

(1966) 11 KL CK 0034

In the High Court Of Kerala

Case No : O. P. No's. 2654, 3119 etc. of 1966

Laila Chacko and Others

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 01-11-1966

Acts Referred:

Constitution of India, 1950 — Article 15(4), 340(1), 341, 342
Kerala University Act, 1974 — Section 26

Citation : (1966) KLJ 1141

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : A.S. Krishna Iyer, A.K. Ramseshadrinathan, P. Subramoniam Potti, S.A. Nagendran, V. Bhaskaran Nambiar, V.R. Krishna Iyer, K. Prabhakaran, K.R. Kurup, T.P. George, K.T. Harindranath, A.S. Narayanan Asan, V. Parameswaran Pillai, C.R. Natarajan, M.K. Anandakrishnan, T.L. Ananthasivan, M.P. Menon, O.K. Namboodiripad, K.C. John, T.P. Mathai, P.V. Paul, S. Easwara Iyer, L.G. Potti, V.U. Joseph, V. Khalid, P.K. Shamsuddin, V.M. Kurian, E. Ebrahimkutty and K. Ramkumar, for the Appellant;

Judgement

K.K. Mathew, J.—In the Prospectus for direct admission to the First Year M.B.B.S. Course in Government Medical Colleges for 1966-67, it is stated that: Candidates who have passed the Intermediate Examination of the erstwhile Travancore University or Kerala University with Physics, Chemistry (including Organic Chemistry and Practical) and Biology as optionals after 1947, and candidates of other Universities who have passed the Intermediate in Science (Medical group) with practical tests will be eligible for admission. Candidates who have qualified for B.Sc., Degree (3 years Course) of Kerala University or of any other University recognised by the University of Kerala with (a) physics as main subject and Chemistry and Biology as half subsidiary subjects or (b) with Chemistry as the main and Physics and Biology as half subsidiary Subjects:

Or

Candidates who have qualified for B.Sc. Degree (3 years Course) of Kerala

University or of any other University recognised by the University of Kerala with Physics or Chemistry or Zoology or Botany as the main subjects and any one or two of these subjects as subsidiary subjects shall be eligible for admission to the course of study leading to the 1. M. B. B. S. Examination on condition that the candidate has undergone the approved course of study in a recognised College in such of the pre-professional subjects (Physics, Chemistry and Biology) as he had not offered for B.Sc. (3 years degree) course and passed the prescribed examination of pre-professional standard in those subjects, are eligible for admission to the course.

The petitioners applied for admission for the first year M.B.B.S. course for the year 1966-67 but their applications have been rejected. They have filed these petitions for the issuance of writs of mandamus directing the respondents to admit them to the course for the academic year in any of the Government Medical Colleges in the Kerala State. They have also prayed for the cancellation of the admission already made to the course in the Government Medical Colleges in the State. In O.P. Nos. 3311 and 3346 of 1966, petitioners have also prayed to quash G.O. (P) 208/66/ Edn. dated 2-5-1966.

The main submission on behalf of the petitioners was that they were not selected for admission to the First Year M.B.B.S. Course because other candidates who are not eligible for admission have been selected and admitted to the available seats and consequently the petitioners were denied admission. The petitioners contend that respondents have selected candidates who have offered Mathematics as one of the subsidiary subjects under Part IV of the B.Sc. course (3 year course) examination and that such candidates are not eligible for admission to the Medical Colleges. 2. Clause (1) of Chapter 41 of the Ordinance issued by the Kerala University u/s 26 of the Kerala University Act, 1957 (Act 14 of 1957), and published in the Kerala Gazette No. 39, Part III dated 6-10-1964 reads:

A candidate who has qualified for the B.Sc. Degree (3 years course) of this University with Physics or Chemistry or Botany or Zoology as the main subject and any one or two of these subjects as subsidiary subject (s) shall be eligible for admission to the course of study leading to the M. B. B. S. examination, on condition that the candidate shall undergo the approved course of study in a recognised College in such of the pre-professional subjects (Physics. Chemistry and Biology) as he has not offered for his B.Sc. (3 year degree) course and pass the prescribed examination of pre-professional Standard in those subjects before he appears for the 1st year University Examination of M. B. B. S.

Provided further that a candidate who has qualified for the B.Sc. Degree (3 year course) of this University with(a) Physics as the main subject and Chemistry and Biology as half subsidiary subjects or (b) with Chemistry as the main subject and physics and Biology as half subsidiary subjects shall be eligible for admission to the course of study leading to the 1st M. B. B. S. Examination.

Clause (1) in the prospectus for direct admission to the 1st year M.B.B.S. course in the Government Medical Colleges for 1966-67, already referred to, was inserted on the basis of the provisions contained in clause (1) of Chapter 41 of the Ordinances issued by the Kerala University. Any candidate who has taken either Physics or Chemistry or Zoology or Botany as the main subject and any one or two of these subjects as subsidiary subjects under Part IV of the B.Sc., Degree (3 years course) examination and pass in the intensive course for the missing subjects shall be eligible for admission to the 1st year M.B.B.S. course. A candidate who has taken Chemistry as the main subject and Physics and Mathematics as subsidiary subjects under Part IV of the B.Sc. Degree (3 years course) examination and had passed the missing subjects of Zoology and Botany by undergoing the intensive course in these subjects is eligible for admission to the First Year M.B.B.S. Course for 1966-67. It appears to me to be clear that a candidate who has taken Physics or Chemistry or Zoology or Botany as the main subject and Mathematics as one of the two subsidiary subjects will not become ineligible for admission to the First Year M.B.B.S. course, merely because Mathematics is not included as one of the four subjects under the Medical group provided the candidate passes the missing subjects in the Medical group after undergoing the intensive course. This interpretation of the Ordinance and Prospectus is strengthened by the resolution passed by the Syndicate on the 29th March 1966. The resolution reads:

The Syndicate in November 1965 considered this question and has decided that science graduates with mathematics as one of their subsidiary subjects might be treated as eligible for admission to M. B. B. S. course provided they have passed an examination at the pre-professional Standard in the deficient subject (s) (Physics, Chemistry, Biology) which they have not studied for the Degree course. The Medical Council of India has also no objection to this recommendation being accepted.

Even if there is some ambiguity in the language of the Ordinance or Prospectus, one should accept the interpretation placed upon it by the Syndicate. It is the Syndicate which passed the Ordinances and that is the body which has to prescribe the qualifications for admission to the First Year M.B.B.S. Course. Any construction as to the scope of the Ordinance by that body is entitled to great weight. The Supreme Court has in *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, observed:

.....Even on the merits we think we ought to point out that where the question involved is one of interpreting a regulation framed by the Academic council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is

pleased to accept. The limits of the High Court's jurisdiction to issue a writ of certiorari are well recognised and it is, on the whole, desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind.

3. Petitioners submit that candidates who have taken Physics or Chemistry or Zoology or Botany as their main subject and Mathematics as one of the two subsidiary subjects under Part IV of the B.Sc. Degree have been selected for the course on the basis of their merit as assessed by the marks obtained under Part IV of the B.Sc. Degree examination and subject to the rules of reservation and that that was not permissible. Reference was made to clause 7 of the Prospectus and it was submitted that according to that clause only the marks obtained in the Science Subject alone could be taken into consideration for assessing the merit of the candidates. Clause (7) reads:

Applicants who attempt to canvass or influence the members of the Selection Board directly or through relatives or friends will be disqualified. The selection of candidates will be on the basis of merit assessed by the marks they have secured in the science subjects subject to the Government orders regarding reservation for Scheduled Castes, Scheduled Tribes and other Backward Communities, reservation for Malabar and Travancore-Cochin areas etc contained in G. O. Rt.2059/66/HLD dated 8-6-66. The decision of Government on all matters concerning admission shall be final.

In the counter-affidavit filed on behalf of the 1st respondent it is stated that the merit of the candidates who have taken Mathematics as one of the two subsidiary subjects was assessed on the basis of the marks they obtained in the science subjects alone, viz., Physics, Chemistry, Zoology or Botany and that the marks they obtained in Mathematics have not been taken into account for assessing their merits and that they have undergone the intensive course and have passed the missing subjects in the Medical group. There is therefore no substance in the contention that the marks obtained in any subject other than the science subjects (assuming that Mathematics is not a science subject) were taken into consideration for assessing the merit of the candidates, who have taken Mathematics as one of the subsidiary subjects. So, the main points argued for the petitioners fail.

4. In some of the Original Petitions, certain other grounds have been urged and I would therefore turn to those grounds.

5. In O.P.No. 3232 of 1966, the petitioner belongs to the Nair Community and he has secured I Class in the B.Sc. Degree with 639 marks in the subjects. Counsel for the petitioner in that case submitted that the petitioner was entitled to get admission for the course for the reason that persons who have been admitted from the reserved seats have got lesser marks. It was argued that the income of the petitioners, father is far below Rs. 6,000/- and still the petitioner has not been admitted to the course, whereas members of the Ezhava Community, the

income of whose families is below Rs. 6000/- have been considered as belonging to backward class and were admitted to the course and that it is discriminatory to have done so. In other words, the argument was that if income is the criterion for deciding the backwardness of a class, then the petitioner also belongs to the backward class and should have been admitted to the course in preference to them as he had secured greater marks than any one of them. Counsel submitted that as the classification has been made mainly on the basis of income, that classification ought to have been applied to the members of all the communities in the country and as the classification based on income has been applied only to certain communities only, it is bad. I am not inclined to accept this submission. The determination of the question of backwardness of a class is a complex matter. In *M.R. Balaji and Others Vs. State of Mysore*, the Court said:

The group of citizens to whom Art.15 (4) applies are described as "classes of citizens" not as castes of citizens. A class according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu Social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts and led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority, and to foster narrow caste loyalties.

Therefore, in dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of the group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the castes themselves.

Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not. The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Art. 15 (4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in

determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. 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. It is true that social backwardness which results from poverty, is likely to be aggravated by considerations of caste to which the poor citizens may belong but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.

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. In a sense, the problem of social backwardness is the problem of rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Art. 15 (4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is a very difficult task.

And as to the nature of the caste disabilities which may be taken into consideration, the Court observed:

It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by Art. 15 (4) itself, treated as being similar to the Scheduled Castes and Scheduled Tribes. Scheduled Castes and Scheduled Tribes which have been defined were known to be backward and the Constitution makers felt no doubt that special provision had to be made for their advancement. It was realised that in the Indian Society there were other classes of citizens who are equally or may be somewhat less, backward than the Scheduled Castes and Tribes and it was thought that some special provision ought to be made even for them. Article 341 provides for the issue of public notification specifying the castes, races or tribes which shall, for purposes of this Constitution, be deemed to be Scheduled Castes either in the State or the Union Territory as the case may be. Similarly Article 342 makes a provision for the issue of public notification in respect of Scheduled Tribes. Under Article 338 (3) it is provided that references to the scheduled castes and scheduled tribes shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a Commission appointed under Art. 340(1) by order specify and also to the Anglo-Indian Community. It would thus be seen that this provision contemplates that some backward classes may by the presidential order be included in Scheduled Castes and Tribes. That helps to bring out the point that the Backward Classes for whose improvement special

provision is contemplated by Art. 15 (4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes.

In *Chitrallekha v. State of Mysore* AIR 1964 S.C. 1823, the Supreme Court observed.:

It may be that for ascertaining whether a particular citizen or a group of citizens belong to a backward class or not, his or their caste may have some relevance, but it cannot be either the sole or the dominant criterion for ascertaining the class to which he or they belong.

It was after adverting to the relevant pronouncements of the Supreme Court on the subject that the Commission for Reservation of Seats in Educational Institutions, Kerala, decided to accept the means-cum-caste/Community test for determining the backwardness of a class. The Commission observes at page 35 of its report:

We therefore consider that a means-cum-caste/Community test has to be adopted for the classification so as to take in only the poor and deserving sections and exclude the wealthier sections.

After considering the evidence, the Commission observed at page 36:

Members of the families in the State which have an "aggregate income" of Rs. 4,200/- and above per annum from all sources put together, cannot be considered to belong to any socially backward class whatever may be the caste or community to which they belong.

This has been enhanced by Government to Rs. 6,000/- in G.O. (P) 208/66/Edn. dated 2-5-1966. As I have already said, the determination of the question whether a class is a backward one is a complex one. Several factors will have to be taken into consideration. It was not on the basis of income alone that the question was determined. Therefore, merely because the income of the petitioner's father is less than Rs. 6,000/- that would not entitle the petitioner to claim that he belongs to a backward class on the basis of the test of income. I therefore, over-rule this contention.

6. In O.P. No. 3329 of 1966, petitioners counsel submitted that the petitioner was provisionally selected but on medical examination it was found that she was physically unfit and for that reason she was not admitted to the course. Counsel submitted that the petitioner is being examined by the Statutory Medical Board and if the report of the Board is in her favour she is entitled to get admission. Counsel appearing for the State admitted that if on the report of the Board it is found that the petitioner is physically fit, she will be admitted to the course. Counsel for the petitioner was agreeable to have the petition disposed of on this basis and I do so.

7. In O.P.No. 3402 of 1966, the petitioner was provisionally selected but was not admitted to the course. Counsel appearing for the State submitted that the

petitioner will be given admission. I dispose of the petition on that basis.

8. In O.P.No. 3160 of 1966, the contention of the petitioner is that she was entitled to be admitted to the course on the basis of the marks obtained by her, but that she was denied admission on the ground that she took two chances for passing the B.Sc. Degree Examination and that she took two chances because of the fact that she was laid up with Typhoid fever. Counsel for the petitioner submitted that this circumstance was not taken notice of by the Selection Board and that if this circumstance was taken into consideration by the Board, petitioner would have been admitted to the course. The petitioner had no opportunity to place this circumstance before the authority and therefore I would direct the Selection Board to take into consideration whether there is sufficient evidence to show that she was prevented by unavoidable circumstance to sit for the examination in all the subjects in the first appearance and whether such circumstance even if proved would entitle her to get admission. The petition is disposed of as above.

9. In O.P.No. 2654 of 1966 the petitioner was not admitted to the course for the reason that she had not completed the age of 17 as required by the prospectus. Petitioner's complaint is that when she joined the Pre-degree course, the age qualification prescribed for that course was 13 years 6 months and therefore she was entitled to be admitted to the 1st year M.B.B.S. Course, whether she has attained the age of 17 or not. The argument is not entitled to any weight. I see no right in the petitioner to get admission to the course in question as she had not attained the age prescribed in the prospectus on the relevant date.

10. In none of these petitions, except one (O.P.No. 3287 of 1966, where the petitioner has adopted the procedure prescribed in rule 3 of the Writ Rules framed by the High Court) candidates who, according to the petitioners, have been wrongfully admitted to the course have been made parties. On that ground alone, the petitions, except O.P.No. 3287 of 1966 (which must fail on other grounds), should fail. There are still some seats available for being filled up and for filling up those seats, the claims of all these petitioners who have failed here may be looked into and the petitioners whose claims are superior in every respect will be admitted to the seats available. With this observation, I dismiss all these petitions which have not been disposed of otherwise by this Judgment. No costs.