

(1993) 02 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12406 of 1991

Manoj Kumar Kathuria and others

APPELLANT

Vs

Haryana Agricultural University and another

RESPONDENT

Date of Decision : 22-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 226, 227

Citation : AIR 1993 P&H 219 : (1993) 104 PLR 251 : (1994) 1 RCR(Civil) 585

Hon'ble Judges : R.K. Nehru, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Surya Kant, for the Appellant; S.C. Sibal and Deepak Sibal, for the Respondent

Judgement

R.K. Nehru, J.—The petitioner has moved this Court for quashing clause 29(i) of the Prospectus of Haryana Agricultural University, Hisar for the Session 1991-92 in so far as it provides that children who have studied in a village school for eight academic years and have in addition passed Matriculation or Middle Examinations, as regular students from a village School, of Haryana Board will be entitled to weightage of 10% marks of total marks of qualifying examination, in this petition under Arts. 226/227 of the Constitution of India.

2. The petitioners after having passed 10 + 2 examination or equivalent examination from the institutions located in the urban areas were granted admission to the B.Sc. (Hons). Agriculture degree courses in the Haryana Agricultural University, Hisar (for short, the University), purely on the basis of their merit. Each of the petitioners secured more than 85% marks calculated on the basis of Overall Grade Point Average of 4.00 basis (equivalent to 100 marks) under the Semester System. They applied for admission in Postgraduate Programme of M.Sc for the session 1991-92 in the University. They were not offered admission for the programme for which they had applied and were eligible. The students who were far lower in merit were given the weightage under clause 29(i) of the Prospectus, which envisaged that the children who had

studied in a village school for eight academic years and had in addition passed Matriculation or Middle Examination of the Haryana School Education Board as regular students from a village school would be entitled to weightage of 10% marks of the total marks of qualifying examination. The respondents gave the benefit of this provision to the students who had studied for 8 academic years in a village school, and had passed Matriculation and Middle examinations of the Haryana School Education Board as regular students from a village School, and by giving this weightage they had an edge over the petitioners and those students secured admission in the programme of their choice while the petitioners, who are more meritorious than them, could not get admission in the programme of their choice.

3. The writ petition came up for hearing before J. L. Gupta, J. on January 23, 1992. He felt that the respondents could not give preferential treatment to the students who had studied in rural schools and clause 29(i) of the University Prospectus should be struck down being arbitrary and unconstitutional. He opined that his conclusion found support from the judgment of the apex Court in *Suneel Jatley and Others Vs. State of Haryana and Others*, . But he noticed that in *Amar Bir Singh v. Maharishi Dayanand University, Rohtak* ILR (1980) P&H 493 a Full Bench of this Court has held that the reservation of seats for students in Medical College faculties, who had received education in rural schools was valid. The view taken in *Amar Bir Singh's* case (supra) was not approved by the apex Court in *Suneel Jatley's* case (supra). Since *Amar Bir Singh's* case has not been expressly overruled by the apex Court, the learned Judge thought it fit to refer this case to a larger Bench. It is how the matter has been placed before us.

4. In *Suneel Jatley and Others Vs. State of Haryana and Others*, , the petitioner moved the apex Court through a writ petition under Art. 32 of the Constitution of India questioning the validity and legality of reservation of 25 seats for candidates coming from rural areas for admission to 1st M.B.B.S./ B.D.S. Course for 1982 session in the Medical Faculty of the Maharishi Dayanand University, Rohtak. The apex Court quashed the reservation of 25 seats reserved in favour of the candidates coming from rural areas and who received education from Class 1 to Class 8 and passed 8th Class examination from a common Rural School situated in any village not having any Municipality or notified area or Town Area Committee, for admission to MBBS Course 1982 at Medical College, Rohtak, affiliated to the Maharishi Dayanand University; Rohtak. The judgment rendered in *Amar Bir Singh's* case ILR (1980) P&H 493) (FB) (supra) was pressed into service on behalf of the respondents in the writ petition and the apex Court while analysing the ratio of that judgment held thus (at p. 1540 of AIR) :--

"It was, however, contended on behalf of the respondents that the decision in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, would not be of any assistance and is distinguishable because in that reservation was in favour of candidate coming from rural, hill and Uttara-khand areas on the ground that

people coming from these areas belonged to socially and educationally backward classes while the reservation in the instant case is found on the lack of facility for education in common rural schools functioning in rural areas and also in Pradip Tandon's case, one of the contentions which found favour with the Court was that the reservation was in favour of a majority which aspect does not arise in the present case. In support of this submission, learned counsel for the respondents extensively read before us the decision of the Full Bench of the Punjab & Haryana High Court in Amar Bir Singh v. Maha Rishi Dayanand University, Rohtak ILR (1980) P&H 493. The Full Bench of the High Court presided over by the then learned Chief Justice upheld the impugned reservation. The High Court distinguished the decision of Pradip Tandon's case observing that the State sought to sustain the reservation under Art. 15(4) contending that the candidates coming from rural areas belonged to socially and educationally backward classes of citizens and the submission did not find favour with the Court though the Court unreservedly accepted that candidates coming from hill and Uttarakhand areas belonged to socially and backward classes of citizen and sustained reservation in favour of the latter. It is true that the State did not attempt to sustain the reservation under Art. 14 but certain observations in the judgment would leave no room for doubt that the aspect of valid classification was present to the mind of the Court. It was observed that 80% of the population reside in rural areas and it cannot be said to be a homogeneous class. Rural habitation cannot constitute it into class. And it is reservation related to place of birth. The Court thus examined whether candidates coming from rural areas constitute a distinct homogeneous class for the purpose of admission to medical college and rejected it. The High Court in Amar Bir Singh's case on the contrary attempted to sustain the classification of students educated in common rural schools which does not carry conviction. Having read this judgment minutely and with care and attention that a judgment of the Full Bench of High Court bearing on the same topic merits, we are of the opinion that the manner in which Pradip Tandon's case was sought to be distinguished was artificial apart from being unintelligible. Undoubtedly, the State in Pradip Tandon's case attempted to sustain the classification under Art. 15(4) but that was not the crux of that matter. The reservation was in favour of candidates coming from a certain area to wit rural areas. Now if the amplification of what constitutes candidates coming from rural areas will not enlarge or restrict the operative portion, indisputably the reservation was for candidates coming from rural areas which were styled in Pradip Tandon's case as socially and educationally backward areas. It is true that one of the reasons which weighed with the Court in striking down reservation in Pradip Tandon's case was that the reservation was in favour of a majority. Such an argument though available in the present case was not advanced, because any day rural area is comparatively much larger in area and size and population to urban area in the State of Haryana. Therefore, we are not impressed by the submission that the judgment in Pradip Tandon's case is distinguishable. In fact, this Court in Arti Sapru's case followed the decision in Pradip Tandon's case.

5. Assuming that the decision in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, does not conclude the point as herein raised, the differentia on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural schools on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped. Agriculture in Haryana has been a very profitable pursuit and standard of life of average farmer in rural area has gone up compared to middle class and industrial workers and the slum dwellers whose children will attend as a necessity urban schools. And yet the better placed will enjoy reservation. Further, the basis of classification based on education up to 8th standard is wholly irrational. And it has no nexus to the object sought to be achieved of providing extra facility to students coming from rural schools to enter medical college.

6. What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from 1st to 8th standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education, equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instruction from 1st to 8th standard. However, as pointed out earlier, the knowledge acquired by the students while taking instruction in Classes I to VIII has hardly any relevance to his being equipped for taking the test for entrance to the medical college. The real challenge would, come in Standards XI and XII. In this behalf all students those coming from common rural schools and urban schools are similarly placed and similarly situated and yet by a reference to a past event wholly unrelated to the objects sought to be achieved, they are artificially divided.

7. It was, however, said that there was another discernible purpose in making the reservation. The urbanised students are disinclined to go to rural areas for practice or service and, therefore, if the students coming from rural common schools are encouraged to seek admission they may return after obtaining qualification to their childhood habitat and thus help extend efficient medical service to rural areas at present wholly neglected. It was urged if a region is woefully deficient in medical services, there occurs serious educational and health service disparity for that human region which must be redressed by a welfare State. It was submitted that the reservation was a step in this direction. This submission was sought to be supported by referring to *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, . This approach overlooks the fact that even students educated in common rural schools would be joining urban schools for four years before going to Medical College and then spend about five years in Medical College. There is no guarantee save a wishful thinking that they would return to rural area. This is too flimsy a material to sustain classification.

We are, therefore, satisfied that the classification is not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved. The classification is irrational and arbitrary. The reservation based on such classification is constitutionally invalid."

8. The apex Court disapproved the principle laid down in Amar Bir Singh's case ILR (1980) P&H 493 (FB) (supra). Overruling can be express or implied. The apex Court gave decision directly opposite to the one given in Amar Bir Singh's case. When this takes place, Amar Bir Singh's case will be said to be overruled as a precedent and cannot any longer be considered as a binding authority.

9. The question of law having been answered by us, we do not think it necessary to send the case to the learned single Judge. The learned single Judge has allowed the relief to the petitioners by applying the ratio of the judgment of the apex Court in Suneel Jatley and Others Vs. State of Haryana and Others, . The interim directions of the learned single Judge are approved.

10. For the reasons stated above, we allow the writ petition and issue a writ of mandamus that the respondents will not implement clause 29(i) of the Prospectus for the year 1991-92. There will be no order as to costs.

11. Petition allowed.