

(1980) 12 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 182 and 185 of 1980

Rakesh Kumar and etc.

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-12-1980

Acts Referred:

Constitution of India, 1950 — Article 15, 226, 29, 46

Citation : AIR 1981 HP 80

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Devinder Gupta and K.D. Sud, for the Appellant; Inder Singh, General and P.N. Nag, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—In these two writ petitions since common questions of law and facts are involved, they can be conveniently disposed of by a common judgment.

2. The relevant facts as disclosed in C.W.P. 182 of 1980, may be stated. The petitioner after having successfully passed the B, Sc. part I examination with medical subject, from the Himachal Pra-desh University, applied for admission to the competitive examination of M.B.B.S. course 1980-81 session, to the Himachal Pradesh Medical College, Simla. It is stated that the admission to the M.B.B.S. Course of Himachal Pradesh Medical College is made in accordance with the conditions contained in the prospectus issued by respondents 1 and 2. It is further disclosed that there are 65 seats in all for the M.B.B.S. Course for 1980-81 session, out of which 41 were unreserved whereas 24 were reserved. It is averred that the number of reserved and unreserved seats contained in the prospectus was later on modified by making provision for reservation of seats for candidates from rural areas. After such modification, the number of unreserved seats was reduced to 33 and of reserved seats, increased to 32. The petitioner appeared in the competitive examination against unreserved seats and after the compilation of result the petitioner in the select list was placed at serial No. 37,

whereas Shri Narain Kumar, the other petitioner in C.W.P. 185 of 1980, was placed at serial No. 36. It is pointed out that since out of three seats reserved for the political sufferers, only one was filled and, out of two seats reserved for backward classes none could be filled; as such in accordance with the note contained in the prospectus, these four seats were also treated as unreserved, thereby raising the total number of unreserved seats to 37. It is contended that the respondent No. 3 later on changed the aforesaid list and prepared another list, termed as revised merit list, on 21-10-1980. A copy of the revised list has been annexed and marked as Annexure PD. In this list the names of the petitioners, in both these writ petitions, were deleted whereas the names of respondents 4 and 5 were added at serial Nos. 30 and 36 respectively. It is contended by the petitioner that he represented the matter to respondent No. 3 and a copy of the same is attached as Annexure PE.

3. The case of the petitioners is that the action of the respondent No. 3 in revising the list and deleting their names is wrong and illegal. Inter alia, it is contended that the petitioner was not afforded any opportunity to show cause before his name was deleted. The petitioner has also alleged legal mala fides against the respondents.

4. Narain Kumar petitioner in C.W.P. 185 of 1980, has stated almost similar facts as in C.W.P. No. 182 of 1980. As such, it is not necessary to re-state all these facts. The only additional plea that has been taken and not pressed, is that the reservation made for candidates belonging to "rural area" is illegal and invalid.

5. The main contention of the petitioners, in these writ petitions, concerns the interpretation of the conditions contained in the prospectus, issued. The relevant extracts from the prospectus (English Translation) have been submitted and marked as Annexure PA. In order to appreciate the respective contentions of the parties, it is desirable to reproduce the same:--

"PROSPECTUS" III ADMISSION

Admission to this College is done according to the condition given below which should carefully be gone through by the desirous candidates while submitting their applications.

Subject to any specific order of the Himachal Pradesh Government, the total seats in the College are limited to 65 children of bona fide Himachalis, Himachal Government employees and employees of autonomous bodies wholly or partially financed by Himachal Pradesh Government will only be considered for seats under Group I (reserved) categories (a) to (g) and Group II (unreserved). In Group I (Reserved) Category (c) the eligibility will be determined in accordance with the conditions laid therein.

The distribution of seats under the various categories will be as under:--

Group I (Reserved)

24 seats

(a)

9 seats

Scheduled Castes

(b)

3 seats

Scheduled Tribes

(c)

5 seats

To be nominated by the Government of India. These candidates will have to satisfy the criteria of eligibility laid down by the Himachal Pradesh University but they will not be required to appear in the competitive examination.

(d)

3 seats

For political sufferer.

(e)

2 seats

For Backward Classes.

(f)

One seat

For Antodya Families.

(g)

One seat

For distinguished Sportsman,

Group II (Unreserved) 41 seats.

(I)

The definition of Political Sufferers is as under: ?

XX

XX

XX

(II)

The definition of Antodya Family is as under: ?

XX

XX

XX

(III) Distinguished Sportsmen.

Only those will be considered as distinguished sportsman who have represented either India or in the sports of Himachal Pradesh University and for this only the certificate issued by the Director of Sports, Himachal Pradesh University will be acceptable.

Note (i) Provided that the seats reserved under different categories in Group I shall be treated as so reserved only if no candidate falling under such respective categories is selected on merit in Group II; and seats of a particular category shall be treated as unreserved to the extent to the candidates falling in that category are selected on merit in Group II.

Note (ii) A candidate wishing to be considered for a reserved seat should in his/her application form specify one category of reserved seat for which he/she is eligible. This will not prejudice his/her case of being selected against a unreserved (Group II) seat. (Category once indicated will not be permitted to be changed).

Note (iii) The minimum number of women candidates excluding the nominated candidates of category I (c) will be ten. If this number falls short, then a combined merit list of all the remaining women candidates of unreserved seats will be prepared on merit after scoring out the names of last male candidates in the merit list.

All the candidates of Groups I and II except Group I (c) will have to compete amongst their own categories. Unfilled seats from Group I mentioned above will be treated as unreserved when the required number of candidates are not found eligible as per rules of the Prospectus and will be added to Group II. If a candidate in any of the reserved seats under Group I (a) and (b) is left out of consideration for not attaining high enough position amongst the candidates specifically grouped thereunder, his/her candidature would be considered on the basis of merit in the unreserved seat (Group II) if otherwise eligible.

Definition of permanent residents of Himachal Pradesh.

A bona fide Himachali is a person who has permanent home in Himachal Pradesh and includes a person who has been residing in Himachal Pradesh for a period not less than 15 years or a person who has permanent home in Himachal Pradesh but on account of his occupation he is living outside Himachal Pradesh."

Since the reservation for admission had been made for candidates from rural area, an intimation to this effect was issued by the Himachal Pradesh University. A copy of the same has been submitted as Annexure PB. The same is also reproduced which reads as under:--

"No. 5-4/PMT-BPU (EXAMS)

Himachal Pradesh University Examination Branch From Registered.

The Controller of Examinations, Himachal Pradesh University, Summer-hill, Simla--171005.

To

Roll No. 3129 Name : Mr. Rakesh Kurnar Father's name-----

Dated Simla 171005, the 29th August, 1980.

Subject: Intimation of Dates of Examinations and reservation of Nine seats for Rural Areas for Pre-Medical Test (Competitive) 1980.

Sir/Madam,

In partial modification of Examination Notice No. 5-2/PMT-HPU (Exams.) dated 3-7-1980 read with notice dated 5-7-80, the Government of Himachal Pradesh have revised the reservation quota of seats for entrance examination for admission to 1st year of M.B.B.S. Course 1980-81 as under: --

Unreserved seats

33

Reserved seats

32

(1)

Govt. of India nominee

5

(2)

Scheduled Castes

9

(3)

Scheduled Tribes

3

(4)

Political Sufferer

3

(5)

Backward Class

2

(6)

Sportsman

1

(7)

Rural areas

9

If you want to change the category according to the modified reservations of seats (i e. rural areas), you have to submit a certificate of the category on the prescribed form obtainable from the Principal, H. P. Medical College, Simla-1. The definition of rural area is as under:--

"A candidate must have received education from 1st to 8th standard in a common rural school situated in any village not having any Municipality or Notified Area or Town Area Committee. For this purpose, a certificate is required to be submitted along with the application, which will be signed by the Block Education Officer under whose jurisdiction the school in which the candidate received education up to 8th standard falls."

The Rural area certificate along with application as per the definition, given above, will be received up to 12th September, 1980 in the office of the Assistant Registrar (Examinations), Himachal Pradesh University, Simla-5, whereafter, no certificate for change of category shall be accepted.

The modified definition of Sportsman is as under:--

"Those who have represented India or Combined Universities or who hold distinctions of All India Level or those who have represented the States or the University, the certificate issued by the respective competent authority in this behalf will be valid."

Applicants under this category are required to submit their form duly completed up to 5.00 P.M. on 12-9-1980.

You can collect your Roll No. at the University Counter from 11 A. M. to 4 P. M. on 17th and 18th September, 1980 on production of Identity Certificate issued by the Principal of the College in which the candidate studied last or a Gazetted Officer.

Competitive Entrance Examinations will be held on the following dates:--

1. 19-9-1980 Biology. 2. 20-9-1980 Chemistry (including Organic Chemistry). 3. 21-9-1980 Physics.

Please quote above letter No., date and Roll No. while corresponding on the subject."

6. It is contended by the learned counsel for the petitioners that Notes (i) and (ii) of Annexure PA are subject to the proviso attached to these notes, which is to the effect that if a candidate in any of the reserved seats under Group 1 (a) and (b) is left out of consideration for not attaining high enough position among the candidates specifically grouped thereunder, his/her candidature would be considered on the basis of merit in the unreserved seats (Group II), if otherwise eligible. It is contended that the respondents 4 and 5 applied for admission as candidates against the category of reserved seats for "rural areas". It is further pointed out that 9 of the candidates who applied under this category had since been selected (though on the basis of their merit), respondents 4 and 5, could not be selected since they had specifically applied against the reserved quota for candidates from "rural areas". It is also contended that only those candidates who fell under category 1 (a) and (b), i.e. (being members of Scheduled Castes or Scheduled Tribes who had applied for admission on that basis, they only could be considered on the basis of merit, in the unreserved seats Group II, if otherwise eligible. The essence of the contention is that since respondents 4 & 5 specifically applied for admission against the reserved seats of "rural areas" and they were not, selected in that category, they could not be considered for admission on merit in the Group II meant for unreserved category.

7. In the returns filed on the affidavits of Dr. B. C. Verma, Associate Professor in Chemistry of the University and Dr. K. D. Gupta, Registrar of the University, it has been contended that if a candidate has shown his willingness to be considered against the reserved category, he has to indicate as such, in the application form, but such indication will not disentitle him for being selected in the unreserved category, i.e., category (II), if he is otherwise eligible and, it will not adversely affect his candidature, for being selected in the unreserved category. It is further contended that immediately after publishing the first list, it was pointed out by the Assistant Registrar (Examinations) that Raman Kumar Sharma and Dhruv Dev (respondents 4 and 5 respectively) secured more marks, i.e., 169 and 167 respectively, but their names had not been included in the list. The matter was immediately taken up on 17-10-1980 and it was found that there was inadvertent mistake in not including their names. It is further contended that these respondents had applied for being considered against the quota reserved for "rural areas" and in that category candidates having more than 169 marks were available and as such, they were selected in that reserved category. It is pointed out that they were otherwise also within the zone of selection in the unreserved category. The result was that the petitioners who were at the bottom of the list prepared on 15-10-1980, had to go and respondents 4 and 5 had to be

shown in the revised list at serial Nos. 30 and 36, where they occupied their places on the basis of the merit secured by them. Accordingly, the revised list was prepared. In the return filed on behalf of respondent No. 3 on the affidavit of Dr. K. D. Gupta, Registrar of the University, it has been stated that immediately after the publication of the first merit list, it came to notice that two candidates, i. e., respondents 4 and 5, who had obtained 169 and 167 marks respectively, had been left out of selection inadvertently and two candidates, i.e., the petitioners, who had secured 165 marks each had been selected. It is further stated that if candidates of a reserved category are selected on merit in general quota, the number of reserved seats is reduced to that extent. It is, however, pointed out that in this case nobody has been selected against the seats reserved for "rural area" candidates. On the other hand, it is stated that 11 candidates including respondents 4 and 5 who had applied to be considered against rural areas seats have been selected on merit in the unreserved group. It is, however, specified that all the 11 candidates who had otherwise applied for consideration against the "rural area" category had been selected in the unreserved category on the basis of better merit and that a separate list had been prepared only for the sake of convenience and to ensure that the number provided for the reserved category in the prospectus was made up, if candidates were available. It is also pointed out that the representation made by the petitioners regarding the deletion of their names from the first list was received and the same was decided. Intimation to this effect was also sent to the petitioner. A copy of the same has been filed and marked as Annexure I. On this account, it is stated that the petitioners' case was properly considered and there has been no violation of principle of natural justice.

8. There is no dispute between the parties that respondents 4 and 5 applied for admission against the reserved seats of "rural area". It is further not disputed that both the petitioners obtained 165 marks whereas respondents 4 and 5 obtained 169 and 167 marks respectively. The relevant record was produced by respondent No. 3 including the answer books of the petitioners as also respondents 4 and 5. Answer books of Shri Bal-dev Singh were also produced who had also obtained 165 marks but had obtained 61 marks in Biology. It may be also pointed out that Rakesh Kumar petitioner secured 52 marks whereas Narain Kumar petitioner secured 53 marks in Biology. In the face of the above undisputed facts, the only point which survives for determination is, the interpretation of Notes (i) and (ii) and proviso attached thereto.

9. There appears to be an apparent conflict between the aforesaid notes (i) and (ii) on one hand and the proviso attached thereto on the other. Whereas under Notes (i) and (ii) it has been specifically provided that the seats reserved in different categories in Group I shall be treated as reserved only if no candidate falling under such respective categories is selected on merit in Group II, and seats of a particular category shall be treated as unreserved to the extent the candidates falling in that category are selected on merit in Group II. Similarly, it is provided that candidates wishing to be considered for reserved seat should in

the application form, specify one category of reserved seats for which he is eligible. But this is not to prejudice his case, of being selected against an unreserved seat. In the proviso (which in fact is not so specified) it is, however, provided that if a candidate in any of the reserved seats under group 1 (a) and (b) is left out of consideration for not attaining high enough position amongst the candidates specifically grouped thereunder his candidature will be considered on the basis of merit against the unreserved seats. As pointed out earlier above, category 1 (a) deals with Scheduled Castes whereas category 1 (b) deals with Scheduled Tribes. If this proviso is literally interpreted, it would mean that the candidates of only these two categories will be entitled to be considered for selection on merit in unreserved seats. In other words, it would mean that those candidates who applied for being considered against the reserved seats for "rural areas" would not be held entitled to be considered for selection against unreserved seats. As such, there exists a conflict between Notes (i) and (ii) on the one hand and the so-called proviso on the other. The question then arises as to how this conflict can be resolved. It is a recognised principle of interpretation of statutes that when the language of a statute is susceptible of two interpretations, one of which is reasonable and the other unreasonable, the court should hold that the former must prevail. At the same time where the language of a statute is general, doubtful or obscure, the language may be modified or varied by interpretation in order to avoid any manifest absurdity repugnance, mischief or injustice. It is not to be supposed that the legislature intended to do a palpable injustice. It is also a rule of interpretation that a proviso is subordinate to the main section and when a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of an Act. In the case of *Nokes v. Doncaster Amalgamated Collieries Ltd.*, 1940 AC 1014, Viscount Simon L.C. observed as under:--

"If the choice is between the two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

Similarly, it is a settled principle of interpretation of statutes that whenever the language of the legislation admits of the two constructions, and, if construed in one way, would do obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention to bring it about has been manifested in plain words. It is also a recognised principle of the interpretation of a statute that where the result of one of two interpretations would lead to an absurdity, the one which avoids absurdity should be followed.

10. As pointed out earlier above, the effect of the so-called proviso has to be considered and it has to be determined whether it negatives the conditions as laid down in Notes (i) and (ii). A reference may be made to the decision in *Abdul Jabar Butt v. State of Jammu and Kashmir* AIR 1957 SC 231. In this case, the

question of interpretation of Section 8 of the Jammu and Kashmir Preventive Detention Act, came to be considered. It is desirable to reproduce the said provision:--

"8 (1). When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order to the Government;

Provided that nothing contained in this sub-section shall apply to the case of any person detained with a view to preventing him from acting in any manner prejudicial to the security of the State if the Government by order issued in this behalf declares that it would be against the public interest to communicate to him the grounds on which the detention order has been made.

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

Their Lordships of the Supreme Court observed as under (at p. 284): --

"In the first place it is fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. Therefore, the proviso in question has to be construed harmoniously with the provisions of Sub-section (1) to which it is a proviso. As we have already mentioned, immediately after the making of the order, Sub-section (1) of Section 8 begins to operate. If the grounds are not communicated to the detenu within the period of time described by the expression "as soon as may be" the detenu becomes deprived of his statutory right under sub-sec. (1) and his detention in such circumstances becomes illegal as being otherwise than in accordance with procedure prescribed by law. In order to prevent this result in certain specified cases the proviso authorises the Government to issue the requisite declaration so as to exclude entirely the operation of Sub-section (1). It, therefore, stands to reason and is consistent with the principle of harmonious construction of statutes that the power of issuing a declaration so as to prevent the unwanted result of the operation of Sub-section (1) should be exercised before that very result sets in."

The mandate contained in the so-called proviso is specific in character, that the candidates belonging to the categories of Scheduled Castes and Scheduled Tribes, if not selected in their respective categories have to be considered for selection on merit, against the unreserved seats. There is, however, no mandate to the contrary that the candidates belonging to other reserved categories are excluded from such a consideration. We are of the opinion that the enacting part of a statute must, where it is clear, be taken to control even the non obstante clause where both cannot be read harmoniously. In the so-called proviso there is a mandate in favour of the candidates belonging to Scheduled Castes and Scheduled Tribes categories. Similarly, under Notes (i) and (ii) of the conditions of the prospectus, it has been specifically provided that candidates wishing to be

considered against reserved seats would not be deprived of their right of being selected against unreserved seats. In spite of the conflict pointed out above, this is the only harmonious interpretation of the respective conditions of the prospectus. In case the enacting part of a statute is clear and unambiguous, its scope cannot be whittled down by the use of the non obstante clause. Similarly a proviso is considered subordinate to the main section and does not enlarge an enactment except for compelling reasons. At the same time, some times an unnecessary proviso is inserted by way of abundant caution. Accordingly, a construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

11. It cannot be disputed that normally reservations of seats in such like institutions are made in order to safeguard the interests of weaker or backward sections of the society. It may be reasonably presumed that the reservation for candidates from "rural areas" was made to ensure that the candidates belonging to this category get admission to the Medical College.

12. The respondents 1 to 3 have supplied to us an integrated merit list of selected candidates of reserved and unreserved groups. We have perused the same and find that 9 of the candidates of "rural areas" category stood selected on the basis of their merit. The minimum marks obtained by the candidate of this category are 172. There being only 9 reserved seats for this category of candidates, respondents 4 and 5 who also applied for admission against this category, could not be selected. If the proviso is interpreted in the manner suggested by the learned counsel for the petitioners respondents 4 and 5 who secured 169 and 167 marks respectively would be thrown out of the zone of consideration and the petitioners who secured 165 marks each, may be selected. Under the situation, the meru shall be sacrificed.

13. It may be noticed that the so-called proviso does not even start with a, non obstante clause. It is to be noticed that the very phrase "unreserved seats" indicates, that against this category, any candidate belonging to any group can compete for selection. Moreover, note (ii) is abundantly clear that a candidate wishing to be considered against a reserved seat will not prejudice his case of being selected against unreserved seats.

14. Shri K. D. Sud. the learned counsel for the petitioner in C.W.P. No. 185 of 1980, has not pressed the relief to quash the reservation on the ground of rural area candidates and rightly so. All the candidates who were selected for admission against this category were even entitled to be admitted on the basis of their merit.

15. For the foregoing reasons, we are of the view that respondents 4 and 5 were eligible for selection against the unreserved seats on merit even though they had applied against the reserved seats of rural areas, As pointed out earlier above, these respondents secured more marks than the petitioners in these writ petitions. It was pointed out on behalf of respondents 1 to 3, which fact was not

disputed on behalf of the petitioners, that one of the conditions of admission was that in the event of some candidates securing equal marks, those candidates who obtained higher marks in Biology shall have preference. As observed earlier above, Bal-dev Singh Ghial secured 61 marks in Biology whereas petitioners Rakesh Kumar and Narain Kumar secured 52 and 53 marks respectively, As such, such of the candidates who got higher marks in Biology, though obtained equal marks as obtained by the petitioners, were rightly given admission on this account.

16. The result of the above discussion is that both these writ petitions are dismissed. Keeping in view the circumstances of the case, the parties are left to bear their own costs.