

(1967) 06 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 2712 of 1966 and 103 of 1967

R. Narayana Swamy and Another

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 14-06-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : AIR 1968 Kar 189

Hon'ble Judges : M. Sadasivayya, J; D.M. Chandrashekhar, J

Bench : Division Bench

Judgement

(1) In these petitions under Article 226 of the Constitution, the validity of Rules made by the Government for admission of Licentiates to the condensed M.B.B.S. course has been challenged. The two petitioners in these petitions were applicants for admission to the condensed M.B.B.S. course and they were not selected.

(2) In April 1966, the Government framed Rules for admission to the Condensed M.B.B.S. course in the Government Medical Colleges in the State and these Rules are in supersession of the earlier rules framed by Government in this behalf. Clause 2 of these Rules states that these Rules shall apply for selection of candidates for ninety seats (thirty in each of the three Medical Colleges in Bangalore, Hubli and Mysore)

(3) Rule 4 of these Rules reads:

"4. Reservations (1): 90 per cent of the seats shall be reserved for persons in Mysore Government Service and the remaining seats shall be reserved for others, out of which one seat shall be reserved for a nominee of the Central Government.

(2) Fifteen per cent and three per cent of the seats reserved for State Government Servants shall respectively be reserved for persons belonging to scheduled castes and scheduled tribes.

(3) Fifteen per cent and three per cent of the seats reserved for others shall respectively be reserved for persons belonging to scheduled castes and scheduled tribes.

(4) In the event of the seats reserved for persons belonging to scheduled castes and scheduled tribes in either of the categories referred to in sub-rules (2) and (3) not being filled up due to non-availability of candidates or any other reason, the number of seats to the extent of the short fall shall be allotted to either State Government servants or others, as the case may be.

(5) In the event of seats reserved for others not being filled up for any reason, the seats so unfilled shall be allotted to State Government servants in accordance with these rules"

(4) Rule 7 sets out the method of selection of candidates. Sub-rule(1) provides that in the case of seats set apart for Licentiates who are in Government service, the selection shall be on the basis of seniority determined with reference to the date of entry into Government service and that where two or more candidates have entered service on the same day, the seniority shall be determined on the basis of age.

(5) Sub-rule (2) provides that in the case of Licentiates other than those in Government service, the selection shall be on the basis of the dates of their passing the L.M.P. or L.C.P.S. or equivalent examination and that where two or more candidates have passed the examination in the same year, the selection shall be on the basis of merit determined according tot he marks secured in the examination.

(6) It is common ground that the Karnataka University to which Hubli Medical College is affiliated, did not grant affiliation to that College for conducting the Condensed M.B.B.S. course. Hence no student was admitted for the Condensed M.B.B.S. course in the Medical College at Hubli. Only sixty students were selected-thirty in each of the two Medical Colleges in Bangalore and Mysore, for the year 196. Out of these sixty candidates selected, one was a nominee of the Government of India. Fifty-four candidates were Licentiates in Government service and the remaining five were Licentiates not in Government service.

(7) The petition in WP 2712/1966 is a Licentiate and private practitioner while the petitioner in WP 103 of 1967 is a Licentiate in the employment of the Corporation of the City of Bangalore and is working as a Doctor in one of the Hospitals run the said Corporation.

(8) Mr. L. G. Havanur, learned counsel for the petitioner in WP 2712 of 1966, who addressed leading arguments in these two petitions (which arguments were adopted by Mr. S. Mahadevan, learned counsel for the petitioner in WP 103 of 1967), formulated his contentions thus:--

(i) The classification of Licentiates into two categories--those in Government service and rest--is arbitrary and offends Article 14 of the Constitution:

(ii) The extent of reservation, namely, ninety per cent of the available seats, in favour of Licentiates in Government service, is in excess of the permissible limit:

(iii) The criteria adopted for selection of candidates, both among those in Government service and among others, are arbitrary and irrelevant, and,

(iv) No competent person or body of persons, was appointed to make the selection of candidates and hence the selection is arbitrary.

(9) Elucidating his first ground, Mr. Havanur contended that the object of the Universities permitting the Colleges to condensed M.B.B.S. course, is to enable the Licentiates to improve their knowledge and educational qualification and that the classification of Licentiates into two categories, namely, those in Government service and those not in Government service, is arbitrary and has no rational relation to the object with which the Condensed M.B.B.S. course has been permitted by the University. Mr. Havanur further urged that Licentiates both in Government service and outside Government service, do like work, that both are in need of improving their knowledge by undergoing the Condensed course and that there is no justification for discriminating against Licentiates not in Government service by limiting the seats available to them to 10 per cent.

(10) In the counter affidavit filed by State, the rationale of the classification of Licentiates into these two categories, has been thus explained: With a view to raise the basis of educational standards of all Doctors in Government service, the Government decided to introduce the Condensed M.B.B.S. course of the duration of 21/2 years. The Indian Medical Council was also of the view that the basic education qualification for Doctors should be M.B.B.S. Degree. The Government also intended to eliminate two different grades of Doctors namely, Licentiates and Graduates in Government service with different conditions of service and different treatment. The Condensed M.B.B.S. course was meant primarily to bring the standard of all Doctors in Government service in par with Graduates. Purely by way of a concession, the Government made available 10 per cent of the seats to Licentiates who were not in Government service.

(11) It is well settled that Article 14 of the Constitution does not forbid reasonable classification. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (I) that the classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved.

(12) There is no difficulty in holding that the impugned classification satisfied the first of these two conditions. The distinction between the Licentiates in Government service and those not in Government service, is real and intelligible. Doctors in Government service serve in Government Hospitals which are open to the general public. They have to treat patients who come to such hospitals and they do not get payment from such patients, but get pay and allowances from Government. They are liable to transfer from place to place. They work subject

to certain conditions of service and under the directions of superior authorities. Private medical practitioners work on their own: they are their own masters. They charge fees to the patients whom they treat. They are generally free to stipulate their own terms for rendering service. Even when Licentiates are in the employment of private or public organisation other than the Government, their conditions of service and their duties, obligations and responsibilities are not generally the same as in Government service.

(13) The more difficult question is whether the differentiation between the Licentiates in Government service and those not in Government service, has a reasonable relation to the object sought to be achieved by the impugned Rules. The impugned Rules do not expressly state the object of these Rules. Such object must be gathered from an examination of the Rules. According to Mr. Havanur, the only object of these Rules is to enable Licentiates to improve their knowledge and educational standard by becoming Graduates while according to the State, the object of these Rules is primarily to improve knowledge and educational equipment of the Licentiates in Government service.

(14) In support of his contention Mr. Havanur relied on the following observations of this Court in WP No. 354 of 1961 (Mys), in dealing with the Rules framed by the Government in year 1961 for regulating admission to the Condensed M.B.B.S. course in Government Colleges:

".....The general purpose obviously was to provide opportunity to the Licentiates in medicine to improve their knowledge and better their prospects whether in service or in private practice by securing a degree by undergoing a course of study shorter than it would otherwise have been necessary....."

(15) But Mr. Havanur has overlooked the other observations made in that case by this Court, which read:

"..... Had it been intended merely to enable all Licentiates in medicine whether in Government service or private employment or practice, no such special provision in regard to the grant of leave would have been made. The said provision for the grant of leave undoubtedly indicates that the primary object was to benefit those in Government service....."

(16) In the present cases we are concerned not with Rules framed by Government in the year 1961 but with the Rules framed in the year 1966 for regulating admission to the condensed M.B.B.S. course. We must ascertain the object of the present set of Rules.

(17) If we examine the impugned Rules it is clear, the object of these Rules is primarily to provide opportunities to Licentiates in Government Service to improve their knowledge and educational standard so that Government may have better qualified and better equipped Doctors to man the hospitals run by Government. It is only incidentally and by way of an exception that the facility of the Condensed M.B.B.S. course is extended to a limited number of Licentiates

who are not in Government service. When that is the object sought to be achieved by the impugned Rules, we think, the classification of Licentiates into those in Government service and those not in Government service, has a rational relation to the object sought to be achieved by these Rules.

(18) Mr. Havanur strongly urged that the Condensed M.B.B.S. course is not "in service" training course for training persons already in employment, that this course is a course leading to a Degree conferred by the Universities, that the course is conducted in Government Medical Colleges affiliated to Universities and open to all students seeking admission and hence it is not permissible for the authorities of College to admit only Licentiates in Government service or to set apart most of the seats for them.

(19) In regard to a course of study for which affiliation is granted by the University, to a College not run by the University, what the University prescribes are the minimum academic qualifications for admission to that course, the duration of that course, the curriculum, the standard of teaching, the scheme and standard of examination and the like. Mr., Havanur has not shown any provision either in the Mysore University Act or the Bangalore University Act, or in any subordinate legislation thereunder, which places any restriction on an affiliated College from having its own policy in selection of candidates for admission to a course of study, subject to such candidates possessing the minimum academic qualifications.

(20) As the two Medical Colleges in question are maintained and run by the Government, we think, the Government is competent to adopt its own policy making selection of candidates to the Condensed M.B.B.S. course, to give preference to any category of candidates, or to set apart all or most of the seats to any class of candidates, subject to the condition that such candidates possess the minimum academic qualifications prescribed by the University and subject to the provisions of Articles 14, 15 and 29 of the Constitution. We think there was no legal impediment for the Government going so far as to even totally exclude Licentiates not in Government service and to admit only Licentiates in Government service to this course. If the Government was competent to keep all the seats exclusively for Licentiates in Government service, it is certainly competent for the Government to set apart 90 per cent of the seats for Licentiates in Government service and make available only 10 per cent of the seats to those not in Government service.

(21) It was argued by Mr. Havanur that exclusion of Licentiates wholly or partly on the ground of their not being in Government service, would violate Articles 15 and 29 of the Constitution. But what Article 29 forbids is denial of admission into any educational institution maintained by, or receiving aid from, the State on the ground of religion, race, caste, language or any of them. This Article does not forbid denial of admission on other grounds. If exclusion of a person from a College is on the ground of his not being in Government service, Article 29 has no application. Likewise, Article 15 forbids discrimination against a citizen on the

ground of religion, race, language, caste, sex, place of birth or any of them. If the ground of discrimination is being or not being in Government service, Article 15 has no application.

(22) It was next contended by Mr. Havanur that the reservation of 90% of seats in favour of candidates in Government service, is in excess of the permissible extent of reservation. Though Rule 4(1) of the impugned Rules states that 90% of the seats shall be reserved for Licentiates in Government service and the remaining seats for others, we think, it is not correct to describe the scheme as one providing for reservation. What Rule 4(1) provides is that 90 per cent of the seats shall be allotted to candidates in Government service and 10 per cent of the seats shall be allotted to candidates who are not in Government service. In substance the rule provides for allotment of quotas for different categories.

The concept of reservation implies a minimum guarantee and there is no prohibition against the class for whom such reservation is made, securing on the strength of its merits, more than the percentage or number of seats reserved for that class. If the allocation of 90 per cent of seats to Licentiates in Government service should be regarded as reservation, there should be no prohibition against candidates in Government service securing more than 90 per cent of seats on the basis of their merit. Correspondingly, if 10 per cent of the seats should be regarded as reserved for candidates not in Government service, there should be no prohibition against such candidates securing more than 10 per cent of seats on the basis of their merit. But what Rule 4(1) provides is that the extent to which candidates in Government service are selected should be a fixed percentage, namely 90 per cent and that the extent to which candidates not in Government service are selected, should be 10 per cent (except where sufficient number of qualified candidates not in Government service, are not available)..

(23) As the Rule does not, in reality provide for reservation for any category of candidates but merely fixes quotas for different categories of candidates, the contention that the extent of reservation for candidates in Government service is in excess of the permissible limit, does not really arise.

(24) For the purpose of arguments, we shall assume that Rule 4(1) provides for reservation to the extent of 90 per cent for candidates in Government service and examine the contention of Mr. Havanur that reservation of the extent of 90 per cent is not permissible. Mr. Havanur sought to derive support for this contention from the decision of the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, . There it was laid down that reservation under Article 15(4) or under Article 16(4) of the Constitution should be less than 50 per cent. On the authority of that decision, Mr. Havanur urged that reservation can in no circumstances exceed 50 per cent.

(25) As stated earlier, the above ruling of the Supreme Court is with reference to Article 15(4) and Article 16(4) of the Constitution. Clause (4) of Article 15 is in the nature of an exception to what is provided in clauses (1) and (2) of that

Article. Likewise, clause (4) of Article 16 in the nature of an exception to what is provided in clauses (1) and (2) of Article 16.

As pointed out by the Supreme Court, clause (4) of Article 15 is a special provision and not a provision which is exclusive in character, so that in looking after the advancement of certain classes or whose benefit that clause is provided, the State would not be justified in ignoring altogether the advancement of the rest of the society. A special provision contemplated by Article 15(4) must be within reasonable limits. If under the guise of making a special provision, the State reserves practically all the seats available in all the Colleges, that clearly would be subverting the object of Article 15(4). It is in the context of adjusting the competing claims under clauses (1) and (2) on the one hand and under clause (4) of Article 15, on the other, the Supreme Court evolved the principle that a special provision like reservation should be less than 50 per cent.

(26) As pointed out earlier, Article 15 has no application to these cases as the favourable treatment to candidates in Government service is not based upon religion, race, caste, sex, place of birth or any of them. Even so, Mr. Havanur urged that the principle enunciated by the Supreme Court that reservation under a special provision should not exceed 50 per cent, would be applicable to reservation for any class, even where the classification does not come within the ambit of Articles 15(4) and 16(4), Mr. Havanur argued that in relation to admission to educational institutions, every classification made under Article 14 of the Constitution must also satisfy the requirements of Article 15 of the Constitution.

In support of this contention he relied on the decision of this court in *Viswanath v. State of Mysore* (1963) (2) Mys. LJ 302 : AIR 1964 Mys 132 in which the validity of the classification of the specially and educationally backward classes under Article 15(4) of the Constitution came up for consideration. Mr. Havanur pointed out that in that case this Court examined whether the impugned classification violated Article 14 of the Constitution also.

From the mere fact that Article 14 also came up for consideration in that case. Mr. Havanur wanted us to hold that a classification under Article 14 is also subject to all the restrictions and limitations as to the extent of reservation under Article 15. Because a contention was raised in *Viswanath's* case that the classification of Backward Classes was ultra vires of Article 14, this Court examined that contention. We do not find anything in *Viswanath's* case 1963 2 Mys LJ 302 : AIR 1962 Mys 132 which supports the contention that there is any limitation as to the extent of reservation even in cases not coming within the ambit of Articles 15(4) and 16(4) of the Constitution. There is no substance in this contention, of Mr. Havanur

(27) The next ground of attack on the impugned Rules was that for selection of candidates both in the category of Licentiates in Government service and in the category of Licentiates not in Government service, the criteria prescribed by the

Rules are arbitrary, irrational and irrelevant. Mr. Havanur urged that the criteria in respect of both these categories of candidate, had no rational relation to merit and suitability of candidates.

(28) For the purposes of these two petitions, we think it is not necessary to consider the validity of the criteria for selection of Licentiates in Government service as both the petitioners were not in Government service and could not be selected for any of the seats (90 per cent) set apart for Licentiates in Government service. They could only claim for being selected for seats (10 per cent) set apart for Licentiates not in Government Service. Hence we shall now examine only the criteria for selection of candidates in the latter category.

(29) As seen earlier, Rule 7(2) provides that the basis for selection of Licentiates not in Government service, is the date of passing the Licentiates examination, candidates who passed earlier being preferred to those who passed later. It is only as between candidates who passed on the same date marks secured by them in the examination shall be the determining factor.

(30) It was contended by Mr. Havanur that the date of passing the Licentiate examination is no indication of a candidate's merit or suitability to pursue the higher course, namely the Condensed M.B.B.S. course, and that a candidate who passed the Licentiate examination later may be more merited and suitable than one who passed earlier. According to Mr. Havanur, marks secured in an examination or at a viva voce or at an interview, should be the only basis for ascertaining the relative merit or suitability of the candidates.

(31) It is reasonable to presume that a Licentiate who does not enter Government service, will, shortly after passing the Licentiate examination, commence his professional career as a Doctor. It is possible that in rare cases he may start his professional career long after the date of passing the examination or he may not practice at all. But such rare cases do not affect the validity of the aforesaid presumption. Hence the date of passing the Licentiate examination may be taken as indicating the length of one's professional career as Doctor. A person who has put in a longer career as Doctor, can reasonably be expected to have gained greater knowledge and experience. It may be, that persons of exceptional ability and industry can gain in comparatively shorter time, greater knowledge and experience, than those with longer career. But every rule is based on generality of things and averages.

(32) Length of professional career can be taken as a measure of suitability of candidates for selection to the higher course of study. Marks obtained in an examination is not the only test for judging merit or suitability. It is not for the Court to decide whether the Government could not have adopted better criteria for assessing merit and suitability of candidates. What the Court has to decide is whether the criteria adopted by the Government are arbitrary, irrational or irrelevant.

Assuming for the sake of argument that marks secured by candidates in the

Licentiate examination would be a better criterion for assessing merit and suitability, we are unable to accept the contention of Mr. Havanur that the impugned criteria are arbitrary and irrelevant.

(33) Mr. Havanur invited our attention to the decision in WP No. 354 of 1962 (Mys) in which while considering the validity of the corresponding Rules framed in the year 1961, this Court struck down as unreasonable the rule which provided for preference being given to candidates older in age. But we think that decision has no application to the impugned Rules, because the age of a candidate is not the same thing as the date of his passing the Licentiate examination. While the date of passing the examination is a rough index of the length of professional standing, the age of a candidate has no such correlation.

(34) Mr. Havanur submitted that the application of the impugned criteria has resulted in a Licentiate who was 57 years old and had retired from Government service being selected for admission and that such result is sufficient to demonstrate unreasonableness of the criteria. The selected candidate alleged to be 57 years old was impleaded as Respondent 29 in both the petitions. But subsequently he and respondents 3 to 5, 9, 27, 36, 38 and 60 in both the petitions, were given up on the ground that those respondents did not join the course. In the absence of the party alleged to have been 57 years old, we cannot examine the allegations and contentions relating to his selection.

(35) Lastly it was contended by Mr. Havanur that there was no competent person or body of persons appointed to make the selection of candidates. The need for appointing a competent person or body of persons to make the selection, will depend upon the criteria adopted for selection,. If a viva voce or an interview had been prescribed as the basis wholly or partly for selection, there might have been need for appointing a competent person or body of persons to assess the performance of the candidate at such viva voce or interview. But under the impugned Rules what are required to be ascertained for the purpose of selection, are the date of entry into service, the date of passing the examination. The ascertainment of these facts does not require any expert or a Committee. It is not the case of the petitioners that there has been any error in ascertaining these facts or that the candidates selected did not satisfy the criteria prescribed.

(36) Mr. Mahadevan, learned counsel for the petitioner in WP 103 of 1967, while adopting the arguments of Mr. Havanur, advanced an additional contention that there was no valid classification as between Licentiates in Government service and Licentiates in the service of local bodies like the Corporation of the City of Bangalore and that both categories of Licentiates work in Public Hospitals on salary without getting any payment from the patients whom they treat.

(37) As stated earlier, the two Colleges in which the Condensed M.B.B.S. course is conducted, are maintained and run by the Government and hence it is permissible for the Government to make a classification on the basis of candidates being in Government service. That the petitioner in WP No. 103/ 1967

is not in the service of the Government but of the Corporation, is itself sufficient to distinguish him from other candidates in Government service. It may be, that the Hospitals run by the Corporation serve the public very much in the same manner as hospitals run by the Government and that the method of remunerating the Doctors is the same in both services. But the conditions of service under the Corporation may not be the same as those under the Government.

Though it was open to Government to include Licentiates in service of Local authorities in the same Classification as those in Government service, we cannot hold that the classification of Licentiates in Government service excluding those in the service of local authorities, is invalid or violates Article 14 of the Constitution. It is entirely for the Government to consider whether certain percentage of seats should be set apart for Licentiates serving under Local authorities like the Corporation.

(38) Sometime after the arguments were closed and the petitions were reserved for orders. Mr. Havana made an oral application seeking leave to bring to our notice a decision of the Supreme Court which has been reported in the latest part (June 1967) of All India Reporter. We permitted him to address further arguments and we also heard Mr. Vasudeva Reddy for the Special government pleader.

(39) Mr. Havanur relied on the following passage in the judgment of the Supreme Court in Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others, :

"But, it is said that if the system of rotation was necessary, the Government should have applied the ratio of 50:50 and not 75:25. When the recruitment to certain posts is from different sources, what ratio would be adequate and equitable would depend upon the circumstances of each case and the requirements and needs of a particular post. Unless the ratio is so unreasonable as to amount to discrimination, it is not possible for this Court to strike it down or suggest a different ratio. Nothing has been placed before us to show that the ratio of 3:1 is so flagrant and unreasonable as to compel us to interfere with the order of the Government"

(40) On the basis of the above observations Mr. Havanur contended that unless the ratio between the seats set apart for Licentiates in Government service and those for Licentiates not in Government service, is equitable and reasonable, the allotment of seats between these two categories would be discriminatory and ought to be struck down. It was further contended by Mr. Havanur that the ratio of 90:10 was prima facie unreasonable and inequitable, and unless the Government placed materials to show that such ratio was justified in the circumstances, the Court should hold that ratio as discriminatory and interfere with the order of the Government.

(41) In Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and

Exports and Others, the validity of a rule made under the proviso to Article 309 of the Constitution providing that 75 per cent of a certain class of posts should be filled by direct recruitment and 25 per cent by departmental promotion, came up for consideration before the Supreme Court. Subha Rao, C. J. who delivered the judgment of the Court, said thus at page 842:

"..... It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and, in that event a court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust, on the face of it the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution.

(42) The above principle applies equally to the selection of candidates drawn from different sources.

(43) In the very passage relied on by Mr. Havanur the Supreme Court has observed that when recruitment to certain posts is from different sources, what ratio would be adequate and equitable, would depend upon the circumstances of each case and requirement and needs of the particular post. Likewise, when selection of candidates to the condensed M.B.B.S. course is from two different sources, what ratio would be adequate and equitable would depend upon the circumstances of the particular selection and the needs and requirements of the scheme of selection. There is nothing in the judgment of the Supreme Court which supports the contention of Mr. Havanur that the ratio 9:1 is prima facie unreasonable. On the other hand, the Supreme Court has stated that what ratio is reasonable must depend upon the circumstances of each case.

(44) It was argued by Mr. Havanur that because the Supreme Court has held that the ratio of 3:1 is not unreasonable, a ratio like 9:1 which varies very much from the ratio 3:1 must be held to be prima facie unreasonable. We think this contention is devoid of merit. The Supreme Court had to consider in that case whether in the circumstances of that case the ratio of 3:1 was unreasonable and the Supreme Court held that it was not unreasonable. From this it does not follow that any other ratio which is very much different from that ratio, would be

prima facie unreasonable irrespective of the circumstances of the case.

(45) The above decision of the Supreme Court does not help Mr. Havanur

(46) The result is, these petitions fail and are dismissed but without costs.

TVN/GGM

(46) Petitions dismissed