
(1995) 08 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10531 of 1994

Dr. Rajesh Garg and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (1995) 111 PLR 450

Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : Sumeet Mahajan, for the Appellant; Randhir Singh, AAG, S.C. Sibal and Sunita Throja, P.S. Patwalia and Namit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Petitioners have all passed their MBBS and completed their internship between the years 1991 to 1994. The selection of the students for admission to 3 years Post Graduate Course in Guru Nanak Dev University, Amritsar in Government Medical/Dental Colleges is made by holding a Post Graduate Entrance Test. A prospectus is alleged to have been published by Guru Nanak Dev University, Amritsar pertaining to the entrance test for admission to Post Graduate Medical/Dental Courses. Thereafter, the respondent-State of Punjab had issued a notification Annexure P-1 to continue with the reservations for various categories in the Post Graduate Courses. It provides for reservation and reads :-

"a) Scheduled Castes/Scheduled Tribes 25%

b) Sportsmen/Sportswoman) Credit will be given for the distinction made during studies in MBBS only) 2%

c) Backward Class 5%

d) Riot affected/Displaced persons and wards of persons killed in terrorist action

in Punjab. 2%

e) Physically Handicapped 1%

2. On 12.1.1993 Secretary, Medical Council of India had addressed a communication to the State of Punjab informing that it has not prescribed for reservation in the Post Graduate Medical Courses of any category and that the matter was considered by the Post Graduate Committee of the Council. In its report the said council had strongly stated that there can be no reservation of seats for admission to Post Graduate Course in College and it should be made strictly on merit.

3. The grievance of the petitioner is that despite the said letter of the Medical Council of India and the decision of the Supreme Court, reservations are being made for members of the Scheduled Caste and other categories referred to above for admission to Post Graduate Courses. Petitioners also assail that 60 per cent of the total seats that are reserved for in-service Doctors in the PCMS is also contrary to the said principle leaving eligible seats for admission to be filled up by candidates of general category by an open competition. The reservation in this process exceeds 80 per cent. Alleging the same to be totally illegal, the present petition has been filed seeking a writ of certiorari quashing notification Annexure P-1 and a mandamus directing the respondents to do away with all kinds of reservation in the Post Graduate Course including 60 per cent quota of seats exclusively reserved for in-service PCMS candidates.

4. The petition as such has been contested and averments made that the said reservation is contrary to law have been denied.

5. The questions that seek an answer obviously are as to whether there can be any reservation in admission to Post Graduate including courses involving specialities and whether the provisions for 60 per cent quota for in-service PCMS candidate would be violative of the principles of equality of opportunity or not.

6. The preamble of the Constitution framed with great care declares amongst other that it is to secure equality of status and of opportunity and to promote among them all. It is followed by Articles 14 and 15 of the Constitution which are intended to strike against discrimination and arbitrariness in State Action whether the same is legislative or administrative. The said Articles (14 & 15) reads as under :-

14. Equality before law -- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds or religion, race, caste, sex or place of birth-(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with

regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.p-

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the Scheduled Tribes."

7. The principles of equality before law and equal protection of law are well settled;. The same can easily be reiterated to be that "equality before the law" or "equal protection of the laws" does not involve the idea of absolute equality among human being, which is a physical impossibility. Equality before the law means that among equals the law should be equal should be equally applied and that like should be treated alike. Hence, equality before law does not mean that things which are different shall be treated as though they were the same. It does not prohibit reasonable classification. In order to pass the permissible classification, two conditions must be fulfilled, namely (1) that the classification must be founded an intelligible different which distinguishes persons or things that are grouped together from other which are left one of the group; (ii) that the differential must have a rational relation to the subject sought to be achieved by the action. What is necessary is that there must be a nexus between the basis of classification and the object. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, it was held :-

"Equality is a dynamic concept with many aspects and dimensions that it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here that was pointed out by the majority in *E.P. Royappa Vs. State of Tamil Nadu and Another*, namely that "from a positivistic point of view equality is entithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic, while the other to whim and caprice of an absolute monarch."

In this background the first submission of the learned counsel for the petitioners though pressed half heartedly can well be taken as to if there could reservation for members of the scheduled castes, scheduled tribes and other backward classes or not in Post Graduate Courses in technical colleges. The ready answer would be forthcoming from the decision of the Supreme Court in the case of *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, While referring to the case of *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* , the

Supreme Court concluded that such reservation is permissible under Article 15(4) of the Constitution. The Precise words can be reproduced for the sake of convenience:-

"It is true that Clause (4) of Article 15 does not expressly authorise providing of reservations in educational institution but it is too late in the day to question this power. Article 15(4) says that nothing in Article 15 or in Clause (2) of Article 2 shall prevent the state from making "any special provision" for the advancement of classes mentioned there in. The words "any special provision" are of wide amplitude and to certainly take in a provision reserving certain number of seats in educational institutions. Indeed, the first major case arising under Article 15 before this Court (M.R. Balaji and Ors. v. State of Mysore 1963 Suppl. S.C.R. 439) was one relating to reservation of seats of educational institutions. At no time was it questioned that such a course was not permissible, evidently in view of the width of the words "any special provision" occurring in article 15(4). In this connection, we may refer to the holding in Indira Sawhney v. Union of India, with respect to a similar argument vis-a-vis Article 16(1). It was argued for the petitioners that Article 16(1) which guarantees equality of opportunity to all citizens in matters relating to employment-does not warrant providing of reservations. The contention was rejected. It was held that just as Article 14 permits classification so does Article 16(1) which is but a fact of rule of equality in Article 14".

It shows that such a reservation for members of the Scheduled Caste and others also is permissible particularly when in the present case by no stretch of imagination as is apparent from the notification reproduced above, it is excessive.

8. The main stay of the argument advance by the learned counsel for the petitioner was that permitting in service doctors to such Post Graduate Courses in Medical Colleges and giving them high percentage which is more than 50 per cent is contrary to the principle of reasonable classification and in any case excessive and arbitrary. In support of his argument, the learned counsel referred to certain precedents to urge that there could not be any reservation for such courses. He drew out attention to the decision in the case of Dr. Jagadish Saran and Others Vs. Union of India (UOI), The Supreme Court was concerned pertaining to certain reservations regarding admission to educational institutions based on regional consideration. Certain percentage was reserved for Delhi students. After scanning through various aspects the Surpeme Court felt that all applicants who had taken their M.B.B.S. Degree must apply for a common entrance test. In Paragraph 38 certain pertinent findings were arrived at which reads :-

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This propositions has greater importance when we reach the higher levels of education like post-

graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent maybe less at the lesser levels of education, jobs and disciplines of social in consequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temperise with the country's development in the vital areas of professional expertise. In Science and techonology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

It was followed by the decision in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, In paragraph 22 the Supreme Court directed that so far as admission to post graduate courses, such as M.S., M.D. and like and like are concerned, it would be eminently desirable not to provide any reservation based on residence requirement within the State, but hasten to add that certain percentage would be reserved on basis of institutional preference. The relevant extract of the same is:-

"We are, therefore, of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, maybe given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course."

9. Both these decisions will not come to the rescue of the learned counsel for the petitioners because they referred to the vexed questions of regional preferences which is not the question in controversy before us. It is not, that no such seats can be reserved for admissions pertaining to a particular class. We, therefore, find little hesitation in coming to the conclusion that both these decisions are not

applicable to the facts of the present case.

10. In that event petitioners" learned counsel pressed into service the well known decision of the Supreme Court in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., The question for consideration before the Supreme Court was as to whether there could be reservation made to the posts and reservation from members of backward classes. The Supreme Court answered it in the affirmative but concluded that reservation should not exceed 50 per cent of the posts. The conclusion had arrived at in paragraph 94-A which runs as under :-

"From the above discussion, the irresistible conclusion that follows is that the reservation contemplated in Clause (4) of Article 16 should not exceed 50%.

Whether this ratio in the decision of Indra Sawhney"s case (supra) can be drawn in the cases of admission to different institution or not came up for consideration in the case of Ajay Kumar Singh"s case (supra) and the conclusions arrived at by the Supreme Court were that in case of Indra Sawhney, the Court was speaking of posts and not of admission to specialist courses in different Medical Colleges. These pertinent findings were recorded in the case of Ajay Kumar Singh"s case (supra) in paragraph 8 and are to the following effect :-

"It may be noticed that the observations were made with respect to Article 16(4) which provision was held qualified by Article 335 which requires that while taking into consideration the claims of the scheduled castes and scheduled tribes the State shall keep in mind the requirement of maintenance of efficiency of administration. The said consideration was held relevant even while providing for reservation in favour of other backward classes. While making the above observations, the court was speaking of posts in research and development organisations, in specialities and super specialities in medicines, engineering and such other courses. The court was not speaking of admission to specialities and super specialities. More-over, M.S. or M.D. are not super-specialities. In any event, this court did not say that they were not permissible; the government was asked to consider the advisability of providing for reservations in those posts having regard to the nature and level of those posts."

It goes without saying, thus, that the limit of 50 per cent in case of reservation only applies in case of posts. In that event, we have simply to consider if giving 60 per cent of the seats to in service doctors in PCMS would give them an undue advantage and whether it would be unfair to the meritorious candidates. It has also to be looked into as to if this differentiate is intelligible or is arbitrary. While much was said on behalf of the petitioners that meritorious Graduates should resultantly pass their MBBS, would be deprived to admission to post-graduate courses giving unnecessary advantage to in-service doctors. Equivocal was the argument to repel the said plea that it is they who serve in rural areas being in service which is the need of the hour and expert facilities have to be provided to patients of the country.

11. After carefully considering the rival contentions, we feel that it is the Government which bears the burden of running the medical colleges. It is for it to lay down the criteria for eligibility. From the very nature of things, it is not possible to throw admissions to all. The Government can not be denied the right to decide from what sources the admissions would be made. It is a matter of policy. It should be decided on an overall assessment of the facts. If the sources are properly classified on reasonable basis, the court would not interfere with the manner and method of making classification. If it is arbitrary the interference would follow.

12. The classification of the candidates for admission an in service candidates who are in the employ of the government is a reasonable classification in the facts and circumstances of the case. It bears a just relation to the object which is sought to be achieved. Majority of the citizens for obvious reasons like poverty are compelled to seek medical aid in the government hospitals where they get free medical aid or on payment of nominal charges. The said medical aid is provided by the in-service doctors to all those poor and other patients. It is, therefore, essential that they should be given scope to become more competent to render medical assistance by increasing their knowledge. Thus giving such doctors admissions helps the government in giving efficient medical aid to millions of people and also those who are staying in villages. Therefore, we find that admissions to the post graduate courses from different sources namely from graduate courses from different sources namely from graduates and in-service PCMS doctors is reasonable classification. Nothing prevent the fresh graduate who have passed MBBS recently to join PCMS to become a class apart, being in service doctors. The arguments of the learned counsel must fail. A similar argument had been raised before a Division Bench in the case of Aditya Kumar Aggarwal and Ors. v. State of Punjab and Ors. 1986(4) S.L.R. 582 and replied. There is no reason to take a different view for the reasons recorded above. Our attention had been drawn to the letter of the medical council for not making any reservation in such admissions. But once again reverting to the decision of Ajay Kumar Singh's case (supra) it was advantageous. A similar plea was advanced and it was concluded that the recommendations of India Medical Council was advisory in nature and not binding in character.

13. Consequently, for all these aforesaid reasons it cannot be held that petitioners in any case are being discriminated or that seats so reserved for certain categories are violative of the principles of equality. The petition being without any merit fails and is dismissed. No costs.