
(2005) 03 CAL CK 0052

In the Calcutta High Court

Case No : MAT No. 25 of 2004 and CAN No. 21 of 2005

S. Indu Bala

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 CALLT 138 : (2005) 3 CHN 158

Hon'ble Judges : Subhro Kamal Mukherjee, J; A.K. Bhattacharya, J

Bench : Division Bench

Advocate : S. Ganguly, for the Appellant; Hemraj Bahadur and Mohammed Tabraiz, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against the order dated August 05, 2004 passed by the learned Single Judge of this Court in WP No. 128 of 2004. By the order impugned, the learned Single Judge rejected the writ petition filed by the appellant-petitioner holding, inter alia, that the action of the respondents in not accepting the application of the writ petitioner, for admission in medical courses in the institutions on the mainland for the year 2004-2005, was justified.

2. In the Andaman and Nicobar Islands several categories of persons are residing. Quotas were fixed for the persons residing in the islands for the purpose of admission to engineering and medical courses. There has been a long-standing dispute between the residents and, ultimately, pursuant to an order passed by this Court in C.O. No. 11514 of 1995, the Secretary, Ministry of Home Affairs, Govt. of India issued an order dated May 30, 1996 laying down the criteria for the allotment of professional/technical and non-technical reserved seats to various categories of students.

3. The allocation of seats to various categories with effect from the 1996

academic session is as under:

(i) Tribals

(ii) Deputationists and Central Government employees with transfer liability to serve outside the Union Territory.

(iii) Settlers, who have settled prior to 1942 and who have settled under various rehabilitation schemes introduced after re-occupation of the islands.

(iv) Other locals who do not fall under category I, II or III above and such Central Government employees having no transfer liability to serve out the Union Territory.

(v) Merit candidates.

4. The residents of Andaman and Nicobar Islands were, therefore, categorised under four heads.

5. The petitioner was born and brought up in the islands. Her father came as a Primary School Teacher in the year 1980. The petitioner studied in the Model School Primary, Middle Point, Port Blair, the Government Middle School, Middle Point, Port Blair and the Government Model Senior Secondary School, Port Blair. The parents of the petitioner were residing in the territory for continuous period of not less than 10 years and the petitioner, also, had 10 years continuous education in the islands. However, the father of the petitioner was transferred to the mainland and is presently posted in the State of Karnataka. The petitioner pursued her higher secondary course at Jawahar Navodaya Vidyalaya, Niangbari, Meghalaya.

6. The petitioner wanted to apply for admission against the reserved quota against category (iv). The petitioner contended that she had 10 years continuous education in the islands. However, her application was not accepted by the administration endorsing that last two years continuous study in the islands and passing the qualifying examination from a school in the islands were necessary for consideration against reserved quota.

7. The petitioner, being aggrieved, approached this Court with an application under Article 226 of the Constitution of India. The learned Single Judge rejected the said application, inter alia, on the ground that, for the purpose of getting benefit of the quota system, the student was required to pass qualifying examination from a school in the islands. Against such order, the writ petitioner has come up with this appeal.

8. Ms. Shyamali Ganguly, learned advocate appearing for the appellant-petitioner submits that the administration acted illegally and without jurisdiction in refusing to accept the application of the petitioner for admission, when the petitioner qualified all the tests laid down in the Government's order dated May 30, 1996. She submits that the petitioner had 10 years continuous education in the islands and the insistence that she should have studied the last two years in the islands

and pass the qualifying examination from a school in the islands is without jurisdiction.

9. Mr. Hem Raj Bahadur, learned advocate appearing for the official respondents, submits that the policy was adopted to give benefits to the students of the islands so that the students passing out from schools of the islands can get higher studies in the institutions on the mainland. Mr. Bahadur submits that the intention is that the students, after getting the higher qualification, will come back to the islands and render services to the residents of the islands.

10. Mr. Tabraiz learned advocate, for the private respondent, adopts the contentions of Mr. Bahadur. He, further, submits that the family of the writ petitioner has conclusively decided to settle on the mainland. He draws our attention to the statements made by his client in the application for reception of additional evidence and the annexure thereto.

11. The Central Government passed the order dated May 30, 1996 and formulated the fresh quota system for various categories. The residents of the islands have been categorized under four heads and various percentages of quotas have been fixed. However, no specific percentage has been fixed for the merit candidates.

12. Mr. Bahadur asks us to consider the objectives for issuing the Government order and draws our attention to the preamble of the said order. It is settled law that the preamble is the key to open the mind of the makers of the policy. The preamble shows general purpose for which provisions have been made, but the preamble is no part of the policy so adopted. The entire scheme is clear and the policy adopted by the Central Government is unambiguous. Therefore, it is difficult to accept the contentions of the respondents that the preamble imposes restriction or limitation on the exercise of the authority in giving effect to the policy.

13. We have already quoted hereinabove the quotas fixed under the policy against each category. Category (iv) deals with other locals including Central Government employees having no transfer liability to serve outside the Union Territory. It is provided that the candidates belonging to the said category must have 10 years education in the islands. The criteria that they should study last two years in the islands and pass the qualifying examination from a school in the islands are absent.

14. In so far as the category (ii) is concerned, one of the criterion is that the candidates must have studied the last two years in the islands and pass the qualifying examination from a school in the islands. Such requirement is absent in so far as the candidates belonging to category (iv) are concerned.

15. Undisputedly, the petitioner belongs to category (iv) and she had 10 years continuous education in the islands. Therefore, the authorities acted without jurisdiction and illegally in refusing to accept her application on the ground that

she did not study last two years in the islands and did not pass the qualifying examination from a school in the islands. The administration had no authority to impose such condition when such condition is not implicit in the Government order.

16. For the reasons as above, we are unable to accept the view expressed by the learned Single Bench and accordingly set aside the judgment and order appealed against.

17. Now, what relief, at this stage, can be given to the petitioner ?

18. We cannot now ask the administration to sponsor the name of the petitioner against the reserved quota inasmuch as the last date of admission is over. We therefore direct the administration to consider the name of the writ petitioner for the academic session 2005-2006 if the petitioner makes an application.

19. The appeal is, thus, allowed with the aforesaid directions.

20. No separate order is required to be passed in connection with the application for reception of additional evidence by the private respondent being CAN No. 21 of 2005. The said application is, also, disposed of.

21. We make no order as to costs.

A.K. Bhattacharya, J.

22. I agree.