

(1995) 10 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : CWP No"s. 1683 and 1770 of 1995

Indar Kumar

APPELLANT

Vs

State of H.P. and Others
 Mohinder Singh Vs State of
H.P. and Another

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 15(4)

Citation : (1995) 4 ILR HP 2863

Hon'ble Judges : L.S. Panta, J;Bhawani singh, J

Bench : Division Bench

Advocate : G.D. Verma and R.S. Parmar, in CWP No. 1683 of 1995, Shrawan Dogra, in CWP No. 1770 of 1995 and K.D. Sood, in CWP No. 1755 of 1995, for the Appellant; Indar Singh, General for Respondent Nos. 1 and 2, D.C. Jishtu, for Respondent No. 3. in CWP Nos. 1683 and 1755 of 1995 and Indar Singh, General in CWP No. 1755 of 1995, for the Respondent

Judgement

Lokeshwar Singh Panta, J.—These three writ petitions viz. CWP No. 1683 of 1995 Inder Kumar V. State of H.P. and Ors., CWP No. 1770 of 1995 Mohinder Singh V. State of H.P. and Anr. and CWP No. 1755 of 1995 Rajesh Rana v. State of H.P. and Ors. involving same question of law and similar facts have been heard together and are disposed of by this common judgment.

2. Indira Gandhi Medical College, Shimla is admittedly a Government College affiliated to the Himachal Pradesh University. It is financed and managed by the Government of Himachal Pradesh. The admission to the Graduate (M. B. B. S. /B. D. S.) Courses is in accordance with the combined prospectus issued by the Government of Himachal Pradesh, Department of Health and Family Welfare (Medical and Dental Education) for Session 1995-96. The total number of seats sanctioned for the College when the Prospectus for the Academic Year was issued were hundred in M. B. B. S. Course and twenty in B. D. S. Course. Out of these 120 seats, 45 seats were reserved as under.

M.B.B.S. 100 seats

B.D.S. 20 seats

Group-A:(Reserved)

37

8

(1) Scheduled Caste

15

3

(2) Scheduled Tribe

7

2

(3) O.B.C.

2

1,

(4) Children-son -daughter of ex-service-men.

1(Who are bonafide resident of H.P)

Inter changeable)

(5) Children -son-daughter of Defence Personnel.

1

-

(6) Ward of Freedom Fighter-

1

(7) Backward Area

5

1

(8) Government of India Nominee.

5

1

3. The remaining seats were meant for unreserved categories. The present petitions relate to the seats reserved for the candidates from backward area.

4. The admission to the M. B. B. S. /B. D. S. Courses is on the basis of a competitive examination conducted by the Himachal Pradesh University. The merit list is to be prepared by the Controller of Examination, on the basis of the aggregate marks obtained by the candidates. The interse ranking of the candidates obtaining equal aggregate marks in the competitive P. M. T. examination is to be according to the marks obtained by them in Biology, Chemistry and Physics, in that order. Last date for receipt of the application in the University office was 22. 7. 1995 and date for holding combined entrance test was 2. 7. 1995.

5. Part III of the Prospectus dealing with the "Admission" mentions in Group "A" (reserved), the distribution of seats under the various categories as reflected above. There is a note below Item No. (7) Backward Areas, which reads:

Backward areas seats in M. B. B. S. and B. D. S. reserved for candidates belonging to the backward area as notified by the Government from time to time in the following manner:

(a) Candidates who have passed atleast two examinations i.e. Primary/Middle/High/+2 located in the backward area.

(b) If no such candidate is available the candidates who have passed such two examinations from the immediately adjoining areas.

(c) If no such candidate is available, then a candidate from Backward area.

(d) In case no candidate becomes available for the backward area seats, the same will go to the General categories candidates.

6. The candidates shall have to apply on a prescribed application form "Appendix-A" attached to the Prospectus. Certificate of belonging to Backward Area has been prescribed in Appendix-A-7 (Group A-7) which shall be duly attested by Sub Divisional Magistrate/Executive Magistrate (Tehsildar) of the area concerned. There is a note below Appendix A-7, which reads:

The Backward areas as listed in the notification No. P Lg. F. C. (F) 3-55/82, dated the 10th January, 1986, issued by Financial Commissioner-cum-Secretary (Planning) . Government of Himachal Pradesh, or areas as may be notified to be Backward areas by the Government of Himachal Pradesh from time to time.

7. The petitioners applied for seeking admission to M. B. B. S. /B. D. S. Courses against the seats reserved in the category of backward area for Academic Year 1995-96. They appeared in Entrance Examination held for the said Courses.

8. Shri Indar Kumar approached this Court by filing CWP No. 1683 of 1995 saying that he belonged from Backward area as notified by the State Government by notification dated 10. 1. 1986 {published in the Himachal Pradesh Gazette(Extra Ordinary), dated February 15, 1986. } (Annexure P-2) and was entitled to admission to one of the seats thereof. He claims that he had secured 176 marks out of 300 marks in the P. M. T. Entrance Examination. His

candidature for admission to a seat reserved for Backward area was erroneously excluded by the Principal, Indira Gandhi Medical College, Shimla. Mohinder Singh made a similar grievance by approaching this Court for relief by filing CWP No. 1770 of 1995. He claims that he secured 158 marks out of 300 marks and on the basis of the recommendations of the Himachal Pradesh University, Principal Indira Gandhi Medical College Hospital Shimla sent a letter dated 16. 9. 1995 (Annexure P-2) directing the petitioner to bring original certificate in respect of Backward area category so that his claim could be confirmed. According to the averments of the petitioner on 22. 9. 1995 he was told by the Principal that due to the pendency of CWP No. 1683 of 1995 in the Court, the petitioner could not be given admission. Rajesh Rana also made a similar grievance in his CWP No. 1755 of 1995. He claims to have secured 171 marks and Vijay Verma (Respondent No. 4) securing 163 marks had been granted admission by the Principal of the Medical College, ignoring him.

9. The areas of the various Panchayats mentioned in para 5 of the Notification dated 10. 1. 1986 have been treated to be backward areas for which reservation of 5 seats was contemplated in the Prospectus for M. B. B. S. Course and one seat for B. D. S. Course for Academic Session 1995-96.

10. Article 14 of the Constitution ensures equality before the law and equal protection of laws within the territory of India. Article 15(1) says that the State shall not discriminate against any citizen, inter alia, on the ground only of place of his birth. Sub Article(4) of Article 15, however, says that, "Nothing in this Article prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the Scheduled Castes and the Scheduled Tribes."

11. A Constitution Bench of the Supreme Court had occasion to . deal with the provisions of Article 15(4) in M.R. Balaji and Others Vs. State of Mysore, It said (in paragraph 21) that:

... The backwardness under Article 15(4) must be social and educational. It is not either social or educational, but it is both social and educational; and that takes us to the question as to how social and educational backwardness has to be determined.

12. Dealing with the question of social backwardness, it said (in paragraphs 23 and 24) that:

... Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the

backwardness of a community of persons....

13. Dealing with the question of educationally backward areas, it said (in paragraph 26) that:

... It is only communities which are well below the State average that can properly be regarded as educationally backward classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are obviously educationally backward classes of citizens....

14. In a latter judgment in State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, the Supreme Court was examining the question of constitutional validity of reservation in favour of the candidates from rural areas, the hill and Uttrakhand areas (in the State. of Uttar Pradesh) for admission of students to Medical College in the State. It referred to several of its earlier decisions. Later it said (in paragraph 30) that:

The onus of proof is on the State to establish that the reservation are for socially and educationally backward classes of citizens. The State has established that the people in hill and Uttrakhand areas are socially and educationally backward classes of citizens.

15. Concluding (in paragraph 42) it said that the reservations for the hill and Uttrakhand areas were valid.

16. These decisions unmistakably show that the reservation for admission for candidates coming from socially and educationally backward areas in a State is constitutionally permissible

17. The learned Advocate General during the course of hearing of the petitions submitted that the writ petitions may be decided without filing reply-affidavit. He contended that the State Government has issued another notification No. PLG-F(DASP) 1-1/95 dated 16th June, 1995 (Annexure P-3) constituting backward areas in supersession of notification dated 10th January, 1986 (Anexure P"-2) and the subsequent notification was made applicable with immediate effect. According to the learned Advocate General, the admission has been given to three candidates namely Indu Bala, (securing 197 marks) Gopal Chand (securing 180 marks) and Vijay Verma (securing 163 marks) on the basis of merit and in accordance with the subsequent notification dated 16th June, 1995. In nut-shell the stand of the College is that the admission is to be given on the basis of subsequent notification.

18. The only question for determination is whether the notification dated 10. 1. 1986 or subsequent notification dated 16th June, 1995 shall apply in the present cases.

19. The candidate who is claiming to be considered for admission against the seats reserved for backward areas must fulfil both the conditions as envisaged by the note referred to above. The consideration of a candidate for a reserved seat

is like a concession. If it is made subject to certain pre-conditions, the candidate must fulfil these conditions unless the conditions are arbitrary and unsustainable in law. The reservation of seats for candidates coming from backward areas and the conditions of eligibility for their consideration prescribed for admission to the Graduate (M. B. B. S) Course 1989-90 were held valid in law by a Division Bench of this Court in *Asheesh Sharma and Anr. v. H.P. University and Ors.* ILR 1989 H.P. 1120.

20. Through notification dated 16th June, 1995 issued by the Governor of Himachal Pradesh in supersession of Himachal Pradesh Government notification dated 10th January, 1986 the notified backward Panchayats were re-structured into three categories namely; (a) Backward Blocks, (b) Contiguous Areas and (c) Dispersed Panchayats in accordance with the new Policy laid down by the Government as per the details given in the said notification with immediate effect. The names of the Districts, Development Block declared as Backward Block and Backward Panchayat forming a contiguous area and Dispersed Backward Panchayats are mentioned in the notification. A note in Appendix A-7 (Group A-7) (extracted above) in the Prospectus relating to the Backward areas says that the Backward areas as listed in the notification No. PLG. F. C. (F) 3-55/82, dated 10th January, 1986," issued by Financial Commissioner-cum-Secretary (Planning), Government of Himachal Pradesh, or areas as may be notified to be . Backward areas by the Government of Himachal Pradesh from time to time ensures that the object for " which the reservation has been made is achieved. It is entirely within the jurisdiction of the State Government to pass Executive order in the form of notification dated 16th June, 1995. The order also finds support from Article 15(4) of the Constitution. It is a well known rule of construction that when a power is conferred upon the Government to issue notification, the Government can exercise that power from time to time as the occasion requires. It cannot be said that the power of the State Government stood exhausted a. soon as it issued a notification dated 10th January, 1986. The power can be exercised by the Government as many times as be found necessary. The State Government has exercised that power by issuance of notification dated 16th June, 1995. The subsequent notification was made effective with immediate effect i. e. 16th June, 1995 and the last date for receipt of application in the University office was 22. 6. 1995. The candidates who applied for the admission to the Courses were aware of the subsequent notification dated 16th June, 1995 and they cannot make any grievance about the issuance of the subsequent notification as they are not prejudiced in any manner by the subsequent notification.

21. The contention of the learned Advocate General that the candidates have to be admitted in two courses on the basis of notification dated 16th June, 1995 is acceptable. We feel no difficulty in holding that notification dated 10th January, 1986 stood superseded by a subsequent notification of 16th June, 1995 which has been made applicable with immediate effect. Therefore the admissions have to be made on the basis of notification dated 16th June, 1995.

22. In conclusion, we direct the Respondents to admit candidates on the basis of merit and who are covered under the latest notification dated 16th June, 1995 in M. B. B. S. /B. D. S. Courses for Academic year 1995-96.

23. The petition shall stand disposed of, in the terms aforesaid. The parties are however, left to bear their own costs.