
(1992) 09 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4244 of 1992

Miss. D. Sridevi	Vs	APPELLANT
The A.P. Agricultural University and others		RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Andhra Pradesh Agricultural University Act, 1963 — Section 22
Constitution of India, 1950 — Article 14, 226
Gurgaon Gramin Bank (Staff) Service Regulations, 1980 — Regulation 10(2)
Liberalised Pension Rules, 1950 — Rule 2(2)

Citation : AIR 1993 AP 123

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : M/s. U. Surya Narayana, Meherchand Nori, P. Naveen Rao and V. Ravichandran, for the Appellant; Mr. B. Siva Reddy for APAU, for the Respondent

Judgement

1. The writ petitioner Miss D. Sridevi is a candidate who was denied admission to the Ph.D. Course in Entomology in the first respondent-University. In the M.Sc. (Ag) Entomology she secured OGPA 9.07 and no other candidate in the three agricultural colleges secured a higher rank than her. In addition to that, in the selection for the Ph.D. Course with Entomology as major field, she was Rank No. 1 having secured 158.70 marks. When the list of candidates selected for admission was announced on 20th March, 1992, she found that the two seats meant for Ph.D. (Entomology) were allotted to respondent No. 3, a BC-B candidate who secured only 151.55 marks and to respondent No. 4, a S.C. candidate who secured only 139.65 marks. Aggrieved by the denial of admission, she has come forward with this writ petition. In this writ petition, she does not challenge the validity of G.O.Ms. No. 158, Education(c) Department dated 20th February, 1982, under which the rule of reservation was made applicable for admissions to M. Phil./Ph.D. Courses. She claims that even if the rule of reservation is to be applied, only 50% of the seats in each major field can be reserved and the University is not entitled to allot both the seats to candidates

belonging to reserved category. In fact, the G.O. itself requires that one seat is required to be filled up by a candidate belonging to the Open Category. She prayed for a writ directing that the denial of a seat to her in Ph.D. (Entomology) is illegal and violative of Article 14 of the Constitution and she prayed for the consequential direction to admit her into the Ph.D. Course with Entomology as major field for the academic year 1991-92.

2. The writ" petition was filed on 25-3-1992 and it was admitted by this Court on 26-3-1992. This Court in W.P.M.P. 5296 of 1992 granted interim order on 26-3-1992 to the following effect.

"There shall be a direction to reserve one seat in Ph.D. Course with Entomology as Major Field."

On 29-4-1992, this Court granted another interim order directing the respondents to permit the petitioner to attend the Ph.D. classes with Entomology as major field until further orders in the writ petition. On 27-3-1992, the petitioner filed W.P.M.P. No. 6610 of 1992 to amend the prayer in the writ petition. She claimed that by oversight, she did not question the constitutional validity of Paragraph 6 of the Prospectus for Admission to Ph.D. Courses for the academic year 1991-92. She claimed that in paragraph 6 of the Prospectus which prescribes that 15%, 6% and 25% of the seats in each Faculty as indicated in para 4 of the Prospectus are reserved for candidates, belonging to Scheduled Castes, Scheduled Tribes and Backward Classes respectively is an instance of giving unguided, arbitrary power which is clearly unconstitutional. As the qualifications prescribed for candidates for admission to Ph.D. Courses require specialisation in a particular field, an M.Sc., (Ag.) candidate with Entomology as a major field is eligible for a seat only in Ph.D. (Entomology) and such a candidate cannot be considered for admission into any other Ph.D. Course. G.O.Ms. No. 158 dated 28th February, 1982 took only a policy decision. It never prescribed that the rule of reservation should be applied for seats in each faculty. The rule of reservation should have been applied for each discipline/major field. If the reservation rule is applied for each discipline in a faculty, there will be scope for admitting, at least, one O.C. candidate in that discipline. In paragraph 6 of the Prospectus, these are no guidelines as to how the seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes should be distributed among the various disciplines in the faculty. In the absence of any guidelines, there is scope for exercising the power arbitrarily and this conferment of naked absolute power, uncontrolled and untrammelled, is clearly in violation of Article 14 of the Constitution. The petitioner's case is a striking example as to how that power is applied arbitrarily so as to deny the first rank-holder in the University and first in the merit list of the Selection Committee, a seat in the Ph.D. Course with Entomology as major field. She prayed for a direction declaring the Prospectus of 1991-92 as violative of Article 14 of the Constitution and for a direction that the action of respondents 1 and 2 in selecting respondents 3 and 4 for Ph.D. Course in Entomology is arbitrary, illegal and unconstitutional and for a

direction to allot one seat in Ph.D. Course with Entomology as major field to her.

3. Respondents 1 and 2 do not dispute the averments in the writ petition regarding her merit and her ranking as No. 1 in the merit list prepared by the selection committee. It is claimed that while implementing the reservation rule as per G.O. Ms. No. 158 dated 20-2-1982, the total seats that will have to be given to the various categories of reserved candidates is as indicated in paragraph 5 of the counter and the rule of reservation is to be applied on the basis of the number of seats available in each faculty. It is claimed that the lists of candidates belonging to S.C., S.T., B.C-A., B.C-B., B.C-D. from among the merit panels approved by the selection committee have been separately drawn in order of merit and the meritorious among them have been granted admissions in the disciplines to which they are applicants to the extent of the reserved seats in each faculty. It is claimed that though the petitioner is first in the merit list of the candidates in the discipline of Entomology, due to operation of rule of reservation, the petitioner could not get a seat. It is claimed that the rule of reservation is to be applied on the basis of total number of seats" in each faculty and the University had seen to it that the number of seats reserved in the faculty is strictly in conformity with the percentages prescribed and saw to it that the reservation did not exceed 46% of the seats available in the faculty of agriculture. It is claimed that the rule of reservation cannot be applied discipline-wise as the number of seats in each discipline is just two or three. Reservation has to be made for candidates belonging to six reserved categories. Normally candidates belonging to reserved categories were available only in one or two disciplines and in order to fulfil the statutory quota of reservation, the reserved candidates had to be accommodated in those disciplines only. In view of the practical difficulty involved, the rule of reservation is applied faculty-wise and not discipline-wise. If it is applied discipline-wise, the quota of reservation cannot be filled up. It cannot be said that rule of reservation implemented faculty-wise is violative of Article 14 of the Constitution. Hence para 6 of the Prospectus is valid and constitutional. It cannot be struck down. While granting admission to the candidates belonging to the reserved categories, merit among such candidates also has to be ensured. The procedure that is being followed by the University has been upheld by this Hon"ble Court in W.P. No. 2474 of 1990 (Sri S.Shamsunder v. Registrar, APAU). In these circumstances the admissions made by the University to Ph.D. Course for the year 1991-92 are in accordance with the law and they did not violate any constitutional mandate. Hence the writ petition may be dismissed and the interim orders granted may be vacated.

4. Sri Y. Suryanarayana, appearing for the petitioner, raised two vital arguments. Reservation cannot be for 100% of the seats in a discipline/ major field. It can only extend up to 50%. Both the seats in the field of Entomology are now given to candidates belonging to reserved category. This is unconstitutional. Para 6 of the Prospectus prescribing that the rule of reservation should be implemented in each faculty as indicated in para 4 is an instance of conferring an unguided and absolute power and arbitrary power without any guidelines and hence it is

capable of misuse, and hence it should be struck down as unconstitutional. He places reliance upon *Akhil Bharatiya Soshit Karamchhari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, and *M.K. Agarwal v. Gurgaon Gramin Bank* AIR 1972 Mys 71 : 1971 (2) SLR 916 in support of his arguments.

5. Sri B. Siva Ueddy, Standing Counsel for the A.P. Agricultural University, appearing for respondents 1 and 2, contended that the crucial question is whether the rule of reservation is to be applied faculty-wise or discipline-wise. The University is following the rule on the basis of total number of seats in the faculty. This system has been upheld by this Court in judgment dated 25-6-1990 in W.P. No. 2474 of 1990. Hence the petitioner is not entitled to any relief. Mr. Siva Reddy submitted that he is producing all the relevant records and lists so that the Court can satisfy itself about the reasonableness of the exercise conducted by the University.

6. A perusal of the counter-affidavit clearly indicates that according to the claim of the University, the total number of seats that would go for reserved candidates, according to the University calculations, will be 11 as indicated in the tabular statement given in para 5 of the counter-affidavit. But the list of admissions notified by the University on 20th March, 1992 for the academic year 1991-92 clearly shows that 12 candidates are given seats in the reserved quota out of which six are S.C. candidates. No explanation is forthcoming as to how the University admitted 12 candidates in the reserved category in the Faculty of Agriculture when, in fact, according to the Rules and according to the tabular statement given in the counter-affidavit only 11 seats are available to them. Then an argument was advanced to the effect that out of the 25 seats available in the agricultural faculty, 46% of the seats are to be reserved and when calculated the number of seats comes to 11.5 and hence 12 seats are given to reserved category candidates. It should be remembered that apart from the 25 seats open to the fresh candidates, there are 15 seats for inservice candidates. If the percentage is calculated on the totality of the seats in the faculty, S.C. candidates will get six seats, S.T. candidates will be eligible for two seats, B.C. A, candidates will be entitled to three seats on the ground that they are entitled 2.80 seats; B.C.-B candidates will be entitled to four seats and B.C.-C candidates will not be entitled to any seat because they would be entitled to 0.40 seats only. B.C.-D candidates would be entitled to three seats as they are entitled to 2.80 seats. The particulars regarding the seats allotted under the reserved quota for the inservice candidates are not produced. It is true that as per G.O. Ms. No. 196 dated 11th November, 1975, if sufficient number of candidates are not available to fill up the seats reserved for Scheduled Castes, they shall be filled up by suitable candidates from the Schedule Tribes and vice versa. If the rule is implemented by the University strictly, we find that according to the details given in the counter-affidavit, Scheduled Tribes are entitled to one seat, but there are no Scheduled Tribe candidates and hence this seat should go to (sic) But in the

selection list announced by the University, we find that six seats are given to Scheduled Castes candidates. Thus it can straightway be said that the rule of reservation is not implemented strictly in accordance with the rules even if it is taken into account on the faculty-wise basis.

7. I shall now deal with the question as to whether the rule of reservation may be applied on faculty-wise basis or on the basis of major field/discipline-wise. To answer the numerous questions put by this Court, the University authorities produced the entire set of merit list for the nine major fields of the Faculty of Agriculture and indicated as to who are the candidates who have been selected for admission to Ph.D. on the basis of the Prospectus and the rule of reservation applying the faculty basis. Two startling facts come to light when we examine this list. In the major field of Genetics & Plant Breeding, V. Suneela who secured 161.35/175 marks is denied a seat. It is interesting to see that she is the top-most scorer among all the candidates who got included in the merit list for all the nine disciplines. Then in the discipline of Entomology, the present writ petitioner D. Sridevi secured 158.70/175 marks. A careful scrutiny of the entire list shows that she is the second highest ranking candidate among all, for the nine disciplines/major fields of the Agriculture Faculty. Both these candidates who topped the merit list have been denied admission by this process of the implementation of the reservation rule. For academics who are concerned with higher standards of academic excellence and dissemination of knowledge and research, such a result should be shocking. To me as a layman, who has respect and reverence for knowledge and higher academic standards, this result is too shocking. It is a severe blow to the principle of justice as understood by the society at large. Simply because there are more candidates belonging to the reserved quota in these particular major fields, the No. 1 and No. 2 in the entire merit list of these nine disciplines cannot be denied admission to the Ph.D. Course. This is a case of total disregarding of merit. When we examine the other seven major fields, we find that Rank No. 1 in Agronomy, Agricultural Economics, Plant Pathology, Soil Science & Agricultural Chemistry, Plant Physiology and Extension Education were provided with seats though they belong to Open Competition quota or general category. In the major field of Horticulture G. Neeraja, a candidate belonging to B.C.-B category, got the seat on the basis of her merit. It is interesting to see that all the six general category candidates and G. Neeraja, who were admitted on the basis of merit are candidates who have secured lesser marks than the present writ petitioner and V. Suneela. Thus it is found that by working the rule on the basis of total number of seats available in a faculty, rank injustice is caused to the topmost scorers, namely, V. Suneela who got 161.35/175 marks and the writ petitioner D. Sridevi who secured the second highest marks 158.70/175. It can straightway be said that the practice followed by the University is producing distorted results and the most meritorious candidates are being denied seats.

8. Paragraph 6 of the Prospectus merely stipulates that such and such percentage of seats should be reserved in each faculty. It does not contain any

guidelines as to how the rule of reservation should be implemented when there are nine major fields in the Faculty of Agriculture. As indicated above, the working of the rule of reservation as per paragraph 6 is resulting in injustice being done to the top scorers in certain major fields/disciplines. As rightly pointed out by Mr. Y. Suryanarayana, paragraph 6 of the Prospectus confers an absolute power and an arbitrary power without any guidelines and the implementation of Paragraph 6 of the Prospectus would result in injustice to the most meritorious candidates. He prays that it should be struck down. In the preceding paragraph, I have indicated how the implementation of Paragraph 6 and the practice followed by the University is causing rank injustice to the top scorers. It is interesting to see that G.O. Ms. No. 158 which is in strict accordance with the constitutional mandate and the policy of the State Government does not lay down whether the rule of reservation is to be applied faculty-wise or major field/discipline-wise. The introduction of the phrase "in each Faculty" in Paragraph 6 of the Prospectus is purely the work of the University. Obviously it has been done when the Academic Council made regulations regarding admissions of students to the University. Section 22 of the Andhra Pradesh Agricultural University Act, 1963, gives power to the Academic Council to make regulations for admission of students. Decisions have held that conferment of absolute power without guidelines is unconstitutional and it should be struck down.

9. M.K. Agarwal v. Gurgaon Gramin Bank (supra) dealt with a case of Regulation 10(2)(a) of the Gurgaon Gramin Bank (Staff) Service Regulations, 1980, which gave unbridled power to the management to terminate the services of an employee. The Supreme Court remarked in paragraph 5 as follows (at page 288; of AIR 1988) :

"This Court dealing with the constitutionality of similar provisions which enabled governmental authorities such terminations-simpliciter has held that the constitutional pledge of equality and the constitutional guarantee against arbitrary action contained in Art. 14, frown upon conferment on the State or its instrumentalities such arbitrary power.....

It requires therefore, to be held that impugned Regn. 10(2)(a) conferring as it does, on the Bank an arbitrary and unguided power is unconstitutional. Consequently, the order dt. 17-8-1982 of purported termination of petitioner's services, which has for its foundation a provision which is unconstitutional would require to be and is hereby quashed."

10. W.B.S.E. Board v. Desh Bandhu Ghose (supra) dealt with Regulation 34 of W.B. Electricity Board's Regulations which enabled the Board to terminate the services of permanent employees by giving three months notice or salary in lieu thereof. The Court observed in paragraph 4 as follows (at page 723; of AIR):

"On the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked "hire and fire"

rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers."

Taking such a view, the Supreme Court upheld the judgment of the Calcutta High Court. It should be remembered that *W.B.S.E. Board v. Desh Bandhu Ghosh* (supra) was quoted with approval in *M.K. Agarwal v. Gurgaon Gramin Bank* (supra). To a similar effect is the decision reported in *C.P. Nesrikar v. Union of India* (supra). The court held that Rule 2(2) of the Liberalised Pension Rules which did not contain restrictions which might ensure the exercise of the power in a manner not likely to bring about discrimination is violative of Article 14 of the Constitution.

11. It should be remembered that the Supreme Court has time and again laid down that reservation should not normally exceed 50%. Judged in that light, giving both the seats in the major field of Entomology to candidates belonging to the reserved quota ignoring the high merit achieved by the petitioner both in her M. Sc. (Ag.) and in the selection process is an instance of rank injustice and an arbitrary exercise of power under the pretext of para 6 of the Prospectus.

12. In *A.B.S.K. Sangh (Rly) v. Union of India* (supra), a very classic judgment of the Supreme Court regarding the rule of reservation Justice V.R. Krishna Iyer observed in paragraph 110 at page 332 as follows :

"A generally acknowledged and long established principle for securing an efficient administration is throwing open the doors to general recruitment, either directly or by promotion, where the governing criterion is excellence and the emphasis is solely on quality.....However, a quota of the posts may be reserved in favour of a backward class of citizens, but the interests of an efficient administration require that at least half the total number of posts be kept open to attract the best of the nation's talent and not more than half be made the sum of reserved quotas. If it was otherwise, an excess of reserved quotas would convert the State service into a collective membership predominantly of backward classes. This, it is evident, will be inconsistent with the all-important goal of maintaining the efficiency of administration."

The views of Justice V.R. Krishna Iyer were approved by the other judges. The principle of that decision would equally apply to the present case on hand. While admitting students for Ph.D. Courses, pure merit cannot be sacrificed for giving representation to candidates belonging to the reserved categories. It is interesting to see that regarding the discipline of Entomology, when there are seven candidates in the merit list with the petitioner loping the list, three open competition candidates were denied seats, and Rank No. 2 T.B. Sankar Rao who belongs to B.C-B and Rank No. 6, who belongs to S.C. quota were given the seats. Similarly in the major field of Genetics and Plant Breeding, ignoring the claims of the first and the second in the merit list, the seats were given to Rank No. 3 who belongs to B.C-B, Rank No. 8 who belongs to B.C.-D and to Rank No.

15 who belongs to S.C. This Type of startling results could have been avoided if the A.P. Agricultural University had a proviso added to Paragraph 6 of the Prospectus somewhat in the following manner :

SUGGESTION NO. 1 :

Provided the rule of reservation shall be so implemented that in any major field/ discipline, the number of seats allotted to candidates eligible for reservation shall not exceed 50% of seats in that major field/discipline.

SUGGESTION NO. 2 :

Provided the rule of reservation shall be so implemented that the first rank-holder in the merit list in each major field /discipline if he/she is a candidate belonging to Open Category, such candidate shall not be denied a seat. The first ranker he/she shall be provided with the first seat in the major field/discipline and balance of seats in that major field/discipline shall be allotted to the candidates belonging to reserved categories.

13. If the University had incorporated in the Prospectus a proviso to Paragraph 6 in the manner suggested above, there will be no instance of alt the seats in the major field/ discipline being allotted to candidates belonging to reserved category, denying seats to the top ranker in the field/discipline. There will be no heartburning among the meritorious candidates.

14. The last argument that will have to be considered is the fact that this system of implementing the reservation rule on the basis of faculty-wise seats being upheld by this Court in judgment dated 24-6-1990 (S. Shyam Sunder v. The Registrar, A.P. Agrl. University and others.) In that judgment, his Lordship Justice Upendralal Waghray was dealing with a case where a candidate seeking admission to the discipline/ major field of Extension Education challenged the rule of reservation and raised some other contentions. His main grievance was when there were three seats for fresh candidates in the major field of Extension Education, the first seat was given to open competition candidate and the rest of the two seats were given to candidates belonging to the reservation quota though they obtained lesser marks than him in the selection process. He contended that if only one seat was reserved, then he would have been admitted for the second seat going to the open competition quota. That is not a case where the Rank No. I in the merit list was completely ignored and all the seats of the discipline/ major field were allotted to reserved quota totally ignoring the claims of the open category candidates who had higher merit. The learned judge had no occasion to consider the constitutional validity of the paragraph 6 in the Prospectus which dealt with the implementation of the rule of reservation on faculty-wise basis. The Court simply observed as follows :

"The stand of the University is that because of the various reservations, which have to be provided for they are not considering each course as a separate unit for reservation but the entire faculty of admission to Ph.D. Agriculture as a Unit

for working out reservations. It is further stated that the candidates belonging to the reserved categories may not be available for each course, thus resulting in diluting the requirement of reservation. For this purpose, the University has been following a practice of admitting candidates belonging to reserved categories in whatever course they have applied provided the overall percentage of reservation in the faculty of agriculture consistent with the eligibility and merit is maintained as far as possible. It is pointed out that the reserved candidates were available for this course and, therefore, instead of one, two have been admitted to maintain the quota for reserved candidates in the entire-faculty of agriculture.

I am not able to say that there is any illegality in the present selection made by the University."

15. A reading of the above judgment clearly indicates that it is not a case where all the seats in the discipline were allotted to candidates belonging to the reserved quota. The learned judge had no occasion to consider whether the working of the reservation rule on the faculty-wise basis has worked injustice to the top ranker in that particular discipline/major field. The present case on hand is totally different. We find that the present petitioner, in spite of the fact that she is No. 1 in the merit list, was denied a seat by allotting both the seats to the candidates of the reserved quota. Similarly the top-most performer V. Suneela who secured highest marks in the selection process was denied a seat in the discipline of Genetics & Plant Breeding.

16. I am fully convinced that Paragraph 6 of the Prospectus is unconstitutional as it is an instance of conferring naked and arbitrary power without any guidelines. It has to be quashed. That rule in paragraph 6 of the Prospectus, which has no relevance to the rule of reservation enunciated in G. O. Ms. No. 158, is apt to be misused, and causes injustice to candidates with higher merit if they belong to Open Category. That rule would be in conformity with the constitutional mandate and the principles enunciated by the Supreme Court only when it contains a proviso similar to the proviso indicated in Suggestion No. 1 or Suggestion No. 2 above. In such a case, there would be a certain amount of guideline to control the arbitrary exercise of power.

17. Before I part with this case, I would like to indicate and observe that though as a result of this judgment normally the seat given to R.4, a Scheduled Caste candidate, has to be cancelled to accommodate the petitioner, I feel larger interests of student community and the State would be served - better if the Academic Council in exercise of its powers u/s 22 of the A.P. Agricultural University Act, 1963, sanctions one extra seat for Ph.D. Course in the discipline of Engomology and accommodates the petitioner in whose favour already interim orders were granted by this court. Similarly I feel larger interests of justice require that V. Suneela, who has secured the topmost marks in the selection process for all the nine disciplines and who was denied a seat in the major field/ disciplines of Genetics and Plant Breeding, should also be given admission to Ph.D. Course by sanctioning an additional seat though she did not seek relief by

filing a writ petition. Only when the two top rankers of the University are admitted to Ph.D. Course, justice would be done by the University, otherwise, "the University authorities would be guilty of perpetrating injustice to the most meritorious candidates and acting against the cherished goal of achieving academic excellence by the University.

18. In the result, for the various reasons given above, the writ petition is allowed with costs. Para 6 of the Prospectus is struck down as arbitrary, illegal and unconstitutional as it offends Article 14 of the Constitution. Consequently there shall be a direction directing respondents 1 and 2 to admit the petitioner for the Ph.D. Course in the major field of Entomology for the academic year 1991-92.

19. W.P.M.P. No. 6610 of 1992 is allowed. W.P.M.P. 5296 of 1992 stands allowed. The earlier granted interim directions are made absolute.

20. Advocate's fees is fixed at Rs. 250/-.

21. Petition allowed.