
(1997) 09 MAD CK 0123
In the Madras High Court

D. Murugesan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Citation : (1998) 2 MLJ 339

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—The prayer in the writ petition is as follows : To issue a writ of mandamus or any other appropriate writ, Order or direction in the nature of a writ, directing the respondents to admit the petitioner in M.S. (General Surgery) for the academic year 1993-94 or directing the respondents to admit the petitioner in M.D.(Paediatric) or in M.D. (General Medicine) for the academic year 1994-95 as per the rule of reservation given in the prospectus for admission for P.G. Medical Courses.

2. According to the petitioner, he belongs to Scheduled Tribe. He finished his M.B.B.S. course in the year 1990. He had his House Surgenary and became a Doctor in the year 1992. It is contended that for the year 93-94 pursuant to the advertisement by the respondents for P.G. Courses, he applied for a seat in M.S. General Surgery and M.D. Dermatology. However, he was not selected. For the academic year 94-95 as per the advertisement, he applied for a seat either in M.D. Pediatric Medicine or M.D. General Medicine. For the year 1994-95 also the respondents without considering the reservation for scheduled Tribe candidates did not select the petitioner. In such circumstances, the petitioner has approached this Court for necessary relief.

3. On behalf of the respondents, 3rd respondent has filed a counter-affidavit wherein it is contended that the petitioner has applied for P.G. Courses 1993-94 session and also 1994-95 session. He got 25.62 marks in 1993-94 session and 19.91 marks during 1994-95 session. The petitioner applied for M.S. General Surgery and M.D. Dermatology during 1993-94 and M.D. Paediatric Medicine and

M.D. General Medicine for 1994-95. The allegation that the interest of Scheduled Tribe candidates and the reservation policy was not considered is totally denied as baseless. It is further contended that it is a fact that the rule of reservation shall apply to P.G. Degree. Diploma/MDS courses in which there are 4 seats or more. According to the rule of reservation 1% is exclusively earmarked for S.T. candidates for each course. The selection has been made strictly according to the Government Order s and as per the prospectus. The petitioner's peculiar argument that S.T. Category 1% which works out to Order 4% (In M.D. Dermatology) 1993-94 is eligible for one seat is wrong. The Order 45% is negligible and it is not under consideration. It is also explained that nowhere in the prospectus it has been stated that 1 % of the total number of seats will be allocated to S.T. candidates. But in the prospectus it has been clearly mentioned that community reservation will be applicable for each course and not for total seats. Hence, there is no hostile discrimination practised against the S.T. Communities as alleged by the petitioner. They also enumerated the details regarding the selection of candidates from S.T. Community for the year 1993-94 as well as 1994-95 in the P.G. Courses. With these averments they prayed for dismissal of the writ petition.

4. In the light of the above pleadings I have heard Mr. A.N. Somayaji the learned Counsel for petitioner, Ms. Senthamarai Kandappan learned Government Advocate for respondents 1 and 2 and Mr. D. Murugesan for the 3rd respondents. It is the main contention of the learned senior counsel that in spite of the specific reservation namely 1% for S.T. candidates, the respondents committed an error in not selecting the petitioner who is S.T. candidate for the P.G. Courses. It is also contended that when it is specifically provided that rule of reservation will apply where there are 4 seats or more, it is imperative that a S.T. candidate must get a seat even if there are only 4 seats. On the other hand, the learned Counsel appearing for the 3rd respondent after taking me through the counter-affidavit submitted that the rule of reservation shall apply to P.G. Decree/ Diploma/ MDS courses in which there are 4 seats or more. Further as per the rule of reservation, 1% is exclusively ear marked for S.T. candidates for such course. He also contended that nowhere in the prospectus it has been stated that 1% of the total number of seats will be allocated to S.T candidates. I have carefully considered the rival submissions.

5. There is no dispute that the petitioner has applied for P.G. Courses during 1993-94 session and also 1994-95 session. He secured 25.62 marks in 1993-94 and 19.91 marks in 1994-95 sessions. The petitioner applied for M.S. General Surgery and M.D. Dermatology during the year 1993-94 and M.D. Pediatric Medicine and M.D. General Medicine during 1994-95. It is the grievance of the petitioner that even though 1% has been specifically reserved for S.T. candidates and in spite of his securing good marks, he was not selected in the above referred P.G. courses. It is the main contention that the 1% seat ear marked for S.T. communities have to be allocated from the total number of seats. In our case as per the particulars furnished by the petitioner, the total number of

reserved seats are 661 which works out to 6.61 or 7 seats. In other words, if 1% reservation is with reference to total number of reserved seats, there is possibility of selecting 7 S.T. candidates even for P.G. Courses. This has not been followed. Even the particulars furnished by the petitioner in pages 7, 8, 9 and 10 clearly shows that for S.T. category of reservation number of seats will be allocated on the basis of the percentage allotted comes to less than 0.5% In Order to appreciate the petitioner's case I hereby furnish the details mentioned by him in the affidavit :

MP. (Dermetology) 1993-94

OPEN (Non-Service) Category;

Category of reservation

%age of reservation allotted

No. of Seats allocable on the basis of % allotted

No. of seats actually allotted

%age of seats allotted

S.T.

1%

0.04=1

nil

nil

SERVICE CATEGORY

S.T.

1%

0.04=1

nil

nil

M.S.(GENERAL SURGERY) 1993-94

OPEN (Non-Service) Category :

S.T

1%

0.34-1

nil

nil

SERVICE CATEGORY :

S.T

1%

0.34=1

nil

nil

M.D. (PAEDIATRIC MEDICINE) 1994-95

OPEN (Non-Service) CATEGORY :

S.T.

1%

0.12=1

nil

nil

SERVICE CATEGORY :

S.T.

1%

0.12=1

nil

nil

M.D. (GENERAL MEDICINE) 1994-95

OPEN (Non-Service) CATEGORY :

S.T.

1%

0.370=1

nil

nil

SERVICE CATEGORY :

S.T.

1%

0.38=1

nil

nil

A perusal of the above particulars show that in none of the courses the percentage has not exceeded 0.5. Since the prospectus has made it clear that the community reservation will be applicable for each course and by applying the said method in view of the fact that the same has not exceeded 0.5% and above, it is not possible to allot a seat under S.T. category in the above mentioned courses.

6. In Order to substantiate the contention that reservation for S.T. category even in a single post has to be followed, the learned senior counsel for the petitioner has cited J.T. (1997)5 S.C. 72 and J.T. (1997)5 S.C. 313. In the light of his submissions I have carefully considered both the judgments of the Apex Court. Both the cases have been decided on the service matters and there is no such contingency arose in those cases similar to case in out hand. On the other hand, the learned Counsel appearing for the 3rd respondent has brought to my notice the decision of Bakthavatsalam, J., dated 15.4.1993 in Writ Petition No. 5727 of 1993 in support of his contention that the community reservation will be applicable for each course and not for total course. A similar question was raised before the learned Judge and after considering the arguments of both sides, the learned Judge observed thus :

When applications have been called for separately for each branch, I do not think that there is any necessity for totalling up the number of seats while making the reservation. A reading of the clauses of the prospectus clearly shows that candidates applying for more than one branch should apply separately. So, if the application is made for each category and each branch consists of only 15 seats, as rightly stated by the learned Government Advocate as well as claimed in the counter affidavit by the respondents, there can be no seat allotted to handicapped candidates, which category will come to only 12 seats. As such the principle applied in an unreported decision in W.P.No. 12329 of 1991 dated 18.11.1991 will squarely apply to the facts of this case. Therefore, I see no reason to issue a writ of mandamus as prayed for. I am not at all convinced that 3% should be calculated on the total number of seats i.e., 60 seats as the petitioner knows very well that each branch is distinct and applications have been called for separately for each of the branches. When the seats are so limited. I do not think that this Court can interfere with the action of the respondents on the mode of selection. Accordingly, this writ petition is dismissed.

7. Further in a decision reported in D. Balasubramanian v. State of Tamil Nadu 1993 W.L.R. 925, the Division Bench of this Court in an identical circumstance decided thus :

The decision of the Division Bench in 1989 W.L.R. 445 approved the principle that once Act. 15(4) is invoked to confer educational benefits to Schedule Caste/

Scheduled Tribe it is not then open to the state to group them in one category without realising that Scheduled Tribes are by and large very much more backward socially, educationally and economically than members of the Scheduled Castes. The other unreported decisions are relied upon to emphasize about the procedure and the manner in which the percentage of reservation has to be worked out. We are informed by the learned Special Government Pleader (Education) that the decision of the learned single Judge in *Dr. M.K. Bhuvana Rani v. The State of Tamil Nadu* represented by its Secretary to Government, Health Department, Madras-600 009 and Ors. has also been applied and followed by one of us (*Bakthavatsalam, J.*) in and by Order in *S. Venkatesh v. The State of Tamil Nadu* represented by its Secretary, Education Department, Madras and Ors.. All these decisions subscribe to the view that the percentage of reservation has to be worked out with reference to each branch and not taking the total number of seats together.

8. In a recent judgment the Division Bench consisting of their Lordships Mr. Justice A.R. Lakshmanan, J. and M. Karpagavinayagam, J. in W.P.No. 16 of 1996, dated 7.8.1997 considered the very same question and concluded thus :

The contention raised by M.S. Duraisami in regard to the rule of reservation cannot at all be accepted in view of the Division Bench judgment of this Court comprising of K.S. Bakthavatsalam, J and D. Raju, J., in the decision reported in *D. Balasubramanian v. State of Tamil Nadu* 1993 W.L.R. 925. After considering the various decisions covering the field the learned Judges said that the percentage of reservation has to be worked out with reference to each branch and not by taking the total number of seats together. The Supreme Court in the decision reported in *Smt. Chetana Dilip Motghare Vs. Bhide Girls Education Society, Nagput and others*, , has also held that the principles of reservation do not apply to an isolated post. One of us (*AR. Lakshmanan, J.*) sitting singly in the case reported in *P.R. Chockalingam v. The Director of Tourism* (1993)1 L.W. 17, has also taken a similar view. That case relates to the reservation of candidates for employment from among the Backward Community. Only one post was available for being filled up. Following the judgment reported in *Chakradhar Paswan Vs. State of Bihar and Ors*, and the Full Bench judgment of the Karnataka High Court in *Dr. Rajkumar v. Gulbarga University* AIR 1990 Karn. 320 this Court held that when there is only one post, the rule of reservation cannot be applied.

9. Finally the learned Counsel for the 3rd respondent has also brought to my notice the decision of the Apex Court reported in *Smt. Chetana Dilip Motghare Vs. Bhide Girls Education Society, Nagput and others*, , wherein it is stated that "principles of reservation do not apply to an isolated post". The above legal position coupled with the specific reference in the prospectus for admission to P.G. courses clearly shows that the percentage of reservation has to be worked out with reference to each branch and not by taking the number of seats together. Hence, I am unable to accept the contra argument made by the learned

senior counsel for the petitioner.

[Italics supplied]

10. It is also demonstrated by the learned Counsel for the 3rd respondent that the contention, none of the scheduled Tribe candidate was selected in P.G. Courses is incorrect. In this regard he brought to my notice the candidates selected for S.T. (P.G.Courses) reservation by taking me through the particulars furnished in the counter affidavit. In page 3 of the counter affidavit the 3rd respondent has furnished the particulars regarding the selected candidates belonging to S.T. Community for the year 1993-94 and 1994-95 sessions. Hence, the contention and apprehension of the petitioner in this regard are misconceived.

11. Under these circumstances, I hold that the percentage of reservation has to be worked out with reference to each branch and not taking the total number of seats together. With the information furnished in the counter-affidavit, I am also satisfied that the respondents have fully followed the rule of reservation in the selection of the candidates for Post Graduate Courses. Accordingly, I am unable to accept any one of the argument of the learned Counsel for the petitioner. Hence the writ petition fails and the same is dismissed. No costs.