

(1990) 04 BOM CK 0004

In the Bombay High Court

Case No : W. P. No. 1164 of 1988 with W. P. No. 2211 of 1988

Dr. Ambedkar Medicos" Association, Maharashtra State,
Aurangabad Branch and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 03-04-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 15(4), 16(4)

Citation : (1990) 04 BOM CK 0004

Hon'ble Judges : P. V. Nirgudkar, J;N. P. Chapalgaonkar, J

Bench : Division Bench

Advocate : S.B. Talekar in W. P. No. 1164 of 1988, Pradeep Deshmukh in W. P. No. 2211 of 1988, for the Appellant; D.G. Shevtekar, Asstt. Government Pleader, For respondents Nos. 1 to 3, Ajay Deshpande for S. C. Bora, in W. P. No. 1164 of 1988, D. G. Shevtekar, Assn. Government Pleader, For respondents Nos. 1 to 3 in W. P. No. 2211 of 1988, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Chapalgaonkar, J.—The first petition before us filed by Dr. Ambedkar Medicos Association, Aurangabad- an Organization formed by the medical graduates for the welfare of the Scheduled Castes and Other Backward Classes and the second petition filed by a student who wanted to opt for medical education raise a common question as to whether the rule prescribing manner in which, percentage of the reservation for the scheduled castes and scheduled tribes and denotified and nomadic tribes and Other Backward Classes will be carved out, in the rules for admission for M.B.B.S. for the year 1988-89 of the Medical Colleges of the Government of Maharashtra is invalid. It is the contention of the petitioners in both the petitions that 34 percent of the seats of the total intake capacity was reserved for Backward Qasses and the break-up was 13 percent for Scheduled Castes and Scheduled Tribes Converts to Buddhism and 7 percent for Scheduled Tribes including those living outside specified areas, 4 percent for the Denotified and Nomadic Tribes and 10 percent for Other Backward Communities.

Therefore, out of the total seats available in the Government Medical Colleges in Maharashtra, 34 percent were available by virtue of the reservation in favour of the Backward Class for the students belonging to these categories. After the introduction of All India Competition, 15 percent seats were carved out from this intake capacity and they were allotted to the students on the basis of the result of this All India Competition. Therefore, material change was effected in the earlier rules and 1988-89 rules make reservation in the following manner:

"Reservation for Backward Class candidates shall be 34 percent of intake capacity excluding 15 percent through All India Competition."

It is precisely this part of the rule which is under challenge.

2. The contention raised by the petitioners in the petition is that the provision for the reservation of 34 percent seats for the Backward Class only after deducting 15 percent of the total intake capacity is arbitrary and unjust, as it reduces the percentage of reservation. They submit that this new rule actually reduces the number of seats reserved for backward classes. Out of 200 seats available in the jurisdiction of Marathwada University, 68 seats were available for backward classes. Now because of this rule making reservation after excluding 15% seats given for allotment to candidates successful in All India Competition; the number of seats available is reduced to 56 only. The petitioners have made a grievance that since ratio of population of the Scheduled Castes and Scheduled Tribes and Other Backward Class in the Maharashtra vis-a-vis other population has not changed, it was not proper and valid on the part of the State Government to reduce the reservation made in favour of these classes.

3. The second submission made by Shri Talekar and Shri Deshmukh, learned advocates for the petitioners, is that this provision in the rules is violative of Article 14. They point out that Bombay Municipal Corporation has framed rules for admission to Medical College separately. Provisions regarding reservation for backward classes in these rules are different from the rules made by State Government for admission in Government Medical Colleges. Rules applicable for the admission in the Municipal Medical Colleges in Bombay vide its rule No. 4 speaks about the reservation of 34 percent without first excluding 15 percent seats to be allotted to the candidates who would pass All India Entrance Test. The relevant rule is as follows:-

"34 percent of the total number of the seats are reserved for each college for students belonging to the reserved category."

On the basis of this differentiation, it is the submission of the petitioners that while the students belonging to the Backward Classes in Bombay who would seek admission in the Municipal Medical College would get 34 percent reservation, the factual reservation in Government Colleges under new rules would be 28.9 percent only. Since 15 percent seats of the total intake capacity will be first taken out without considering any reservation, the reservation of 34 percent will not be against total intake capacity but will be against remaining 85

percent seats. Therefore, there would be lesser number of seats reserved for the Backward Classes in the Government Medical Colleges. This would be, as per the submission of the petitioners, violative of Article 14 of the Constitution being discriminatory.

4. It was further submitted by the petitioners that if the Government of Maharashtra has taken a policy decision to have 34 percent reservation in favour of Backward Class, then in true spirit of that decision, Government should have increased the percentage of reservation to make good the loss of reservation against 15% All India Competition seats.

5. The third submission on the basis of which the petitioners want us to struck down the above referred portion of the rules is the discrimination between the students who are applying for medical course and the students who apply for engineering course. Since there was no question of allotment of any seats by All India Competition in Engineering Colleges of the State, the reservation of 34% as against all the seats in Engineering Colleges is intact. It was argued before us that since merit alone is consideration for admission to both these Courses, then there should not be differentiation between the percentage of reserved seats in the Medical Course and the Engineering Course. It was submitted before us that the reservation percentage in the Government Engineering Colleges for Backward Classes is 34 percent, while the effective, reservation percentage in the Government Medical Colleges would be 28.9 percent.

6. It is necessary to bear in mind that whatever seats to be allotted for the students who would be successful at the All India Entrance Examination are now specifically directed to be without considering any reservation made. Supreme Court has now directed that allotment of seats by All India Entrance Examination shall be without taking into consideration any reservation. This was in modification of the earlier directions of the Supreme Court and very specific reasons have been given in paragraph 5 of the judgment, in *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, . Since the percentage of reservation in favour of backward class differed from State to State, it was argued before the Supreme Court that the number of seats percentagewise which would be available for the All India Entrance Examination would differ from State to State. Therefore, it was thought fit by the Supreme Court to direct that not less than 15 percent of the total number of seats in each Institution shall be made available for the All India Entrance Examination without taking into account any reservation validly made.

7. It is true that there appears to be some difference in the manner in which the reservation is made in the rules of State Government and the rules of Bombay Municipal Corporation for the admission to the M.B.B.S. Course. Whereas in the rules of the State Government, reservation of 15 percent of the total intake capacity excluding 15 percent is provided for in the rules of the Bombay Municipal Corporation, the reservation of 34 percent of the total intake capacity is provided. The question we have to consider is whether this differentiation

would invalidate the above referred portion of the rules framed by the Government of Maharashtra. It is not in dispute that both the State Government and the Bombay Municipal Corporation who were providing medical education were authorised to frame rules for admission in the Medical Colleges run with their funds. If they were authorised to have their own rules, then we will have to consider whether a differentiation between two validly made rules would render one rule invalid because of the Article 14 of the Constitution of India. The Supreme Court in *The State of Madhya Pradesh Vs. G.C. Mandawar*, has held:

"Article 14 does not authorise the striking down of a law of the State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of the authority for the two State being different, Article 14 can have no application."

The principle laid down in *Mandawar's* case was later followed in many pronouncements including the case of *Prabhakaran Nair and Others Vs. State of Tamil Nadu and Others*, . In the said case, a submission was made before the Supreme Court that since Tamil Nadu Rent Control Act does not make the provision for the return of possession to the tenant who had vacated old premises for the construction of the new building and whereas such provision is there in many other statutes governing the rent and eviction, the Tamil Nadu Act is violative of Article 14. Section 16(2) of the Tamil Nadu Rent Act provided that if any building is totally demolished, and a new building is erected in its place provisions of the Act shall cease to apply for such new building for a period of five years. It was argued before the Supreme Court that since the tenants who had to vacate for reconstruction of the buildings are protected in similar statutes of other States such as Maharashtra, Karnataka, Kerala and West Bengal, the absence of such protection in the Tamil Nadu Act and negation of tenancy rights by virtue of provision of section 16(2) is violative of Article 14. Relying upon *Mandawar's* case, the Supreme Court reiterated that the Constitution does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject, its provisions are discriminatory, We will have to apply same principle to the difference in the rules which . are made for admission in the Medical Colleges by two different authorities who are authorised" to make such rules. Therefore, merely because different provisions have been made in the rules, we cannot hold that the rules framed by the State of Maharashtra are invalid on that ground.

8. Since there is no question of seats to be allotted for All India Competition so far as Engineering Colleges are concerned, reservation made in those colleges is against total intake capacity. On the point at issue rules for admission to Medical and Engineering Colleges are, therefore, not comparable. Even assuming that there is a difference of the percentage of the reserved seats for the Backward

Class in respect of the admission to the Engineering Colleges in the State of Maharashtra that by itself cannot invalidate one of the rules for the reasons that the students securing admission to the Medical Course and students securing admission to the Engineering Course can be safely treated to be distinct classes and it would be in the discretion of the Government to assess the needs of the particular course and determine the number of seats to be reserved for that course.

9. Shri D. G. Shevtekar, learned counsel appearing on behalf of the respondents Nos. 1 to 3 submitted that in fact, there is no deduction in the percentage of the reservation for backward classes in Government Medical Colleges because 15 percent seats which are to be carved out from the intake capacity of the Government Colleges are not under the control of the State Government and are not governed under the present rules. Therefore, the intake capacity of the Government colleges has been reduced by 15 percent because of the scheme of All India Entrance Examination. The calculation based on the intake capacity without carving out this 15 percent seats would be, therefore, only imaginary and not corresponding to the factual position. Shri Shevtekar therefore submits, and rightly so, that-so far as seats available with the State Government are concerned, it has made reservation of 34 percent as required and the reservation is not at all reduced.

10. Petitioners have urged before us that there should be additional reservation as against 15% seats taken out for All India Competition also. This submission would be totally unreasonable. If these seats are available for open merit candidates coming from some source, then only portion of these seats can be reserved for backward classes. These 15% seats are not available exclusively for open merit candidates of the State from this University area and therefore, there can be no reservation against these seats in favour of candidates belonging to backward classes coming from this University area of the State. Shri Pradeep Deshmukh, learned Advocate for the petitioners, relying on Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , submitted that the State Government should have considered observations of the Supreme Court contained in paragraph 5 of this case and increased reserved seats. Following observations are relied by him:

"It would be open to the State Government to reduce the number of seats available for admission on the basis of All India Entrance Examination by increasing the number of reserved categories or by increasing the percentage of reservations."

The observations of the Supreme Court relied upon by Shri Deshmukh are neither directions of the Court nor observations in respect of the reservations to be made after the reduction of 15 percent seats as directed by the Supreme Court. The Supreme Court in this paragraph was considering a situation that if reservation is to be considered before carving out seats to be allotted for All India Entrance Examination, it is possible that there would be variation of the

seats to be allotted for the All India Entrance Examination because of the variation in the reservations made for the Backward Class in different States. It was submitted before the Supreme Court that the State Government by increase in the reservation is likely to reduce number of seats to be allotted for the All India Entrance Examination and this hypothetical situation was considered by the Supreme Court.

11.. A plea was made before us by the learned counsel for the petitioners that the State Government should be directed to increase percentage of reserved seats, particularly in view of the fact that 15 percent seats have" already been reduced. There is fallacy in this argument. No doubt that carving out of 15% seats has reduced number of seats available for Backward Class. Similarly, this reduction has also affected open merit candidates. Therefore, the ratio of the reservation has not. at all been changed by carving out 15 percent seats. Even if different interpretation is available for the rules framed by the Bombay Municipal Corporation on the basis of that we cannot issue a direction to the State Government to increase the quota of reserved seats for the Backward Class. In this respect Shri Talekar, learned counsel, appearing on behalf of the petitioners, invited our attention to Cause 13.10 in Chapter XIII of the first part of the report of Backward Classes Commission. It is pointed out that Scheduled Castes and Scheduled Tribes constitute 22.5 percent of the country's population. Accordingly, a pro-rata reservation of 22.5 percent for these classes taken together has been made for them in all services and public sector undertakings. Mr. Talekar wanted us to hold that the State Government is also under obligation to have same percentage of the reservation for these classes taken together for the admission to the M.B.B.S. Course also. Article 15(4) is enabling provision empowering State to make special provision for the advancement of socially and economically Backward Classes or for the Scheduled Castes and Scheduled Tribes. This provision will have to be read together with other provisions of the Constitution. This is an exception to the general rule laid down in the Articles 14 and 15(1). When the statute enables particular authority to exercise its discretion contrary to the general rules laid down by that statute, that discretion normally cannot be governed by the directions of the judiciary. In the case of *M.R. Balaji and Others Vs. State of Mysore*, , Supreme Court observed-

"In this connection, it is necessary to emphasize that Article 15(4) like Article 16(4) is an enabling provision. It does not impose obligation but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary."

The sphere of judicial review of the executive discretion in such cases would be very limited. No data is made available to us and no foundation, has been laid in the petition as to how the State Government has not exercised its discretion correctly in framing the rules regarding reservation. No case has been made out as to why reservation in favour of backward classes need be increased than the prescribed ratio of 34%. Therefore, it would not be proper on our part to direct

the State Government to increase the percentage of the reserved seats for the Backward Classes in respect of the admissions to the Government Medical Colleges. However, it would be open for the State Government, who would be better equipped with the necessary information to make any alterations or variations in the relevant rule if they think it necessary.

12. Since we are holding that practically there is no reduction in the percentage reserved for the Backward Classes in the impugned rules and since we are holding that assuming that there is a difference between the rules one for the Government Medical Colleges and another for the Municipal Medical Colleges in Bombay, it would not by itself invalidate the rules of the State Government and since we are holding that no mandamus would lie against State Government to vary percentage of the reservation for the Backward Class in case of medical admission in the absence of material and/data made available to the High Court for judicial review, we have no option but to reject both these writ petitions. Rule is discharged. However, there will be no order as to costs.

13. The respondents had filed a Review Application bearing No.- 2657 of 1988 in Writ Petition No. 1164. of 1988 for the review of the directions of this Court dated 16-12-1988 directing respondents 1 and 2 to admit petitioners Nos. 2 and 3 against seats available to the Scheduled Tribes candidates. Since we are dismissing the writ petition, any admissions given in furtherance of the said interim order will stand automatically cancelled and there is no necessity to pass separate orders on the Review Application. Civil Application No. 2270 of 1988 does not survive.