

(1991) 01 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 16833, 18584 and 19603 of 1990

M. Shravana Kumar

APPELLANT

Vs

Karnataka Regional Engineering College

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 15 (1), 15 (4), 16 (4)

Citation : (1991) ILR (Kar) 594 : (1991) 2 KarLJ 148

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : K. Subba Rao, N.B.N. Swamy, V. Mukunda Menon, for the Appellant;
K.R.D. Karanth, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—In these Writ Petitions, an important question of law arises for consideration, namely:-

"Whether the direction issued by the Central Government to the effect that in the event of candidates belonging to Scheduled Castes and Scheduled Tribes being not available to fill up the seats reserved in their favour in any specified course in an educational institution the same should be kept vacant and shall not be filled up by the candidates belonging to the general category, is constitutionally valid?"

2. The petitions have come up for preliminary hearing after notice to the respondents. By consent, they are taken up for final hearing and are disposed of by this order.

3. Brief facts of the case, are these: The petitioner in W.P. No. 19603 of 1990 holds B.Sc. (Hons.) Degree. He passed the degree examination in 1 Class from Usmania University. He applied to the first respondent - the Karnataka Regional Engineering College, seeking selection for admission to the Master's Degree in Computer Application. The two other petitioners are from this State. They also submitted their application to the second respondent - College, seeking

admission to the same course. For this course, in the first respondent-College, there were 30 seats. Out of them, 15 are to be filled up from among eligible applicants belonging to this State and the other 15 seats are required to be filled up from among eligible applicants coming from other States. Out of each pool, three seats are reserved for eligible applicants belonging to Scheduled Castes and Scheduled Tribes. There is an Entrance Examination prescribed by the first respondent - College, for making selection for admission to the course. All the three petitioners appeared for the Entrance Examination. In respect of 15 seats earmarked for students from other States, in the list arranged in accordance with merit, the first petitioner secured 15th rank. The seats were given only upto Sl. No. 12. Three seats were not filled up. As regards the other two petitioners who come from Karnataka, they secured 14th and 16th rank, according to merit. Among the general candidates, one did not join and consequently both the petitioners were within Sl. No. 15, but they were also not given the seats. As informed by the first respondent-College, the petitioners could not be selected though seats were available and they were eligible, in view of the directions issued by the Government of India on 16-7-1983. The said letter of the Government of India reads:

"Sir,

Sub: Post-graduate courses - Reservation for SC/ST candidates.

In continuation of this Ministry's letter of even number dated 9th March 1983, I am directed to state that keeping in view the facilities that have been created for admission to various post-graduate courses, it has been decided by the Government of India that the existing interim of 5 and 10 in each speciality of post-graduate courses may be increased to 7 and 13 respectively with effect from the academic session 1983-84. For specialities with the revised intake of 7.5 seats will be available for general students and the remaining two seats for Scheduled Caste and Scheduled tribe candidates. For specialities with revised intake of 13, 10 seats will be available for general students, 2 for scheduled caste candidates and 1 for scheduled tribe candidates.

Please note that reserved seats remaining unfilled due to non-availability of Scheduled Caste/Scheduled Tribe candidates should not be filled by candidates from general category."

There was also a subsequent letter dated 31-8-1988 (Annexure-D), which reads:

"Sir,

I am directed to refer to your letter No. 7199/88/PG/E1 dated 27-8-1988 addressed to Dr. K.J. Khatwani, Deputy Educational Adviser (I), on the subject cited above and to say that reserved seats remaining unfilled due to non-availability of scheduled caste/scheduled tribe candidates should not be filled by candidates from general category in respect of M.C.A. programme. Please note and take necessary action accordingly,"

It is in view of the above directions of Government of India, the first respondent-College, did not give seats to the petitioners, though seats were, available. The petitioners have presented these Petitions questioning the constitutional validity of the aforesaid directions issued by the Government of India.

4. In support of the petitions, the learned Counsel submitted as follow: Clause (4) of Article 15 of the Constitution, no doubt, empowers the Government to make special provision in favour of persons belonging to socially and educationally backward classes and in exercise of that enabling power, it was competent for the Central Government to make reservation of seats in the colleges in favour of persons belonging to Scheduled Castes and Scheduled Tribes, as they are persons constitutionally recognised as persons belonging to socially and educationally backward classes. But in the absence of candidates belonging to Scheduled Castes and Scheduled Tribes, any direction issued by the Government to keep such seats vacant, cannot be regarded as a special provision made in favour of backward classes, which the Government was competent to make under Clause (4) of Article 15, as the seats which are not filled up do not enure to the benefit of the persons belonging to that category. Therefore, any direction to keep such seats vacant, which results in the waste of educational facility available in the College on the one hand and denial of seats to the open competition candidates on the other, without any corresponding benefit to the persons belonging to Scheduled Castes and Scheduled Tribes, is not within the purview of Clause (4) of Article 15 and therefore violative of Articles 14 and 15(1) of the Constitution.

5. In support of the above contention, the learned Counsel relied on the Judgment of the Supreme Court in the case of State of Orissa and Another Vs. Dr Asim Kumar Mohanty and Others, . As can be seen from the above Judgment, the Supreme Court held that when seats were earmarked in favour of in-service candidates in the Post-Graduate course and out of those seats certain number of seats were reserved in favour of persons belonging to Scheduled Castes and Scheduled Tribes, In the absence of candidates belonging to Scheduled Castes and Scheduled Tribes being available, those seats should revert to the General Category. The ratio of the above Decision applies on all fours and with greater force to these cases.

6. Further, it appears to me that in issuing the impugned direction, the Central Government has mechanically applied the principle of carry forward laid down in the matter of reservation of posts in favour of persons belonging to Scheduled Castes and Scheduled Tribes in the services of the State under Clause (4) of Article 16, In this behalf, it should be pointed out that the reservation of seats in educational institutions is entirely distinct and separate in nature from reservation of posts under the State under Clause (4) of Article 16 of the Constitution. Clause (4) of Article 16 enables the State to provide reservation of posts in favour of persons belonging to backward classes, who are, in the opinion of the State, inadequately represented in the services of the State. Therefore,

after having reserved "posts in favour of persons belonging to Backward Classes, any further provision made by the Government that in the event of candidates belonging to Scheduled Castes and Scheduled Tribes not being available at a particular recruitment, those vacancies should not be filled up by candidates belonging to General Category and a second or subsequent attempt should be made for filling up those posts by candidates belonging to Scheduled Castes and Scheduled Tribes, would be really in furtherance of the object of Clause (4) of Article 16 and is clearly permissible, for, in such a case, carrying forward of the vacancies would enure to the benefit of Scheduled Castes and Scheduled Tribes at a second or subsequent attempt for recruitment (See: Dr. Rajkumar and others Vs. Gulbarga University and others, But that would not be the position in the case of reservations in favour of persons belonging to Scheduled Castes or Scheduled Tribes in educational institutions. If there are no candidates belonging to Scheduled Castes and Scheduled Tribes available for being selected against seats earmarked for Scheduled Castes and Scheduled Tribes and the filling up of those seats during any particular year, by other candidates, is prevented, all that would result is, the facility to provide education to certain number of students available in the educational institution concerned would not be available to anyone and would go to a national waste. Further, it does not in any way advance the interest of the persons belonging to Scheduled Castes and Scheduled Tribes, The learned Counsel for the respondent could not furnish any rational basis in support of the direction. In my opinion, the impugned directions are plainly discriminatory and violative of both Articles 14 and 15(t) of the Constitution and not saved by Clause (4) of Article 15 of the Constitution as it discriminates against persons not belonging to Scheduled Castes and Scheduled Tribes only on the ground that they do not belong to such castes and is no special provision for the advancement of the backward classes.

7. For the aforesaid reasons, I answer the question, set out in paragraph 1, as under:

"The direction issued by the Central Government to the effect that in the event of candidates belonging to Scheduled Castes and Scheduled Tribes being not available to fill up the seats reserved in their favour in any specified course in an educational institution, the same should be kept vacant and shall not be filled up by the candidates belonging to the general category, is constitutionally invalid being violative of Articles 14 and 15(1) of the Constitution and therefore void."

8. Before concluding, it is necessary to state that there was an interim order in these petitions directing the respondent-College to admit the petitioners to the course, and pursuant to that Order, they have been admitted and the only Order that need be issued is to direct the second respondent to confirm their admissions.

9. In the result, I make the following order:

(i) The Writ Petitions are allowed;

(ii) It is hereby declared that the direction issued by the Central Government in its letters dated 16-7-1983 and 31-8-1988 (Annexures - C and D) to the effect that the seats earmarked for persons belonging to Scheduled Castes and Scheduled Tribes in the second respondent-College should not be filled up by general candidates, even in the event of candidates belonging to Scheduled Castes and Scheduled Tribes not being available, is void as offending Articles 14 and 15(1) of the Constitution of India;

(iii) A Writ in the nature of Mandamus shall issue directing the second respondent - Union of India, not to enforce the directions incorporated in its letters dated 16-7-1983 and 31-8-1988 (Annexures - C and D respectively);

(iv) A Writ in the nature of Mandamus shall issue to the first respondent to confirm the admissions of the Petitioners to the Master's Degree course in Computer Application and allow them to continue and to complete the course.