
(1999) 12 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3169, 3406, 4334 and 4412 of 1999

Kamla Godara and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Constitution of India, 1950 — Article 162, 226
Rajasthan University Act, 1956 — Section 13(4)

Citation : AIR 2000 Raj 130

Hon'ble Judges : Shiva Raj V. Patil, C.J.; Bhagwati Prasad, J

Bench : Division Bench

Advocate : G.C. Vyas, Govind Mathur, Vijay Agrawal and Rajesh Joshi, for the Appellant; S.M. Mehta, General assisted by S.S. Bhandawat, R.N. Mathur, R.L. Jangid, A.A.G.s, S.K. Sharma and J.M. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—A controversy was raised by a letter petition sent by a large number of students who had taken up the examination for Pre-Medical Test and Pre-Veterinary Test, 1999 (referred to hereinafter as "P.M.T." and "P.V.T." respectively) held from 9th to 12th June, 1999 at different examination centres in different cities of the State of Rajasthan.

2. By this letter petition the petitioners sought to challenge the enhanced reservation provided for by the Government of Rajasthan in a Cabinet Meeting held on 4-5-1999 whereby the quota of Scheduled Castes was enhanced from 8% to 16% and quota of Scheduled Tribes was enhanced from 6% to 12%. Apart from these two reservations 3 new reservation was provided for by the State Government for the candidates belonging to Other Backward Classes (referred to hereinafter as "O.B.C.") and this was 21% of the seats. As alleged this letter petition was sent to this Court by students after getting perturbed and aggrieved by the newspaper reports.

3. It was submitted in the letter petition that after submission of the application

forms to appear in the PMT/PVT examination 1999, it was unjust and Improper to change the conditions of reservations, before and during the preparation by the students for the test. It was also averred in the letter petition that certificate regarding Scheduled Castes and Scheduled Tribes was required to be signed by the District Magistrate but the certificate regarding OBC was not prescribed to be issued by the District Magistrate.

4. The students have given out in the letter petition that they were preparing for the examination relying upon the reservation quota prescribed in the Information Booklet distributed along with the forms. It has been expressed by the students that they were disturbed and shocked to find that due to enhanced reservation, their chances for success have been diminished and this has been done after submission of their admission forms. The students were surprised to read the news items and that they are constrained to think that they should not have wasted time and money when new reservation policy has come into being.

5. It was further averred in the letter petition that many students belonging to Scheduled Castes and Scheduled Tribes and O.B.C. were deprived of the advantage of the enhanced reservation quota because they had no notice of more chances being available at the time when the forms were filled in. The petitioners have alleged that the action of the State Government was vitiated because it was taken in the back-ground of Lok Sabha elections which were going to be held in September, 1999 to take advantage of the votes of these communities. The effect of this enhancement has resulted into distraction of minds and preparation and studies of these students and virtually paralysed their preparation for the examinations.

6. Notices were issued to the respondents and a reply was filed on behalf of the State Government wherein an objection was taken by the State Government that the petition pertains to challenge a policy decision of the Government. Such petition does not involve any public interest and is filed to further the personal interests and, therefore, the matter is cognizable by a Single Bench of this Court. In its reply the State Government contended that the Information Booklets supplied to the petitioners does not mean that the Government was debarred from enhancing the quota of reservation for Scheduled Castes, Scheduled Tribes and O.B.C. So long as the reservation made is consistent with the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, the reservation cannot be said to be arbitrary and, thus, the reservation does not violate any constitutional mandate. The reservation has been kept below 50% and, therefore, is not liable to be impeached.

7. It has been claimed that the State Government is fully empowered to make reservation in favour of socially and economically backward communities. The reservation has been provided by a Government which was democratically elected and functioning under the Constitution. The State Cabinet in its meeting held on 4-5-1999 has decided to enhance the reservation and it was competent to do so. This was necessitated because in the year 1996, 116 medical officers

were required to be appointed against the reserved category of Scheduled Castes and 78 candidates were only available. Therefore, there remained a back-log of 38 posts of Scheduled Castes candidates. 87 posts were required to be filled in by the Scheduled Tribes candidates and only 56 candidates were available and there remained a back-log of 31 posts. In the case of O.B.C. 152 posts were available but only 69 candidates could be appointed because of the non-availability of suitable candidates. Such was the case for the years 1997 and 1999 also and the quotas of these socially and economically backward classes could not be filled in. This necessitated the State Government to take a decision to safe-guard the interest of these socially and economically backward communities.

8. In view of the State Government's decision taken in the Cabinet Meeting dated 4-5-1999 the Vice-Chancellor of the University of Rajasthan was informed about the change in the policy and it was requested that Ordinance 272 should be accordingly amended. The Government by its letter dated 5-5-1999 communicated to the University about its decision. The Vice-Chancellor accordingly invoked her emergency power u/s 13 (4) of the Rajasthan University Act (referred to hereinafter as "the Act") and amended Ordinance 272 on 27-5-1999. Later on by a regular process Ordinance 272 has been amended. This amendment has come into being well before the admissions could take place and, therefore, there is authorisation of the University for Implementing the enhanced reservation for the socially, educationally and economically backward classes as desired by the State Government.

9. The State Government has further contended that mere appearance in the examination does not vest a right in the petitioners to get admission in the Medical Colleges. Unless the petitioners have a vested right they cannot maintain the writ petition. The petitioners are not entitled to challenge the enhanced reservation because they have no vested right accrued to them. The State Government has denied that the decision was a political one. The policy decision was initiated to grant due rights to those communities which were denied their legitimate due for the past many years. The State Government has claimed that the writ petition is misconceived.

10. A detailed rejoinder is filed by the petitioners and it has been stated in the rejoinder that the petitioners were allowed to appear in the PMT/PVT pursuant to the application forms submitted on or before 6-4-1999, The reservation was enhanced and information to this effect was published by a Press Note published in the Rajasthan Patrika dated 10-7-1999. It was made applicable to the PMT/PVT examination which were held from 9-6-1999 to 12-6-1999. The application forms were submitted on or before 6-4-1999. The students belonging to O.B.C. classes were required to submit their requisite caste certificates before 25-7-1999. Such a Press Note is totally arbitrary, unreasonable and unjust. The Cabinet in its meeting dated 4- 5-1999 decided that the Rajasthan University be requested to amend Ordinance 272 immediately for holding PMT/PVT 1999 in

accordance with the proposed amended Rajasthan University Ordinance 272. The examinations which were held were not held in accordance with Ordinance 272 as amended and were not held in accordance with the Cabinet decision taken on 4-5-1999.

11. The Government has written to the Vice-Chancellor to amend the Ordinance on 5-5-1999. The Vice-Chancellor invoked its emergency powers u/s 13 (4) of the Act. Such powers cannot be invoked by the Vice-Chancellor because Section 13 (4) of the Act is in relation to the emergency powers of the Vice-Chancellor and he has no authority to amend Ordinance 272 under emergency powers because amendment of Ordinance is a legislative function which falls beyond the competence of the Vice-Chancellor because the emergency power cannot be invoked to legislate and it is only the Syndicate which can do it.

12. The petitioners have referred to a resolution passed by the Syndicate of the University of Rajasthan in its meeting held on 9-6-1999 whereby the Syndicate has expressed that the revised reservation policy could only be implemented from the next examination and, therefore, the highest decision making body of the University has denied to implement the State Government's decision in relation to PMT/PVT 1999. Such amendment could only be made in the Ordinance 272 before 9-6-1999. The examinations were over on 12-6-1999 and an ordinance amended after 12-6-1999 cannot be given retrospective effect. Whatever amendments have been made by the University authorities in Ordinance 272 will be effective prospectively and in this regard no notification was Issued by the University for making the amendment applicable to the examinations held in 1999. The State Government directly issued the Press Note making it applicable to the 1999 PMT/PVT examinations. This is totally an unauthorised act of the State Government.

13. The result of the enhancement of the reservation will be that out of 600 seats for M.B.B.S. only 172 seats will be available for boys and 63 for the girls of general category. If the reservation was not enforced retrospectively it would have been 314 for boys and 105 for girls. Such an amendment has made a drastic imbalance. Since those who were taking up the examinations were not aware of the changed reservation policy earlier, therefore, this has resulted in deprivation of the right of consideration to the general category candidates. This tantamounts to intervention in the merit of the candidates.

14. It has also been contended in the rejoinder by the petitioners that the Government is not competent to introduce the reservation without amendment to Ordinance 272, since the chances of selection have been reduced the rights of the petitioners have been affected adversely. Not only that the chances of the general category candidates have been diminished but chances of such reserved categories candidates have also been affected. Those who could have thought of competing in the examination and had not filled in the forms knowing of the less number of seats reserved for them. Had they known that a large number of seats are available, more students could have applied for taking up the examination.

15. Certain students made application for getting impleaded them as parties but the impleadment applications were not pursued by them by not appearing at the time of hearing. The petitioners have also placed on record the minutes of the Syndicate meeting held on 9-6-1999 wherein the University Syndicate approved the amendment of Ordinance 272 as proposed by the Vice-Chancellor but expressed that the reservation policy will be implemented from the next year. Such views of the Syndicate were communicated by the Registrar vide its letter dated 21/22-6-1999. The letter has been produced on record. Thus, it has been contended that the reservation introduced could not be implemented for the examinations held in 1999.

16. Mr. G. C. Vyas, appearing on behalf of the petitioners, contended at the time of hearing that when reservation including women. Scheduled Castes and Scheduled Tribes is governed by legislative provisions then without amending the provisions of such legislation no change could be effected in the quota of reservation. In this regard the emphasis of the learned counsel for the petitioners was that Ordinance 272 was amended by the Syndicate of the University of Rajasthan, which is the authority empowered to amend the Ordinance, after holding of the examination. Therefore, the provision could not be implemented for the examination of 1999.

17. Learned counsel raised a question that such reservation cannot be implemented after the examinations were over. The position would have been different if the amendment was made before filling up of the forms for the examination. But the present Press Note was issued by the State Government in the month of July, 1999 whereas the examinations stood concluded in the month of June, 1999 itself. Learned counsel for the petitioners also emphasised that such a belated revisions of reservation have resulted into deprivation of the students belonging to the Scheduled Castes. Scheduled Tribes and O.B.C. because many students could not comprehend that they will have enhanced number of seats and did not opt for filling up of the forms.

18. Learned counsel also wanted to raise the question of change of merit and contested that the answer keys were available and the merit has been revised. But this question was countered by the holder of the examinations by saying that there was mistake in the examination paper and, therefore, a corrective measure was taken to award marks for particular questions where there was an error in framing the same. Therefore, this question is not relevant to be gone into for adjudicating the present controversy.

19. The petitioners also challenged the candidates competing on the basis of reserved category can be included in the general category because of their higher marks but the holder of the examination has submitted that the Information Book-let provides an explanation appended to the reservations that the reserved category candidates will be considered for general category after exhaustion of the reserved quota in a particular category and not before that and therefore, this question was also not relevant for deciding the present

controversy.

20. The petitioners also tried to raise a question whether the women of general category should be treated at par with women of reserved category but this question too was not relevant for deciding the present controversy and, therefore, not decided because the real question to be decided in the present petition is whether the State Government could implement the enhanced reservation policy for the PMT/PVT examination 1999 or not.

21. learned counsel for the petitioners Mr. G. C. Vyas has relied upon the following Supreme Court decisions :--

Mrs. Rekha Chaturvedi v. University of Rajasthan reported in 1993 AIR SCW 1488. It has been observed in this case that the qualification, as on last date of preferring the application has to be considered. The argument of the learned counsel for the petitioners is that after submission of the application form, any change affected cannot govern the scenerio of the examination. Therefore, the State Government's decision to implement the revised reservation policy is violative of the mandate given in the aforesaid case by the Hon"ble Supreme Court.

Gurdeep Singh Vs. State of Jammu and Kashmir and others, : The Hon"ble Supreme Court observed that the selection procedure adopting illegal means should not be permitted to continue on human consideration.

Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc., . In this case, it was observed that on equitable grounds, a procedure which is not sanctioned by law, cannot be approved only to mitigate the hardship of such candidates, who have sought admission in the medical college aforesaid.

Suryakumar Govindjee Vs. Krishnammal and Others, . In this case, it has been held that when no all India examination held in a particular year, the entire 100% seats were thrown open for the institutional candidates. In such circumstances, Hon"ble Supreme Court held that there was no justification to upset the same.

Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others, . In this case, it was held that selection of an eligible candidate refused merely on ground of his failure to satisfy Government order.

N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, and P. Mahendran and others Vs. State of Karnataka and others, . In these cases, it was observed that person applying for appointment if otherwise qualified in accordance with the existing rules or order and in terms of advertisement inviting application, acquires a vested right to be considered for selection in accordance with that rule or order. In this back ground the learned counsel submitted that in terms of the advertisement the petitioners acquired a vested right. The petitioners were qualified to be admitted when the advertisement was issued.

The petitioners submitted their forms on this understanding.

State of Andhra Pradesh v. J. Sreenivasa Rao reported in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, . In this case, it has been held that vacancies in a promotional post occurring prior to the amendment have to be filled up in accordance with the unamended rules.

P. Mahendran and others Vs. State of Karnataka and others, . The amended rules were not enforced in relation to the existing recruitment because the selection of candidates had already been made. Therefore, it was held by the Hon''ble Supreme Court that the selection of candidates already made earlier cannot be affected by changing the eligibility criteria unless retrospective effect (sic) intention is shown. Thus, this case has no application.

22. Mr. Govind Mathur, who appeared in the case of Badri Lal, contested that the examination of PMT/PVT were held without there being any corresponding amendment in Ordinance 272. The effort made by the Vice-Chancellor u/s 13 (4) of the Act was an act which was an exercise in futility. The powers under the aforesaid provisions are only executive powers. They are ment to handle administrative exigencies. Legislative functions are not covered by it.

23. The University authorities while subsequently amending Ordinance 272 have amended the Ordinance 272 as proposed by the State Government. In these circumstances, it can be said that they have acted under the dictates of the State Government.

There was no independent exercise of jurisdiction by the legislative functionaries. Therefore, it cannot be said that the amendment was effected by the University authorities on their own. It tantamounts to an act under the pressure of the State Government. Thus, the University authorities abdicated their powers.

24. Learned counsel has also emphasised that the amendment in Ordinance 272 cannot be made retrospectively and cannot be enforced for the examinations held in 1999. To lay stress on the powers of the Vice-Chancellor while exercising powers under Sub-section (4) of Section 13, learned counsel has placed reliance on a Full Bench decision of this Court in the matter of Virendra Kapur Vs. University of Jodhpur and Others, and another decision of Division Bench of this Court in the case of University of Jodhpur and Others Vs. Ramchandra Sharma and Another, wherein this Court has held that the emergency power cannot be resorted to for legislative purposes and the Vice-Chancellor is not empowered to repeal an ordinance in exercise of the emergency powers. Thus, it has been contended that no power is vested in the Vice-Chancellor to amend the Ordinance 272 as has been claimed by the University.

25. Mr. Vijay Agrawal, learned counsel appearing for the petitioner Saloni Gupta also submitted his arguments in the same line.

26. Learned Advocate General appearing for the State canvassed that the State Government is competent to incorporate and enforce a reservation in terms of

Article 15 of the Constitution. As and when the State Government feels persuaded that anything is required to be done for advancement of socially and educationally backward classes of citizens and Scheduled Castes and Scheduled Tribes, powers under Article 15(4) of the Constitution of India can be resorted to. In this regard it can be seen that before the examinations were held, on 4-5-1999 the Cabinet has decided to increase the reservation. As and when the State Government makes a decision under Article 15 of the Constitution of India and there is no legislative enactment occupying the field, then such decision and executive orders, partake the character of law, under Article 162 of the Constitution of India. They come into effect the very moment they are made. The learned Advocate General canvassed that on 4-5-1999, much before the examinations were held, the State Government had taken a decision. This decision has the force of law under Article 162 of the Constitution of India. Such order will be enforced as law vide *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* .

27. Thus, the learned Advocate General stated that the basis of the argument of the learned counsel for the petitioners is weak. The State Government has decided much before any alleged right if any accrued to the petitioners.

28. Learned Additional Advocate General also canvassed that taking up of the examination does not give any vested right to the petitioners, the petitioners are not entitled to maintain the present petition because merely by taking up the examinations no vested rights get accrued to the petitioners. The present petition is an exercise in futility, There was a clear constitutional mandate to the State Government under Article 15 of the Constitution of India read with Article 162 to enact a provision whereby such provision could be made, having done so the State Government could enforce the same.

29. The learned Additional Advocate General further canvassed that before the admissions were finalised and lists were announced for admission, ordinance 272 has been properly amended by the University and that amendment gives right to the authorities granting admission to enforce the reservation and therefore, there is nothing wrong in enforcing the reservation to the admission from 1999.

30. Learned Additional Advocate General has placed reliance on the following decisions of the Supreme Court :

Rajasthan Public Service Commission Vs. Chanan Ram and Another, wherein the Hon"ble Supreme Court upheld the issuance of a fresh advertisement for recruitment after change in law holding that change of law has resulted into abolition of the posts. Therefore, no recruitment could be made pursuant to the earlier notification. Learned Additional Advocate General has canvassed that the Hon"ble Supreme Court has recognised the change of rules even during the process of recruitment.

State of Bihar and others Vs. Md. Kalimuddin and others, , wherein the Hon"ble Supreme Court has recognised the right of the State Government to halt the

process of selection to amend the law. The learned Additional Advocate General has further canvassed that the Hon''ble Supreme Court in *Shankarsan Dash Vs. Union of India*, , has upheld that even those candidates who are included in the select list do not acquire an indefeasible right to get appointment. In the instant case, the students have only appeared for admission in the P.M.T./P.V.T. Examination. No select list showing their names has been announced. Therefore, they have no vested right to challenge the enforcement of amendment introduced by the State Government.

P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, . On the strength of this case it has been canvassed that as and when there is change in the policy and such change is made in the public interest then the Government is entitled to revise the policy and lay down new policy and such revision of policy cannot be questioned unless of course on ground of mala fides. In the instant case, no mala fides are involved and therefore, the change in the policy can rightly be upheld by this Court.

S. Prakash and Another Vs. K.M. Kurian and Others, . On the basis of this case it has been canvassed that the selection process continues until the list of selected candidates is published. That being the position no interference is called for. The cases relied upon by the learned counsel for the petitioners are distinguishable. In all cases where interference was made by the Courts there was alteration in qualification or eligibility criteria etc. after the selections were announced. In the instant case neither the qualifications nor the mode of appointment and other conditions of recruitment is changed. Change in policy regarding reservation, therefore, cannot be questioned.

M.R. Balaji and Others Vs. State of Mysore, , wherein it has been held that when Article 15(4) contemplates that the State can make the special provision in question, it is clear that the said provision can be made by an executive order.

31. We have considered the rival submissions advanced on behalf of the learned counsel for the parties.

32. What is undisputed is that the examinations were held in between 9th to 12th June, 1999. The Cabinet meeting was held on 4-5-1999. It took a decision to enhance the quota, By letter dated 5-5-1999 (Ex.P. 1/2) the University was informed of the State Government decision for enhancing the reservation. The Ordinance 272 was subsequently amended. The Syndicate of the University of Rajasthan, in its meeting held on 30-6-1999, has approved the amendment in Ordinance 272.

33. The competence of the State Government to issue executive instructions under Article 15 of the Constitution to make a provision for reservation has not been questioned. The decision taken by the State Government on 4-5-1999 is also not challenged. What is challenged is the date of the enforcement of the amendment.

34. The State Government in its meeting held on 4-5-1999 made recommendations for the enhanced reservation. Article 162 of the Constitution recognises that where the State has the power to make laws it can issue executive instructions. Thus, the decision of the State Government taken in the meeting dated 4-5-1999 has the force of law. Once this proposition is saved by the constitutional provisions then what necessarily follows is that a law came into being providing for reservation to the tune of 16% to Scheduled Castes, 12% to Scheduled Tribes and 21% to Other Backward Classes on 4-5-1999 with the State Government's decision. This happened before the holding of the examinations.

35. A change in law, which came into effect with an express intention of the State Government, to enforce the law in relation to 1999 examination, which was going to be held, cannot be held to be ineffective, for that examination. A reference can be made in this regard to a Supreme Court decision rendered in the matter of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., wherein it has been observed as under :--

"Once we hold that a provision under Article 16(4) can be made by the executive, it must necessarily follow that such a provision is effective the moment it is made."

36. Once this is held that the State Government's decision taken in the Cabinet meeting held on 4-5-1999 was the law to govern the PMT/PVT examination which were to be held for the year 1999 then the case of the petitioners that Ordinance 272 was not amended prior to the holding of the examination loses its rigour. Ordinance 272 is a subordinate piece of legislation and it has to give way to a legislative enactment, coming in the form of State Government decision under its constitutional power under Articles 15 and 162 of the Constitution of India.

37. With the Cabinet decision on 4-5-1999 enhancement became effective. The order was passed on 5-5-1999. On this count the arguments of the learned counsel for the petitioners fail and it is held that the State Government's decision taken in the Cabinet Meeting held on 4-5-1999 will govern the examination of 1999 whereby enhanced reservation was available to the classes specified in the order.

38. The case of the petitioners further falls on the ground that by mere filling up of the forms for taking up the examination no vested right can be said to have accrued to the petitioners. If there was no vested right accrued to the petitioners then they cannot ask this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in a matter which falls short of creating any right in favour of the petitioners.

39. The Courts in India have been taking a consistent view that even those who figured in the select list have no indefeasible right to get appointment. In the instant case the petitioners had only taken up the examination and they have been declared successful and don't find place in the select list. Therefore, they

cannot claim that they have any indefeasible right. A valid law framed by the State Government cannot be called in question on the grounds raised by the petitioners.

40. The case law relied upon by the learned counsel for the petitioners circles around basically where the Hon"ble Supreme Court was considering the change in the criteria after conclusion of the selection. Such case law having no application in the present context because neither the process of selection was complete nor there is a change in the criteria until last. What has only been changed is the reservation, the qualification remains the same. The other cases relied upon by the learned counsel for the petitioners related to such amendments which in itself incorporated that the amendment in force will not affect the ongoing selections. therefore there is no question of such amendment affecting the selections. The Hon"ble Supreme Court has recognised the right of the State Government to pass an executive order having the force of law vide M.R. Balaji and Others Vs. State of Mysore, and the same has been subsequently clarified in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . Thus, the case law cited by the learned counsel for the petitioners has no application as far as the present controversy is concerned.

41. In view of the aforesaid discussion, the argument of the learned counsel for the petitioners that the emergency power of the Vice-Chancellor could not have been used to amend Ordinance 272 or Ordinance 272 as amended could not be used retrospectively loses its weight because Ordinance 272 is only a subordinate piece of legislation and the State Government's decision contained in the letters dated 5-5-1999 is in terms a law governing the field and, therefore, the enhanced reservation will have to be recognised for 1999 examinations and, thus, there is no force in the letter petition and the other writ petition referred to above and the same are, therefore, dismissed.