

(1996) 12 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 28538 of 1996

Nagashree M. Rathnappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Constitution of India, 1950 — Article 15(4)
Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental,
Pharmacy and Nursing Courses Rules, 1993 — Rule 12(4)

Citation : (1997) 7 KarLJ 125

Hon'ble Judges : Tirath Singh Thakur, J

Judgement

1. In this petition for a writ of mandamus, the petitioner seeks a direction against the respondents asking them to extend the scheme and benefit of reservation applicable to free seats and payment seats also for admission to various professional colleges being finalised by the Common Entrance Test Cell for the year 1996-97.

2. The petitioner has taken the Common Entrance Test, in the hope of joining an Engineering or Medical Course in one of the Institutions in the State of Karnataka. Being a Scheduled Caste candidate she apprehends that she may not in view of the rank assigned to her in the C.E.T. Result, find a berth in the free seat category in any one of these courses. She claims to have approached the respondents for consideration of her case against a payment seat in the category reserved for Scheduled Caste candidates. This request was declined on the ground that the reservation of seats for Scheduled Caste and Scheduled Tribe candidates is not applicable to payment seats. Aggrieved she has filed the present petition for a mandamus as already pointed out earlier in which she contends that the reservations made for Scheduled Caste, Scheduled Tribe and Backward Class candidates in terms of Government orders dated 17th September, 1994, 12th October, 1994 and 28th Decemeber, 1995, referred to in the writ petition is ipso facto applicable to payment seats also or ought to be made applicable to such seats. It is urged that the Government orders in

question have been issued in exercise of the powers conferred upon the State under Article 15(4) of the Constitution of India, and that the same must necessarily regulate admissions to the professional courses regardless of whether such admissions were made in one or the other category. The Government orders, it is contended, being relatable to a superior source of power like Article 15 of the Constitution must get precedence over the scheme otherwise prescribed by the rules framed by the State under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. Viewed thus, the petitioner considers herself entitled to a direction extending the reservation prescribed by the Government orders even to payment seats no matter the statutory rules framed under the Act aforesaid, do not provide for the same.

3. Heard.

4. In exercise of powers conferred by Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, the State Government has framed what are known as Karnataka selection of candidates for admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993. These rule provide inter alia for allocation of seats, determination of merit, procedure for selection of candidates, conduct of entrance test, preparation and publication of the merit list, etc. Rules 10 and 11 of the said Rules provide for selection of candidates to free seats and payment seats respectively whereas Rule 12 provides for reservation applicable to free seats category. Rule 12(4) in particular envisages reservation for Scheduled Caste, Scheduled Tribe and Backward Class candidates under the said category and inter alia provides for reservation by reference to the total number of seats available in the full time courses after deducting the seats reserved under sub-rules (1) and (7) of Rule 12. The relevant portion of the rule runs thus:

"12(4) Seats shall be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes under "free seats" in the following manner:-

(i) Out of the total number of seats available in full time courses after deducting the total number of seats reserved under sub-rule (1) of Rule 12 and out of the total number of seats reserved under clause (vii) of sub-rule (1) of Rule 12, reservation shall be made for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Groups A, B, C, D and E in each college in accordance with the order issued in G.O. No. SWL 66 BCA 86, dated 13th October, 1986 and other related orders issued from time to time;

(ii) If sufficient number of candidates under clause (vii) of sub-rule (1) of Rule 12 belonging to the category of general merit, SC/ST, Groups A, B, C, D and E are not available, such seats shall be filled by other Karnataka students of the same category;

(iii) If any of the seats reserved for candidates belonging to SC/ST, Groups A, B, C, D and E are not filled due to the non-availability of eligible Karnataka students of such groups, the reservation to that extent shall stand reduced and shall be

open to other Karnataka students.

Note.- (a) xxx xxx xxx xxx.

(b) xxx xxx xxx xxx.

(c) xxx xxx xxx xxx.

(d) xxx xxx xxx xxx".

A plain reading of the above would show that reservation of seats for Scheduled Caste, Scheduled Tribe and Backward Class candidates, is envisaged only insofar as free seats are concerned. It is also apparent from the language employed in the rule that such reservation has to be made by reference to the total number of seats available in the full time courses after deducting the seats referred to under Rule 12(1) and (7). Such reservation has however to be in accordance with Government Order No. SWL 66 BCL 86, dated 13th of October, 1986 and other related orders issued by the Government from time to time. In other words, while the rule envisages reservation, against free seats, the extent of the reservation is left to be determined by the Government in terms of the orders issued by it. Any such Government orders have therefore to be read in conjunction with the provisions contained in the rule. It follows that the extent of reservations so prescribed by such orders shall be applicable only to admissions against free seats. That appears to me to be the scheme underlying the rules which it is apparent does not conceive of any reservation qua the payment seats.

5. Learned Counsel for the petitioner however argued that Government orders dated 17th September, 1994, 12th October, 1994 and 28th December, 1995 were independent of the rules and prescribed a scheme that was applicable to the payment seats also. Such a scheme it was urged could not only be permissible but ought to be given precedence over the Rules since it owed its origin to Article 15(4) of the Constitution. I cannot subscribe to this view. I say so because, while it is possible for the State to enlarge the scope of reservation prescribed by the statutory rules, by issuing an executive order yet that is not what has been done in the present case. The Government orders referred to by the petitioners do not either expressly or by implication extend the scheme of reservation to payment seats. The orders do not in fact make any mention of the category of seats to which they are applicable; let alone widen the scope of the reservation sanctioned by the statutory rules. The orders came to be issued pursuant to an interim order passed by the Supreme Court in W.P. No. 438 of 1994, where the question that fell for consideration was as to the outer limit of reservations that may be made by the State, by its order dated

9-9-1994, the Court directed the State Government to restrict the over all reservations upto 50% only inclusive of Scheduled Castes, Scheduled Tribes and other Backward Classes. Pursuant to the said direction the State Government by its order dated 17th September, 1994, copy whereof has been produced as Annexure-F, prescribed the extent of percentage of reservation in respect of

Scheduled Castes, Scheduled Tribes and other Backward Classes, restricting the total extent to 50%. This order was valid for admissions to professional courses for the year 1995-96 only but has by subsequent order dated 28th December, 1995, been extended till the final decision in the writ petitions pending before the Supreme Court. From a perusal of the Government orders it also appears that the same have been issued in modification of the Government Order dated 13th October, 1986, referred to in Rule 12(4). The said orders are thus clearly relatable to the provisions contained in Rule 12(4) and have therefore to be read as supplementing and not supplanting the said provision. The argument advanced on behalf of the petitioner that the Government orders stand by themselves and should be understood to prescribe reservations for payment seats also, does not therefore hold good. There is no merit even in the alternative submission made on behalf of the petitioner that the State having decided to make a reservation in respect of free seats, it is bound to prescribe a similar reservation for the payment seats also; merely because, the power to make a reservation was available under Article 15(4). The reason for saying so is not far to seek Article 15(4) of the Constitution which is in the nature of an exception to Article 15(1) is only an enabling provision; and does not create any fundamental rights in favour of any one of the classes of citizens mentioned therein, for them to insist or coerce the State to necessarily make a reservation simply because it has done so in respect of any class or category of seats or courses available in the institutions. It is true that Article 46 of the Constitution provides for promotion of educational and economic interests of the weaker sections of the society including Scheduled Castes and Scheduled Tribes, but then that is only a constitutional objective not a legally enforceable right.

6. Equally untenable is the submission that absence of reservation for payment seats brings about any invidious discrimination for the mere fact that the power to make reservations is available under Article 15(4) of the Constitution of India, does not by itself mean that the State is bound in all situations to exercise the same. As to what should be the extent of reservation or categories of Backward Classes, Scheduled Tribes and Scheduled Castes, whose interest deserve to be promoted are matters that are in the realm of State policy. A Scheduled Caste or other candidate cannot claim any vested right or read in Articles 15(4) and 46 an enforceable constitutional obligation upon the State Government to necessarily provide for reservation in all situations and in respect of all categories of seats available in professional colleges. The State having in its wisdom restricted the reservation in favour of the Scheduled Caste, Scheduled Tribe and Backward Class candidates only to free seats, the petitioner has no right to demand extension of the said reservation even to payment seats nor is there any room for this Court to enlarge the area of operation of such reservations by issuing a mandamus. A similar question had arisen in *Sujal Atul Munshi and Others v State of Gujarat and Others*, AIR 1996 Guj. 170, which was answered against the petitioner by a Single Judge of the Gujarat High Court in the following words:

"If reservation is allowed in payment seats, it strikes to the fundamental purpose

of reservation. Purpose of reservation is to uplift the candidates who are bracketed in reserved category. If the purpose of reservation is looked into and considered, then in that case, if the reservation is provided in payment seats, it will mar the purpose of reservation. The students of reserved category if not available on payment seats, less meritorious students would take benefit of such payment seats. It may happen that from amongst the students of reserved category, there may be meritorious students who cannot afford to avail of payment seats and if reservation is applied to payment seats, their seats will be reduced and those who are meritorious from amongst the reserved category may lose their opportunity to avail admission in those seats".

7. In the circumstances therefore there is no merit in this writ petition which fails and is hereby dismissed but in the circumstances without any orders as to costs.