

(1999) 04 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9976 of 1996

P. Thirumala Devi	Vs	APPELLANT
A.P. Education Dept., Hyderabad and others		RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 20, 21, 49(1), 79, 80
Constitution of India, 1950 — Article 15(4), 309

Citation : (1999) 3 ALD 313 : (1999) 3 ALT 424 : (1999) 1 APLJ 25

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : Mr. P. Balakrishna Murthy, for the Appellant; Govt. Pleader for School Education, for the Respondent

Judgement

1. The petitioner herein challenges sub-rule 6 of Rule 12 of G.O. Ms. No.1, Education (PS.2) Department, dated 1-1-1994 as unconstitutional and beyond the rule making power of the 1st respondent and seeks a direction to the respondents to consider her candidature for appointment to the post of S.G. Teachers.

2. The petitioner, a post graduate in M.A. and having B.Ed. Qualification, pursuant to the notification published in Telugu dailies "Vaarlha" and "Eenadu" by the respondent No.4 respectively on 14-4-1996 and 15-4-1996 inviting applications for two aided posts of SGBT in their school, applied for appointment to the post of SGBT within the time prescribed. The notification indicates that the two posts are meant for woman applicants belonging to SC and BC-A group candidates. It also indicates that besides having requisite qualification of TTC or BEd., the name of the candidate should have been registered in an employment exchange. Since the 4th respondent is an aided school, the posts are aided posts. The petitioner, being a OC candidate, was found to be ineligible for consideration of her candidature to the post of SGBT in the 4th respondent-School. The petitioner submits that the reservation of these two posts to SC and

BC(A) group candidates is in purported exercise of power under sub-rule (6) of Rule 12 of G.O. Ms. No.1, dated 1-1-1994 and challenges the said Rule as unconstitutional and beyond the rule making power of the 1st respondent. Hence the present writ petition.

3. The learned Counsel for the petitioner contends that in exercise of the power conferred u/s 99 of the A.P. Education Act, 1982 (for short (he "Act") (he Government framed sub-rule (6) of Rule 12 of G.O. Ms. No.1, dated 1-1-1994 providing for the selection of the posts in all private educational institutions on the basis of the communal rotation roster and the 4th respondent issued the impugned notification reserving two posts for SC and BC(A) group candidates and that the rules framed u/s 99 read with Sections 20, 21, 79, 80 and 83 of the Act do not confer power on the Government to frame Rules providing for reservation in favour of SCs. and BCs. Therefore sub-rule (6) of Rule 12 is beyond the rule making power of the Government. In support of his contention the learned Counsel for the petitioner relied upon a recent judgment of the Supreme Court in V. Sudheer etc. v. Bar Council of India and another, 1999 (2) Supreme 460; and also another judgment of the Supreme Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, . The learned Counsel also submits that Article 15(4) of the Constitution of India empowers the State to make special provision for the advancement of any Socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. In other words in exercise of the power conferred under Article 15(4) of the Constitution the State is competent to make a special provision in favour of socially and Educationally backward classes or scheduled caste and scheduled tribes. There is no provision in the Act I of 1982 enabling the Government to frame rules and to implement the provisions under Article 15(4) of the Constitution making special provision for advancement of socially and educationally backward classes of citizens or scheduled castes and scheduled tribes. In the absence of the statutory provisions in the Act sub-rule (6) of Rule 12 of G.O. Ms. No.1, dated 1-1-1994 is without any authority of law. The rules are framed in exercise of the delegated power of legislation. The delegatee should be clothed with the power to make rules. There is no provision stipulated in the Act empowering the delegatee to frame rules making special provision for advancement of any socially and educationally backward citizens or scheduled castes and scheduled tribes. Therefore, according to the learned Counsel for the petitioner, sub-rule (6) of Rule 12 of G.O. Ms. No.1, dated 1-1-1994 is ultra vires of the provisions of the Act.

4. In the counter affidavit filed by the respondents except stating that G.O. Ms.No.1, dated 1-1-1994 was issued in exercise of the power conferred u/s 99 read with Sections 20, 21, 79, 80 and 83 of the Act, nothing is mentioned as to under what authority of law the reservation in favour of SC and BC(A) group candidates for the two posts as published in the notification is made.

5. To consider whether sub-rule (6) of Rule 12 is within the rule making power of

the Government it is necessary to refer Section 99 of the Act. Section 99(1)(a) deals with the general power to frame rules to carry out all or any of the purposes of the Act. Section 99(1)(b) is a specific power enabling the Government to frame rules in respect of items mentioned in Clauses (ii) to (xxxiv) of Section 99 (1)(b) of the Act, On a perusal of various clauses in Section 99 it is clear that none of the clauses empower the Government to frame rules for appointment to various posts in private aided schools on the basis of the communal rotation roster. Similarly Section 20 of the Act also does not empower the Government to frame rules for appointment on the basis of communal rotation roster as Section 20 provides for permission for establishment of educational institutions. Section 21 deals with grant or withdrawal of recognition of institutions imparting education, but it does not empower the Government to frame rules for appointment of teachers on the basis of communal rotation roster. Section 79 deals with dismissal, removal or reduction in rank or suspension etc., of employees of private institutions and Section 80 provides for appeal against orders of punishment imposed on employee of private institutions. Section 83 stipulates the provisions for retrenchment of employees. Therefore none of the provisions which are referred to in G.O. Ms. No.2 dated 1-1-1994 enable the Government to frame rules providing for appointments in accordance with the communal rotation roster.

6. It is pointed that under Article 309 of the Constitution of India the appropriate Legislature is empowered to legislate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Under the proviso to the said Article till such legislation is made, the President or the Governor as the case may be, are empowered to frame rules, regulation, regulating the recruitment and condition of service of persons appointed to services and posts in connection with the affairs of the Union or State. In exercise of the said power the Central Government as well as State Governments framed rules, regulation regulating the recruitment and service condition of persons appointed to the post, in connection with the affairs of the Centre or State. As far as the State is concerned it has framed State and sub-ordinate Service Rules incorporating the mandate incorporated under Article 15(4) of the communal rotation roster. The State and Subordinate Service Rules which are framed under Article 309 of the Constitution are not applicable to the private aided educational institutions. Therefore, there is no provision in the Act 1982 enabling the State Law to frame rules providing for appointment on communal rotation roster. In the absence of the provisions enabling the Government to frame rules for making appointments on the basis of communal rotation roster, sub-rule 6 of Rule 12 is ultra vires the provisions of the Act. As pointed out in the earlier paragraph, Article 15(4) is only an enabling provision and it confers a power on the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. In this context a reference to the Judgment of the Supreme Court in *K Sudeer etc. v. Bar Council*

of India and another, (supra), is relevant :

"A mere look at the aforesaid provision makes it clear that the rule making power entrusted to the Bar Council of India by the Legislature is an ancillary power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, Rules to be framed u/s 49(1) must have a statutory peg on which hang. If there is no such statutory peg the rule which is sought to be enacted de hors such a peg will have no foothold and will become still born."

"Any rule framed by rule making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law. Consequently, the valiant attempt made by Shri Rao for sustaining the Rules u/s 49(1)(af), (ag) and (ah) would remain abortive only on this short ground."

Therefore any rule framed without a statutory power is ultra vires the provisions of the Act and it is to be declared as such, I am therefore of the view that sub-rule (6) of Rule 12 of G.O. Ms. No.1, dated 1-1-1994 is ultra vires of the provisions of the Act.

7, In the result the writ petition is allowed with costs. Advocate's fee Rs.1000/-.