

(1996) 07 DEL CK 0027

In the Delhi High Court

Case No : C.W. Ps. No's. 1141, 1147 and 1154 of 1996

Dr. Neera Gupta and etc.

APPELLANT

Vs

University of Delhi and another

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Citation : AIR 1997 Delhi 175 : (1996) 39 DRJ 205

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : N. Safaya and Miss Gita Mittal, for the Appellant; T.R. Gopinath, Delhi University, for the Respondent

Judgement

1. These petitions are classic illustrations of discrimination and arbitrariness. Discrimination and arbitrariness in State actions strike at the very foundation of the fundamental rights guaranteed by the Constitution. Article 14 guarantees equality before the law and equal protection of the laws against every State action. The right to equality is the most important fundamental right of any democratic society. Fundamental rights are considered inalienable, natural and very basic bundle of rights guaranteed by the Constitution of any civilised society.

2. This order shall dispose of writ petitions Nos. 1141, 1147 and 1154 of 1996. The basic facts of these petitions are almost identical, Therefore, to avoid repetition detailed facts of only Writ Petition No. 1141/96 are recapitulated. The petitioner was compelled to approach this Court because of the letter dated 14th March, 1996 sent by Assistant Registrar (Medical), to the Dean Maulana Azad Medical College, New Delhi. In this letter it is mentioned that Dr. Neera Gupta, student of M.D. Micro-Biology is not eligible to appear in the annual examination to be held during the month of April-May, 1996, as she availed maternity leave for the period from 8-6-1993 to 8-8-1993 and Dr. Heera Gupta may be eligible to appear in the supplementary examination to be held during 1996, if otherwise eligible. A similar letter was sent to another petitioner (in Writ Petition No. 1147/96) Dr. Meenakshi Mittal plea was also not permitted to appear in the

annual examination. These petitioners were seriously aggrieved by the said letter and approached this Court with the prayer that the said letter of 14th March, 1996 be quashed being illegal and violative of Articles 14 & 15 of the Constitution of India.

3. In the writ petition it is mentioned that the petitioner has attended more than 75% lectures which is much more than the required number of (2-3rd) lectures to be eligible to appear in the examination. The said order dated 14th March, 1996 was primarily challenged on the ground of discrimination.

4. Learned counsel for the petitioner submitted that like the petitioners who had availed; maternity leave, many other students had also availed different kinds of leave for a much longer period and have been permitted to appear in the examination in the past. Even now most of them are being permitted to appear in the examination. For the reasons best known to the respondent only the petitioners are not being permitted to appear in the annual examination.

5. It is also submitted that the petitioner joined the Post-Graduate programme on 3-5-1993, while there are many other students who have joined the Post-Graduate programme much after the petitioner, and have been permitted to appear in the annual examination. The petitioner has mentioned a list of 22 candidates who have joined the same course much after the petitioner, and have been permitted to appear in the examination. The entire chart is reproduced herein below which gives details of similarly placed students who availed a long leave and still have been permitted to appear in the annual examination.

S. No. Name Date of Joining

1. Dr. Aparna Mohan (Medicine) 17-6-1993
2. Dr. Aashish Awasthi (Medicine) 17-6-1993
3. Dr. Himadri Shankar (Medicine) 17-6-1993
4. Dr. Dinesh Baba (Medicine) 17-6-1993
5. Dr. Niraj Tandon (Medicine) 17-6-1993
6. Dr. Anupama Verma (Gyna) 17-6-1993
7. Dr. Gurmeet Singh Bhatia (sic) 17-6-1993
8. Nidhika (Microbiology) 18-6-1993
9. Shalini Kakkar (Microbiology) 18-4-1993
10. Vrindavan Nayak (Surgery) 18-6-1993
11. Sanay Kumar Gupta (Surgery) 18-6-1993
12. Ajay Jain (Orthopedic) 18-6-1993
13. Dr. Sanjay Mahesh (Physiology) 21-6-1993

14. Ramesh Hegde (Anesthesia) 28-6-1993
15. Dr. Charanjeet (Dermatology) 30-6-1993
16. Dr. Vivek Goel (Medicine) 03-7-1993
17. Meenakshi Madan (Gynea) 03-7-1993
18. Dr. Vineet Gupta (Radiotherapy) 03-7-1993
19. Dr. O. P. Rajoura (P.S.M.) 03-7-1993
20. Dr. Jaishree Chandslia (Biochemistry) 03-7-1993
21. Dr. Vijay Gupta (Forensic Medicine) 05-7-1993
22. Dr. Kamal Kumar Sawlani (Medicine) 26-10-1993

6. Apart from that, even other female students like the petitioners who have also availed maternity leave during the Post-Graduate programmes have been treated differently. The petitioner has been able to ascertain details about certain students who did avail the maternity leave and were allowed to take the examination on the scheduled dates without being required to compensate for maternity leave. The petitioner has given the following names:--

S. No. Name of the students who availed the maternity leave Year of Examination

1. Dr. Naminta Jaggi (Microbiology) 1992 Maulana Azad Medical College
2. Dr. Pooja Chandra 1992 Maulana Azad Medical College
3. Dr. Anuradha Kapoor (Gynea) 1992 Maulana Azad Medical College
4. Dr. Meenakshi Bhan (Gynea) 1992 Maulana Azad Medical College
5. Dr. Radha (Microbiology) 1992 Lady Harding College
6. Dr. Shaila (Biochemistry) 1992 Lady Harding College
7. Dr. Deepti Nair (Microbiology) 1993 Maulana Azad Medical College
8. Dr. Urvashi Ahuja (Microbiology) 1993 Maulana Azad Medical College
9. Dr. Geeta Srivastava (ENT) 1993 Maulana Azad Medical College
10. Dr. Namita Arora (Anesthesia) 1993 Maulana Azad Medical College
11. Dr. Rekha (Pathology) 1994 Maulana Azad Medical College
12. Dr. Parvati Nayar (Anatomy) 1994 Maulana Azad Medical College
13. Dr. Pirya Khanna (Gynea) 1994 Safdarjung Hospital
14. Dr. Geeta (Microbiology) 1994 Lady Harding College
15. Dr. Neha (Physiology) 1995 Maulana Azad Medical College

16. Dr. Aparna Aggarwal 1995 Safdarjung Hospital

17. Dr. Vandana Man (Surgery) 1995 Maulana Azad Medical College

18. Dr. Anupama Thakur (Ganae) 1996 Maulana Azad Medical College

19. Dr. Praveen Suman (Paediatrics) 1996 Maulana Azad Medical College

7. Similarly, Dr. Sanjay Maheshwari and Dr. Neera Gupta availed 90 days and 36 days leave respectively and are being allowed to take examination and only the petitioners are being discriminated.

8. It is also mentioned that other male and female candidates who have availed leave other than maternity leave during their Post-Graduate programme were permitted in past and are also now being permitted to take the annual examination without being required to compensate for the leave taken by them on other grounds.

9. It is also mentioned that if a student is absent or not able to attend the required lectures for reasons of having participated in NCC, Civil defense, or any other activity as given in clause 9(a) of Ordinance VII or has fallen seriously ill or met with the accident is not required to compensate the leave period. It is also mentioned that proviso to rule is unconstitutional, being discriminatory on the basis of sex and is clearly violative of the fundamental rights of the women and is detrimental to the larger interest of the society.

10. It is also mentioned in the petition that previously the Post-Graduate course was of two years and now, the course is of three years, Therefore, in the changed circumstances, the rule has otherwise become redundant. It is mentioned that there will be grave repercussion of the impugned order of 14-3-1996 because the petitioner will be able to take only supplementary examination only after six months of the annual examination, that would mean that they would lose all chances of pursuing further studies. The petitioner shall be rendered junior to her own colleagues. It is also mentioned that the University bulletin nowhere mentions, the number of lectures which are required to be attended in the Post-Graduate programme and in case of not attending the requisite number of lectures, what would be the consequence? In this view of the matter, the respondent is not justified in not permitting the petitioner from appearing in the annual examination by sending her a letter a few days before the annual examination.

11. It is also submitted that this embargo which has been placed only on these petitioners has not been placed on other similarly situated- persons. The maternity leave is permissible for of her courses but has been denied only for the Post-Graduate course in medical College. The maternity leave which was taken about three years ago (from 8-6-93 to 8-8-1993), for that now the respondent-University wants to penalise the petitioner by not permitting her to appear in the annual examination which is scheduled to take place from 16-4-1996.

12. This Court after hearing the learned counsel for the petitioner issued notice to the respondent Counter-affidavit of Mr. Henry H. Baa Assistant Registrar (Medical) was filed on behalf of the University. This affidavit is totally silent about the main grievance of the petitioners with regard to discrimination. If similarly placed students have been permitted or are being permitted to appear in the examination, then the respondent-University would not be justified in not permitting the petitioner from appearing in the annual examination.

13. The learned counsel for the respondent-University could not give any Explanation why the affidavit is totally silent on the ground of discrimination. The learned counsel appearing for the University has also not been able to give any Explanation as to why on 14-3-1996, the Assistant Registrar, Medical has all of a sudden sent this letter to the Dean, Maulana Azad Medical College, stating that the petitioners will be eligible to appear in supplementary examination only, particularly when maternity leave was obtained about three years ago from 8-6-1993 to 8-8-1993.

14. The learned counsel appearing for the Delhi University has also failed to explain that for all other kinds of leave, there is no requirement that the concerned students may take supplementary examination instead of the annual examination, then why is this embargo been placed only on maternity leave?

15. I have heard the learned counsel for the parties at some length. Learned counsel for the Delhi University has not been able to satisfy the Court that why are similarly placed students treated differently by the University?

16. In view of the extraordinary facts and circumstances of this case hearing of the case was deferred and the University was once again given an opportunity to explain its stand by filing additional affidavit. It was clearly indicated in the order that the affidavit must deal with the averments of discrimination incorporated in the petition. The respondent-University issued the letter dated 14-3-1996 only a few days before the annual examination, Therefore, the Court had no option but to permit the petitioners to appear in the annual examination.

17. The University was given sufficient time of three months to file an additional affidavit to clarify its stand on the discrimination. The additional affidavit as directed by the Court has not been filed till date though more than three months have lapsed. Learned Counsel appearing for the University submits that information regarding discrimination has yet not been collected and the respondent-University requires another month's time to file additional affidavit.

18. The University has not cared to file an additional affidavit within three months in a matter of this magnitude, where careers of so many students are at stake. The Court gets the impression that the additional affidavit has not been filed perhaps, because the respondent-University is not in a position to give any reply to the allegations of discrimination.

19. The learned counsel for the petitioner submitted that the petitioner has

suffered a great deal of harassment because of the very strange and unusual attitude adopted by the University in dealing with the matter. It is also submitted that any further adjournment would adversely affect the career of the petitioners. It is submitted that the petitioner has to appear for the post of "Senior Resident" very shortly. It is also submitted that the result has already been declared and the petitioners have cleared in the examination. The University has only provisionally declared the result of the petitioner, even that would create problems in pursuing further career. Therefore, looking to the peculiar facts of this case no further adjournment can be granted to the respondent-University. The allegations of discrimination remain uncontroversial and the Court has no other option but to accept the veracity of the averments mentioned in the petition.

20. There is also no Explanation as to why a long leave is permitted to all other students for various reasons mentioned above while only female graduate students are not permitted to avail maternity leave. There seems to be no rational or logical Explanation for this discriminatory treatment.

21. In the writ petition the ground of discrimination has been very clearly" pleaded and all possible and relevant details have been furnished about students who have availed of other leave and maternity leave in the similar Post-Graduate programme and all of them were permitted to appear in that examination. There was then, no justification in not permitting the petitioner from appearing in the examination.

22. The concept of Fundamental Rights has been accepted in all modern democratic constitutions. Fundamental rights emanates from natural law. These are bundle of some rights which every human being, every where, at all times ought to possess. Fundamental rights are also considered as inalienable rights. They are natural and basic rights guaranteed by the Constitution. Among equals, law will be equally administered. The prohibition contained in Article 14 is in absolute terms. Every citizen is equal before the law and he is entitled to equal protection of the laws to persons and situations of the like nature. The guarantee of equal protection of law is available against every State action. Article 14 assures equality to all persons before law.

23. The law as has been interpreted and declared by the Supreme Court in series of cases is consistent from the very beginning and it has been clearly laid down that it is the mandate of Article 14 that same law must be made applicable to similarly placed persons. In the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , it has been laid down that Article 14 lays down an important fundamental right which should be closely and vigilantly guarded.

24. The Constitution Bench of the Supreme Court in Jagan Nath Prasad v. State of U. P., AIR 1961 SC 45 (or 1245) had clearly enunciated that the concept of equal protection of laws postulates in the application of the same laws alike and without discrimination to all persons similarly situated. It denotes equality of

treatment in equal circumstances. It implies that among equals, the law should be equal and equally administered and the like should be treated alike without any discrimination.

25. In *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, , the Court while interpreting Article-14 has mentioned that Article 14 of the Constitution ensures equality among equals; which is to protect persons similarly placed against discriminatory treatment.

26. In the celebrated case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , Article 14 has been interpreted in the following manner.

"Now, the question immediately arises as to what is the requirement of Article 14; what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, Therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude, Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterated here what was pointed out by the majority in *E.P. Royappa Vs. State of Tamil Nadu and Another*, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is equal both according to political logic and constitutional law and is, Therefore, vocative of Article, 14"." Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

27. In another celebrated case, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Court interpreted Article 14 in the following manner :

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under

authority of law or in exercise of executive power without making of law. The State cannot, Therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, where the then learned Chief Justice pointed out that the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing -- A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling -- It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. It must, Therefore, follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet it does so, it cannot arbitrarily choose any person it likes, for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

28. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , Article 14 came up for consideration and the Court laid down its true scope. The relevant discussion reads as under :--

It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stage of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfills two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , that this Court laid bare a new dimension

of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness."

29. There is also no Explanation why the University chose to send the letter dated 14-3-1996, only a few days before the annual examination particularly when leave in question was availed about three years ago, not granting any further time.

30. One fails to comprehend why the letter dated 14-3-1996 was sent at all? Even if it is assumed that there was any irregularity in availing the maternity leave in 1993, why was no action taken immediately? What is the justification of the delay for more than three years? Why did the respondent-University choose to send the letter dated 14-3-1996 only four or five days before the final annual examination in 1996? The another question which arises is, how is the University permitting a large number of similarly placed students to appear in the examination and preventing other similarly placed students? This policy of pick and choose cannot be permitted in the respondent-University.

31. The University authorities have to be extremely careful in sending such letters (14-3-1996) only four or five days before final examination particularly when the irregularity, if any, had happened three years ago. The University authorities must not be oblivious of the fact that such communication sent at the last minutes (only a few days before final examination) can very seriously affect the future career and have grave repercussions in general.

32. In the opinion of this Court this is a fit case in which the Vice-Chancellor must get the entire matter looked into by directing a proper inquiry so that at least in future similar unfortunate incidents may not be repeated.

33. I have heard the learned Counsel for the parties at length and perused all relevant documents and pleadings carefully. The letter dated 14-3-1996 is illegal and discriminatory being violative of Articles 14 and 15 of the Constitution of India is accordingly quashed.

34. The action of the respondent is clearly discriminatory and infringes the fundamental rights of the petitioners enshrined under Article 14 of the Constitution of India.

35. Mr. T. K. Gopinathan, learned Counsel appearing for the University at the outset submitted that the dissertation (thesis) submitted by Kavita Modgil (C.W. No. 1154/96) shall be evaluated along with other candidates. He also submitted that Kavita Modgil shall be permitted to appear in the examination along with others. In view of this statement of the learned Counsel for the University nothing really survives in that Petition (C.W. 1154/96) and the petition is accordingly disposed of.

36. The Writ Petitions are allowed with costs and accordingly disposed of.

37. Petitions allowed.