

(1991) 03 KAR CK 0026
In the Karnataka High Court
Case No : W.P. No. 15480/1990

Karnataka State Scheduled Castes and Scheduled Tribes
Educational Management Association

APPELLANT

Vs

Bangalore Development Authority and Another

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 2 KarLJ 595

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

Challenging the Notification Annexure-A, the petitioner who is running an Institution viz., the Karnataka State Scheduled Castes/Scheduled Tribes Educational Management Association, has filed this writ petition seeking the following reliefs:

"(1) Declare that Notification Annexure-A, dated 14-6-1990 bearing No. BDA/EM/CCA/TA2/3210/1990-91 in so far as it does not make any special provisions in favour of SC/ST Institutions in regard to registration fee, initial deposit, total value of lease amount, lease amount per annum and additional lease amount per annum as illegal and void;

(2) Issue a writ, order or direction in the nature of mandamus directing the respondents to notify the civic amenities sites mentioned in Annexure-A afresh after making special provisions at reduced rates in favour of the SC/ST managed institutions in regard to registration fee, initial deposit, total value of the lease amount, lease amount per annum and additional lease amount per annum, in the interest of justice of equity;

(3) Grant such other relief/s as this Hon'ble Court deems fit in the circumstances of the case including an order towards costs."

2. According to Sri Ramachandra Reddy, learned counsel for the petitioner that the Respondents in not making special provisions to allot suitable sites to

educational institution to the SC/ST Institutions at a lesser price is a clear case of violation of Article 14 of the Constitution; when once the Government has made such a provision to provide residential sites to persons belonging to SC/ST it is something like treating unequals as equals which is not the purpose of Article 14. By this indirectly the desire of the institutions to impart education to the weaker section of the society will be deprived of. Thus in the long run, it would result in depriving education to the weaker section of the society. Therefore, he submitted, that Annexure-A be quashed and direction be given to make reservation of sites to educational institutions formed by persons belonging to SC/ST and allot sites at lesser price. In support of his contention, the learned counsel for the petitioner relied upon a decision of the Supreme Court reported in *Pradeep Jain v Union of India*, AIR 1984 SC 1420- "13. We may now proceed to consider what are the circumstances in which department may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions in medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simple a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically in very true, namely "One law for the Lion and the Ox is oppression". Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. We may in this connection usefully quote what Mathew, J. said in *Ahmedabad St. Xavier's College Society v State of Gujarat*, (1974)1 SCC 717 at p. 799: AIR 1974 SC 1369 at page 1433.

"It is obvious that equality in law precludes discrimination of any kind whereas equality, in fact, may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations."

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large masses of people suffer in the country. Equality in law must produce real equality; *de jure* equality must ultimately find its *raison d'être* in *de facto* equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer, J. in *Dr. Jagdish Saran and Others v Union of India and Others* case, AIR 1980 SC 820 (*supra*) weave those special facilities into the web of equality which, in an equitable setting provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity. Equality is not negated or neglected where special provisions are geared to the large goal of the disabled getting over their disablement consistently with the general good and individual merit. The scheme of admission to medical colleges, may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals."

3. In support of another contention that separate provision shall be made for weaker section particularly in the matter of education, the learned counsel relied on the decision of the Supreme Court in *State of Maharashtra v Kamal*, AIR 1985 SC 119. At paras 23 and 24, it is stated thus:

"23. Section 2(f)(b) suffers from yet another vice in that, it treats all persons alike irrespective of how they are situated in the matter of their involvement in the construction of unauthorised structures and their interest therein. Classification requires division into classes which are marked by common characteristics. Such division has to be founded upon a rational basis and it must be directed at sub-serving the purposes of the statute. Section 1(f)(b) and the other cognate provisions of the Act make no distinction at all between owners of lands who have themselves constructed unauthorised structures and those others on whose lands unauthorised structures have been constructed by trespassers. The latter class of owners who are silent spectators to the forcible and lawless deprivation of their title to other property have been put by the Act on par with trespassers who, taking law into their own hands, defy not merely private owners but public authorities.

24. Section 2(f) also suffers from the infirmity of according equal treatment to unequals. Take a simple example. A plot of land may be vacant in the true sense of the term, this is to say, wholly unbuilt upon. Another plot of land may have a small structure built upon it in accordance with the Municipal rules and regulations. The first plot of land attracts drastic provisions of the Act merely by reason of the fact that nothing has been built upon it at all, while the second plot

of land is entirely outside the scope of the Act for the reason that some tiny structure is standing thereon. Such a classification betrays lack of rationale."

Sri Ramachandra Reddy, learned counsel for the petitioner after relying on these authorities further submits that if such direction is not given to the Board, the very purpose of encouraging education to the weaker section will be nothing but an act of pretence and the so called reservation is nothing but a farce. For these reasons, the learned counsel submits that the reliefs prayed for may be granted. The authorities relied upon by Sri Ramachandra Reddy, learned counsel for the petitioner, are not applicable to the case on hand, as they differ on facts.

4. Sri N.B. Swamy, learned counsel for the B.D.A. submits that as far as the Board is concerned, it is sympathetic towards those who belong to weaker section, particularly Scheduled Caste and Scheduled Tribe. But it is not its concern to deviate any rules or regulations made by the Government. At no time it exercised courage to deviate the Constitutional mandate, namely encouraging SC/ST by allotting residential sites, etc. On the other hand providing sites to weaker sections, namely, Scheduled Caste and Scheduled Tribe, is one of the principles which the B.D.A. to adhere in all its sincerity. With a view to allot residential sites to the weaker section of the society, the B.D.A. has formed a separate rules. The principle object of the said rule is to allot sites at a lesser price to the weaker section of people purely on compassionate grounds. But same analogy cannot be applied in respect of civic amenities sites as they cover a different rules. Imparting and, encouraging education is the concern of the State and not the B.D.A. Sri Swamy further submits that this Court cannot lay down what type of policy an authority has to adopt. It is left to the discretion and wisdom of the authority or the representative. If there is no such Rule-making provision for allotment of sites to the Educational Institutions started by Scheduled Castes and Scheduled Tribes who seek for allotment of sites to educational institutions, it is for the State to make such Rules. In the absence of such rule, it is too much for the petitioner to say that it is discriminatory or violative of any of the Articles particularly Articles 14 and 15(4) of the Constitution. According to the learned counsel, it is not shown or established how that not providing sites to construct schools at a lesser price to the petitioner is a clear violation of Article 14. For all these reasons, Sri Swamy submits that the writ petition be dismissed.

5. On hearing both sides, I am of the view that however pious and noble the purpose of the petitioner is, but it cannot be said that the BDA is not justified in not making reservation for allotment of sites at lesser cost to the petitioner to start educational institutions. Further, it cannot be said that there is any violation in not making such provision under Article 14 of the Constitution of India.

6. The grievance of the petitioner no doubt may be very laudable in nature and it goes to the very root of our social structure. But, as far as such an action is concerned, the jurisdiction of this Court to lay down a policy is very much limited. If the petitioner is very much interested he may get the relief before

some other forum and not under Article 226.

7. Before parting with this case, it is appropriate to state that when it is the aim of the State to render social justice by uplifting the poor and other weaker sections, when it is one of the Directive Principles of State Policy that education to the weaker section be encouraged, is it proper on the part of the State of say simply that every citizen has a right to start an Educational Institution without giving proper aid and assistance. In matters of this type, is it proper to equate an Association of SC/ST with Associations formed by those who are in affluent position? It is hoped that the concerned would think over seriously on matters of this type and suggest for necessary provision for allotment of sites to Association of SC/ST for construction of school building.

Hence, writ petition is dismissed.

No costs.