

(2002) 02 MAD CK 0090

In the Madras High Court

Case No : W.A. No. 2624, W.P. No's. 12337, 12369, 13063, 13359, 14246, 15011, 16595, 18319, 20451, 22173, 22367, 22565, 22607, 23298 to 23309, 23325, 23326, 23626, 23956, 24034, 24102, 24362 and 24452 of 2001, W.A.M.P. No's. 19814 and 19815 of 2001, W.M.P. No's.

S. Muthu Senthil and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(3), 15(4), 16(4)
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 14

Citation : AIR 2002 Mad 257 : (2002) 1 LW 577 : (2002) 1 MLJ 580 : (2002) WritLR 155

Hon'ble Judges : B. Subhashan Reddy, C.J.;K.P. Sivasubramaniam, J;K. Raviraja Pandian, J

Bench : Full Bench

Advocate : R. Kaaruppan, N. Paul Vasanthakumar, C. Selvaraju, Radha Gopalan, R. Singaravelan, R. Subramanian, T. Chandrasekaran, P. Subba Reddy, R. Suresh Kumar, K. Vijayakumarn, C. Prakasam, K. Vijayakumar and A. Albert Nirmal Kumar, C. Chinnaswamy, for V. Rajan Associates, A. Sankarasubramaniam, for R. Sankarasubbu, S. Packiaraj, for K. Gadnhi Kumar and A. Stephen Raj, for the Appellant; R. Muthukumarasamy, A.A.G. assisted by V.R. Rajasekaran, Special Government Pleader, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—At issue is the constitutionality of the Governmental action in providing rural reservation for admission to

professional courses conducted by the Government and self-financing colleges in the State of Tamil Nadu.

2. Excepting W.P. No.16595 of 2001 and W.A. No.2624 of 2001 arising therefrom, which relate to admission to law course, all other writ

petitions relate to medical admission. The genesis for this litigation is G.O.No.603

(Education), dated 30.8.1996, by which a high level committee was appointed to review the standard of education, basic facilities etc. The high level committee had recommended to the Government to reserve 15% of the seats for the students studying in panchayat schools in rural areas. The premise on which such recommendation was made is said to be the disparity in opportunity in securing admissions to professional courses between the students studying in the schools located in rural areas as compared to that of urban areas. According to the high level committee, the students of rural areas were at disadvantaged position than their counter-parts in urban areas. Firstly, such facility of special reservation was made available to engineering students in G.O. Ms.No.261. By G.O. (Rt) No.600, Health and Family Welfare Department, dated 5.12.1997, the same was extended even for medical students. Later, it was extended to law course also. The above special reservation of 15% to rural students was increased to 25% by G.O.Ms.No.171, Health and Family Welfare Department, dated 6.6.2001 for M.B.B.S. and B.D.S. courses and so far as the law course is concerned, it was by G.O.Ms.No.35, Law Department, dated 12.7.2001. In some matters, only the escalation of special reservation from 15% to 25% is challenged while in other cases, the scheme of special reservation itself is under challenge.

3. When the matters came up for hearing, it was submitted on behalf of the Government that the lis is no more res integra in view of the Division

Bench judgment of this Court in Navarasam Matriculation Higher Secondary-Parents-teachers association, Palliyuthu Vs. State of Tamil Nadu and

2 others, . It was also brought to our notice that the said judgment of the Division Bench was followed by a learned single Judge of this Court in

T.A. Naufal Rizwan rep by his father S. Abubacker Vs. The State of Tamil Nadu and four others, . On behalf of the petitioners, the judgment in

Radhey Shyam Singh and others, etc. Vs. Union of India and others, , was cited. The Division Bench having considered the contentions advanced

on either side, was of the considered view that the matter should be referred to the Full Bench and order of reference to that effect was passed on

30.11.2001 and that is how the Full Bench heard the matters.

4. On behalf of the petitioners, the arguments were led by learned counsel M/s. Karuppan, C. Selvaraj, Paul Vasanthakumar and Ms. Radha

Gopalan. Other learned counsel adopted their arguments. On behalf of the Government, Mr. R. Muthukumarasamy, learned Additional Advocate

General, has countered the petitioners' arguments.

5. The question of providing reservation - be it in educational institution or public employment - had been the subject matter of controversy since

inception. Whether reservation for Scheduled Castes and Scheduled Tribes should be provided castewise and even if the said categories could be

provided reservation castewise, can that castewise consideration be extended to backward class, was the subject matter of debate and

adjudication in several landmark judgments rendered by the Supreme Court. Elucidation of the said judicial precedents is not necessary for this

adjudication. But all such aspects relating to reservation and particularly, relating to reservation to backward, classes were considered by a nine-

Judge Bench of the Supreme Court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, . The aspects of reservation under Article

15(4) as also Article 16(4) of the Constitution were considered comprehensively. Dealing with the vertical reservation, it was held that as a rule,

the reservation on the whole should not exceed 50% unless extraordinary exceptions can be carved out. To get over the same, Tamil Nadu

Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation Of Seat In Educational Institutions And Of Appointments Of Posts In

The Services Under The State) Act, 1993 (Tamil Nadu Act 45 of 1994) has been enacted. But the constitutional validity of the same is pending

adjudication before the Supreme Court. The same is a question apart in the instant batch as what is relevant for consideration is the horizontal

reservation for rural students from among the reserved categories of S.C./S.T., M.B.C. and B.C.

6. The contention of the learned counsel for the petitioners is that students studying in panchayat schools located in rural areas cannot form a

homogenous class and that is not protected by Article 15 of the Constitution and such a classification cannot justify the discrimination and that

Article 15(4) of the Constitution cannot protect the impugned Governmental action. They also submitted that Article 14 of the Indian Constitution

cannot also be invoked as there is no reasonable classification and that there is no nexus for the object to be achieved. Alternatively, it is also

contended by the learned counsel for the petitioners that even assuming that 15% reservation can sustain, there is absolutely no justification for

increasing the percentage of rural reservation from 15% to 25% on the ground of prospectivity of such later notification issued after the entrance

examination has been conducted. The learned Additional Advocate General, countering the above arguments, submits that there is no reservation

provided on the basis of the residence in rural areas and that the classification is drawn on the basis of the institutions categorising them into

educational institutions located in urban areas and those of rural areas and there is a valid classification protected by Article 15(4) of the

Constitution as the students in rural areas are socially, educationally and economically backward and because of the said backwardness, they are

unable to compete with the urbanites and as urbanites were knocking away majority of the seats in professional courses and to secure equal rights

and opportunities to the rural students, the Government has issued the orders and that the Governmental action is valid in not only providing 15%

but also increasing the same to 25%. He submits that while there is a high level committee's report for sustaining 15% reservation, even for the

differential 10%, i.e. 15% to 25%, there is material data available to sustain the said increase even though it is not backed by any high level

committee's report. It is also the contention of the learned Additional Advocate General that the candidates who have appeared basing upon the

prospectus which indicated 15% rural reservation and having not secured the admission, cannot now turn back and challenge the 15% reservation.

In support of his proposition, he relies upon the judgment of the learned single Judge in *Bharathi v. The Secretary To Govt. Health and Family*

Welfare Dept., Chennai, 2001 (2) M.L.J. 311. The learned counsel on both sides have cited judicial precedents.

7. (i) In *Minor P. Rajendran Vs. State of Madras and Others*, , the Supreme Court held that admissions to M.B.B.S. course in the State of Tamil

Nadu on district-wise basis was unconstitutional. At the said time, there were eight medical colleges in the State of Tamil Nadu. Of them, three

were situated in the City of Madras, and one each in Madurai, Chingleput, Coimbatore, Tanjore and Tirunelveli Districts. The total number of seats

available were 1125 as against which 7000 students applied for admission during the year 1967-68. The said selection on district-wise basis was

challenged and the Supreme Court upheld the challenge holding that there was no nexus for such classification. While striking down district wise

selection provided by Rule 8 thereof, the Supreme Court upheld Rule 5 which provided reservation to the backward classes, repelling the attack

that it was caste based and explaining that the caste factor was based upon social and educational backwardness.

(ii) In *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, which also arose from this State, the complaint was the

unit-wise selection to M.B.B.S. course. The above case came to be filed before the Supreme Court, as the State of Tamil Nadu even though

followed the ratio laid down by the Supreme Court in *Minor P. Rajendran Vs. State of Madras and Others*, for the academic years 1967-68,

1968-69 and 1969-70, went back and divided the State into five units for the purpose of admissions to M.B.B.S. course. While Madras City was

constituted as one unit, each of other medical colleges in the Mofussil was constituted as a separate unit. There was thus six units created in the

State for the purpose of admissions into M.B.B.S. course. In respect of each one of the Units, a separate Selection Committee was constituted.

The intending applicants were asked to apply to anyone of the Committees, but they were advised to apply to the Committee nearest to their place

of residence possible. They were told that if they apply to more than one Committee, their applications will be forwarded by the Government to

only one of the Committees. The Supreme Court struck down the said unit wise selection on the ground that there was no rationale in such

classification and that there was no reasonable nexus with the object intended to be achieved. It was held that the object intended to be achieved is

to select the best candidates for being admitted to medical Colleges and by unit-wise selection, the said object cannot be satisfactorily achieved. It

was held that unit-wise distribution of seats was violative of Articles 14 and 15 of the Constitution.

(iii) In *State of U.P. v. Pradip Tandon*, AIR 1985 S.C. 563, the Supreme Court was dealing with the reservations made in favour of candidates

from rural, hill and Uttarkhand areas. The reservation for the rural area was set aside on the ground of there being no classification based on the

residents between the students coming from within the State and others coming from outside and that object of providing medical education to

students in Uttar Pradesh to secure the best possible students for admission to those Colleges would be defeated. While considering the

contentions, the ratio laid down by the Supreme Court in *Minor P. Rajendran Vs. State of Madras and Others*, was followed. The Supreme Court

held,

The reservation for rural areas cannot be sustained on the ground that rural areas represent socially and educationally backward class citizens.

This reservation appears to be made for the majority population of the State. 80% of the population of the State cannot be a homogenous class.

Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India.

Drawing a distinction so far as hill and Uthrakand areas are concerned, it was held that the hill and uthrakand areas are instances of socially and

educationally backward classes of citizens coming within the protection of Article 15(4) of the Constitution.

(iv) In *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, reservations were made to medicos graduated from Delhi University to the extent

of 70%. In a three Judge Bench, the majority decision is to the effect that there was no nexus for such reservation on the basis of the education in

Delhi University.

(v) In *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , the Supreme Court has struck down the reservations made

on the basis of classification for rectification of regional imbalance while upholding reservation for areas adjoining actual line of control and bad

pockets. The principles laid down are on the same analogy to *Pradeep Tendon's Case*, AIR 1985 S.C. 563.

(vi) To the same effect is the legal principle enunciated by the Supreme Court in *Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and*

Others, . Quoting the decisions in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, and *Pradip Tandon's Case*, AIR

1985 S.C. 563 with approval, the Supreme Court held that rectification of regional imbalances was not based upon any valid classification and

would not fit in the protective umbrella under Article 15(4) of the Constitution thus violating the equality clause.

(vii) In *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad*

and Others, , it was held that admission to medical course on the basis of marks obtained at qualifying examinations held by different universities is violative of Article 14. In the said case, the admissions were made not on the basis of marks obtained at the entrance examination conducted by Government of India or Indian Medical Council on All India basis but were made on the basis of evaluation made by respective Universities of different States.

(viii) In *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, , college wise institutionalised preference

was held to be violative of Article 14 of the Constitution.

(ix) Same is the principles laid down by the Supreme Court in *Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another*,

where Rules were framed restricting admission only to those who have acquired qualification from institutions situated within the Municipal limits.

The classification limiting admissions only to candidates from institutions within the Municipal Limits was held to be arbitrary not having any nexus

with the object.

(x) Yet another judgment of the Supreme Court highlighting the said aspect is *Parents Association v. Union of India*, AIR 2000 S.C. 845, in which

a clear distinction is laid between the reservations to Scheduled Tribes of Andaman and Nicobar Islands and the persons, who had settled after

1942, with 10 years education in islands. The Supreme Court held that only the reservations to Tribals fall within the sweep of Article 15(4) and

not the persons, who had migrated to the islands and had 10 years education. In the said case, reservations were carved out not only for Tribals

but also for others. But the Supreme Court made it so specific in paragraph 5 of the judgment, which we feel apt to extract:

We may make it clear, even at the outset, that the "quotas" fixed in the various proceedings, except the quota fixed for Tribals, do not fall under

Article 15(4) at all. The question of validity of the quotas for the Central Government servants, the pre-1942 and post 1942 settlers and the 10

year old is to be considered on the basis of Article 14 and not under Article 15(4).

(xi) Even though *Radhey Shyam's Case*, dealt with recruitment to a service, the analogy is applicable to the instant cases. In the said case,

examination was held for selection to non-technical class 3 posts in the

departments of Government of India in the subordinate offices on zonal basis. It was held that there was no nexus between the process of zonewise selection and the object to be achieved and that the process of selection envisaged in the advertisement in question would lead to discriminatory results because of adopting the said process of zonewise selection and would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently, the rule of equal chance for equal marks would be violated. The principles laid down by the earlier decisions of the Supreme Court in *Minor P. Rajendran Vs. State of Madras and Others*, and *A. Periakaruppan's Case*, were followed.

8. The ratio decidendi laid down in the abovestated cases is clear to the effect that rural reservation cannot sustain under Article 15(4) of Indian

Constitution. It is also clear from the above judicial precedents that reservation for backward classes or most backward classes, S.Cs and STs. Is

not based upon solely on caste basis but because of the identification of such castes as socially and educationally backward. Now, the

Government wants to create a class in a class i.e. rural students of S.C. & S.T., M.B.C. and B.C. and of other urban areas. When the

categorisation is made of S.T. & S.C.s, M.B.Cs. and B.Cs. on the ground of social and educational backwardness, the question of dissecting the

same further into rural and urban cannot arise. Of course, gender reservation is a different aspect as is specifically provided under Article 15(3) of

Indian Constitution. Though rural reservation is horizontal as that of gender reservation, horizontal gender reservation can sustain because of the

above constitutional protection expressly provided under Article 15(3) of Indian Constitution. But similar is not the situation relating to rural

reservation. Perhaps that is the reason why the Tamil Nadu Act 45 of 1994 mentioned above did not provide for any such rural reservation. It is

needless to mention that when the Act itself cannot provide any rural reservation, as there is no constitutional sanction for the same, the State

cannot derive any executive power under Article 162 of Indian Constitution. The learned Additional Advocate General's reliance on the Full

Bench Judgment of High Court of Andhra Pradesh in *Devarakonda Rajesh Babu v. Nizam Institute of Medical Sciences*, AIR 1998 A.P. 162, to

which one of us (B. Subhashan Reddy, CJ) was a party, cannot help him as the said judgment was rendered in the context of special constitutional provision providing for area reservation on the basis Of backwardness of the region and it is so clearly mentioned in Reita Nirankari Vs. Union of India and Others, . We accordingly hold that there is absolutely no constitutional protection for rural reservation under Article 15(4) of Indian Constitution.

9. Let us now examine as to whether the rural reservation can sustain on the touchstone of equal protection of laws under Article 14 of Indian Constitution. For considering the same, extraction of the relevant Government Orders are necessary.

GOVERNMENT OF TAMIL NADU

(Abstract)

Medical and Dental Education Admission of students in First Year in Government and Self-financing Colleges for the year 1998-99, 15%

reservation for students from rural areas Orders being issued.

Health and Family Welfare (MCA) Department

G.O.(Rt.) No.600

Dated:5.12.1997

Read:

G.O.No.603, Higher Education, Dated 30.08.1996.

G.O.No.261, Higher Education, Dated 12.05.1997.

G.O.No.406, Higher Education, Dated 25.07.1997.

G.O.No.414, Higher Education, Dated 31.07.1997.

ORDER

1. In G.O.No.(Education) 603 dated 30.08.1996 a High Level Committee was appointed to review the standard of education, the basic facilities

etc., The High Level Committee had recommended to the Government that since in Technical Education the majority of seats allotted on merit

basis had gone to the urban students, the rural students were compelled to study on payment of fees, and that to prevent this situation 15% of the

seats should be reserved for the rural students studying in schools situated in rural areas. It has also been recommended that this reservation should

be treated as special reservation within the reservation for a particular class.

2. The above recommendation of the Committee was accepted by the Government and the Government has ordered in G.O.Nos.2 and 4 referred

to above that in the Government and self financing Engineering Colleges only of the total seats available for the first year Engineering Courses from

the year 1997-98, 15% should be reserved for the students from rural areas.

3. The Government reviewed whether the above Scheme should be extended from the year 1998-99 to the Government and self-financing

Medical Colleges. It was decided that the student from rural areas also should be given opportunity to have Medical and Dental Education. On the

basis of the above decision the Government is issuing the following orders: -

(1) By allowing the mode of reservation now in existence 15% out of the total seats shall be reserved for the rural students who studied 11th and

12th standards in the Higher Secondary Schools located in village panchayats, for admission to MBBS/Dental Medicine in Government Medical

College/Self-Financing and Dental Colleges;

(2) The above Order will not be applicable to the students studying in the Higher Secondary Schools situated in Corporations, Towns and the

Urban areas surrounded thereto throughout the State;

(3) The urban area limits as far as the Chennai City is concerned the limits of the Chennai Metropolitan Development Authority. As far as the other

cities and Municipalities are concerned, the Urban Land Ceiling limits of the respective urban areas;

(4) The Selection Committee located in Kilpauk Medical College, Chennai Campus will prepare the list of students of Village Panchayats based on

the list prepared by Anna University.

The Director of Medical Education, and the Secretary, Selection Committee are requested to implement the above orders.

(By Order of Governor)

S.Ramakrishnan

Secretary to Government.

GOVERNMENT OF TAMIL NADU

ABSTRACT

Medical and Dental Education Government and Self Financing Medical and Dental Colleges Admission from 2001-2002 - enhancement of Rural

School Students from 15% to 25% - Orders issued.

G.O.Ms.No.171 Health & Family Welfare Dept.,

Dated: 6.6.2001

Read:

G.O.Ms.No.600, Health and Family Welfare Dept., dt.15.12.1997

G.O.Ms.No.351, Health and Family Welfare Dept., dt. 23.6.1998

G.O.Ms.No.232, Health and Family Welfare Dept., dt.01.06.1999

ORDER

1. In the Government Orders read above 15% of seats are reserved for Rural School Students in Medical and Dental Courses in Government and

Self Financing Colleges and following the stipulations admissions are being given.

2. For the development of villages and to encourage the village school students in admission to Medical and Dental Courses in Government and

Self Financing Colleges the said 15% reservation is enhanced to 25 % from the academic year 2001-2002 subject to the orders read above.

(Order of the Governor)

Sd/-

Secretary to Government

To

1.The Director of Medical Education, Chennai-600 010.

2.The Secretary, Selection Committee, Chennai-600 010.

3.The Registrar, Dr.M.G.R.Medical University, Chennai-600 032.

10. State of Tamil Nadu consists of several categories of local bodies like village panchayats, town panchayats, municipalities and municipal

corporations. There are 12,609 village panchayats in the State, as against which, there are only 810 schools run either by Government or by

Government aided institutions. The rest of the schools in village panchayats are run by private institutions after obtaining the due permission of the

Government. Aid is provided to the private schools by Section 14 of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973 (Tamil

Nadu Act 29 of 1974) and the said provision underwent amendment imposing a blanket prohibition from providing any new grant to private

schools from the academic year 1991 - 92 onwards. It is apt to extract the said amended provision.

Subject to such rules as may be prescribed, the Government may continue to pay grant (o the private school receiving grant from the Government,

before the date of the commencement of the academic year 1991 - 92 at such rate and for such purposes as may be prescribed.

Explanation: For the purposes of this Sub-section, private school receiving grant from the Government shall also include a private school receiving

grant from the Government only in respect of any class or course of instruction.

11. It is needless to mention that the strength is fixed for every educational institution - be it Government aided or un-aided. Aspiring students have

to opt for admission to any such schools subject to availability of the seats. Economic condition alone cannot be the criteria and it cannot be said

that only poor students will go to Government and aided schools and that affluent would choose the un-aided educational institutions. In fact, there

are instances where there are no Government or aided schools located in some village panchayats and necessarily the students have to get their

education and particularly, higher secondary education in town panchayats. It is sufficient, if we give one example of the instant batch of cases and

other urban areas. The petitioner in W.P. No.22607 of 2001 is a resident of Kaisoondi village within the village panchayat of Painkulam of

Vilavancode Taluk of Kanyakumari District. But since there is no Government or aided school in the said village panchayat, she underwent the

Plus Two course in Christuraja Matriculation Higher Secondary School, Marthandam of Kanyakumari District, a Town Panchayat. Contra, one

candidate namely Shiny Prema, Daughter of Mr. Kanagasigamani, belonging to backward class, even though a permanent resident of

Fathimapuram of Koollamcode Town Panchayat in Kanyakumari District, underwent Plus Two course in St. Francis Higher Secondary School,

Vavarai, (a Government school located in village panchayat area). The result is that the petitioner in W.P. No.22607 of 2001, even though secured

the eligible cut off mark, was disabled from securing the seat in the medical course because of the rural reservation while the said Shiny Prema,

even though belonging to a Town Panchayat, only for the reason that she underwent Plus Two course in an adjoining village panchayat, could secure admission because of the lower cut off mark in view of the rural education in Plus Two course. Further, this special reservation facility is given only to the students belonging to reserved categories of SC/ST, MBC and BC studying in the Government and Aided schools located in village panchayats and not for students belonging to open category. What is more, it is not the place of birth or the domicile, which is made the criteria for rural reservation. It is also not the education from the inception to Plus Two, which is the qualifying examination. But the consideration for rural reservation is solely based upon the education in rural areas in Plus Two category (Intermediate), which is the qualifying examination for entering into professional courses - be it medicine, law or engineering.

12. The situation is such that any student, who takes advantage of rural reservation where there is advantage of lower cut off marks and who belongs to the non-local panchayat areas can study +2 course in panchayat areas and then can gain undue advantage. That can be more possible for the students staying at the places in non-panchayat areas, but adjoining the panchayat areas. Live instance is already mentioned supra. It is rather strange that State again further classifies rural O.C., than that of rural S.T/ S.C, B.C. & M.B.C. If the rural area is the consideration, that should be equal to all whether it is S.C/ S.T, B.C., M.B.C. or O.C. Even there cannot be a discrimination between a Government aided schools on one side and un-aided schools on the other. In Navarasam Matriculation Higher Secondary-Parents-teachers association, Palliyuthu Vs. State of Tamil Nadu and 2 others, , rural reservation was not at all questioned. What was sought for equal treatment of provision of 15% rural reservation for the students of un-aided schools also. The Division Bench held that it is for the Government to consider the same the Court cannot issue any direction for extension of such facility of rural reservation to the students of un-aided colleges situated in panchayat villages. That apart, the decisions which have been considered also highlight on the said subject of the policy decision extending to a particular class but not extending to others. The Division Bench did not consider the matter in the context of the validity of the rural reservation on the touchstone of either Article 14

or Article 15(4) of Indian Constitution. Similar is the situation in the judgment rendered by the learned single judge in Naufal Rizwan's Case.

Paragraph 11 of the judgment, which reads,

The reservation of 15% seats to rural students as such is not objected to and the power of the Government in making reservation is not

questioned. All the petitioners want that reservation should be extended to them and not just restricted to fees levying schools only." makes it

obvious.

13. For the foregoing discussion, we hold that the rural reservation provided at first with 15% and then extending to 25% for admission in

professional colleges in the State of Tamil Nadu, by issuance of the impugned Governmental orders by the Government, has got absolutely no

nexus to the object to be achieved and there is no intelligible differentia either and that the Government has failed to justify the discrimination and as

such they are invalid being infractive of Article 14 of Indian Constitution and are hereby set aside. The judgment of Supreme Court in Rajiv

Kapoor and Others Vs. State of Haryana and Others, has got no bearing on the facts of the instant batch of cases. In fact, the legal principles

stated therein by the Supreme Court strengthen the arguments of the petitioners and not the respondent -Government. The Supreme Court clearly

held in that case that what was modified by the Government after the issuance of prospectus was in relation to pattern of allotment of marks, and

that the Government did not introduce any new criteria. In the said case, the Government had issued some directions to follow certain pattern in

allotment of marks in the entrance examination, which in no way interfere with the selection on merits. There was no change in the criteria for

selection on merit basis. But, in the instant case, by increasing 15% reservation to 25%, there is a radical change in the selection process divesting

the rights of the students which had vested in them by reason of their performance in the examination before the increase of the reservation from

15% to 25%. This discussion we are making only in the context of the relief to be granted, as we are not inclined to grant any relief for such

students who got admission on the basis of rural reservation in excess of 15%. Even for the students admitted on 15% reservation, the

consideration is being shown as the reservations were provided ever since 1997,

and they were upheld by a Division Bench of this Court in

Navarasam Matriculation Higher Secondary-Parents-teachers association, Palliyuthu Vs. State of Tamil Nadu and 2 others, followed by the

learned single Judge. Bharathi's case, 2001 (2) M.L.J. 311 cannot be made applicable on the ground of estoppel, as there cannot be estoppel

against the statute and more so against the fundamental rights. In fact, it is settled principle of law that fundamental rights cannot be waived at all.

The differential seats basing on 15% reservation had to be made good for the petitioners before us by seeking appropriate direction from the

Medical Council of India or Bar Council, as the case may be, from one month from today. Otherwise, this judgment would come into effect

displacing the students and enabling the petitioners herein for admission into the respective courses of Medicine and Law treating the rural

reservation provided in the impugned Government Orders as non est in law. The writ petitions are disposed of. No orders need to be passed in the

writ appeal and the same is closed. No costs.