
(1973) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 8144 of 1973

Gopal Krishna Gupta

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-11-1973

Acts Referred:

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

Citation : AIR 1974 All 288

Hon'ble Judges : Hari Swarup, J;H.N. Seth, J

Bench : Division Bench

Advocate : Hanuman Upadhyya, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This petition has been filed for a writ in the nature of Mandamus directing the respondents. Union of India and the Incharge, Joint Entrance Examination to Indian Institute of Technology, Northern Zone (K), Indian Institute of Technology, Kanpur to cancel the admission of the scheduled caste and scheduled tribe students, who did not secure qualifying marks in the entrance examination held in 1973. A further writ in the nature of Mandamus is claimed for consideration of the petitioner and other students similarly placed for admission to the Technological Institutions by eliminating the scheduled caste and Scheduled Tribe candidates who have failed to get the qualifying marks.

2. The petitioner's contention is he had passed the Intermediate Examination held by the Board of High School and Intermediate Education and had appeared for the entrance examination held for admission to technological institutions run by the Union Government viz; Indian Institute of Technology. Bombay, Delhi Kanpur, Kharagpur, Madras, and Banaras Hindu University Institute of Technology, Varanasi. The petitioner could not get admission to the Institution of his choice as he failed to compete with the candidates who had appeared at the Entrance examination. The contention is that if the reservations had not been

made for scheduled caste/scheduled tribe candidates and they had not been admitted, the petitioner would have got a seat in the Institution of his choice.

3. The petition is liable to fail on the ground primarily as the allegations made in the petition are quite vague. It has not been mentioned as to what was the position of the petitioner among the unsuccessful candidates. It has also not been mentioned as to who are those persons belonging to the scheduled castes and scheduled tribes who have been given admission though they had not secured qualifying marks. The petition is based on the allegation that the qualifying marks in the examination were to be 40% of the maximum marks securable at the examination, but no material has been placed to justify the assertion. There is thus no material for holding as to what were the conditions necessary for qualifying to get entrance in the technological Institutions. The qualification mentioned in the instructions to candidates in the joint entrance examination mentioned in paragraph 4 is-

"A candidate, in order to be eligible to apply for admission to the J. E. E. must satisfy the entrance requirements as to minimum educational qualifications age limit and standard of physical fitness mentioned in paragraphs 24 to 28, In Paragraph 47, which deals with concession to Scheduled Caste/Tribe candidates the requirements are mentioned as below:--

"Candidates belonging to the Scheduled Castes/Tribes are offered the following special concessions:

(i) The upper age limit will be relaxed by 3 years.

(ii) Those who qualify In the J. E. E. will be offered admission irrespective of their merit positions in the J. E. E.

4. It is alleged in the petition that some direction was received after the examination had been held from the Government of India by those who managed the examination to the effect that all the reserved seats for the scheduled castes and scheduled tribes should be filled by Scheduled Caste and Scheduled Tribe candidates without any reference to qualifying marks. It was alleged that persons receiving only 10% marks were admitted in the reserved seats. This paragraph again makes only a vague statement without placing any material from which the inference has been drawn by the petitioner. The facts therefore in this petition themselves are not sufficient for the consideration of the petition on merits.

5. Even though the petition does not give specific facts we proceeded to hear learned Counsel for the petitioner on merits, assuming that the contentions are based on facts asserted by the learned Counsel. Learned Counsel for the petitioner has contended that the admission of Scheduled Caste and Scheduled Tribe candidates in reserved seats without their securing 40% marks was not covered by the special provision contemplated by Clause (4) of Article 15 of the Constitution and that Clause (1) of Article 15 was still operative and read along with Article 29(2) of the Constitution made such admission constitutionally bad.

6. The second contention of the learned Counsel for the petitioner is that admission to this Institution could be controlled only by an Ordinance framed u/s 28 of the Institutes of Technology Act 1961 and not by any executive direction issued by the Central Government.

7. So far as the second point is concerned it has not been stated whether any ordinances have been framed or not. Section 28 of the Act runs as follows:--

"Subject to the provisions of this Act and the statutes the Ordinances of each Institute may provide for all or any of the following matters namely -

(a) The admission of the students to the Institute"

If no Ordinance has been framed, there is neither any question of the admissions being controlled by the Ordinance nor of any violation of any Ordinance. The admission of the Schedule Caste and Schedule Tribe candidates to reserved seats cannot therefore be invalid on this ground. No administrative order has been produced for our consideration. We cannot, therefore, hold that the admission was made according to some invalid executive order. No violation of the Act has been pointed out.

8. For purposes of the argument based on Article 15 of the Constitution, we proceed, as contended by the learned counsel, on the assumption that the State has made special provision for reservation of seats for scheduled caste/tribe candidates and that for their admission no minimum marks have been fixed as qualifying marks. After having heard learned counsel, we are of opinion that the admission of the scheduled caste and scheduled Tribe Candidates in the circumstances mentioned above is saved by Clause 4 of Article 15, and is valid. Clause (1) of Article 15 bars discrimination and enjoins that the State shall not discriminate against any citizen on the ground of religion, race, caste, sex place of birth or any of them. Clause (4) of Article 15 makes Clause (1) inapplicable if the State makes any special provision for the advancement of socially or educationally backward classes of citizens or for members of the scheduled castes and scheduled tribes. The Union of India by making a special provision for admission of scheduled caste and scheduled tribe candidates to technological Institutions must be held to have done so for securing their advancement. Such a provision will be within the scope of Clause (4) of Article 15 and will thus not be hit either by Clause (1) of Article 15 or Clause (2) of Article 29 of the Constitution. The purpose of reservation of seats in technological Institutions is to make them available for scheduled caste and scheduled Tribe candidates as they cannot be available to them without such reservation. Once reservation has been made the method of filling up of reserved seats may be different from the one adopted for filling up to unreserved seats. The qualifying marks for this class may also be different or there may be no qualifying marks at all.

9. Learned counsel for the petitioner contended that by admitting candidates who do not acquire even 40% marks which according to him are qualifying marks in the examination for all candidates, the standard of Engineers and Technologists

coming out of these Institutions will be much lower and will ultimately affect the welfare of the people. We are not impressed by this argument. It is only at the stage of admission that concession is granted to the people belonging to Scheduled Castes and Scheduled Tribes. No concession is being granted to them in passing the final examination; unless they qualify themselves through the education given to them at the Institute they will not pass and the country will not get technologists and engineers who are not fully qualified.

10-11. In support of his contentions learned Counsel for the petitioner relied upon a decision of the Supreme Court in the case of M.R. Balaji and Others Vs. State of Mysore, . The facts of that case were entirely different. In that case the State had divided the entire population into backward and non-backward classes. It was observed by the Supreme Court as follows:--

"The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories "Backward" and "Very Backward", The classification of the two categories therefore is not warranted by Article 15(4)."

12. On this" finding the Supreme Court held that Article 15(4) could not save the order. Further the question before the Supreme Court was about the quantitative reservation of seats and not about the method of filling up the reserved seats. Similarly the other cases cited by the learned Counsel for the petitioner viz., the case of Ramesh Chander Garg Vs. State of Punjab and Others, , State of Andhra Pradesh and Another Vs. P. Sagar, do not deal with the circumstances existing in our case and the law laid down therein is not applicable to the circumstances of this case. One other case of the Supreme Court relied upon by learned counsel for the petitioner is the The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc., . It deals with the distinction in the backward and non-backward classes. That case also does not in our opinion deal with the point before us.

13. Having considered the points raised by learned counsel for the petitioner, we are of opinion that this petition must fail. It is accordingly dismissed.