

(1998) 12 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 783 of 1998 Others Writ Petition (OWP) No. 852 of 1998

Parvez Ahmed Naik

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 08-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) KashLJ 53

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Shakeel Ahmed, D.S.Thakur, Advocates appearing for the Parties

Judgement

Petitioner Parvez Ahmed Malik seeks admission to the course Master's Degree Programme in Computer Applications with the University of

Jammu. He claims to be belonging to area which is backward. He is resident of Doda. He submits that interms of conditions 1.3 Sub. Category

(vi), he is entitled to the admission. He submits that he has been wrongly deprived of the admission because a candidate belonging to Leh and

Kargil even though low in merit has been given preference.

There is another writ petition preferred by Tsewang Dorje. This bears No. 852 of 1998. Petitioner in writ petition No. 852 of 1998 figure as

respondent No. 3 in the writ petition preferred by Parvez Ahmed Naik. This petitioner is also claiming benefit of same regulation on which

petitioner is placing reliance. As the contending parties are seeking admission in terms of Regulation noted above, it would be apt to notice the

same. It reads as under :

a) Candidates belonging to backward area including Leh and Kargil.

(At least one seat will be provided out of this category for candidates belonging to Leh/Kargil).

b) Schedule Tribes (Gujjar and Bakerwals)

3. The petitioner submits that the candidates belonging to Backward area including Leh and Kargil have to be accommodated to the extent of 3%.

This accordingly to the petitioner is an independent provision. If a candidate is shown high in merit and he belongs to Leh and Kargil then there

would be no dispute. Dispute has arisen because the candidate from Doda i.e. the petitioner has higher merit. He is being denied admission on the

ground that the seat has to go to the candidate belonging to Leh/Kargil area. For this reliance is being placed on the lines." At least one seat will be

provided out of this category for candidates belonging to Leh/Kargil." (Emphasis Supplier).

As per the respondents the reading of the aforementioned Regulation leads to the conclusion that 3% seats are reserved for backward area

including Leh/Kargil. It is urged that if a candidate from Leh/Kargil is unable to get seat on account of his lower merit then he has to be necessarily

accommodated in terms of provision quoted above. It is thus contended that one seat has necessarily to go to a candidate belonging to Leh/Kargil

irrespective of the merit.

The contention put across by the counsel for the petitioner is that there cannot be a category within a category. It is also urged that if the petitioner

is denied admission then it would mean that the reservation is meant only for those candidates who are living in Leh and Kargil. This would amount

to creating a district wise category which would be hit by Article 14 and 16 of the Constitution.

There is merit in the contention put across by the learned counsel for the petitioner in writ petition, OWP 783/1998. If the interpretation placed by

respondent University is to be accepted then, it would amount to making districtwise reservation within the same State. This would not be in

consonance with the view expressed by the Supreme Court of India in the case of P.Rajendran Vs. State of Madras, AIR 1968 SC 1012. In para

11, the following observations were made;

It is true that Article 14 does not forbid Classification, but the classification has to be justified on the basis of the nexus between the classification

and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the

classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved

Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional

colleges the allocation of seats districtwise has no reasonable relation with districtwise has no reasonable relation with the object to be achieved. If

anything such allocation will result in many cases in the object being destroyed and if that is so, the classification, even if reasonable, would result in

discrimination, inasmuch as better qualified candidates from one district may be rejected, while less qualified candidates from other districts may be

admitted from either of the two sources.

Thus, the interpretation which is being placed by the respondent authorities would lead to creation of a separate category for the Districts of Leh

and Kargil. A candidate possessing higher merit would stand deprived of his seat. This would not be in consonance with the spirit of Articles 14 and

16 of the Constitution of India.

It is again settled law that an effort should be made to uphold the regulations. This can be done only by adopting the principle of interpretation

known as "reading down the provisions." By adopting this principle, the validity of the regulation can be sustained. On so reading, it can be

concluded that a candidate possessing higher merit has to be selected. If he belongs to the Districts of Leh and Kargil, then that candidate would

naturally be selected. If a candidate is not available from Leh and Kargil Districts, then one seat is to go to the candidate who is high in merit, and

another seat would go to the candidate from Leh and Kargil districts. By adopting this interpretation, the regulation can be saved from the attack of

its being ultra vires.

Even though above interpretation is being given, the respondent University would see to it that the regulation is clarified so that the ambiguity which

has been pointed out above is not there for the next year.

Learned counsel for the University submits that this would lead to creation of additional seat. Learned counsel for the petitioner submits that

University itself has given admission to more than 30 candidates. Therefore, he

submits that by creating one more seat, nobody is going to be prejudiced. The fact that more than thirty candidates have been given admission is not being disputed. This petition is, accordingly, disposed of

with the following directions:

I) That the petitioner in writ petition No. 783/1998 who is high in the merit list be granted admission in his own right;

II) As on giving admission to the petitioner of writ petition No. 783/1998, a candidate from Ladakh and Kargil districts is not likely to come,

therefore the additional seat be offered to the writ petitioner of writ petition No. 852/98. This petition is disposed of accordingly.