
(1997) 08 MAD CK 0034
In the Madras High Court

R. Chandrasekaran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1)

Citation : (1998) 1 MLJ 110

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Division Bench

Judgement

N.V. Balasubramanian, J.—The petitioner in the writ petition is a student who has applied for admission in the first year B.E. degree course

in the Engineering College in the State of Tamil Nadu for 1997-98. The petitioner has challenged the provisions contained in Clause 4(1) of the

Information and Instructions to candidates"" seeking admission in the first year B.E./B. Tech/B. Arch degree course admissions 1997 for the Tamil

Nadu Engineering Admissions, 1997. The said clause reads under:

4. 1 Reservations for Rural School Candidates: 15% of the seats are reserved for candidates who have studied both XI and XII Stds. in Higher

Secondary Schools situated within Village Panchayat limit in Tamil Nadu. The reserved seats are within the overall communal reservations.

However, this will not apply to admission under special categories mentioned in para.

4.5. Candidates seeking admission under this reservation should get the certificate No. II, signed by the Head of the Institution where he/she has

studied XI and XII standards giving the school Code from Annexure II.

The petitioner has challenged the above clause on the ground that it is violative

of Article 14 and Article 15(4) of the Constitution of India. A

counter-affidavit has been filed by respondents and 2 justifying the classification. The third respondent Anna University has also filed a counter affidavit.

2. Mr. A.L. Somayaji, learned Senior Counsel appearing for the petitioner made an elaborate argument and submitted that the paragraph 4(1) of

the Instructions is violative of Article 14 read with Article 15(4) of the Constitution of India. Mr. G. Masilamani, learned Additional Solicitor

General of India, also made a forc-ible plea and submitted that the above clause is not hit by ArticleS 14 and 15(1) of the Constitution of India.

3. The above paragraph has been inserted on the basis of recommendation of a High Level Committee of selffinancing institutions of Tamil Nadu

and it was found that most of the free seats in almost all the colleges are cornered by the urban based students who have better facilities for study

and opportunities for coaching, viz., and that the students passing out from in schools in rural areas were unable to compete with their urban

counter parts and hence got relegated to the inevitably payment seats. It is also made clear that the reserved seats are within the overall communal

reservations. Learned Additional Solicitor Gen-eral appearing for respondents 1 and 2 submitted that the preference in given to the candidates

coming from the Higher Secondary Schools situated within the Panchayat limits in Tamil Nadu who studied in XI and XII standards in the said

High School. The learned Additional Solicitor General also made it clear that the preference in confined to the candidates coming within the

communal reservation. Mr. A.L. Somayaji, learned senior counsel appearing for the petitioner has fairly submitted that the petitioner is a candidate

belonging to other community and he is ineligible to apply for a seat in the reserved category, as he is not competing for the reserved seats. I am of

the opinion that the petitioner has no locus standi to challenge the said reservation. The case of the petitioner falls under general category and it is

not open to the petitioner to question the reservation made for the students coming from the rural schools in the reserved category. The preference

given to such students is called horizontal reservation among the students claiming seats in the reserved quota and it does not extend to the other

category students-open gen-eral candidates, called vertical reservation. More or

less a similar situation came up for consideration before the

Supreme Court in the case of Dr. N.C. Singhal Vs. Union of India (UOI) and Others, and the Supreme Court held as under:

Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to

question their promotions. Each one of them was promoted to a post in a supertime grade II in a speciality other than ophthalmology and appellant

admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them.

Incidentally High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service

qualification and therefore, the promotions could not be stuck down. Once the challenge on merits failed the second string to the how need not be

examined. Having said all this appellant is least competent to challenge their promotions.

3. The Supreme Court in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, has observed as under: ""The other question

which was canvassed before the High Court and which has been pressed before us relates to the merit of the nominations made to the reserved

seats, it seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete

for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are

not in accordance with the rules all such seats as have not been properly filled up could be thrown open to the gen-eral pool is Wholly unfounded.

4. S. Mohan, J. (as His Lordship then was) in W.P. No. 5586 of 1979 dated 18.9.1980 reported in 1980 T.L.N.J. 459 has also taken the same

view and held so long as the petitioner is not qualified, he is not entitled to challenge the same. In view of the above categorical pronouncement of

the Supreme Court as well as by this Court, I held that the petitioner has no locus standi to question the paragraph 4(1) of the Information and

Instruction to candidates seeking admission to Engineering Colleges for 1997 as it is of academic interest to him, and this Court cannot question

which are of academic in nature even in academic fields.

5. The other contentions that has been raised by A.L. Somayaji, was that under

the single window system it is not possible to provide 10 days time limit as provided in the scheme formulated in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., I have already held in W.P. No. 8223 of 1997, etc., by a judgment of even date, that by the adoption of the single window system the respondents have not violated the scheme prescribed by Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., .

6. The third submission that was made by Mr. A.L. Somayaji was that, it is only the respective colleges which can make and provide for the reservation and it is not open to the admitting body to make the reservation. He also submitted that under the agreement entered into by the third respondent with the Government of Tamil Nadu at the time of granting recognition to start the private selffinancing engineering colleges, the said colleges have to provide seat for students selected on the basis of communal reservation. He also refers to Regulation 9 of the All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994, framed by All India Council for Technical Education under the Act, 1987. The regulation reads as under:

9. Reservations:- (1) It shall be open to a professional college to provide for reservation of seats for candidates belonging to weaker section of society in accordance with the rules of the Central Government or the State Government as the case may be.

(2) Admission to reserved seats shall be made on the basis of merit.

He therefore submitted that on the basis of the above regulation it is open to the professional colleges to provide for reservation of seats for candidates belonging to weaker section of society according to the rules of the Central Government or the State Government as the case may be.

He therefore, submitted that it is not open to the State Government to admit the students on the basis of reservation. I am not able to agree with the contention of the learned senior counsel. Firstly, the petitioner cannot plead the cause of selffinancial private colleges. Secondly, in the agreement entered into by the Government with the selffinancing engineering colleges, the students, claiming seats under the reserved category were not and cannot be the parties and their constitutional right guaranteed by the

Constitution of India cannot be bartered with. Thirdly, the said regulation which provides for reservation of seats to candidate belonging to weaker section of society cannot be construed to mean that the private colleges and alone empowered to provide for seats for candidate coming within the communal reservation. The clause properly read should mean only to the candidate belonging to the weaker section of the society. That apart, the professional colleges have to provide for reservation of seats according to the constitutional mandate and the reservation policy cannot be evolved and adopted by the private selffinancing engineering colleges. Therefore, the management of such private selffinancing engineering colleges are bound to admit the students allotted by the appellate authority as per the rules of reservation. I also hold that the allotments of seat provided for reservation for constitutionally permissible classes by the State Government is not in any way inconsistent with the decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., .

7. In this view of the matter, the writ petition is liable to be dismissed and accordingly it is dismissed. No costs.