
(1990) 06 GUJ CK 0009
In the Gujarat High Court

Gujarat University

APPELLANT

Vs

Dr. Sida Nitinkumar Laxmanbhai and Others

RESPONDENT

Date of Decision : 18-06-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 29, 46
Contract Act, 1872 — Section 23, 23

Citation : (1991) 1 GLR 93

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; R.A. Mehta, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—Gujarat University and its Selection Committee, respondent Nos. 1 and 2 in the main Special Civil Application no. 3670 of 1990 (Reported in 1990 (2) GLR 808) are the appellants herein. The respondent Nos. 1 and 2 herein are the original petitioners in the Special Civil Application No. 3670 of 1990 praying for issue of a writ of mandamus or any other appropriate writ or direction declaring that the original petitioner No. 1 is entitled to opt for P.G. Medical admission in the general category pool of which he is at merit No. 21. The petitioner No. 1 therein has also prayed for getting the unit of his choice in P.G. Course and has also prayed for giving a direction to the respondent Nos. 1 and 2 in the Special Civil Application to give admission to the petitioner No. 1 therein in the branch which may be available to the petitioner in order of his merit from general category pool in the interviews which were going to be held on the 10th May, 1990. There is a further prayer in that Special Civil Application to the effect that the petitioner No. 2 therein is entitled to get admission in M.S. Orthopaedic reserved category for SEBC quota as per his merit number in SEBC category list. There is a further prayer to the effect that the action of the respondent authorities in that Special Civil Application, in denying the admission on the basis of general category merit number to the petitioner No. 1 and thereby denying the unit choice also to be petitioner No. 1 be declared as illegal, arbitrary and violative of Articles 14 and 15 of the Constitution of India.

2. The short facts of the case are that the University received application for

admission to post-graduate medical course. The University has prepared four lists. The list No. 1 includes names of eligible candidates for unreserved category of seats. This list includes also the names of students belonging to Scheduled Castes, Scheduled Tribes and Socially and Economically Backward Class Communities. The list No. 2 includes the names of candidates belonging to Scheduled Castes. List No. 3 includes the names of candidates belonging to Scheduled Tribes, Nomadic Tribes and denotified tribes. List No. 4 includes the names of candidates belonging to Socially and Educationally Backward Class of Communities which in short, called SEBC. The names of first respondent herein appears at serial No. 21 in list No. 1 which is called common or unreserved category list. The first respondent's name also appears at the serial No. 3 in the reserved SEBC category list i.e. List No. 4. As far as second respondent herein is concerned his name appears at serial No. 73 in unreserved category List i.e. List 4. As per the notice issued by the university dated April 12, 1990, the date and time for interviewing the candidates have been given. According to the said notice, the candidates belonging to SC or ST or Socially and Educationally Backward Classes and who claim benefits of reservation were to be interviewed.

It is the case of the petitioner No. 1 that he was forced to express his choice for reserved category seat and was required to give up the choice for unreserved category seat. But, according to the University, the first and second respondents herein, along with other candidates claiming benefits of reservation were required to express their choice either for reserved category seats or for unreserved category seats at the initial stage only accordingly to the procedure and policy adopted by the University. It is further stated, by the University that no coercion was exercised upon the first and second respondents herein. As per the notice, the first respondent herein appeared for the interview and exercised his choice for reserved category seat and was granted admission in subject of Orthopaedic, while the respondent No. 2 herein opted for unreserved category seat and, therefore, his interview was deferred.

3. The first respondent herein who ranks at serial No. 21 and who thought that he will have a fair chance in the unreserved category and that he will be in a position to get a subject of his higher choice instead of orthopaedic in the reserved category, wanted to compete in the unreserved seat also. But the University contended that since the first respondent herein had opted to have an interview in the reserved category, it is not possible for the University to allow him to have an interview in the unreserved category. As regards the second respondent herein, the University was of the view that the second respondent cannot have the seat in Orthopaedic if the first respondent herein is able to get the seat in the unreserved category. This, according to the University, is the practice and procedure that is being followed in respect of admissions to the post-graduate course. This procedure sought to be followed by the University is questioned by the first and second respondents herein in the Special Civil Application and they have come forward with a prayer which we have already extracted in paragraph supra. According to the University both the respondents

i.e. respondent Nos. 1 and 2 herein along with other candidates claiming benefits of reservation were required to express their choice either for reserved category seat or for unreserved category seat at the initial stage only. This, according to the University, is the procedural policy adopted by it and there was no coercion as alleged by the first and second respondent herein in exercise of such procedure.

4. It is interesting to note that the rules governing the admission to post-graduate medical courses do not provide for the procedure which has been adopted by the University. It is also clear that no decision was taken by the Selection Committee either in the form of minutes of the meeting or in the form of resolution as regards the policy and procedure to be adopted at the time of holding the interview. However, it was submitted by the University that the procedure adopted is as per the long standing practice of the University and that of the college council which used to perform the function of granting post-graduate admission. Thus, it is clear that at no time the candidates have been made aware about the procedure adopted at the time of interview and selection of the candidate. Notice dated April 12, 1990 only indicates the sequence in which the interviews were to be held. Interviews for reserved category seats were to be held first and for the unreserved category seats the interview were to be held afterwards. As regards the policy and procedure adopted by the University in para 8 of the affidavit-in-reply it is stated as follows:

Candidates are called at the interview according to the merit list. General merit list is utilised for open merit seats and reserved category 2, 3 and 4 merits list for SC, ST and SEBC students respectively. I say that reservation is for subjects only. I say that reserved category students are called first. They have to state their option as to whether they are desirous of going in for open merit or for reserved category. Once they opt for reserved category, they are granted admission on the basis of their merit list. Then they are not to be considered on general open merit. The option exercised by them is final. If there are still registrations available, for which there are no reserved category students, the said registrations are converted to be available on open merit.

In para 8 of the affidavit-in-reply further averments have been made in support of the aforesaid procedure. It is contended that the procedure is eminently just and fair. It is further submitted that registration of post-graduate course is different from other posts in services inasmuch as each seat for registration is different and distinct from another. It is further stated in the affidavit-in-reply as follows:

The student concerned knows his merit number in open merit list (list No. 1). Once he chooses his subject he is not to be considered in open merit. If he withdraws his claim from reserved category, he is not to be called on the basis of his general merit.

It is further averred in the reply affidavit that after the interviews for reserved

category seats are over, if the seats reserved remain unfilled, they are converted into unreserved category and they are also offered to candidates listed in unreserved category list (i.e. List No. 1). Thereafter unreserved category list is operated till it is over.

5. From the foregoing discussion it is clear that there is no rule, regulation or circular as to how the reserved and unreserved category of students have to be operated. But the reply affidavit makes it clear as to the procedure adopted by the University and it clearly states that the reservation is for subject only and that the reserved category candidates are called first. It also states that the reserved category candidates have to state the option as to whether they are desirous of going in for open merit or reserved category. Once they opt for reserved category, they are granted admission on the basis of their merit list. Then they are not to be considered in general open merit. The option exercised by them according to the practice of the University is final. If there are still registrations available for which there are no reserved category students, it is stated by the University, the said registration are converted to be available on open merit.

5A. The learned single Judge of this High Court while disposing of the main special civil application has elaborately discussed the reservation policy in relation to the procedure adopted by the University and we completely endorse the discussion and to the conclusion arrived at by the learned single Judge. For the purpose of disposing of the present Letters Patent Appeal, it is not necessary for us to repeat all those things except to discuss as to whether the reservation is to the subject only and that the option exercised by the reserved category candidates is final.

6. Correctly Mr. S.N. Shelat, the learned Counsel appearing for the appellants submitted three contentions for the purpose of disposal of the present "Letters Patent Appeal. They are:

1. It is essential for the reserved category candidates to decide after having seen his merit number and the subject available to him, whether he opts for the said subject or not. This facilitates operation of Rule 5.4.

2. Rule 5.4 is operated only after all the candidates under the reserved category are interviewed and their choice is exercised.

3. If he does not opt for the posts reserved for SEBC, he has a right to compete for general seat. He cannot be permitted to ride on both the horses so as put the claims of the general candidates into jeopardy as general candidates must know as to whether the seats which are not filled in by reserved candidates are available to them or not.

7. In this connection we can usefully refer to Articles 14, 15, 16, 29 and 46 of the Constitution of India.

Article 14 states that the State shall not deny to any person equality before the

law or the equal protection of the laws within the territory of India.

Article 15(1) states that the State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(4) clearly states that 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.

Article 16(4) reads that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 29 deals with protection of interests of Minorities. It envisages that (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same, and (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 46 reads as follows:

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker section: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

8. In the light of all these articles and on the strength of various Supreme "court decisions, which the learned single Judge has discussed and which decision we need not repeat once again herein, it is clear that the benefits conferred by these articles on the Scheduled Castes, Scheduled Tribes and SEBC are in addition to the already existing fundamental rights and other rights. If such scheme of reservation by special provisions has to depend upon the option that has to be exercised by the persons on whom such concession is conferred, then such policy and procedure would be contrary to constitutional provisions and the law, to the extent that it curtails the fundamental rights or any other right which the reserved candidates are allowed to enjoy. By such concession, seats are reserved for such candidates and not candidates for seats.

9. The argument of Mr. S.N. Shelat, learned Counsel appearing for the University that if a candidate exercises his option to be considered in the reserved category, he cannot be considered for the unreserved category, is neither supportable by rule framed for such selection by the University nor by the constitutional mandates enshrined in our constitution nor by the principles enunciated by various decisions rendered by the Supreme Court on the subject of reservation. The learned single Judge of this High Court has discussed the necessity for

reservation in order to uplift the weaker section of the society to enjoy of the benefits of our freedom and has discussed the decision rendered by the Supreme Court in which such principles have been applied. Hence it is not necessary to repeat the same except to endorse the view taken by the single Judge as correct.

10. The rules governing the admission to Post-Graduate Degree and Diploma Medical Courses other than M.Ch. and D.M. at the affiliated Medical Colleges and which are applicate to the present case are:

Rule 1.2: In case the seats reserved in Rule 1.0 remain vacant because of non-availability of candidates, the same will be treated as open and will be filled up from the Merit List of eligible candidates under Rule 2.

Rule 2.0: Remaining 75% (not more) of total Seats after Rule 1.0 in Post-Graduate Courses will be filled up by the "Selection Committee" of the University." "Rule 4.0: Seven percent of the Seats available under Rule 2, will be reserved for candidates belonging to Scheduled Caste, Thirteen percent of the Seats will similarly be reserved for ST/NT/DNT candidates and Five percent of the Seats similarly will be reserved for the candidates belonging to Socially and Educationally Backward Class.

These seats are reserved for the candidates belonging to SC/ST/NT/DNT and SEBC recognised as such in the State of Gujarat and not those or whose parents have migrated from other State to Gujarat State.

For allocation of Seats to this Reserved category a 100 Point Roster, freshly prepared in January 1989 will be followed, record of which will be maintained by the University. These lists will be separate for two affiliated institutions.

Rule 4.1: Number of Unreserved Seats will be increased in the same subject against the number of seats utilised under Rule 4.0 as per existing policy of Government Institution.

Rule 4.2: In case the Seats reserved under Rule 4.0 remain due to non-availability of the candidates of the specified category, upto Rule 3.1 selection they shall be treated as unreserved Seats and will be filled up by the candidates on the basis of Merit who are eligible as per Rule 3.0.

11. Reading the abovesaid Rules Mr. K.V. Shelat, learned Counsel appearing for the respondents correctly contended that there is no substance in the argument advanced by Mr. S.N. Shelat to the effect that if a reserved candidate is allowed to appear both for the general and reserved category seats, candidates in the general category will be put into jeopardy since they may not know the actual seats available to them inasmuch as Rule 4.1 and 4.2 enable the authorities to increase the equal number of seats against the number of seats utilised by the SC/ST/DNT/SEBC candidates. Thus, it is seen that the argument of Mr. S.N. Shelat as if the general candidates will suffer has no leg to stand in the light of the abovesaid rules. These rules categorically state that the corresponding seats reserved for the SC/ST/DNT/SEBC will be increased in the general category

seats. The seats reserved under Rule 4, if remained vacant due to non-availability of the candidates of the specific category, they shall be treated as unreserved seats and will be filled up by the candidates on the basis of merit who are eligible as per Rule 3. Thus the unreserved category is an open category which takes in both the reserved and unreserved candidates. Nowhere in the rules it is stated that once the reserved candidate opts to be treated in the reserved vacancy, he is completely debarred from competing in the unreserved category i.e. general category. If such is the case, it will result in compartmentalisation of the different categories on the basis of caste which will be clearly hit by the Constitutional Provisions and the Principles enunciated by the Supreme Court in various decisions referred to by the learned single Judge in his judgment. Inasmuch as the seats in the unreserved category are bound to be increased as against the number of seats utilised in the reserved category, the undue anxiety expressed by the University in favour of the unreserved category will not survive. We must appreciate that the reservation policy is to benefit the Scheduled Caste, Scheduled Tribe and Socially and Economically Backward Classes. If the argument of Mr. S.N. Shelat regarding the exercise of option is to be accepted, the very purpose and object of constitutional mandate in order to encourage the abovesaid classes will be frustrated. The argument of Mr. S.N. Shelat to the effect that the reserved category candidate should decide after having seen his merit number and the subject available to him by exercising his option or otherwise there will be difficulty in operating Rule 5.4 has neither moral nor practical strength to stand. Reading Rules 4.1 and 4.2 which we have discussed in paragraph supra, the insistence upon the reserved category candidates to exercise the option and denying them to come to the general pool can have no leg to stand in view of Rules 4.1 and 4.2 and further the question of repeating the selection process in rate cases cannot take away the fundamental and legal rights of the reserved category candidates. The apprehension of Mr. S.N. Shelat that there will be difficulty in operating Rule 5.4 is only imaginary. The vacancy if any either by virtue of increase in seat in the general category or by transferring the seats from the unreserved category to general category under Rule 4.2 or Rule 1.2, the necessity of holding fresh interview will always be there. On this basis one cannot deny the right of SC/ST/SEBC candidate to avail the reserved quota in addition to his right to compete in the general category. Article 14 of the Constitution clearly gives a mandate that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. If by exercising option the reserved category candidates are denied the equality before the law and equal protection of the law, the same will definitely be hit by Article 14 of the Constitution. The facility accorded to SC/ST/SEBC candidates by virtue of Article 15(4) cannot take away the basic constitutional right which every citizen of India has a right to enjoy under Articles 14 and 15(1) of the Constitution. Simply because there will be some difficulty in operating Rule 5.4 envisaged by Mr. S.N. Shelat, which we think is only imaginary, the basic constitutional right guaranteed under Articles 14 and 15(1) of the Constitution and the concessions envisaged under Article

15(4) of the Constitution to SC/ST/SEBC candidates cannot be curtailed.

12. Mr S.N. Shelat, learned Counsel for the University cited the decision in the case of Arjun Chandra Naik v. State reported in AIR 1985 SC 300. This is a case decided by the Bench of Orissa High Court in relation to the paragraph in the prospectus for selection to Resident House Staff (R.H.S.) and admission to P.G. Courses in three Medical Colleges of Orissa for the Session 1984-85. In that prospectus where paragraphs 5.3 and 5.4 reserved seats in the P.G. Course for certain category of students, it is stated therein that candidates who have opted for the reservation in paragraph 5.3 and 5.4 cannot claim admission against the seats reserved for Scheduled Castes and Scheduled Tribes in paragraph 5.2 even though they may be candidates belonging to SC and ST. The classification made in these paragraph are held to be a reasonable classification and does not offend any of the provisions of the Constitution. As far as the present case is concerned, the candidates want to come from reserved category to general category as contrast to Orissa decision where the candidates opted for one reserved category want to go to other reserved category. If it is a case where a candidate is debarred from coming to general category from the reserved category in our opinion the same will offend the constitutional provisions apart from the general principles enunciated by various decisions of the Supreme Court can be we do not think the abovesaid decision cited by Mr. S.N. Shelat can be of much assistance to the propositions he has enunciated.

13. The next decision cited by Mr. S.N. Shelat is the case reported in Shri Lachoo Mal Vs. Shri Radhey Shyam, . In this case the Supreme Court had occasion to observe as follows:

Where during the tenancy governed by Rent Control Act the landlord in 1962 entered into an agreement by which tenant was to vacate premises for reconstruction and landlord was to redeliver same after reconstruction, no question of policy, much less public could arise. The landlord can waive the exemption benefit available for constructions made after 1-1-1951. The agreement is neither illegal nor unlawful nor defeating provisions of any law within meaning of Section 23 of Contract Act.

We are not able to understand how this decision and the principles enunciated in it can have any application to the facts of the present case. A teenager who appears before the selection committee is said to have exercised his option simply on the ground that he appeared before them in the category for which the selection was made at that time. It is too much on the part of the University to contend that there is a waiver on the part of such a candidate and that he is disentitled from competing in the merit quota even though such opportunity is available to him on the basis of his merit. Such narrow view taken by the University goes against the principles of public policy and fair play and offends equality before the law and equal protection of the laws that has to be given to every citizen of India. We do not think even this decision can have any assistance to the appellants herein.

14. The third decision referred by Mr. S.N. Shelat, learned Counsel for the appellants is the case of Shri V.V. Giri Vs. Dippala Suri Dora and Others, . In this case the Supreme Court had occasion to consider the effect of the Double-member Constituency under the Representation of the People Act, 1951. In that decision the Supreme Court held:

Per Majority (J.L. Kapur, J. dissenting) - An election to the House of the people even from a double-member constituency where one seat is reserved for the members of the Scheduled Tribes is one, and though the Constitution shows just anxiety to afford necessary protection to the members of the Scheduled Tribes, it deliberately has refused to adopt the system of separate electorates. The reservation of a seat in a double-member constituency cannot affect the main basic position that the constituency is one and for returning representatives to the House of the People it is the same joint electorate that goes to the poll. (Para 11)

A member of the Schedule Tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim and both the claims have to be decided on the basis that there is one election from the double-member constituency. (Paras 17, 21)

The underlining is done by us to add emphasis to the said principle. In paragraph 22 of the judgment the Supreme Court held:

In this connection we may refer by way of analogy to the provisions made in some educational Institutions and Universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the rest of the candidates. We are, therefore, satisfied that the High Court was right in rejecting the appellant's contention that respondent No. 1 could not have been validly elected for the general seat from the Constituency of Parvatipuram.

This decision, in our view, squarely supports the principles that we are accepting in this case.

15. Thus, looking at from any angle, the submission made by Mr. S.N. Shelat which we have extracted in paragraph supra cannot be countenanced. For all these reasons we are in complete agreement with the reasoning and conclusion arrived at by the learned single Judge in Special Civil Application No. 3670 of 1990 on 17th May, 1990 and accordingly this Letters Patent Appeal is dismissed. There will be no order as to costs. The respondent No. 1 who has been

interviewed for the open seat as per the direction of this Court and a seat has been kept vacant under interim order in Letters Patent Appeal, shall be admitted to that seat and his seat falling vacant in the SEBC reserved category shall be offered to candidates in that category including the second respondent in order of their inter se merit.

16. We make it clear that both the original petitioners were interviewed for the general category also under the interim orders passed in Letters Patent Appeal and seats were ordered to be kept reserved for them in the general category. The petitioner No. 1 had opted for M.D. (Medicine) in general category and that seat has been kept vacant and, therefore, the reserved seat of Mr. M.S. (Orthopaedics) falls vacant. As far as the petitioner No. 2 is concerned, he did not opt for any of the seats in general category which was available to him. In view of this, question arises of disturbing any admission in general category. Moreover, at the fag end of the term, it would not be practicable and just to do so in absence of necessary parties.