

(2014) 09 MAD CK 0158

In the Madras High Court

Case No : Writ Appeal No. 782 of 2014 and M.P. No. 1 of 2014

Attavanai Ena Makkal

APPELLANT

Vs

The Secretary to Government

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 15, 16, 341

Citation : (2014) 09 MAD CK 0158

Hon'ble Judges : Satish K. Agnihotri, J; M.M. Sundresh, J

Bench : Division Bench

Judgement

1. The appellant is a welfare organisation meant for the upliftment of Scheduled Caste people of Puducherry origin. A challenge was made by the appellant to the prospectus issued by the 3rd respondent in respect of clause (vi) pertaining to the admission to first year M.B.B.S. Course before the learned single Judge.

2. The prospectus of 3rd respondent has been issued with respect to admission of 150 M.B.B.S. seats for the academic year 2014-15. Of the said seats earmarked, 40 seats have been reserved for the residents of Puducherry. Of the said 40 seats, 6 have been earmarked for the Puducherry Scheduled Caste candidates. Apart from the same, 16 seats have been earmarked for the Scheduled Caste candidates on All India basis. The appellant has challenged the classification made with reference to Puducherry Scheduled Caste category which means "a candidate satisfying the definitions of Categories (iii) as well as iv (a)/(b)". For the sake of brevity, the relevant clauses are re-produced hereunder:

"(iv) Puducherry Unreserved (P-UR) means any applicant who is a Puducherry resident and an Indian National with

(a) Candidate/his or her parents residing continuously in the Union Territory of Puducherry for atleast five years immediately preceding the date of application.

(b) Children of Central/State Government servants, including employees of Public Sector undertaking under the Central/State Government posted and serving in

the Union Territory of Puducherry for at least a minimum period of ONE year prior to the last date for submission of application.

(v)

(vi) Puducherry Scheduled Caste (P-SC) means a candidate satisfying the afore mentioned definitions of categories (iii) as well as iv (a)/(b)."

3. The learned single Judge basing reliance upon the two judgments of this Court in Puvvala Sujatha Vs. Union of India (UOI) and Others, and D. Ram and D. Shyam, rep. by father and natural Guardian, Dr. D. Balasubramanian Vs. Jawaharlal Institute of Post Graduate Medical Education and Research, , was pleased to dismiss the writ petition. Challenging the same, the present writ appeal has been filed.

4. Learned counsel for the appellant and the 5th respondent submitted that the definition as mentioned in the impugned proceedings is contrary to the Presidential Order - Constitution (Pondicherry) Scheduled Castes Order 1964 issued under Article 341 of the Constitution. It is also contrary to the order dated 22.3.1977 passed by the Government of India. In support of the said contention, the learned counsels have made reliance upon the following decisions:

"(1) S. Pushpa and Others Vs. Sivachanmugavelu and Others, ,

(2) Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, and

(3) Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, ."

5. Per contra, learned Additional Solicitor General appearing for the 3rd respondent submitted that the issue involved is already dealt with by this Court in the Order dated 27.9.2005 made in W.A. No. 3472 of 2004 and W.P. No. 12863 of 2005 and the Order dated 30.9.2005 made in W.A. Nos. 3311 and 3386 of 2004. A reliance was also made on the judgment of the Supreme Court dated 7.8.2014 in W.A. No. 10829-10830 of 2010. Therefore, it is submitted that in view of the same, the issue having been already decided by this Court, no interference is required.

6. We find considerable force in the submission made by the learned Additional Solicitor General. In this connection, it is apposite to refer to the decision of the Division Bench of this Court in W.A. No. 3472 of 2004 dated 27.9.2005, wherein it has been held as follows:

"7. The reservation of 7 % for Scheduled Tribe is made available under the Open Scheduled Tribe category for the current year. Whether there should have been a further specific provision for any migrant Scheduled Tribe who have settled down in Pondicherry is a matter of discretion. Nothing has been shown that absence of

such reservation is arbitrary. The provisions contained in Articles 15 and 16 of the Constitution are obviously enabling provisions and in that sense a member belonging to Scheduled Tribe or Scheduled Caste cannot claim as a matter of right that there should be a reservation and that too to a particular extent.

8. Merely because some special concession has been shown to the Pondicherry Scheduled Caste candidates by earmarking certain seats, it cannot be said that absence of any such special concession for migrant Schedule Tribe candidates, who have settled down in Pondicherry, is arbitrary or discriminatory. It is not that no reservation has been made. Reservation as per the required ratio having been made, the petitioner cannot claim that his right has been violated merely because some additional concession shown to some other category has not been specifically shown to the migrant Scheduled Tribe and, therefore, such contention cannot be accepted."

7. Accordingly, in the said judgment, it has been held that what has been provided is only a concession and therefore the relief sought for cannot be granted. Considering the very same issue involved before us, it has been held by the Division Bench of this Court in the Order dated 30.9.2005 made in W.A. Nos. 3311 and 3386 of 2004 as under:

"6. Mr. Ajaya Kumar has placed strong reliance upon Marri Chandra Shekar Rao's case and Action Committees case. The first case related to a person who was considered to be a Scheduled Tribe as per the Presidential Notification relatable to Andhra Pradesh. Such candidate and his father had migrated to Maharashtra. However, the Tribe to which he belonged was not included in the Presidential notification as a Scheduled Tribe for Maharashtra, and therefore, such candidate was not given the privilege of reservation as a Scheduled Tribe candidate for admission to college within Maharashtra. The Supreme Court negatived the plea of such candidate by holding that a candidate belonging to Scheduled Tribe in a particular State is entitled to claim privilege for admission to college in his parents State but he is not entitled to claim any such privilege if he migrates to another State. The question as well as the answer in the Action Committees case was almost similar.

7. In our opinion, the ratio of the aforesaid two decisions of the Supreme Court is not applicable to the present case. In the present case, the question is not in relation to admission to a college coming under the control of any State or even Union Territory. As already indicated, the Institute has been established by the Central Government.

8. The principle adopted in the Prospectus is in consonance with the principle adopted for employment under the Central Government, wherein the benefit/privilege of reservation is open to all persons who are declared to be Scheduled Caste or Scheduled Tribe in the Presidential notification applicable to various States and Union Territories. It is of course true that 5 seats have been earmarked for Pondicherry Scheduled Caste. However, those seats have not been

confined to Scheduled Caste candidates of Pondicherry origin only. A person, who is considered as Scheduled Caste as per the Presidential notification applicable to any of the States or the Union Territories, is also entitled to the benefit of such category of Pondicherry Scheduled Caste, provided such candidate or his parents is residing continuously within the Union Territory of Pondicherry for at least 5 years or such candidate is the child of a Central/State Government servant posted and serving in the Union Territory of Pondicherry for a period of one year. The basic intention is to provide the benefit to the residents of Pondicherry or who are employed within Pondicherry in connection with the Central/State Government or Public Sector undertakings.

9. The question can be viewed from another angle. It is not disputed that so far as the Government of Pondicherry is concerned, even in respect of employment in connection with such Government, provisions have been made for reservation which had also been extended to migrant Scheduled Caste candidates. The validity and propriety of such provisions had been challenged successfully before the Central Administrative Tribunal and ultimately the matter had gone to the Supreme Court in *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, , wherein the Supreme Court has observed as follows:-

9. The policy of the Government of India, whereunder all SC/ST candidates get benefit in the matter of appointment and admission in educational institutions controlled/administered by the Central Government has been reproduced in para 18 of the judgment in *Marri Chandra Shekhar Rao* and the relevant part thereof reads as under: (SCC P. 145) I. Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the all-India services or admissions in the educational institutions controlled/administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). . . .

(Emphasis added)

10. In our opinion, the ratio of the said decision would be squarely applicable to the facts and circumstances of the present case. Even in *Marri Chandra Shekar Rao*'s case it has been well recognised that admissions in the Educational Institutions controlled/administered by the Central Government, Scheduled Castes and Scheduled Tribes are entitled to derive benefit irrespective of the State to which they belong.

11. In view of the above, it is difficult to accept the contention raised by Mr. Ajayakumar to the effect that the category Pondicherry Scheduled Caste must be construed as Scheduled Caste candidates of Pondicherry origin as per the Presidential notification for the Union Territory of Pondicherry.

8. In view of the above said decisions, we do not find any merit in this writ

appeal. Accordingly, the writ appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.