
(1981) 09 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3464 of 1981

Gauri Shankar Verma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Constitution of India, 1950 — Article 12, 15

Citation : AIR 1982 P&H 100

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

1. Briefly, the facts are that the petitioner being a Sunar, belongs to a backward class in Haryana. In terms of the Government Instructions, dated 7th July, 1981 (copy Annexure P-3), regarding reservation of seats in the educational institutions in Haryana, eight seats were reserved for candidates belonging to backward classes in the Government Medical College, Rohtak. For the purpose of admission to the M. B. B. S. Course in the College, an Entrance Examination was held on 27th/28th June, 1981. The petitioner had passed the Pre-Medical Examination from the Maharshi Daya Nand University, Rohtak (hereinafter referred to as the M.D. University), in April, 1981. He appeared in the Entrance Examination and was placed at number seven on the merit list of the candidate pertaining to the backward classes.

2. The M. D. University has issued the prospectus regarding the Medical Entrance Examination 1981-82. Backward Class candidates have been defined in clause (I) of Chapter IV of the said prospectus. According to this clause, backward classes include all the residents of Haryana State whose family income is less than Rs.1,000 per annum, irrespective of the fact as to which caste, community or class they belong and what profession they are following, and the candidates belonging to backward classes, as declared by the State Government and whose family income does not exceed Rs.4,200 per annum. It is alleged that though the latter class in the prospectus is against the Haryana Government instructions

dated 17th May, 1973 (Copy Annexure P-4), yet the petitioner attached a certificate from the Sub-Divisional Officer (Civil), Jhajjar, to the effect that the petitioner's family income from all sources was Rs.9,700 per annum. Consequently, the petitioner was not admitted in the College in spite of his having secured the seventh position in the merit list prepared on the basis of the Entrance Examination. He has challenged the order rejecting his candidature inter alia on the grounds that clause (I) of Chapter IV of the Prospectus providing the family income of Rs.4,200 in the case of backward classes, as declared by the Government, is against the Haryana Government instructions applicable to the educational institutions in the State: that the instructions dated 7th July, 1981 (copy Annexure P-3) and dated 17th May, 1973 (copy Annexure P-4) are applicable to the educational institutions and that if the income criteria is taken to be valid, the annual income for the financial year in question and not for the previous years should be taken into consideration.

3. The writ petition has been contested by the respondents. In its written statement respondent No. 1 has admitted that Sunars have been declared as members of the Backward Classes up to 19th August, 1985, and that the instructions dated 17th May, 1973, and 7th July, 1981, were issued by the Government. It has also admitted that there was no Government policy laying down income criteria for reservation of seats for backward classes in the educational institutional. The other allegations in the writ petition were, however, denied.

4. The Direct-Principal, Medical College, Rohtak, respondent No. 2, has in his return, stated that the petitioner submitted an income certificate from the Sub-Divisional Officer (Civil), Jhajjar, that his family income from all sources was Rs.9,700 per annum, but in clause (I)(b) of Chapter IV of the Prospectus, it had been provided that the candidates belonging to the backward classes, as declared by the Government, would not be treated as belonging to such classes for the purpose of admission to the College, if their family income exceeded Rs.4,00 per annum. Therefore, the petitioner was debarred from getting the benefit of the seats reserved for the candidates of backward classes. He has further stated that the instructions dated 17th May, 1973 (copy Annexure P-4), are not applicable for the purposes of admission to the educational institutions. M. D. University has filed a separate return wherein it has taken similar pleas as have been taken by respondent No. 2

5. It is contended by the learned counsel for the petitioner that the instructions, Annexure P-3 and Annexure P-4, are applicable to the educational institutions. He further submits that even if it is held that the instructions are not applicable to such institutions, the M. D. University has no authority to lay down the income limit for the declared backward classes by the State Government.

6. I have duly considered the argument of the learned counsel, Annexure P-3 is the letter dated 7th July, 1981, containing instructions from the Commissioner and Secretary to Government, Haryana, Welfare of Scheduled Castes and

Backward Classes Department, to all heads of Departments, regarding reservation of seats for Scheduled Castes/Scheduled Tribes and Backward Classes in Technical Educational and Professional Institutions. By virtue of this letter, the State Government increased the reservation of seats in the technical, educational and professional institutes from 2 per cent to 10 per cent, with a proviso that the total number of seats to be reserved for various categories should not exceed 50 per cent and that the seats reserved for the members of the Scheduled Castes should not be reduced below 20 per cent. Respondents Nos 2 and 3 did not dispute the applicability of these instructions. Rather, the said respondents have admitted that they followed the instructions and increased the seats for the Backward Classes for admission in the College from 2 to 8.

7. Regarding the applicability of the instructions dated 17th May, 1973, Annexure P-4, the categorical stand of the said respondents is that these do not apply to educational institutions and, therefore, they are not bound to follow them. Annexure P-4 contains instructions relating to abolition of the limit of income regarding the reservation in service for the members of the Backward Classes, from the Chief Secretary to Government, Haryana, to all Heads of Departments, etc. Prior to the issuance of the letter, directions had been issued that only those persons whose family income did not exceed Rs.1,800 per annum would be considered as belonging to Backward Classes for the purposes of reservation in service. No income criteria was laid down for the members of the Scheduled Castes. By this letter, the income criteria regarding the members of the Backward Classes was deleted and they were brought at par with the members of the Scheduled Castes for the purposes of recruitment against reserved posts.

8. The learned counsel for the petitioner has drawn my attention to a sentence in the letter (Annexure P-4) to the effect that such a limit can be imposed for the grant of scholarship which had also been imposed for the members of the Scheduled Castes, and urged that the letter was of general applicability and did not apply for recruitment to the service only. I am not inclined to accept this submission of the learned counsel. There is no mention in the letter that is also relates to reservations in the technical, educational and professional institutes as was stated in Annexure P-3. If it had to apply to such reservations, that would have been included in it. I consequently reject this submission of the counsel.

9. The next question that arises for determination is as to whether the M. D. University could lay down the income limit for the declared Backward Classes. The Medical College is affiliated to the M. D. University which also holds the Entrance Examination for admission to the College. It has issued Prospectus for Entrance Examination wherein all the conditions for appearing in the examination have been laid down. Article 12 of the constitution of India defines the State for the purposes of Part III, according to which it includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. The M. D. University is an autonomous body

constituted under a specific enactment and it therefore falls within the four corners of the words "authorities within the territory of India" in Art. 12. It is, thus, a State for the purposes of Part III of the Constitution of India. Article 15 relates to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Clause (1) of that Article says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex place of birth or any of them. Clause (4) is in the nature of a proviso which inter alia provides that nothing in this Article 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. Thus, the State can make a special provision for advancement of classes, which it considers socially and educationally backward and that will not be in contravention of clause (1). Therefore, the State is entitled to lay down the criteria for determining socially and educationally Backward Classes. M. D. University being the State is also entitled to do so.

10. Now, the question is whether the income criteria as laid down by the M. D. University is good or it contravenes Art. 15. In clause (4) of Art. 15, the words used are "socially and educationally backward classes." Generally poverty is the root cause for social and educational backwardness. While determining social and educational backwardness, the economic aspects cannot be overlooked. A similar question arose in *R. Chitralekha and Another Vs. State of Mysore and Others*, . In that case, the Court was dealing with an order providing that classification of socially and educationally backward classes under Art. 15(4) be made on the basis of economic condition and occupation. It was stated by the Government that the families whose income was Rs.1,200 per annum or less and the persons or classes following the occupations of agriculture, petty business, inferior services, crafts or other occupations, involving manual labour, were, in general, socially, economically and educationally backward. It also listed the following occupations as contributing to social backwardness : (1) actual cultivator; (2) artisan; (3) petty businessmen; (4) inferior services, including casual labour and (5) any other occupation involving manual labour. The impugned order did not take into consideration the caste of an applicant as one of the criteria for backwardness. It was observed by Subba Rao, J., speaking for the majority, that the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons but if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria. Caste is only a relevant and not a compelling circumstance in ascertaining the backwardness of a class and where it can be done the social backwardness of a group of citizens can be determined without reference to caste at all. If the classification of backward classes of citizens was based solely on the caste of the citizen, it might not always be logical and might perhaps contain the vice of perpetuating the castes themselves. Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation

to many sections of Indian Society which do not recognise castes in the conventional sense known to Hindu society. That is why the caste in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups of classes of citizens, it cannot be made the sole or the dominant test in that behalf.

11. The above case was followed by a Division Bench of Andhra Pradesh High Court in *Desu Rayudu and Another Vs. Andhra Pradesh Public Service Commission, Hyderabad and Another*, , and Full Bench of Kerala High Court in *V. Hariharan Pillai Vs. State of Kerala and Others*, , In the former case, the learned Bench held that any help on the basis of caste may result in assisting even those who do not deserve such assistance merely because they belong to that caste and also denying such help to those who deserve merely because they belong to certain castes not included in the list of "backward classes". All those who deserved economic assistance under the previous arrangement for advancement of education would continue to get under the new criteria based on economic considerations. It is only those who were getting the assistance without deserving it that are perhaps left with a grievance. The economic basis, therefore, not only removes the abovesaid defects, but puts the assistance of equitable and socially just basis and extends a helping hand to all those who really deserve such assistance for their advancement in education. The learned Bench consequently rejected the contention that economic considerations cannot be the basis for determining any assistance to be given under Art. 15(4). The Full Bench in *V. Hariharan Pillai's* case (supra) laid down that poverty or poor economic condition played a great part in the social and/or educational backwardness of a class of people. From the above observations, it is evident that while determining social and educational backwardness if income criteria is laid down in addition to caste criteria, it cannot be held to be bad.

12. The learned counsel for the petitioner placed reliance on the *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.*, , and *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, . In the former case, the Bench observed that if an entire caste is as a fact found to be socially and educationally backward, their inclusion in the list of Backward Classes by their caste name is not violative of Art. 15(4). A caste is also a class of citizens and a caste as such may be socially and educationally backward. It has been further held that if after collecting the necessary data, it is found that the caste as a whole is socially and educationally backward and reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. In the latter case, it was ruled that mere educational backwardness or the social backwardness does not by itself make a class of citizens backward. In order to be identified as belonging to such a class, one must be both educationally and socially backward. In my view, both the cases are distinguishable and the observations therein were made in a different context. Accordingly, the counsel cannot derive any benefit from those observations.

13. The learned counsel for the petitioner has lastly argued that the petitioner sought admission in the College in the month of May, 1981, and for admission in that month, the income from 1st April, 1980, to 31st March, 1981, is relevant; the annual income of the family of the petitioner for that year in Rs.3,110 and, therefore, the petitioner is entitled to the admission.

14. I have given my thoughtful consideration to the argument but am not impressed with it. In order to determine the question, it will be relevant to reproduce hereunder clause (I) of Chapter IV of the Prospectus:--

"(1) Backward Classes Candidates: The following categories of persons are included in the backward classes:--

(a).....

(b) Candidates belonging to backward classes as declared by the State government must be from communities such as are special to these backward communities, excluding those whose family income exceeds Rs.4,200 per annum. They will be entitled to privileges being enjoyed by backward classes. They are required to produce a certificate to the effect in the forms in Appendix B."

The certificate given in Appendix B is as follows:--

"Certificate of Yearly Income of Parents/Guardians.

This is certified that Mr./Miss..... s/o, d/o..... is a permanent resident of Village.....P. O..... Tehsil..... District.....(Haryana). The yearly income from all sources of his/her parents/guardians is Rs.....

Seal of the Court

Date

Deputy Commissioner/

G. A. to D. C. or Sub-

Divisional Officer

(Civil)

15. In Clause (1) and the pro forma of the certificate, the year for which the income is to be taken into consideration is not mentioned. It cannot be denied that the University authorities want to give benefit of the reservation to the candidates of backward classes whose normal family income does not exceed Rupees 4,200 per annum. The intention of the authorities cannot be that if a candidate belongs to a family whose normal income is much higher than Rs.4,200 for several years and it came down to Rupees 4,200 prior to the year in which he seeks admission, he will become eligible to seek admission. Similarly, the authorities, did not intend that if his family income had been below Rs.4,200

per annum for several years and had increased to slightly over Rs.4,200 in the year prior to the year in which admission is sought, he becomes ineligible. In the circumstances, the only criterion can be that the average annual income of the family in the previous year should not exceed Rs.4,200 per annum. The question arises, how many years' average income should be taken into consideration for determining the eligibility. In my view, the average income of the past five years will be reasonable criterion to do so. If the clause and the certificate are not interpreted in this way, the candidates who seek admission in the College can manage to obtain certificates so that they fall within the purview of candidates belonging to backward classes.

16. It is stated that the University authorities have not taken into consideration the income of the family of the candidate for the year immediately prior to the year in which he was seeking admission. The University had fixed 25th May, 1981, for submitting the application forms, duly completed in all respects. It was specifically said that the applications received after that date would not be entertained. The petitioner submitted the application with the requisite certificate dt. 23rd June, 1981, showing the income of the family as Rs.9,700 per year. His application was rejected on the ground of family income. He then filed another certificate, Annexure P-5, dated 28th July, 1981, showing the annual income of the family as Rs.3,100. It is stated that the earlier certificate was not for the relevant year but the latter one was, and, therefore, he was entitled to admission. The petitioner submitted the later certificate after his application had been rejected. The University could reject the application being incomplete if the certificate of income relating to the relevant year had not been annexed. It could also reject the application if the income mentioned in the certificate was taken into consideration by it. The petitioner cannot, therefore, make a grievance regarding the rejection of his application. It may also be mentioned that certificate, Annexure P-5, is not in the prescribed form and the authorities were not bound to take it into consideration. Consequently, I reject the contention of the learned counsel for the petitioner.

17. For the aforesaid reasons. I do not find any merit in this writ petition and dismiss the same with no order as to costs.

18. Petition dismissed.