

(1976) 07 MAD CK 0001
In the Madras High Court

C.T. Chidambaram and Others

APPELLANT

Vs

The General Manager, Indian Bank and Another

RESPONDENT

Date of Decision : 12-07-1976

Acts Referred:

Citation : (1977) 2 MLJ 517

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—As the questions involved in all the writ petitions are the same, they are disposed of together.

2. The respondent called for applications from eligible candidates for the posts of typists and secured hands like cashiers and godown keepers

prescribing certain qualifications. The petitioners in all the above writ petitions satisfied all the prescribed qualifications and, therefore, applied for

appointment to the said posts. They were asked to sit for a written test. Thereafter they were asked to appear before a Selection Committee for

interview. The petitioners appeared for the test and the interview before the Selection Committee. The petitioner in Writ Petition No. 768 of 1974

had applied for the post of typist and the petitioners in W.P. Nos. 745 and 746 of 1975 had applied for the post of cashiers and godown keepers

in the category of secured hands. Their names were not, however, found in the list of successful candidates selected for appointment to the

different posts. On enquiry the petitioner in the first writ petition was told that he was not eligible for appointment as his father and brother were

already working in the Bank. The petitioner in W.P. No. 745 of 1975 was told that as his sister was already employed as a clerk in the bank he is

ineligible for appointment. The petitioner in W.P. No. 746 of 1975 has been made ineligible as his sister has already been employed as a typist in

the Bank. Thus all the petitioners have been considered to be ineligible for appointment to the posts of typists and secured hands in the bank on the

ground that their relations are already working in the Bank-According to the Petitioners the rejection of their claim for appointment on the only

ground that they are related to persons already working in the bank which is said to be a policy decision taken by the management is violative of

Article 16(2) of the Constitution of India which prohibits a discrimination being made on the only ground of descent. They have therefore,

approached this Court for the issue of a certiorari filed mandamus to quash the said policy decision of the Bank and to direct the respondents to

appoint the Petitioners to the corresponding posts.

3. In the counter-affidavit, the respondents have stated that the bank being a commercial organisation, no writ under Article 226 of the Constitution

would be available as against the same and, therefore, the above writ Petitions cannot be maintained. On merits they have taken up the stand that it

is open to the Bank to adopt a uniform policy in the matter of recruitment of its employees, that a policy decision was taken in 1973 to make an

applicant ineligible if his father and brother/sister are already in the service of the Bank and that it is in pursuance of the said policy decision the

Petitioner in the first writ petition was made ineligible for appointment even though he might have done well in the written examination or the

interview. In the year 1974 this policy was revised and it was decided not to recruit a candidate whose brother or sister is already in the service of

the bank, and the Petitioners in the other Writ Petitions were considered ineligible for selection in view of this policy. In the counter-affidavit it has

clearly been admitted that the rejection of the Petitioners' claim for appointment is only on the basis that their recruitment will be against the said

policy decision.

4. In the reply-affidavit filed by the petitioner in W.P. No. 768 of 1974 a list of 7 instances wherein more than 2 members of a family had been

employed by the Bank is given to show that the bank is not adopting a uniform or consistent policy and that it adopts policies to suit its whims and

fancies and the particular situation. In answer to the said reply-affidavit, the

respondents have stated that out of those instances cited by the petitioner in his annexure to the reply-affidavit three cases related to recruitment of a second son and of them two were in the year 1972 before the Policy decision was taken and the other related to recruitment of temporary scavengers whose services were also terminated later, and that from the year 1973 onwards no second son or second member of the family has been recruited in the permanent service of the bank,

5. As regards the question raised by the respondents regarding the maintainability of the writ petitions, it has been held by this Court in W.P. No.

4429 of 1974 that the Bank of India after its nationalisation, is an authority contemplated by Articles 12 and 226 of the Constitution of India and,

therefore, they are amenable to the writ jurisdiction of this Court. In *Ramiah v. State to Bank of India* (1967) 80 L.W. 616, it has also been held

that the State Bank of India is an authority contemplated by Articles 12 and 226 of the Constitution. I cannot, therefore, accept the preliminary

objection raised by the learned Counsel for the respondent.

6. As regards the contention raised by the petitioners that the policy said to have been adopted by the Bank not to employ Persons whose

relations are already working in the Bank cannot be said to be a sound or reasonable one that in any event the bank has not been following a

uniform policy and that there is a change in their policies at every stage to suit its whims and fancies. I am of the view that the laying down of a

policy for purpose of recruitment of employees is a managerial function and that once a certain policy is adopted in the matter of recruitment of

staff having regard to the interests of the Bank, it is not for the Court to suggest a different policy or to find loopholes therein, the Court taking the

position of a management. Doubtless, if the policy laid down by the bank on any particular matter or on a particular occasion is contrary to any law

for the time being in force or the constitutional provisions then the policy can be struck down by the Court.

7. In the supplementary counter filed by the second respondent, the Chairman of the Bank, it has been stated that after considerable deliberations

and consultation with his other colleagues in the bank, he took the view that the applicants whose father and brother/sister are already in the service

of the bank should be declared ineligible for appointment and that such policy

was adopted for the various reasons set out therein. One of the reasons is that once members of the same family are employed in the service of the bank they tend to pressurise the management by making various requests and that employment of members of the same family has, in its past experience, created several problems for the management.

Some of the problems pointed out are: (1) If disciplinary proceedings are initiated against one member of the family, the other members of the family working in the bank bring pressure on the management to take a lenient view of the case. (2) In making recruitment also pressure is being brought by the members of the family to select another member of the family without reference to considerations based on merit. (3) Decisions regarding promotions and transfers which are to be taken on objective grounds are affected once the members of the family are employed. (4) If a member of a family is employed in a branch, the Central Office where the other members of the family might be employed, may not exercise strict vigilance about the working of the branch as is expected of them. (5) The possibility of the members of the family taking leave at the same time on the ground of some function in the family leaving the work of the bank to suffer, which would not be the case if there is no concentration of members of the same family in the bank. (6) If too many members of one family are concentrated in the bank's employment, the confidential nature of the bank's transactions will be lost and in its experience, the bank has found that when the members of the same family are in the bank it is difficult to keep the Bank's transactions confidential. The considerations set out have led the second respondent to think that employment of members of the same family in the bank is detrimental to the interests of the bank and cannot be said to be irrelevant or arbitrary as they have sufficient nexus with the functions of the bank. As already stated, the laying down of a policy for recruitment of personnel is managerial function and if, after taking relevant and germane considerations the policy was adopted by the bank to make ineligible for recruitment persons whose relations are already working in the bank it cannot be said to be arbitrary or unreasonable.

8. The only question then is whether the policy said to have been laid down by the second respondent in 1973 or in 1974 to exclude from employment persons whose father and brother/sister are already employed in

the bank contravenes any law for the time being in force or the constitutional provisions.

9. The contention of the learned Counsel for the petitioners is that such a policy contravenes Article 16(2) of the Constitution in that persons seeking employment in the bank are excluded because they are children, brother/sister, of persons who are already working in the bank which means the exclusion is only on the basis of descent. Article 16(2) of the Constitution is as follows:

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence of any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

It is pointed out by the learned Counsel that in this case the petitioners have been declared ineligible by the respondents only on the ground of

descent as they have been found suitable for appointment otherwise, that as heredity is not a disqualification, the respondents are not justified in

declaring the petitioners ineligible on the ground of heredity, and that such an exclusion based on heredity cannot be justified on the ground of

reasonableness or otherwise. The learned Counsel refers to the following passage in the judgment of Patanjali Sastri, C.J., in *Kathi Raning Rawat*

Vs. The State of Saurashtra, ,:

All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Article 14. The expression

"discriminate against" is used in Article 15(1) and Article 16(2) and it means, according to the Oxford Dictionary "to make an adverse distinction

with regard to; to distinguish unfavourably from others." Discrimination thus involves an element of unfavourable bias and it is in that sense that the

expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it

may well be that the statute will without more, incur condemnation as violating specific constitutional prohibition unless it is saved by one or other of

the provisos to those Articles. But the position under Article 14 is different. Equal protection claims under that Article are examined with the

presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which

the legislature must, of necessity, possess in making laws operating differently as

regards different groups of persons in order to give effect to its policies.

Reference has also been made to the decision in *Punjab Provinces v. Daulat Singh* (1942) F.C.R. 67 : AIR 1942 F.C. 38, which dealt with the

scope of Section 298(1) of the Government of India Act, 1935 which corresponds to Article 16(2) of the Constitution. In that case the question

before the Federal Court was whether Section 13-A of the Punjab Alienation of Land Act which was introduced by Amending Act X of 1938 by

the Punjab Legislature in the Punjab Act XIII of 1900 was inoperative on the ground that it contravened Section 298(1) of the Government of

India Act of 1935. The Punjab Alienation of Land Act was designed to protect the cultivator against moneylenders. Section 3 of that Act declared

that no permanent alienation made by an agricultural tribe shall take effect as such unless and until sanction is given by the Deputy Commissioner.

Section 3(3) left it to the discretion of the Deputy Commissioner to grant or refuse such a sanction. Section 4 empowered the Local Government

to determine by notification in the Official Gazette what bodies or persons in any district or group of districts are to be deemed to be agricultural

tribes or groups of agricultural tribes. There were two exceptions to the Prohibition indicated in Section 3 namely (a) the sale of right of occupancy

by tenant to his landlord and (b) gift made for a religious or charitable purpose, whether inter vivos or by will. Sections 6 to 13 contained certain

provisions in respect of temporary alienations of land such as mortgages, leases etc., by a member of an agricultural tribe. By the Amending Act of

1938 Section 13-A was inserted in the Principal Act. That section was as follows:

13-A(1) When a sale, exchange, gift, will, mortgage, lease, or farm purports to be made either before or after the commencement of the Punjab

Alienation of Land (Second Amendment) Act, 1938, by a member of an agricultural tribe to a member of the same agricultural tribe or of a tribe in

the same group, but the effect of the transaction is to pass the beneficial interest to a person who is not a member of the same tribe or of a tribe in

the same group, the transaction shall be void for all purposes and the alienor shall be entitled to possession of the land; so alienated,

notwithstanding the fact he may have himself intended to evade the provisions of the Act.

Explanation: Any alienation made in consequence of a transaction rendered void by this sub-section shall also be deemed void for all purposes.

It was contended that the said provision read along with the Notification No. 63 dated 18th April, 1904 issued u/s 4 of the Act by the Punjab

Government infringed Section 298(1) of the Government of India Act, 1935. The Federal Court held that the provision in Section 134 read with

the said notification was clearly discriminatory because it draws a difference between transactions in which benefits belong to an agriculturist and in

which they belong to a non-agriculturist and declares the latter void and that such a discrimination will not by itself amount to contravention of

Section 298(1), unless the discrimination is based on the ground of descent and on descent alone. While dealing with the contention of the State

that the discrimination if any is based on the character of the land or the status of the transferee and not purely on descent, the Federal Court pointed

out that the discrimination is not one based on the character of the land or on the status of the transferee but is one based purely on descent. Their

Lords of the Federal Court came to the said conclusion by considering the following three illustrations with reference to the applicability of

Section 13-A and the notification of the Punjab Government dated 18th April, 1904 which stated that a person will not be included in an

agricultural tribe within the meaning of the Act unless (1) he is descended from members of a particular tribe, (2) he resides or holds property in a

particular place and (3) the alienor and the alienee should be members of the same agricultural tribe or of a tribe in the same group. A may satisfy

the conditions of descent from a particular community: but he may fail to satisfy the condition as to residence or the holding of property in a

particular place. B may hold property or reside in the prescribed place, but not being descended from a member of the community specified in the

notification, he may not satisfy the requisite condition. C may fail in respect of both qualifications. The Federal Court was of the view that through

the provisions of the Act generally impose certain disabilities on these three classes of persons, in the case of the second of the illustrations given the

prohibition of acquisition or holding of property has been made to depend on the ground of descent, while in the first and third illustrations the

prohibition cannot be said to be on the ground of descent, alone and that, therefore, the Act in so far as it makes it impossible for persons standing

in the same position as B in the illustration given above to acquire or held interest in land as defined in the Principal Act as beneficiaries under a

benami transfer to a qualified transferee while the Principal Act makes it impossible for such persons to acquire a permanent interest in such lands

by a direct transfer to themselves does contravene Section 298.

10. The learned Counsel for the respondents however relied on the following observations of Beaumont, J., in the minority judgment in the same

case, in support of his submission that if the discrimination is based on any one or more of the grounds specified in Article 16(2), then the

discrimination is bad but if the true basis of the discrimination is something different, then there is no violation of Article 16 (2):

The policy of the principal Act appears to be to ensure that agricultural land in the Punjab shall not be allowed to pass permanently out of the

hands of the agricultural classes, in whom it was vested at the date of the Act, without sanction of the Government, a policy which has appealed to

many Governments besides that of the Punjab and which has been applied in countries other than India. It is true that descent has been made an

element in determining the persons who fall within the description of agricultural tribes but, the prohibition against alienation would seem to be

based quite as much on the character of the land and the occupation of the holder, as on his descent. In every Province in India the population is

divided into different communities, who profess different religions and some legislation must inevitably take account of these distinctions. This

position was well-known to Parliament when the Government of India Act was passed, and to my mind Section 198(1) was deliberately confined

to cases in which there was no other ground for discrimination except one or more of those specified in the section To construe the section as

providing an Act one effect of which is to discriminate on the ground of descent, though that appears from the terms of the Act itself, not to have

been the only ground on which the discrimination was based, seems to me to impose a very serious and possibly dangerous limitation on the

powers of Provincial Legislatures which the language of the section does not warrant.

The learned counsel also refers to the following decision in support of his stand In *Anjali Roy Vs. State of West Bengal and Others*, , the scope of

Article 15(1) was considered and it was held that the discrimination which is forbidden by Article 15(1) is only such discrimination as is based

solely on the grounds that a person belongs to a particular race or caste or professes a particular religion or was born at a particular place or is of a

particular sex and on no other ground. The discrimination based on one or more of these grounds and also on other grounds is not hit by the

Article. In coming to that decision the Court has placed emphasis on the word "only" occurring in Article 15(1). In that case a girl student applied

for admission to a mixed college and the admission having been refused on the ground that a separate college for women had been established in

the place, the student moved the Court for the issue of a writ on the ground that she has been refused admission solely on the ground of sex and

therefore, the refusal amounts to a contravention of Article 15(1). The Court held that the discrimination alleged in the case is not only on the

ground of sex but also on the ground that a women's college has been established in the place for the advancement of female education and for

relieving the pressure in the mixed college in which the admission was sought for.

11. Thus the contention of the learned Counsel for the respondents is that the discrimination if any in this case is not based on descent alone but it is

based not only on the ground of descent but also on other factors such as the recruitment policy of the bank and the factum of the earlier

employment by the bank of the member of the petitioners' family, and that Article 16(2) does not prohibit a discrimination being made on any one

of the grounds set out therein coupled with other grounds. He also contends that the other grounds such as the existence of a recruitment policy

and the earlier employment of the members of the petitioner's family by the bank are quite relevant matters for purpose of making a classification.

In this connection he refers to the decision of the Court of Appeal in *Currings v. Birkenhead Corporation* (1971) 2 All. E.R. 881 In that case the

Education Authority constituted under the Education Act, 1944 had laid down a policy for allocation of children to be admitted to the secondary

schools, and according to that policy the children from Roman Catholic Primary Schools are to go to the Roman Catholic Secondary Schools and

those from non Roman Catholic Primary Schools should go to the non-Roman Catholic Secondary Schools. On the basis of the said policy,

admission sought for by one who came from a Roman Catholic Primary School to a seat in non-Roman Catholic Secondary School was refused.

This action was challenged as invalid on the ground that the said policy laid down by the Education authority was in breach of Section 76 of the

Education Act which provides;

...local education authorities shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and

training and the evidence of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

Lord Denning, M.R. held that though Section 76 of the Education Act provides that pupils are to be educated according to the wishes of their

parents, the wishes of the parents are not the only consideration, that there were many other things to which the education authority may have

regard which might outweigh the wishes of the parents, that they should have due regard not only to the wishes of the parents of one particular

child but also to the wishes of the parents of the other groups of children and that the Education authority having taken a policy decision in the

matter of allocation of children to particular schools, such a policy decision cannot be challenged as ultra vires Section 76. The following

observations in the judgment are quite pertinent:

So, here, if this education authority were to allocate boys to particular schools according to the colour of their hair or, for that matter, the colour of

their skin, it would be so unreasonable, so capricious, so irrelevant to any proper system of education that it would be ultra vires altogether, and

this Court would strike it down at once. But, if there were valid educational reasons for a policy, as, for instance, in an area where immigrant

children were backward in the English tongue and needed special teaching, then it would be perfectly right allocate those in need to special schools

where they would be given extra facilities for learning English. In short, if the policy is one which could reasonably be upheld for good educational

reasons, it is valid.

Based on this decision, the learned Counsel for the respondents submits that the bank having laid down a policy in its own interest, it cannot be

said to have acted either unreasonably or mala fide. As already stated, it is not necessary for me to go into the question as to the desirability or

otherwise of such a policy as it is a managerial discretion to have such a policy or not The Only question which this Court has to consider is

whether such a policy is violative of Article 16(2).

12. There can be no dispute that if the exclusion of the petitioner is only on the ground of descent, then it would be hit at by Article 16(2) but if the

exclusion is based not only on the ground of descent but also on other grounds as well, then the act of exclusion cannot be challenged on the

ground that it violates Article 16 (2). It is true, the petitioners have been declared to be ineligible for recruitment. But the question is whether such

exclusion is only on the ground of descent. The exclusion in this case is based on the fact that the member of the petitioner's family had already

been employed by the Bank and that any further recruitment of another member of the same family will not be in the interest of the bank. Thus the

exclusion results not only because of the fact that the petitioners are members of a particular family but also because the members of that family

have already been employed by the bank and that any further recruitment of members from that family will be against the bank's interest. I am,

therefore, of the view that the exclusion in this case being not merely on the ground of descent but also on other grounds, the action of the

respondents in declaring the petitioners ineligible for recruitment cannot be said to violate Article 16(2) of the Constitution.

13. The result is, there are no merits in the writ petitions and therefore, they are dismissed. There will, however, be no order as to costs.