

(1965) 10 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 1660 of 1965

H.J. Siddappa

APPELLANT

Vs

The State of Mysore and Another

RESPONDENT

Date of Decision : 19-10-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mysore Government Order — Clauses 11, Clauses 3, Clauses 4

Citation : AIR 1967 Kar 67 : (1966) 1 MysLJ 301

Hon'ble Judges : K.S. Hegde, J;K. Bhimiah, J

Bench : Division Bench

Advocate : H.K. Vasudeva Reddy, for the Appellant; B. Venkataswamy, High Court Govt. Pleader, for the Respondent

Judgement

K.S. Hegde, J.—In this writ petition, under Article 226 of the Constitution, the petitioner prays that a writ of Mandamus or a direction in the nature of a Mandamus be issued to the respondents requiring them to admit him to one or the other of the (Medical Colleges run by the State of Mysore.

2. The petitioner passed his Pre-University Course Examination in the Mysore University in April last. In that examination, he secured 54 per cent in Physics, 79 per cent in Chemistry and 48 per cent in Biology, thus making a total of 181 marks out of 300. Admittedly, he belongs to a Socially and Educationally Backward Class. His application for admission to one of the Medical Colleges was rejected. As he is a Mysore University student, his application was considered only in respect of seats allotted to the Mysore Medical College. As mentioned earlier, he had secured 181 marks in his Optional subject in the P. U. C. Examination. He had secured 22 marks in the interview. Thus the total marks obtained by him are 203. The last student belonging to socially and educationally Backward Classes admitted to the Mysore Medical College had secured 210 marks. If his claim has to be considered only in respect of the seats allotted to the Mysore Medical College then there is no doubt that he has no place.

3. In the affidavit filed in support of this writ Petition, he has stated that Sri Basavaraj and Sri Chandrasekhariah, who had obtained lesser marks than himself had been given seats in the Medical Colleges. On that basis he complained of hostile discrimination. Sri Basavaraj like himself was a student of the Mysore University. He had been admitted to the Mysore Medical College. The petitioner's learned Counsel conceded at the time of the hearing that Sri Basavaraj had secured more marks than the petitioner. The learned Government Pleader informed us that Sri Basavaraj had secured 208 marks. To that extent the complaint of discrimination is not well founded.

4. Now coming to the case of Sri. Chandrasekhariah, he had passed his P. U. C. Examination in the Bangalore University. He, like the petitioner, belongs to a socially and educationally Backward Class. He had secured in the aggregate 200 marks. The last student belonging to socially and educationally Backward Classes admitted to the Bangalore Medical College was one who had secured 200 marks. But, it must be remembered that the seats available in the Government Medical Colleges in the State had been distributed on University-wise basis. Separate selections had been made on University-wise basis. Therefore, if the distribution of the seats is held to have been validly made there is no point in comparing the petitioner's case with that of Sri Chandrasekhariah. In the petition the validity of University-wise distribution of seats was not challenged. But it was challenged at the time of the hearing. We shall consider that question a little later.

5. The only other ground taken in the petition is that Rule 4 of the Rules relating to the admission to the Medical Colleges is ultra vires of the Constitution. Rule 4 reads as follows;

"Reservations in favour of Government of India Nominees, etc.

(1) Notwithstanding anything contained In Rule 3, seats as indicated below shall be reserved for the category of persons mentioned therein :

(a) Cultural Two seats Scholars of in each of Indian the three Origin who Medical have settled Colleges at abroad Bangalore. Hubli and Mysore. (b) Scholars One seat in deputed each of the under Co- two Colleges limbo Plan. at Mysore and Bangalore. (c) Students Two seats in of Indian each of the Origin migrating two Medical rating Colleges at from Burma. Mysore and Bangalore. (d) Students from One seat in Allan and each of the African countries four Medical Colleges at Bangalore, Bellary, Hubli and Mysore. (e) Students One seat in from Goa. the Medical College at Bangalore and two seats in each of the Medical Colleges at Hubli and Bellary. (f) Students Two seats in belonging each of the to union four Medical territorial Colleges at Other than Bangalore, Delhi. Bellary, Hubli and Mysore. (g) Children/ total number Wards of of eighteen Defence seats in all personnel. the Medical Colleges. (h) Children/ A total number Wards of of eighteen Ex. Defence seats in all Personnel the Medical Colleges.

(I) Students who One seat in have passed each of the L. A. M. S. and Medical L. U. M. S. Colleges at Bangalore, Bellary, Hubli and Mysore. (J) Students A total

who have number of shown out- seven seats standing in all the merit or Medical skill in Colleges in sports or the State, games.

Explanation: For purposes of this sub-rule allotment of seats for Defence Personnel and Ex Defense Personnel shall be regulated in terms of the Government Order No. ED 69 TGL 63, dated 2nd July 1964. (2) in the event of any seat reserved under Sub-rule (1) being not filled up, the number of vacant seats shall be added on to the general pool and distributed on that basis. (3) In respect of seats reserved for the categories (a), (b), (c), (d) and (f) of Sub-rule (1), the selections shall be made by the Government of India, and intimation thereof given to the State Government and the Deans of the Medical Colleges in which the seats are reserved on or before 15th July of the year of admission, failing which those seats shall be filled up by the State Government in accordance with the other rules. In respect of seats reserved for the other categories under Sub-rule (1), the selection of candidates shall be made by the Selection Committee in accordance with these rules."

We were not told why the reservations made under Rule 4 are invalid. A contention similar to this had been considered by this Court in *D. G. Viswanath v. Chief Secy., Govt. of Mysore* 1963 2 M1963 sLJ : AIR 1964 Mys 132 and rejected. These Colleges are owned and run by the Government of Mysore. It is open to the Government to reserve some seats for outside students. Our attention was not invited to any provision in the Constitution prohibiting such reservations.

6. Though in the petition only two contentions had been raised at the time of the hearing, the learned Counsel for the petitioner traversed a much larger field and his attempt in this regard was supported by a number of other learned Counsel who intervened at the time of the hearing. Let us now examine those contentions.

7. The first contestation advanced is that the distribution of seats on university-wise basis is ultra vires of the Contention as the same is violative of Article 14 of the Constitution. A contention similar to that had been unsuccessfully advanced in *W. P. No. 1862 of 1964*: (reported in AIR 1966 Mys 40) and the connected Writ Petitions, Dealing with that contention, this is what the Court observed:

"The last contention urged was that two different standards were adopted in the matter of selection one standard for the Karnataka University students and the other for the Mysore University students. It was said that the Mysore University students were discriminated against inasmuch as no student of that University who secured less than 218 marks was admitted whereas students of the Karnataka University who secured 208 marks or more were selected. This contention has also no merit in It. By means of a Corrigendum issued by the Government on 7-8-1964, the Government directed:

"1. Seats in Karnataka Medical College, Hubli, will be filled up only from among those students who have passed the qualifying examinations of the Karnataka University subject however, to seats upto 10 per cent or the total number of seats in that College being filled up by students having equivalent qualification

from other universities at the discretion of the selection Committee.

2. Seats in the Bangalore Medical College Mysore Medical College and Bellary Medical College (all of which were affiliated to the Mysore University at that time) will be filled up only from among those students who have passed the qualifying examinations of the Mysore University subject, however, to seats upto 10 per cent of the total number of seats in the said three Colleges being filled up by students from other Universities having equivalent qualification at the discretion of the Selection Committ-tee."

The Syllabi of the two Universities are different. They do not have common examination. The comparative merits of the students of the two Universities cannot be tested by referring to the marks obtained by them in the examination. Hence the Government thought, the best way is to distribute seats between the two Universities in the manner it has done, probably taking into consideration the areas served by the two Universities, the number of students who have passed the prescribed examinations and all other relevant circumstances. We see no reason to interfere with the same."

8. But, Mr. Vasudeva Reddy contended that the ratio of that decision is inapplicable in the matter of distribution of seats between the Bangalore University and the Mysore University. He urged that the Colleges, which are now affiliated to the Bangalore University, were constituent parts of the Mysore University till about a year back: they had common syllabi; the teaching standards were common; and the examinations held were similar and therefore the Government should not have treated similar things in a dissimilar manner. None of these facts have been set out in the affidavit filed in support of the petition. It must be remembered that there is a strong presumption that a classification made is a valid classification. The burden of proving that classification is illegal or otherwise violative of Article 14 is heavily on the person who challenges the validity of the classification. When a citizen wants to challenge the validity of any classification on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned classification is based on discrimination and that such discrimination is not referable to any classification which is rational and

which has nexus with the object intended to be achieved by the said classification.

As mentioned earlier, no plea that the classification made on university-wise basis in violative of Article 14 had been taken in the petition. Nor are there any allegations in the petition on the basis of which the arguments now advanced by Mr. Reddy and others can be supported. That apart, it was admitted by the Counsel appearing for the parties that the Bangalore University and the Mysore University had separate examinations; the question papers were different; and papers were valued by different persons. Therefore, it cannot be said that the

classification made is unjustified. For these reasons, the challenge based on Article 14 of the Constitution ought to fail.

9. The next contention of Mr. Reddy, supported by some other counsel is that the Rules relating to admission to the Government Medical Colleges do not authorise selection on University-wise basis. This contention again had not been taken in the Writ Petition. That apart, we do not think that that contention is correct. The scheme of admission to the Medical Colleges as we understand, it, is that out of 750 seats available in the four Medical Colleges run by the State Government, some seats were reserved under Rule 4. (We are given to understand that 76 seats were reserved under Rule 4). The remaining seats were first distributed on university-wise basis, subject to the proviso to Rule 11. Broadly speaking, seats in colleges, affiliated to the Karnataka University were allotted to persons passing from the Colleges affiliated to that University. Similarly seats in the Bangalore Medical College were reserved to students of the Bangalore University and in the Mysore Medical College to students of the Mysore University.

There is no doubt that the Rules relating to admission to Medical Colleges have been haphazardly drawn up. But, it is the duty of this court to find out the true intention of the Rule Making Authority and implement the same. For doing so, it is necessary to harmoniously construe the several Rules.

10. In the Government Order No. PLM 778 MMC 64, dated 11th June 1965, the Government prescribed Rules for the selection of candidates for admission for Pre-professional/I B. Sc., Course leading to M.B.B.S. Degree course in the Government Medical Colleges in the State. Rule 1 prescribes eligibility. That Rule reads:

"No person

(a) who has not passed the P. U. C. Examination or the XI standard of the Higher Secondary Schools Examination in the State with (i) Physics, Chemistry, Biology, or (ii) Chemistry, Botany, Zoology as Optional subjects, or

(b) who is not a graduate with (i) Physics, Chemistry, Biology, or (ii) Chemistry, Botany, Zoology as Optional Subjects, or

(c) who has not passed an examination declared by the State Government to be equivalent to any of the aforesaid groups either in P. U. C. or in XI Standard of the Higher Secondary Schools or in decree examination shall be eligible for admission:

Provided that eighty per cent of the seats shall be set apart for persons who have passed only P. U. C. or XI Standard of the Higher Secondary School or equivalent examination and the other twenty per cent shall be set apart for graduates." As seen earlier, under Rule 4, certain reservations are made for the Government of India Nominees and others. We have already considered the validity of that Rule. Under Rule 5, certain reservations are made for Scheduled castes, Scheduled Tribes and Socially and Educationally Backward Classes. Rule 6 provides that the

number of seats available for distribution after allowing reservations under Rules 4 and 5 shall be regarded as seats in the general pool. A common Selection Committee was appointed for selecting students for admission to the Medical Colleges. See Rule 7. Rule 8 prescribes that every application for admission to the Pre-Professional/I B. Sc., Course leading to M. B. B. S. shall be sent to the Chairman, Selection Committee on or before the last date fixed for its receipt; applications shall be in the Form as appended to these Rules and shall be accompanied by all the annexures prescribed; applications not in proper form and not accompanied by requisite annexures are liable to be rejected. Rule 9 prescribes procedure for selection. Rule 10 is important as much of the controversy centres round that Rule. It reads:

"Manner of preparing lists of selected candidates :

(1) In respect of the eighty per cent seats let apart for distribution to persons who have passed the P. U. C. Examination or XI standard of the Higher Secondary School Examination or Other equivalent examinations tinder the proviso to Rule 1.

(a) the Selection Committee shall first prepare a consolidated list of all applicants irrespective of castes or classes to which they belong, arranging them in the order of merit (hereinafter called the First List), merit being assessed applying the following principles :--

(i) The aggregate of the marks obtained by the candidate in the subjects taken into account for making the selection and the marks obtained by the candidate at the interview.

(ii) If candidates have obtained the same total marks (optional marks plus interview marks), the candidates with higher optional marks will be assigned higher rank.

(iii) If candidates have secured equal number of marks both in the optional and at the interview, the candidate having higher aggregate [marks in all the subjects) will he assigned higher rank.

(b) The selection Committee will then prepare from out of the First List, a Second list containing the names of applicants equal in number to the total number of seats to be selected for admission by the Committee arranging them in the order of merit, commencing with the first name in the first list.

(c) If the Second List contains the names of as many members of each of the three categories, namely, Scheduled Castes and Scheduled Tribes and Socially and Educationally Backward Classes as the number of seats respectively reserved for them, then the said Second List will constitute the list of applicants finally selected for admission.

(d) If, in the case of any of the aforesaid three categories, viz., Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes, the

number of applicants belonging to such categories in the Second List falls short of the number reserved for them in the Government Order No. ED 75 TGL 63, dated 26th July 1963, issued in this behalf, additional number of applicants of those categories required to make up that deficiency shall be selected in the order of merit to the extent available from out of that portion of the First List remaining after excluding the portion corresponding to the Second List.

(e) If and when such additional number of applicants belonging to one or more of the three categories, namely Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes, come to be selected under the last preceding Clause (d), an equal number of the names of applicants not belonging to any one of those categories, shall be deleted from out of the Second List counting from the bottom of the said list upwards.

(f) The list finally settled by conforming to the Clauses (a) to (e) shall constitute the list of candidates finally selected.

(2) In respect of the twenty per cent seats for graduates set apart under the proviso to Rule 1, the Selection Committee shall follow the same procedure *mutatis mutandis* indicated in Sub-rule (1). It is hereby clarified that only the marks obtained at the degree or equivalent examination shall be taken into consideration and the marks obtained in the P. U. C. examination or XI Standard of the Higher Secondary School Examination shall not be taken into consideration.

(3) Two separate lists of candidates finally selected, one for persons who have passed the P. U. C. Examination or XI Standard of the Higher Secondary School Examination and the other for persons who are graduates, shall be prepared by the Selection Committee.

(4) The selection Committee shall also prepare a list of persons selected from out of the persons belonging to the categories (e), (g) (h), (i) and (j) of Sub-rule (1) of Rule 4 avoiding to merit, on the basis of marks obtained, in the qualifying examination and at the interview and the procedure set out in Sub-rule (1) shall be followed, *mutatis mutandis*, in this respect."

It is true that if this Rule is read by itself, it gives reason to think that a common selection list of all applicants had to be made arranging the names solely on the basis of the marks obtained and selection made on the basis of that list. But then, if that Rule is read in that manner. Rule 11 would become otiose. Rule 11 says:

"Distribution of seats among several Colleges: Seats other than those reserved under Rule 4 shall be distributed university wise that is, seats in colleges, affiliated to the Karnataka University shall be allotted to persons passing from Colleges affiliated to that University and seats in Colleges affiliated to Bangalore and Mysore Universities shall respectively be allotted to persons passing from Colleges affiliated to each such University. The proviso is not relevant for our present purpose.

11. If Rule 10 and Rule 11 have to be reconciled, about which there can be no doubt, the distribution of seats contemplated by Rule 11 have to be done first and thereafter the list contemplated by Rule 10 should be prepared. Properly speaking Rule 11 should have come before Rule 10. On reading all the clauses together we are left in no doubt as to the true intention of the Government in this regard.

12. Mr. K. Jagannath Shetty, the learned Counsel for one of the petitioners contended that as Rule 10(1)(a) requires the Selection Committee to first prepare a consolidated list of all applicants, the priority being defined on the basis of the marks obtained and we should hold that preparation of such a list has to be done before the distribution contemplated by Rule 12 was made. We are unable to agree with that contention. Mr. Shetty has overlooked the words "irrespective of castes or classes" following immediately the word "all applicants". The language employed in that Rule clearly indicates that a consolidated list has to be prepared irrespective of castes or classes and not irrespective of the distribution contemplated by R. 11. For these reasons we are unable to agree with the learned counsel that the selection made by the Selection Committee is not in accordance with the Rules.

13. Further if the petitioner wanted to challenge the validity of the selection made he should have impleaded all the selected persons. In their absence, the selection made cannot be set aside. If the selections made are invalid that by itself does not entitle the petitioner to get a seat in one of the Medical Colleges. Every wrong interpretation of a Rule or law does not amount to a hostile discrimination. What is of the essence is hostile discrimination -- an intentional unequal treatment of persons similarly placed--We are unable to agree with Mr. S. K. Venkataranga Iyengar, that any and every contravention of a Rule brings the case within Article 14 and the equality clause requires that if one person is wrongly selected, every one else similarly situated is also entitled to be selected. This contention is wholly untenable. In cases of this nature, there is no hostile discrimination. To take an erroneous view of the law does not amount to a hostile discrimination, against any one. In such a case there is no question of contravention of Article 14.

14. The only remaining contention is that the Selection Committee erred in selecting students coming from Universities outside the State. This is not a contention taken in the pleadings. In the course of discussion, the learned Government Pleader informed us that 29 students coming from outside Universities had been admitted to one or the other of the Medical Colleges in the State. This submission was made the basis of a strenuous argument to the effect that such admissions are illegal and not permitted by the Rules. In view of those admissions, 29 seats were lost to the students coming from one or the other of the Universities in the State and if those 29 seats had been available, there was every possibility of the petitioner being selected.

As mentioned earlier, this contention has no support in the pleadings. It is not a

plea taken in the petition. The respondents had no occasion to meet that plea. Further assuming that those selections are invalid, the only proper course is to strike them down. But that cannot be done, because the selected students are not before us. Hence, it is unnecessary for us to consider the question whether those selections are justified by the proviso to Rule 11 of the Rules or not.

15. There were vague suggestions that 20% reservation made under the proviso to Rule 11 is invalid. This contention again had not been taken in the pleadings. Hence that contention does not arise for consideration. We were informed by the learned Government Pleader that those seats were filled up solely on the basis of merit.

16. For the reasons mentioned above, this petition fails and the same is dismissed. No costs.

17. Petition dismissed.