
(2004) 12 CAL CK 0001
In the Calcutta High Court
Case No : R.V.W. No. 011 of 2004

Ms. Zahida Rehman

APPELLANT

Vs

The Lt. Governor and Others

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2005) 2 CALLT 126 : 108 CWN 503

Hon'ble Judges : Nure Alam Chowdhury, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Anjali Nag, H.R. Bahadur, for the Appellant; A.S. Roy, for the Private Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—This review application involves the fate of two tribal girls of these Islands. I would have been happy if I was not a party to the Division Bench hearing this review application. After hearing the review application I was placed in a peculiar situation where despite my fullest sympathy for those two tribal girls I am unable to find out a solution by which I can protect the interest of both of them. As I have said, I have been placed in a most unpleasant situation while writing this judgment.

2. In 19th century these Islands were virgin and were not intercepted by urban population. Only population of these Islands was the tribals maintaining the culture and heritage of our country. In early part of 20th century when settlements of prisoners and thereafter by the them East Pakistani refugees in these Islands were done so called development started by changing the nature and character of these Islands and turning it to be an urbanised society. Administration run by the Central Government started making several policies to protect the interest of the tribals and up bring them so that they could place themselves at par with the civilised society. Various welfare schemes were propounded. The administration decided to educate the tribal children either in

the Islands or by taking them to mainland for higher education. Time to time these policies came for judicial scrutiny before this Court as well as before the Apex Court.

3. Subject matter of the instant proceeding is an administrative order passed by the Union of India in deference to the desire of this Court in a writ proceeding as well as various orders passed by the Apex Court. By the said circular the authority kept 20% of the reserved quota for admission in different stream in the mainland for tribals. By the said circular different modifications were made in different categories. However, the reservation with regard to the tribals remained the same as on the date of issuance of the said circular dated 30th May, 1996. By the said circular the allotment of quota was categorised in five parts: (i) Tribals-20%, (ii) Deputationists and Central Government employees-10%, (iii) Settlers-15%, (iv) Other Central Government employees-20%, (v) Residuary category being the inhabitants of these Islands who do not fall in the above four categories--unutilised quota from categories (i) to (iv). To avail these quotas one has to apply for the same in a prescribed form. In the said format there are five prescribed certificates to be submitted in respect of respective categories. The note appended to the said form being relevant herein is quoted below:

1. Certificate of passing AISSCE (Class XII) with Statement of Marks.
2. Certificate of passing AISSE (Class X) with Statement of Marks.
3. Certificate of Date of Birth.
4. Local Certificate issued by the Revenue Authority. (For Candidates under Category I, III & IV only).
5. Scheduled Tribe Certificate (for Category I only)
6. Migration Certificate
7. Duration Certificates showing 10 years continuous study in these Islands for category IV).
8. Duration Certificate showing last 2 years continuous study in these Islands (for all categories I to V)
9. Degree Certificates, if any.

4. The review applicant as well as the private respondent both applied for the quota. According to merit, the private respondent was placed at the top, whereas, the review applicant was placed as No. 5. Pertinent to mention, four candidates out of the said merit list were to be selected for medical stream for admission in mainland. The review applicant had undergone studies in school level in these Islands, whereas the private respondent did her primary studies in the Islands and therefore was taken to mainland for further studies. According to the private respondent, she was taken to mainland for further studies sponsored by the administration in accordance with the policy of the Central Government.

The fact that both these girls are tribals was not in dispute. Review applicant approached this Court in a writ proceeding challenging the selection of the private respondent, as according to her, since the private respondent did not undergo school education in the island she could not be considered for admission in reserved quota and her selection should be set aside and the writ petitioner should be given such benefit as she was in Sl. No. 5 in the merit list.

5. Learned Judge in his elaborate judgment considered the issue and ultimately held that it was mandatory for a candidate to undergo study in the Islands to avail the benefit of the quota as per the policy laid down therefor. Learned single Judge discussed the background in which the tribal policy was formulated by the Central Government. His Lordship considering the backdrop in which the said policy for development of the tribal people formulated by the Central Government came to a conclusion that even though there was no qualification for Category I, they could not be read in isolation and out of context for the principles or preamble of the policy itself. According to His Lordship, when the preamble stipulated the condition of passing out from schools of these Islands the issue of passing out from schools could not be overlooked and the private respondent was not eligible for the quota as she studied in mainland.

6. An appeal was preferred by the private respondent. The Division Bench by Their Lordships' judgment and order dated December 1, 2004 reversed the judgment of the learned single Judge. The Division Bench came to a conclusion that for the tribals there was no qualification and the finding of the learned Judge that the private respondent was not eligible for the quota because of her study in mainland; was not correct considering the circular and its preamble.

7. learned single Judge set aside the allotment of quota in favour of the private respondent and directed authority to grant admission to the writ petitioner/appellant within 48 hours. The Division Bench reversed the judgment and recalled the direction of the learned single Judge and in effect called back the review applicant and directed admission of the private respondent. Hence this application for review.

8. Ordinarily the scope of review of a decision of the same Bench or a Coordinate Bench is a limited one. In an application for review the Court is only to see whether there is any error crept in the judgment or there is any material fact inadvertently ignored by the Bench or a material fact subsequent surfaced warranting reversion of the earlier decision. We would have pinned down the learned counsel for the review applicant to satisfy us on these three eventualities. However, considering the urgency and the plight of two tribal girls we were bit indulgent to the parties and allowed them to make exhaustive submissions. Needless to say, they some time crossed the limit prescribed for a application for review.

9. Mrs. Anjili Nag, learned counsel appearing in support of the review applicant, contended as follows:

(i) The private respondent claimed benefit on the basis of a primary certificate which itself would show discrepancies raising doubt in the mind of the Court and the Court should not have placed reliance on the said certificate.

(ii) The private respondent claimed that she was taken to mainland for further studies at the instance of the Government, which was not in fact correct, as she was taken by missionary.

(iii) The Division Bench should not have reversed the judgment of the learned single Judge without making Union of India, College Authority as; well as Medical Council parties to the said proceeding.

(iv) The Division Bench while setting aside the order of the learned single Judge relied on some observations of the learned single Judge which was patently irregular.

(v) The Division Bench considered the preamble of the said policy whereas the policy did not have any preamble at all.

10. Mrs. Nag in support of her contention cited two decisions of the Apex Court reported in M.M. Thomas Vs. State of Kerala and Another,

11. Mr. A.S. Roy, learned counsel appearing for the private respondent, contended that the review applicant was not entitled to take the plea of non-joinder of party as the writ proceeding was initiated by her without making the said authorities party to the writ proceedings. Mr. Roy further contended that on a plain reading of the policy and/or circular issued by the Central Government it would appear that for the tribals. There was no qualification attached therewith; hence the Division Bench was right in reversing the decision of the learned single Judge. Mr. Roy in support of his contention relied on the Apex Court decision reported in Parents Association and Another Vs. Union of India and Others, .

12. Mr. H.R. Bahadur, learned counsel appearing for the Administration supported the contention of Mr. Roy and contended that for tribals there was no qualification. There was no pre-condition for study in these Islands as this was not contemplated by the Central Government in the policy and/or circular prescribed therefore.

13. The plea of non-joinder of party could not be taken by the review applicant as she herself did not make those authorities party to the writ proceeding. In an appeal from the writ proceeding. The appellant was not entitled to add of their own any new party and as such the contention of Mrs. Nag on that score is not tenable. The other pleas taken by Mrs. Nag were based on facts and this Court while considering the application for review is not competent to go into that question any further.

14. Let me now consider the decisions cited by the parties.

(i) S. Nagaraj and Others Vs. State of Karnataka and Another, . In this case the Apex Court held that if any mistake or error apparent on the face of the order to

avoid injustice the order can be recalled. The Apex Court in the said case recalled their own order holding that the same had caused injustice because of mistake.

(ii) M.M. Thomas Vs. State of Kerala and Another, of this judgment were relied upon by Mrs. Nag. Here also the Apex Court held that High Court being the Court of record had inherent powers to correct the records and had a duty to itself to keep all its records correctly and in accordance with law. It would be proper for the High Court to correct the error apparent on the face of the record.

(iii) Parents Association and Another Vs. Union of India and Others, was relied upon by Mr. Roy. The Apex Court while considering this quota in respect of these Islands observed that as follows:

"We may make it clear, even at the outset, that the "quotas" fixed in the various proceedings, except the quota fixed for tribals, do not fall under Article 15(4) at all. The question of the validity of the quotas for the Central Government servants, the pre-1942 and post-1942 settlers and the ten-year-olds is to be considered on the basis of Article 14 and not under Article 15(4)."

15. In this backdrop our anxious consideration is to find out whether there is any error crept in the said judgment and if so whether the same is apparent on the face of the record. As it have observed earlier, the party who came before the Court for the first time did not make the aforesaid authorities party in the said proceedings. Hence, it was not the obligation of the private respondent to add those parties in the proceeding at the appellate stage. If I accept the submission of Mrs. Nag that those were necessary parties and the Division Bench judgment in their absence was liable to be set aside, the same logic would apply in case of single Bench decision which eventually went in favour of the review applicant. Hence such contention of Mrs. Nag is considered and rejected.

16. The second plea of Mrs. Nag that the preamble, considered by the Division Bench, was not a preamble at all and this was an error apparent on the face of the record. I have perused the relevant circular and/or policy. The relevant document did in fact have a recital portion which the learned single Judge also described as preamble. In that context, the Division Bench also discussed the same. On this ground alone, the decision of the Division Bench cannot be reversed by a Co-ordinate Bench in an application for review. Hence such plea being not tenable is also rejected.

17. The third contention of Mrs. Nag was that while setting aside the judgment and order of the learned single Judge the Division Bench relied on some of the observations of the learned single Judge which was not permissible in law. I am unable to appreciate such contention. The very basis of the single Bench decision in the subject controversy was whether it was a pre-condition to get the benefit was to study in these Islands at least for two years or not. The Division Bench found that for tribals there was no pre-condition attached therewith. Both the decisions discussed the policy, gave their respective interpretations. While doing so, the Division Bench might have relied upon any of the finding and/or

observation of the learned single Judge. However, the same did not in any way result in the ultimate finding of the Division Bench and the reason thereon. Hence I am unable to hold there was any error or mistake committed by the Division Bench on that score.

18. Other pleas raised by Mrs. Nag as discussed above were on merits and it would be difficult for me to reconsider the issue on merits while hearing the application for review sitting in a Co-ordinate Bench. Hence the application fails and is hereby dismissed.

19. There would be, however, no order as to costs.

20. Before parting with, I once again reiterate that we have fullest sympathy for these two tribal girls. However, there is one seat and one has to vacate for the other. The Division Bench found the private respondent suitable for the seat. Hence the writ petitioner being the review applicant would have to vacate the same making room for the private respondent although she had undergone studies for last 4/5 months. Learned single Judge, while directing admission of the review applicant, made it clear that her admission would be subject to the result of the appeal. Hence the writ petitioner knew that she would have to make room for the private respondent in case she failed. As such, I am constrained to direct the Administration to call back the review applicant and arrange for admission of the private respondent in medical stream on the basis of the merit list prepared therefore.

I feel that it would be inappropriate to express our desire that for the next academic session the respondent-Administration should sympathetically consider the case of the review applicant and in such case there should not be any deduction of marks as she could not obtain any seat in this year.

Nure Alam Chowdhury, J.

21. I agree.