

(1973) 11 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 3782 of 1973

A.V. Jolly and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 28-11-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19(1)(g), 226

Citation : (1974) KLJ 58

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : Xavier Arakal, K.V. Benedict, K.P. Anathanarayana Iyer and R.D. Shenoy, for the Appellant;

Final Decision : Allowed

Judgement

P. Subramonian Poti, J.—The petitioner in O.P. 3782 of 1973 is an employee of the Federal Bank Limited at Ernakulam and the petitioner in the other petition is an employee of the Tata Oil Mills, Tatapuram, Cochin-14. Both of them sought admission to the part-time LLB. Course in the Government Law College, Ernakulam. Their applications have not been considered because, according to the respondents, the admission to the part-time LLB. Course during the current year is regulated by Ext. R1 rules framed by the Government in G.O. MS. 149/73 Higher Education dated 19-9-1973, which rules restrict admission to the course to regular employees in the Central and State Government Departments, quasi - Governmental bodies including public Corporations and Government owned companies. Having not been called for interview, they came to this Court on 8th November, 1973 at which time the interview for selection of the candidates had not yet been held. Of late, there has been a large rush of candidates for admission to the Law Colleges in the State. The number of seats in these Colleges are limited. In the year 1966, part-time courses with classes held in the mornings and evenings were started in the Government Law Colleges. This was intended for employed persons. Prior to the commencement of the current

academic year instructions in force regarding the admission to part-time degree courses in Law in the Government Colleges of the State enabled admission to be obtained by employees of private institutions also. G.O.M. S. 314/66 Edn. dated 8-7-1966 provided that:

Preference for admission to this course will be given to full time employees of State Government, Central Government and quasi Government institutions. Admission can be given to full time employees of other private institutions also.

This, it is said, was challenged in this Court as a result of which, it appears that the second respondent, the Principal of the Law College, Ernakulam proposed a new set of Rules. It is these rules as recommended by the Principal of Law College, Ernakulam that have found a place in Ext. R1 order of the Government. The only relevant clause with which I need be concerned in this case in regard to Ext. R1 is Clause. 2. That reads

Admission to part time LLB Course shall be restricted to employed persons on a regular full time basis in the Central and State "Government Departments, quasi Governmental bodies including public Corporation and Government owned companies.

That necessarily means that persons like the petitioners in the two cases who, though under the earlier orders were entitled to seek admission, are now denied consideration of their applications. They become ineligible for admission under the new rules. Therefore they were not called for interview by the second respondent. They have moved this court prior to the date of the interview by the Principal of the Law College which is said to have been on the 9th November, 1973. Notice of the interim petitions moved in these cases are said to have been served on the second respondent on 9th November, 1973. The admissions of the students to the College have been made later, during the course of the month.

2. The only ground of attack against the order of the Government reserving all the seats in the part-time course to the employees envisages in R.2 is that it is a blatant infringement of the right to equality guaranteed in the Constitution of India. It is said that the conduct of the respondents in denying the petitioners the right to have their applications considered violates Art.14 of the Constitution.

3. As I have said earlier, hitherto admission to the part-time course has been open to all employees irrespective of whether they are employees of the State and Central Governments, public Corporations or private companies or firms. The restriction of such admission to the classes of employees referred to in the new Rules is introduced for the first time in the current academic year. The files available with the Government Pleader indicate that this was intended to remedy the mischief of the earlier rule. It is the petitioner's contention that the remedy is worse than the evil and the current rule is more vicious than its predecessor. It would also appear from the files that the Government was only accepting the suggestion of the second respondent without bestowing any independent thought on it. The result is that admissions are now restricted in such a manner as to

exclude all employees other than the class referred to in Ext. R1 Government order.

4. I have also to mention that though the Professor in charge on behalf of the Principal has filed a counter-affidavit, the State has not filed a counter-affidavit. But it is submitted by counsel for the State that the stand taken by it is the same as that taken by the second respondent in the counter-affidavit. The stand taken in the counter-affidavit on behalf of the 2nd respondent is seen from Para.5 of the counter.

"There are 100 seats in the regular full time class for LLB. In that there is no such restriction regarding employment. Even when the evening class started they were only intended for employed persons mainly for the employees of State Government, Central Government and quasi Governmental Institutions prior to 1973. Only in 1973 Government framed rules for selection of students to the part time LLB. Course in which Government have not included the students from the private institutions.

Again in Para.8 it is stated

It is submitted that the intention of the Government in conducting part time course is to provide opportunity for legal education for those who are employed in Government Departments and the like as many of the Government servants today are endowed with the duties of administering innumerable statutory provisions and rules. In fact a good percentage of Government employees are having quasi judicial powers affecting rights of the citizens and therefore, providing opportunities for such employed persons to be legally educated would be a object sought to be achieved for the benefit of the public and in the interests of the Government.

This is the only answer to the plea of discrimination as could be found in the counter-affidavit in the case.

5. Before I proceed to consider the plea I have also to notice that the counter-affidavit itself recognises the fact that the earlier rules permitted even employees other than the categories referred to in Ext. R1 to be admitted though in the counter-affidavit a statement is made that the course was "mainly" intended for employees of the State Government, Central Government and quasi - Governmental Institutions. There is no indication in the counter-affidavit as to why a change in the rule was called for and what the justification for such change was. It is also significant that while in paragraph I reference is made to the duties of the Government servants which according to the counter-affidavit requires legal education, no reason is indicated why, to the other class covered by Ext. R1 order legal education would be necessary in preference to the employees of other institutions.

6. It has been said time and again that Art.14 does permit classification. Classification may at times result in exclusion of particular classes. But it is

equally well settled that the classification has to be justified on the basis of the nexus between the object to be achieved and the classification itself. Where the object to be achieved may not justify the classification made by the State it will not be possible to sustain the classification as reasonable or proper. Therefore the enquiry in all such cases would be as to what was the purpose or object of giving a different treatment to a particular class of persons. If in a case such as the one before me any right, such as the right to admission to an educational institution, is confined to a particular category of persons excluding all others who would otherwise be eligible to be considered and the reasonableness is called into question, such action can be sustained only by showing that the object intended by such exclusion is relevant.

7. Normally in an institution run by the State with State funds every citizen is entitled to be considered for admission provided he satisfies the basic qualification laid down for admission to the course. To the graduates who are entitled to seek admission to the Law Colleges in the State the acquisition of the law qualification is of value and purpose as it would not only equip them in life with a degree which may be useful to them but also enables them either to take to the legal profession or seek better venues of promotion in service. Denial of opportunity to seek admission to a course in a government college without proper reason would certainly be objectionable. It would certainly be a violation of the mandate issued to the State that it should treat all its citizens alike. But if the State shows good cause for its policy in limiting admission to a particular class and that cause has got a direct relation to the purpose for which that restriction is imposed then the Courts may be justified in upholding the rule of restriction.

8. Therefore, the prime enquiry in matters where a plea such as the one made here arises should be to find an answer to the question what exactly is the purpose of the rule of exclusion or restriction. Why should the admission be restricted to employees not only of the Government, State and Central, but also of the public Corporations and Government owned companies? The only purpose as seen from the counter-affidavit is that the Government servants should be well equipped with legal training in order to enable them to exercise quasi judicial powers affecting the rights of citizens. On the face of it, this is not an answer to the classification made by Ext. R1 because the right of admission is not restricted to the employees of the State and Central Governments only, but is also equally open to employees of the quasi - Governmental bodies, including public Corporations and Government owned Companies in whose cases no justification is shown in the counter-affidavit. Not that the reservation to the Government employees does not require further examination.

9. The reservation, as I have stated, is not to any particular class of employees in the Government service. That again is quite relevant. It is to all employees irrespective of in what department they are working. So is the case with the public Corporations and Government owned companies. May be there are some

posts in Government service, some even in public Corporations which may require incumbents who may be able to perform their functions more efficiently with a legal background provided to them. But this cannot be said of all employees whether it be of the State Government or Central Government or of the public Corporations or Government owned companies. Therefore it is very difficult to understand the logic of a rule which does not limit opportunity for admission to the Law College to those class of employees whose efficiency may perhaps be increased by obtaining the law qualification. As it is the opportunity for admission can be availed of by a Veterinary Doctor in Government Service, a Laboratory Assistant in the Public Health Laboratory, an Eye Specialist in the Ophthalmic Hospital, a Research Assistant in the Fisheries Corporation or even a Chemist in the Travancore-Cochin Chemicals Limited as much as by a Member of the Board of Revenue. It is difficult to appreciate the purpose behind providing for the acquisition of such qualifications by all these employees though it may be possible to justify it in the case of some. The counsel for the State points out that the Veterinary Doctor may sometimes act as a Land Tribunal and that may necessitate acquisition of a legal qualification by him. Possibly so. Fortunately that is not being said of the other categories like the Laboratory Assistant to whom, I think, the legal qualification may not be a professional asset. That cannot be said also of employees of public Corporations and Government owned Companies like the F.A.C.T. Limited or T.C.C. Limited or the Trivandrum Rubber Works. Therefore the argument that the Veterinary Doctor may become a Land Tribunal and may require legal background need not detain me. Not that it is, a legitimate plea. In a country where there are any number of legally trained men available both in the Bar and outside it, it is difficult to see the propriety of entrusting judicial duties concerning the adjudication of rights to property to those who have had not only no proper training in law but who are really laymen so far as the legal field is concerned. But as I said I need not go further into that plea, for, that does not answer the complaint of discrimination since there are very many classes among those who had been allowed to apply who, I am sure, are not going to be entrusted with quasi-judicial duties.

10. Equally significant is the fact that among those who are left out of the Rule, I mean those who are now excluded from seeking admission, despite being regular salaried employees, there may be many who may stand to gain by legal training. Their employers also may benefit by the employees undertaking a course of study in the LLB. class in the Law College. An officer or an employee of the Vijaya Bank, the Federal Bank or the South Indian Bank may not be able to apply, though legal training may be of assistance to him. But an employee of a Nationalised Bank can seek such admission. A liaison officer working in a private limited company like Tata Oil Mills or Burma-Shell may not be able to apply but a Chemist in the Travancore Titanium Product Ss entitled to apply. It is difficult to see the rational connection between the object of the 100 percent reservation of seats in the part-time LLB. course in the Law College to the particular class of employees enumerated in Ext. RI. It is equally difficult to understand, how if at

all there is any, the purpose, which is sought to be achieved by such exclusion could be promoted by the impugned rule.

11. Indeed, there is ample scope for grievance because what is provided for is not in the real sense any reservation. While even a reservation of admission to a particular category of employees or preference to them may have to be supported by proper justification, where, in the name of reservation, all the seats are concerned by a class of employees effectively ignoring the rights of others, there is an annihilation of the rights of such others to seek admission to an institution in which normally they should have a right to be considered for such admission along with others. As observed by the Supreme Court in *T. Devadasan Vs. The Union of India (UOI) and Another*, in considering the question of reservation in the matter of employment, any rule of reservation cannot be such as to make the availability to the non-reserved classes illusory.

12. Counsel for the State seems to justify the action of the Government by reference to the decision of the Supreme Court in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, . My attention is drawn to Para.9 of this judgment. The learned Judge Grover J. said

It is the Central Government which bears the financial burden of running the Medical College. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an over all assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education.

It is true, it is for the State to lay down the criteria for eligibility and that is essentially a question of policy. But what the learned judge said later in the same paragraph makes the position clear.

If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification.

The power of the Government to decide upon the policy as to the source from which the candidates are to be drawn does not vest an arbitrary power in the Government, a power which is capable of excluding a class for no intelligible reason. The source, as the Supreme Court said, must be properly classified. In the case before the Supreme Court reservation had been made in regard to admission to the Medical College to various classes. The Supreme Court considered the justifiability of the reservation to each one of these classes and found that these were necessary and reasonable. That of course, is a matter to be examined on the facts of each case.

13. Reliance is also placed by State's counsel on the decision of the Supreme

Court in *Miss Rita Kumar Vs. Union of India (UOI) and Others*, . The Government of India introduced a scheme under which certain number of seats in Government Medical College were reserved in the pre-medical and M.B.B.S. Courses for repatriates from Burma, Ceylon, Mozambique and new migrants from Bangladesh. Applications were invited from qualified repatriates from the above areas in prescribed forms. "Repatriate" was defined in the case of persons coming from Burma as those who arrived in India on or after 1-6-1964. Petitioners were, probably on the merits, more qualified than the other repatriates who had come to India after 16,1964. Since they were entitled to apply they did apply. There were no statutory rules governing admission. The petitioners were not admitted because selection was confined to those repatriates who came within years prior to the selection. The question was whether this was a discriminatory classification. Even among repatriates those who had come within five years prior to the selection and those who had come earlier were treated differently. But the latter class of repatriates had been better settled and rehabilitated. The purpose of the reservation being to assist all those who had not been rehabilitated, classification preferring those who had not been really rehabilitated was held to be a rational one. Here again I see no assistance to the contention of the State as every case must necessarily ultimately turn on the facts.

14. It is very difficult to conceive of a rational policy behind the impugned Government order. It is highly doubtful whether the Government seriously took note of the consequences of exclusion resulting from the implementation of its order. It suggests to me from a perusal of the file that in an attempt to lay down some rule or criteria, suggestions made by the then Principal of the Law College, Ernakulam, the second respondent, to the Government was accepted as such without seriously considering the consequences that would result from the course adopted. There has not been a serious attempt to justify the classification. There is not even an apparent justification shown for preferring employees of Government owned companies and public Corporations. Not that the justification shown in regard to Government servants would pass the test. In these circumstances it is difficult to uphold the rule embodied in the impugned order Ext. R1 limiting admissions to a particular class. Clause. 2 of Ext. R 1 is therefore violative of the right of equality guaranteed under Art.14 of the Constitution and is therefore liable to be quashed.

15. It has been suggested by counsel for the State at the hearing that the petitioners must be denied relief for other reasons. It is said that by this time admissions to the College have been closed, classes have begun and any decision by this Court would result in an unsettlement of the situation. It is also said that those who have been admitted are not parties to these petitions. It is suggested that the petitioners could have come earlier. As to the last of these contentions, I think I should accept the petitioners' case that there was no occasion for the petitioners to know about Ext. R1 earlier. The petitioners say that Ext. R1 is not seen published in the Gazette even though it is a Government Order. No Gazette

publication is shown to me and the State frankly admits that it is not seen published. Therefore it cannot be taken that this order was known to all concerned. It is no doubt true that the substance of this rule is seen in this year's prospectus. The petitioners have come to court even before the interview had begun. They had come on the 8th November and the interview was only on the 9th. Notice on the interim petition had been served on the second respondent on the 9th. Admissions to the college were made only thereafter. Therefore the petitioners may not, in any way, be blamed for not impleading those who are admitted later.

16. There is another aspect of the matter which is equally relevant in this context. The mandate under Art.14, 15 and 16 of the Constitution is directed to the State. It is more a matter for the State to take note of and to be governed by in its conduct than for a citizen to seek enforcement of. That is why Courts have on occasions said that when the plea is one of infringement of Art.14 the test as to the availability of the right in the petitioner will not be as rigorous as in the case of a plea of infringement of other fundamental rights guaranteed in Part III of the Constitution such as the right to property under Art.31 or the freedom to practise profession in Art.19 (1) (g). The legislature and the executive have to be kept within Constitutional limits. Of course, in the matter of the consequential directions to be given by the Court by way of implementation of its decision the Court must take note of relevant circumstances.

17. Since Art. 14 of the Constitution is a command to the State, the Supreme Court held that it is a fundamental right which cannot be waived by any person. This is in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, . A Full Bench of the Patna High Court in *Umesh Chandra Sinha Vs. V.N. Singh and Others*, said

In Art.14,15 and 16 the emphasis is more on the constitutional duty of the State than on the right conferred on an individual unlike Art.31. Hence the nature of the interest which an applicant has to establish while seeking the help of this Court under Art.226 where infringement of Art.14 is alleged may be less tenuous than the interest which he has to establish where infringement of some other Article in Part III such as Art.31, is alleged.

18. Now I must come to the relief that must be granted to the petitioners here. The petitioners, as I said, have come to this Court in time and therefore in their cases they are entitled to their applications being duly considered. It is submitted by the petitioners that candidates with lesser marks than that obtained by the petitioners have been admitted to the course. Once the distinction between the several classes of employees may not be the basis for excluding any particular candidate, necessarily selection must go by merit and merit has been determined, I am told, on the basis of marks. If the petitioners have more marks than those admitted, they are entitled to admission. How that is to be worked out is a matter for the respondents to consider. If that necessarily requires others to be displaced, that must be done. But, I believe, the better course, in case the

petitioners are found eligible, would be to see that two more seats are provided. The matter must be finally settled within a week from to-day. Possibly those who may come to Court hereafter may not be in the same position as the petitioners, because of the lapse of time. Necessarily what I have said herein will, I hope, be a guidance to the respondents in the matter of framing proper rules atleast for the admissions in the coming years. In the result, Clause. 2 of Ext. R1 is quashed and the petitions are allowed. No costs.

A carbon copy of this judgment will be issued to the Government Pleader free of charge. Allowed.