

(1998) 11 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 13157 of 1998

Basavaraj Nagoor

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Constitution of India, 1950 — Article 13 (2), 14, 15, 16
Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 2 (1) (mm), 3B

Citation : (1999) ILR (Kar) 1814 : (1999) 1 KarLJ 488

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri. T.S. Amar, for the Appellant; Sri. S. Vijaya Shankar, Advocate-General, Sri N.K. Ramesh, A.G.A. and Sri T. Narayana Swamy, for the Respondent

Judgement

1. The petitioner has appeared at the examination held on 30-8-1998 by Karnataka Public Service Commission for the Karnataka Civil Service Group "A"/"B" post, the result whereof is still awaited. He has questioned the validity of Rule 3-B read with Rule 2(1)(mm) of the Karnataka Civil Services (General Recruitment) Rules, 1977 (in short, the "Rules") which provide for giving of a weightage of 10% marks to the Rural candidates in giving public employment under the State's Civil Services.

2. Pursuant to the powers conferred on the State Government u/s 3 of the Karnataka State Civil Services Act, 1978 (Karnataka Act 14 of 1990), the State Government has made the Karnataka Civil Service (General Recruitment) (Forty-third Amendment) Rules, 1993, whereby it amended the rules by inserting clause (mm) in sub-rule (1) of Rule 2 defining "Rural Candidate" and an independent Rule 3-B providing for "weightage of marks to rural candidates" in order to give preference to them in public employment.

3. Subsequently, clause (mm) in sub-rule (1) of Rule 2 and Rule 3-B of the Rules were subjected to various amendments by the Karnataka Civil Services (General Recruitment) (Forty-seventh Amendment) Rules, 1996, Karnataka Civil Services

(General Recruitment) (Forty-ninth Amendment) Rules, 1997, Karnataka Civil Services (General Recruitment) (Fiftieth Amendment) Rules, 1997 under notification dated 15-3-1996, 27-4-1997 and 6-12-1997 respectively. The amended clause (mm) of sub-rule (1) of Rule 2 and Rule 3-B of the Rules read thus.--

2(1)(mm) "Rural candidate" means a person who was studied in the State of Karnataka.--

(i) from first standard to tenth standard where the qualifying examination prescribed for a post is SSLC or higher; or

(ii) from first standard to the qualifying examination, where the qualifying examination prescribed for a post is lower than SSLC,

in a school situated in an area/town other than the areas/towns specified in the Schedule.

Provided that where a student who has been admitted directly to any standard other than the first standard in accordance with the provisions of the Compulsory Primary Education Act, 1961 and has studied upto qualifying examination or upto the 10th standard as the case may be in a school situated in an area or towns other than the areas or towns specified in the Schedule shall also be considered as rural candidate under this rule.

3-B. Weightage of marks to rural candidates.--(1) Notwithstanding anything contained in these rules or in the Karnataka Civil Services (Direct Recruitment by Selection) Rules, 1973 or in any other rules made or deemed to have been made under the Karnataka Civil Services Act, 1978 (Karnataka Act 14 of 1990) in all direct recruitments to (any of the posts) in the State Civil Services, in respect of a rural candidate, a weightage of.--

(i) Ten per cent shall be added to the percentage of marks secured in the.--

(a) qualifying examination where the selection is based upon the marks secured in the qualifying examination;

(b) qualifying examination where the selection is based upon the marks secured in the qualifying examination and interview;

(c) competitive examination or in the competitive examinations and interview/ viva voce, as the case may be, where the selection is based upon marks secured in the competitive examination or in the competitive examination and interview/ viva voce.

(ii) Ten per cent of the marks secured in the interview shall be added to the marks secured in the interview where the selection is made on the basis of the marks secured in the interview:

Provided that no weightage shall be allowed to a rural candidate for whom a rural weightage has already been allowed in accordance with the rules of recruitment

especially made in respect of any service or post".

4. Learned Counsel appearing for the petitioner has questioned the constitutional validity of the impugned rules providing for giving of extra 10% marks to the rural candidate in order to give them weightage over the otherwise better merited candidates for giving preference in public employments being violative of the fundamental rights of equal opportunities enshrined under Articles 14, 15 and 16 of the Constitution of India since according to him no classification based on residence in a particular area for a given period can form a permissible class for the purpose of any of the equality clauses in the Constitution. In support of his submission, he has relied on the decisions of the Supreme Court in the cases of State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, , State of Maharashtra Vs. Raj Kumar, and Suneel Jatley and Others Vs. State of Haryana and Others, .

5. Learned Advocate-General appearing for the State of Karnataka has submitted that the candidates hailing from rural areas surely form a well denned class in themselves for the purposes of Articles 14, 15 and 16 of the Constitution of India and the State is justified in giving preference to them in public employments by adding 10% to the marks scored by them in the qualifying and entrance test or the interviews as a "rural weightage" so that they may have proper representation in such employments. He has placed reliance on the statement made in the counter affidavit by the Under-Secretary to the State Government wherein he has stated that the impugned rules have been made by taking into consideration the environment and the educational facilities available in rural areas as compared to those in urban areas and further to enable the rural candidates to compete with the candidates coming from urban areas for the purpose of direct recruitments to the posts in civil services of the State.

6. The original Government file pertaining to making of the impugned rules, the Cabinet decision and opinion of the Law Department and Cabinet Secretary have also been made available to me for my perusal. On perusal thereof, I find it advisable to quote one paragraph from the Cabinet note dated 21-1-1996 prepared by the Secretary to the Government, Department of Personnel and Administrative Reforms, which is quite eloquent on the issue. It is to the following effect.--

"As already opined by the Law Department, providing rural weightage may not stand the test of Constitutional validity and legal scrutiny. Further, without any statistical data or material, it may be difficult to sustain such a provision when questioned in the Courts. Frequent enhancement may in itself give room for this issue being challenged. Thus, it may not be possible to defend the initial action taken by the Government in providing rural weightage but also the frequent enhancement could be the cause for setting aside the whole concept of rural weightage".

7. Neither, in the counter affidavit nor independently, any material has been

placed before this Court to show that the entire population covered by the definition "Rural Candidate" constitutes socially and economically a backward class of citizens for the purposes of Article 16(4) or they are entitled for any weightage, relaxations, concessions or privileges in public appointments en masse forming a backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State. As a matter of fact, as extracted from the Government note, what to talk of at the time of taking initial decision in the year 1994 when the original impugned rules were incorporated, even till this day, no data of whatsoever worth, is available on record either to justify the backwardness of the rural candidates or that persons coming from the rural areas do not have adequate representation in services under the State.

8. To my mind, the questions raised at the Bar are no more *res Integra* since the law on these questions has already been settled by the Supreme Court long back but unfortunately, still the political executives in order to appease/lure the voters and enrich their vote banks, despite having the full knowledge about the declaration of law by the Apex Court, have ventured to incorporate a constitutionally invalid rule like the impugned one depriving many merited candidates of their fundamental rights of employment and livelihood. I feel, that a Government, acting under the solemn oath to preserve the supremacy of the Indian Constitution and rule of law, should have acted with little more care and restraint instead of being swayed away with unconstitutional populist measures.

9. In Pradeep Tandon's case, *supra*, the question which had fallen for consideration before their Lordships of the Supreme Court was as to whether the instructions framed by the State in making reservation in favour of the candidates from rural areas, hill areas and Uttarakhand were constitutionally valid? In this case, on behalf of the State Government, it was contended by the learned Attorney-General that the people of rural areas are normally socially and economically backward and so they constitute a well defined class within the meaning of Article 15(4) of the Constitution of India. It was also contended that because of their common trades, occupation and residence in rural areas they are recognised as a separate class in the Indian Society and are commonly known as "Rural People". However, the Supreme Court rejected the said plea by holding that (paras 25 and 26).--

"25. Some people in the rural areas may be educationally backward, some may be socially backward, there may be a few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.

26. 80 per cent of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State".

(emphasis supplied)

10. Subsequently, in Raj Kumar's case, supra, the recruitments rules, like the one under challenge, were under judicial scrutiny before the Supreme Court. In this case also, the State Government had made provision for giving 10% rural weightage to the candidates having passed SSC from rural areas. Their Lordships have held that "giving of weightage to the rural candidates would virtually convert the merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being impermissible classification. The rule of weightage as applied in this case is manifestly unreasonable and wholly arbitrary and cannot be sustained". In this case, their Lordships have found themselves in complete agreement with the opinion expressed by the High Court which according to them had laid down the correct law and was thus fully approved. The High Court had observed that.--

"..... .On the contrary, it places a rural candidate in an advantageous position by a sheer accident of his passing the SSC Examination from rural area".

"..... .Here we are faced with a problem that a candidate by sheer chance of his appearing and passing the examination from rural area gets an advantage over all others by arbitrary addition of ten per cent of marks which, as we have indicated above, has no reasonable nexus or connection with the object of getting the best candidates suitably adapted to rural life".

11. Similar question regarding validity of a rule providing for giving weightage to the rural candidates in professional colleges had arisen in Suneel Jatley's case, supra, which was also declared to be constitutionally impermissible. In this case, the Apex Court apart from relying on its earlier judgment in the case of Pradeep Tandon, with approval have given some additional reasonings for taking the said view. These reasons aptly and squarely apply to the present case in order to counter the claim of the State. The Supreme Court in paras 11 and 12 of the judgment has held that.--

"11. Assuming that the decision in Pradip Tandon case, supra, does not conclude the point as herein raised, the differentia on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural school on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped. Agriculture in Haryana has been a very profitable pursuit and standard of life of average farmer in rural area has gone up compared to middle class and industrial workers and the slum dwellers whose children will attend as a necessity urban schools. And yet the better placed will enjoy reservation. Further, the basis of classification based on education upto eighth standard is wholly irrational. And it has no nexus to the object sought to be achieved, of providing extra facility to students coming from rural schools to enter medical college.

12. What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from first to eighth standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instructions from first to eighth standard".

(emphasis supplied)

12. What has been said by the Supreme Court in respect of State of Haryana is no less true in respect of the State of Karnataka as well. The "Status Report on Elementary Education" published by the Education Department of the Government of Karnataka in September 1996 reveals that out of Rs. 12,33,915.00 lakhs, representing the total State Budget for the year 1996-97, Rs. 1,82,660.50 lakhs, which is 14.80%, had been earmarked for being spent on education. Out of the said amount, Rs. 99,454.05 lakhs and Rs. 58,084.15 lakhs was meant for primary and secondary education respectively. The report further states that all steps have been taken to open primary schools in area having a population of more than 300 inhabitants and more than 95% of the children have a primary school within a radius of 1 km. from their place of residence. According to the report, there are in total 42,479 lower and higher primary schools in the State providing for free and compulsory education for the children in the age group of 6 to 14 years.

13. It is also of importance to note that the imparting of education right from first standard is being regulated in this State under various statutory provisions. Now, a consolidated Act called the Karnataka Education Act, 1983 is in force whereunder rules have been framed making those applicable uniformly to all the schools situated in the State of Karnataka irrespective of the fact whether the areas are rural or urban. These rules are "Karnataka Private Education (Discipline and Control) Rules, 1978" providing for qualification of teachers, their mode of recruitment and service conditions. Even for standard VII and below, the Government has framed the statutory rules known as District Level Seventh Standard Public Examination Rules, 1997 providing for uniform examinations. The other rules in the area are the Grant-in-Aid Code, the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 and the Karnataka Educational Institutions (Classification and Registration) Rules, 1997.

14. For the aforesaid reasons and keeping in view the judgment of the Supreme Court in the above referred case of Suneel Jatley, it is difficult to accept that the students who had read in the rural schools have in any manner suffered any disadvantage in the matter of acquiring school level education. But, even otherwise, as held by the Supreme Court, such a classification per se is constitutionally impermissible.

15. The judgment in the case of Raj Kumar, supra, has been followed with approval by the Supreme Court in its later judgment in the case of V.N. Sunanda Reddy and others Vs. State of Andhra Pradesh and others, . In this case, the Apex Court has held the rule framed by the State Government providing for addition of 5% of the total aggregate marks to the assessment of Telugu medium candidates in recruitment to public posts, to be violative of Articles 14 and 16 of the Constitution. The Apex Court has held that (at p. 245/a).--

"This would weed out best available candidates from the open market and would impair the efficiency of administration. It deserves to be pointed out that even while making reservations for members of the Scheduled Castes and the Scheduled Tribes as permitted by Article 16(4) of the Constitution, efficiency in administration is required to be borne in mind, as enjoined by Article 335; and it is principally this requirement which led the nine-Judge Bench of this Court in the Mandal Commission case to hold that reservation cannot exceed 50%. This aspect shall have to be borne in mind, a fortiori, here as the weightage to be given has no constitutional sanction".

(emphasis supplied)

16. For the aforesaid reasons, the impugned Rule 3-B of the Karnataka Civil Services (General Recruitment) Rules, 1977 providing for "weightage of marks to rural candidates" is declared as void in terms of clause (2) of Article 13 of the Constitution of India which prohibits the State from making any law taking away or abridging the rights conferred under Part III of the Constitution of India, including the right of equality enshrined in Articles 14, 15 and 16 thereof.

17. I expect that the law declared by the Supreme Court will be duly honoured by the State Government by forbearing from granting rural weightage in respect of admission to educational institutions as well.

18. Anyhow, it is clarified that as held in Sunanda Reddy's case, supra, notwithstanding the above declaration, the appointments of persons already made on the basis of "rural weightage" and who are working on their posts will not be disturbed and their appointment will not be adversely affected because of the present judgment.

19. The writ petition is accordingly allowed. Anyhow, there will be no order as to costs.