
(1983) 11 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 2520 of 1983-L

R.S. Boss

APPELLANT

Vs

K.P. Krishnan Nair and Others

RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4)

Citation : AIR 1984 Ker 115

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : V.N. Swaminathan and A. Antony Jr, for the Appellant; C.K. Sivasankara Panicker and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—This original petition as amended is for the issue of a writ of certiorari to quash Explanation III to the Government Order produced as Ext. R-4 (a) along with the counter-affidavit filed by the 4th respondent and for consequential reliefs. The petitioner was a candidate for the B.H.M.S. Course in the Athurasramam N.S.S. Homeo Medical College, Sachivethamapuram. Kottayam for the academic year 1982-83. Ext. P-3 dated 18-3-1983 is a true copy of the list of candidates selected for admission for the B.H.M.S. Degree Course in the said college Ext. P-3 shows that the petitioner is number 5 in the waiting list and had obtained in the qualifying examination in the optional subjects, a total of 200 marks The 5th respondent, who is one among the selected candidates in the quota available for "other backward communities" in the absence of sufficient number of scheduled castes/tribes candidate, in No. 4 in the reservation quota, He had obtained only 262 marks in the optional, subjects. The petitioner belongs to the Ezhava community included in the socially and educationally backward classes of citizens within the meaning of Article 15(4) of the Constitution. The 5th respondent also belongs to a community classified as falling in the socially and educationally backward classes. The petitioner's

grievance is that even though both himself and the 5th respondent are members of communities classified as socially and educationally backward, he has not been selected even though he had much higher marks in the qualifying examination than the 5th respondent. Respondents 1 to 4 are members of the selection committee of whom the 4th respondent is the Principal of the College concerned. A counter-affidavit has been filed on behalf of respondents 3 and 4. There is also a counter-affidavit filed by the 1st respondent on behalf also of the 2nd respondent. The stand taken in the counter-affidavits is that selection was made in accordance with the Government Orders Exts. R-4 (a) and R-4 (b) produced along with the counter-affidavit of respondents 3 and 4. Ext. R-4 (a) prescribes the mode of selection and the percentage of seats to be reserved for Scheduled Castes/ Tribes and backward communities in the three private Homeo Colleges in the State, mentioned therein. 20% of the total number of seats in each college shall be reserved for candidates belonging to the Scheduled Castes/ Tribes and in the absence of sufficient number of candidates from those communities, the remaining seats available in the quota reserved for them shall be filled on the basis of merit from among backward minority communities, in case the college is run by a backward minority community and from among other backward communities in all other cases. The Government Order contains three explanations. As per Explanation I backward minority community means the communities mentioned in categories II III and IV of the Annexure to G. O. (P) 208/66/Edn. dated 2-5-1966. The Annexure to the aforesaid G. O. (P) is produced along with the counter-affidavit of respondents 3 and 4 as Ext. R-4 (b). According to Explanation II to Ext R-4 (a) backward community means all communities included in Ext R-4 (b) and per Explanation in Other Backward Community means the communities included in categories IV and V of Ext. R-4 (b).

2. The total number of seats available for admission to the course in the Athurasramam N.S.S. Homeo Medical College is only 50, out of which as per Ext. R-4 (a) 10 seats are reserved for Scheduled Castes/Tribes candidates. During the relevant year 1982-83 there were only six Scheduled Castes candidates and the remaining four seats were available to the Other Backward Communities in the order of merit. There is no dispute that the Athurasramam N.S.S. Homeo Medical College is not one run by a backward minority community. But for Explanation III in Ext. R-4 (a), the petitioner would have been selected for admission to the course instead of the 5th respondent. It is not disputed that numbers 1 to 4 shown above the petitioner in the waiting list do not belong to any backward community, and if there is no restriction as contained in Explanation III to Ext. R-4 (a), the petitioner would have been entitled to selection to the last place available in the reserved quota on account of the nonavailability of sufficient number of Scheduled Castes/Tribes candidates.

3. Ext. R-4 (b) shows the list of communities declared by the Government as falling under the "socially and educationally backward classes of citizens" within the meaning of Article 15(4) of the Constitution. Category 1 in Ext. R-4 (b) is

Ezhava including Ezhavas, Thiyyas, Ishuvan, Izhuvan, Illuvan and Billava. The petitioner comes under category 1 mentioned in Ext. R-4 (b). As per Explanation II to Ext. R-4 (b) all the communities mentioned in Ext. R-4 (b) belong to the socially and educationally backward classes. Explanation III restricts Other Backward Communities to Categories I to III of Ext. R-4 (b) Categories I to III of Ext. of Ext. R-4 (h) are totally excluded from the benefit of reservation on account of Explanation III. The 5th respondent being a Chakkala belongs to Category V of Ext. R-4 (b). He is selected to the reserved quota for backward communities for the reason of Explanation III restricting the reservation for other backward communities, to Categories IV and V of Ext. R-4 (b).

4. The question therefore is whether the reservation confined to categories IV and V among other backward communities as is referred to in Explanation III in Ex. R-4 (a) is sustainable in law. There is no dispute that all the communities referred to in Ext R-4 (b) continue to be classified as belonging to the socially and educationally backward classes within the meaning of Article 15(4) of the Constitution. The State has no case that Ezhavas or the other communities mentioned in categories I to III of Ext. R-4 (b) have made such progress in the social and educational field and hence had been deleted from the list of communities classified as falling under the socially and educationally backward classes. All those communities continue to be included in the list of communities classified as socially and educationally backward. It is also brought to my notice that in the prospectus issued by the Government College of Homoeopathy, Trivandrum for the year 1982-83 there is no restriction of reservation to other backward communities referred to in Explanation III of Ext. R-4 (a). The reservation quota is available according to merit to all the communities classified as socially and educationally backward.

5. In the decision of the Supreme Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, it is stated thus at page 3310 :--

"31. *Minor P. Rajendran Vs. State of Madras and Others*, is an authority for the proposition that the classification of backward classes on the basis of castes is within the purview of Article 15(4) if those castes are shown to be socially and educationally backward. No further material has been placed before us to show that the reservation for backward classes with which we are herein concerned is not in accordance with Article 15(4). There is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life. Hence we are unable to uphold the content on that the impugned reservation is not in accordance with Article 15(4). But all the same the Government should not proceed on the basis that once a class is considered as a backward class it should continue to be backward class for all times. Such an approach would defeat the very purpose of the reservation because once a class reaches a stage of progress which some modern writers call as take off stage then competition is necessary for their future progress. The Government should always keep under review the

question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation."

The reservation permissible under Article 15(4) is for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Tribes. This article does not permit a discrimination among those classified as socially and educationally backward. The Government is not competent to pick and choose some among those classified as socially and educationally backward for the conferment of benefits of reservation in educational institutions or in Government service. Almost a similar question arose before the Madras High Court in *P. Susila represented by her father and next friend S. Perinpamuthoo Vs. The State of Madras and Another*,). In the prospectus in respect of the first year Integrated M.B.B.S. course for the year 1969-70, the C. S. I. Christian Community of Kanyakumari District and Shenkottah Taluk, of Tirimelveli District included, as per Government Order, in the category of socially and educationally backward classes, was omitted from among the communities belonging to the socially and educationally backward classes. The Madras High Court held as follows (at p. 400) :--

"3.....It is no doubt open to the Government, from time to time, to add to or subtract from the list of backward classes. But once a classification has been made for educational purposes, by an order of Government and the order continues to be in force, we do not see how without expressly modifying that order by a proper decision of the Government, a mere omission of a particular community from the list of backward classes, appended to the prospectus, can justify elimination of the community from consideration as backward at the selection. To do so, will be unreasonable and illogical. It cannot be that, for the purpose of concession in educational institutions, a community is considered as backward and not so for the purposes of admission in educational institutions. There appears to be no substance in the dividing line. We consider, therefore, that the petitioners ought to have received consideration, at the selection, on the basis that they belong to a backward classes."

Explanation III to Ext. R4 (a) restricting the benefit of reservation to some alone among the communities declared as socially and educationally backward is therefore clearly discriminatory and unsustainable in law.

6. It is not disputed in the present case that but for the restricted application of the principle of reservation to some alone among the backward communities, the petitioner would have been selected instead of the 5th respondent. The selection was made in March, 1983 for the academic year 1982-83. The 5th respondent has already undergone the course of study for at least two terms of the first year B.H.M.S. course. It will also serve no useful purpose if a direction is made to admit the petitioner at this late stage of the academic year. In the decision of the Supreme Court in *Punjab Engineering College, Chandigarh v. Sanjay Gulati* AIR 1983 SC 580 : 1983 3 SCC 517 it was found that the selection of 16 candidates for admission to the Punjab Engineering College was not in accordance with law.

Nevertheless for the reason of their having completed two semesters, the Supreme Court declined to cancel their admission, and instead directed the admission of 16 others who would have otherwise got admission on the basis of merit in the next academic year in 16 additional seats directed to be sanctioned by the Government. Since the petitioner wants to join the course and qualify himself as a homoeopathic doctor there will be a direction to the 6th respondent State of Kerala to sanction an additional seat for the I year B. H. M. S. Degree Course in the Athurasramam N. S. S. Homoeo Medical College for the next academic year and the 4th respondent is directed to admit the petitioner to the additional seat so sanctioned. The 4th respondent, the Principal of the College concerned, has no objection to this course.

The original petition is allowed as indicated above. There will be no order as to costs.