
(1957) 09 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 321 of 1957

Joseph Thomas

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-09-1957

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 15, 15(1), 29
Evidence Act, 1872 — Section 114

Citation : AIR 1958 Ker 33

Hon'ble Judges : Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : K.K. Mathew, for the Appellant; K.V. Subianarayana Iyer, General
and C.I. Parameswaran Pillai, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner was an applicant for admission to the M.B.B.S. course. He did not succeed in securing a seat. According to him but for Ex. P-4, a Press Release dated 10-7-1957, he would have been admitted, and his attempt in this petition is to challenge the validity of the directions embodied in that Press Release.

2. Ex. P-4 is in the following terms:

"Government have directed that seats for the Engineering and Medical Colleges will be distributed between Malabar area and Travancore-Cochin area in the ratio 5:8. This will apply only to the total number of admissions for the State including seats for the Backward classes and Scheduled classes. The reservation of seats for Backward classes and Scheduled classes will be worked on a State basis."

3. Counsel for the petitioner submitted that he was confining the attack to the distribution of seats between the Malabar and Travancore-Cochin areas and that he did not propose to challenge the reservation in favour of the Backward and Scheduled classes. It follows that the only question we have to consider is

whether the said distribution of seats in the ratio of 5:8 is hit by any of the provisions of the Constitution.

4. Article 15(1) of the Constitution provides:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, and the first contention urged before us was that the distribution of seats between Malabar and Travancore-Cochin was a discrimination based on the place of birth and cannot hence be sustained. This contention is stated as follows in para. 8 of the petitioner's affidavit dated 14-8-1957 :

"The order referred to in Ex. P-4 allotting seats to candidates from the Travancore-Cochin area and Malabar area in the ratio of 8:5 is ultra vires of the Government of Kerala. Both the above said areas are part of Kerala State. The allotment of seats in the ratio of 8:5 to different parts of the State offends Article 15, Clause (1) of the Constitution of India and has to be quashed on that account. But for the application of the principles laid down in the order referred to in Ex. P-4 to the selection of candidates for M.B.B.S. degree course, I would have qualified myself for admission and would have been selected."

5. We are unable to agree. As we understand Ex. P-4 the distribution of seats directed is not on the basis of the place of birth of the candidates concerned but of their domicile as popularly understood, that is their place of residence, the place where they live or have their home. The difference, between the two concepts has been clearly brought out in D.P. Joshi Vs. The State of Madhya Bharat and Another, (Majority Judgment):

"Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when Article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence."

6. Article 16(2) of the Constitution provides:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of Birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

It is significant that "residence" which finds a place in Article 16(2) is not included in Article 15(1).

7. Article 29(2) of the Constitution provides:

"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."

"Sex" and "place of birth" which occur in Article 15(1) do not occur in Article 29(2). In University of Madras v. Shantha Bai AIR 1954 Mad 67 (B) it was held

that Article 29(2) is a special provision and that it is that Article and not Article 15(1) which will prevail in matters of admission into educational institutions:

"Now, it will be seen that while Article 15(1) enacts a general principle, Article 29(2) deals with a particular topic, viz., admission to educational institutions. If the principle *generalia specialibus non derogant* is to apply the controlling provision would be Article 29(2) and not 15(1). It should also be noted that the language of Article 29(2) is significantly different from that of Article 15(1). Thus as pointed out by the learned Advocate-General while Article 15(1) prohibits discrimination on the ground "inter alia" of "place of birth" these words are omitted in Article 29(2).

The omission is clearly deliberate and there is a purpose behind it. A State might be minded to open an institution for the advancement of knowledge in a particular region which might be backward and for carrying out this object it might restrict admission into the institution to persons of the locality. If persons from other and more advanced regions are to insist on being admitted and the restriction in favour of persons who belong to the locality is to be rejected as inconsistent with Article 15(1), the result would be that persons in the locality might be prevented for all times from improving their lot.

It is to avoid such consequence that "place of birth" which is included in Article 15(1) would appear to have been omitted in Article 29(2). In the same manner the omission of "sex" in Article 29(2) would appear to be a deliberate departure from the language of Article 15(1) and its object must have been to leave it to the educational authorities to make their own rules suited to the conditions and not to force on them an obligation to admit women."

8. In the view we have taken as to the meaning of Ex. P-4 it is unnecessary for us to decide this question. It may, however, be pointed out that the Madras view apparently derives some support from the following passage in *The State of Bombay Vs. Bombay Education Society and Others*, :

"Article 15 protects all citizens against discrimination generally but Article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions of the specified kind."

9. The next question for consideration is whether there is any violation of Article 14 of the Constitution which provides 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. In order to attract Article 14, Ex. P-4 must amount to a "law" as defined in Article 13 and not a mere administrative direction or executive order. We do not propose to decide the question in this case. Even assuming that Ex. P-4 is a law within the meaning of Article 13, it cannot be said that the differential treatment meted out to candidates from Malabar and Travancore-Cochin is without a reasonable basis. As stated in *Budhan Choudhry and Others Vs. The State of Bihar*, , it is now well established that Article 14 does not forbid reasonable classification, that in order to pass the test of permissible classification two

conditions alone need be fulfilled:

(1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group;

(2) that the differentia must have a rational relation to the object sought to be achieved; and that the classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like.

10. It is well known that Malabar is educationally more backward than Travancore-Cochin and whatever be the reason for the backwardness -- the indifference of the Government of Madras or the smaller scale of Christian Missionary enterprise -- there can be no doubt that a great leeway has to be made up before parity is established and identity of treatment will not work out an injustice. On the basis of population also the distribution is sustainable, the population of Malabar being 51,69,373 and that of Travancore-Cochin 83,96,572.

11. It was suggested that there has been mala fides in the matter of admission. The selection was done by a Committee consisting of the Chief Secretary (Chairman), the Principals of the Medical Colleges at Trivandrum and Kozhikode, the Director of Health Services and the Registrar of the University of Travancore. The composition itself should normally provide an insurance against arbitrary selection.

Our attention has not been drawn to any specific instance in which the Committee has functioned, to adopt the phraseology of A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, with an evil eye or unequal hand. It has also to be remembered that there is a presumption that public officials will discharge their duties honestly and in accordance with the rules of law, Pannalal Binraj Vs. Union of India (UOI), . That presumption has in no sense been rebutted in this case.

12. As stated in the decision last cited there is a broad distinction between the discretion to be exercised with regard to fundamental rights and statutory rights and the discretion relating to the former has always to be controlled by clear rules before it can come within the category of reasonable restrictions. Exhibit P-4 does not stand in isolation but is one of a series of Press Releases (see Exs. P-1, P-2 and P-3). The Government will do well to decide its policy in respect of an academic year well in advance of the opening of the colleges and to reduce that policy into simple rules which will not produce a misunderstanding or provoke an application to this Court.

13. In the light of what is stated above this petition has to be dismissed. We order accordingly. No costs.