
(1988) 01 DEL CK 0030

In the Delhi High Court

Case No : Civil Writ Appeal No. 2340 of 1987

Inder Mohan

APPELLANT

Vs

Dte. of Training and T.E.

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Citation : (1988) RLR 308

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Anita Gupta and A.S. Chandiok, for the Appellant;

Judgement

P.K. Bahri, J.

(1) [ED. facts ; Respd. 1 is an Office of Delhi Adm. (Respd. 2). It is running 4 Polytechnics at G.T. Road, Okhla and at Pusa. At G.T. Road and Okhla there are 30 seats each for evening course in Electrical Engg. Petitioner applied for same and his position was 21st in merit list. At Okhla there is 100% reservation for Sch. Castes & Tribes. So petitioner was not given admission. He has challenged constitutional validity of this reservation. Respd. no. 3. Director of Dte. filed affidavit saying that the seats at Okhla were newly created for Sch. Castes & Tribes and hence reservation for them.] After detailing above judgment proceeds :

(2) Counsel for the respondents has argued that in view of Art. 15(4) read with Art. 46 of the Constitution the respondents were fully justified in creating cent per cent seats in its institutions for giving training to the candidates belonging to the said lower strata of the society. It is, no doubt, a laudable object that the State should endeavor to create more and more opportunities which should enable the lower strata of the society to equip itself in joining the main stream of the society for earning a better livelihood. It is the duty of the welfare State like ours to try to ameliorate the social conditions of all sections of the society. But in view of the paucity of resources the State has to strike a balance. It cannot be

the object of the State that the vast sections who are in majority should be deprived of the facilities and amenities completely in order to give all the benefits to the lower strata of the society so that the citizens belonging to the lower strata of the society should come up in life while the citizens belonging to other sections of the society should completely go down to the poverty line. In view of these conflicting areas, the highest Court has laid down in a number of judgments that there cannot be given a complete go by to Art. 15(1) of the Constitution taking resort to the exception incorporated in Art. 15(4). It has been laid down that by taking resort to Art. 15(4) read with Art. 46 of the Constitution the State can provide for reservation of seats for Scheduled Tribe candidates and also candidates belonging to other backward classes to the extent of 50% seats. All important decision given by the Supreme Court on the point is M.R. Balaji vs. State of Mysore Air 1963 Sc 659. unanimously. The Supreme Court observed : ".....A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent ; how much less than 50 percent would depend upon the relevant prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its orders on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between July 10, 1961 and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4) it has to approach its task objectively and in a rational manner. Undoubtedly it has to take reasonable and even generous steps to help the advancement of weaker elements, the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant consideration. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Article 15(4)....."

(3) In T. Devadasan Vs. The Union of India (UOI) and Another, , the Supreme Court had even gone to the extent of laying down that even if certain seats reserved for backward classes are not filled in, even then when vacancies arise in a particular year the rule of 50% reservation to the maximum has to be followed.

Counsel for the respondents has made reference to State of Kerala and Another Vs. N.M. Thomas and Others, and Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, , in support of his arguments that the ratio laid down in case of Balaji (supra) and Devadasan (supra) stands whittled down by the pronouncement in the said later decisions of the Supreme Court. I need not go in detail and discuss the aforesaid judgments of the Supreme Court because fortunately all these judgments came up for consideration before a F.B. of A.P. High Court in V. Narayana Rao and Another Vs. State of Andhra Pradesh and Another, , and all these judgments were discussed in detail and elaborate reasons have been given which I need not reproduce for coming to the conclusion that the ratio of law laid down in the cases of Balaji (supra) and Devadasan (supra) still holds the field. I entirely endorse the reasoning given in the aforesaid judgment.

(4) Counsel for the respondents has drawn my attention to Art. 15(3) which enables the State to make special provision for the females and children. He has argued that if a state brings into existence a particular school or college exclusively meant for children or the female, such an act of the State could not be challenged. Counsel for the respondent forgets that u/Art. 29 which reads "29(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 ; (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". State can constitute colleges and schools exclusively for the females and such act of the State would be saved by the said special Article. Articles 15 & 16 are general in nature while Art. 29 is a special in nature. So, special Art. would supersede general Art. if there is any conflict between the two. In The The University of Madras Vs. Shantha Bai and Another, , Articles 15(1) & 29(2) of the Constitution came up for consideration and the D.B. held that Art. 29(2) enables the authorities to set up colleges or schools exclusively for the women. So in view of the above discussion, I hold that the respondents were not constitutionally right in giving 100% reservation to the candidates belonging to the Scheduled Castes and Scheduled Tribes in its G.B. Pant Polytechnic Institute.

(5) As far as the second ground of attack raised in the writ petition is concerned, it appears to have no merit because the provisions of the prospectus show clearly at pages 2 & 3 of the prospectus that failed students in a particular course would be re-admitted in the said course and they have to be included in the annual intake while the failed students of Scheduled Castes and Scheduled Tribes category are to be readmitted in addition to the above intake. Counsel for the petitioner has made reference to Regulation No. 4 in the said prospectus which provides that candidates who have failed or detained or disqualified in any diploma course earlier will not be eligible for fresh admission. This particular rule would debar such candidates from fresh admission in any other course but the

candidates who have failed in the particular course could continue in the said course for the next year in view of the rule mentioned earlier as it does not amount to giving any fresh admission to such candidates. At any rate, the petitioner having not imp leaded the said affected candidates, who have been retained in the said course, as respondents in the present writ petition has no right to seek any relief against them.

(6) The question which now arises for decision is as to what relief should be granted to the petitioner because admittedly all the seats stand already filled by the respondents. The petitioner has not imp leaded the candidates, who have been already admitted in the said course, as respondents in this petition. So, no order which could affect their rights adversely can be passed in the absence of those persons before the Court. However, the respondents cannot deny the legal right of the petitioner to have admission in the said course on account of respondents' own illegal acts. It is true that there are 8 more candidates in 313 general category who rank senior to the petitioner in merit who have to be first provided the seats in the said course before the petitioner is granted admission.

(7) I allow the writ petition, make the rule absolute and quash the rule/scheme of the respondents by which 100% seats have been reserved for the Scheduled Caste and Scheduled Tribe candidates with the directions that the respondents shall not in any case reserve more than 50% seats for Scheduled Caste and Scheduled Tribe candidates in consonance with the law already laid down by the Supreme Court in Balaji's Case and further direct the respondents to create 9 more seats for the present in order to accommodate the petitioner and the eight candidates who rank senior to the petitioner in merit and offer admission to them in the Evening Course in either of the above said two Polytechnic Institutes. The petitioner shall have costs from the respondents which I quantify at Rs. 1,000.00.