

(1994) 08 SC CK 0061

In the Supreme Court Of India

Case No : Contempt Petition No's. 43-54 of 1994 in Writ Petition (C) No. 607 of 1992 with C.P. No. 79 of 1994 in SLP (C) No. 13526 of 1993, I.A. No. 9 in C.P. No. 79 of 1994 and I.A. No. 8 in C.P. No. 373 of 1993 and I.A. No. 10 in SLP (C) No. 13526 of 1993, SLP (

S. Sathyapriya and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Constitution of India, 1950 — Article 15(1), 15(4), 16(1)

Citation : (1994) 3 SCALE 787 : (1996) 9 SCC 466 : (1994) 2 SCR 721 Supp

Hon'ble Judges : S. C. Sen, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : Shanti Bhushan, in I.A. No. 2 in W.P. No. 454 of 1994, H.N. Salve, in I.A. No. 3 in W.P. No. 454 of 1994, A.K. Ganguli, A. Ranganathan and A.V. Rangam, in I.A. No. 4 in W.P. No. 454 of 1994, Gunwant Dara and P. Gaur, in I.A. No. 5 in W.P. C No. 454 of 1994, Jitendra Sharma and C.S. Vaidyanathan and K.V. Mohan, Adv Shanti Bhushan, in I.A. No. 2 in W.P. No. 454 of 1994, H.N. Salve, in I.A. No. 3 in W.P. No. 454 of 1994 and A.K. Ganguli, A. Ranganathan and A.V. Rangam, in I.A. No. 4 in W.P. No. 454 of 199 C.B. Babu, Vijay Kumar Verma, C.V.S. Rao, Indu Malhotra, P.R. Tripathian, Sailendra Bhardwaj, Ajit Kumar Sinha, R.N. Keshwani, V. Krishnamurthi, M.A. Krishnamoorthy, A.T.M. Sampath, S. Srinivasan, S.R. Setia, M.T. George and P. Gaur, for the Appellant;

Judgement

1. In continuation of the order dated August 1, 1994 and August 9, 1994, the following further orders are made:

2. According to the statement filed by the learned Advocate General, appearing for the State of Tamil Nadu - which is made a part of this order, marked as Appendix A- the position is the following: me total number of seats in government medical colleges in 870. Free seats in two private medical colleges together are 100 making a total of 970, In addition to above, 161 seats are allocated to be filled up on the basis of All India merit. Another 54 seats are earmarked to be filled up from among the members of the special categories on

the basis of merit in the respective categories. In short, the total number of seats comes to 1185.

3. Out of 970 seats, only 300 seats representing 31% were filled up on merit basis as against the open competition quota. Against the 30% reservation for Backward Classes, 291 students were admitted. Similarly, against the 20% quota of Most Backward Classes, 194 were admitted, against the 18% quota of scheduled castes 175 were admitted and against 1% of scheduled tribes quota seven candidates were admitted as against the 10 seats reserved for them.

4. It is stated that of the 300 candidates admitted as against the open competition quota of 31%, the candidates belonging to Backward classes, Most Backward classes and Scheduled Castes are 213, 29 and 2 respectively. (None from the Schedule Tribes were admitted in the O.C. category). The students not belonging to any of the reserved categories admitted against the O.C. quota is 56. This shows and affirms the trend disclosed last year - a trend both heartening and highly significant. The candidates belonging to Backward Classes are getting 80% of the seats in merit quota on the basis of their merit. In addition, they are getting 50% of the total seats (excluding All India merit quota) under the rule of reservation. This was also the trend during the previous academic year 1993- 94, as would be evident from the orders of this Court relating to that year. The candidates not belonging to any of the social reservation categories who got admission in the merit quota this year is only 56 - against a total of 970 seats, i.e., not even 6%.

5. If the rule of 50% reservation had been followed - which would mean in proportionate decrease in the quota of Backward Classes and Most Backward Classes, the position would have been as follows: O.C. (50%) - 485, B.C. (18.6%) - 180, Most Backward Classes ' (12.4%) - 120, Scheduled Castes (18%) - 175 and Scheduled Tribes (1%) - 10. The ultimate result, as disclosed by the statement Appendix-A, is that on account of the application of 69% reservation provided by the Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of seats in educational institutions and of appointment or posts in the services under the State) Act, 1993 62 candidates are said to have been deprived of admission inspite of their merit.*[*Sri Vaidyanathan, learned Counsel for the petitioner docs not admit the correctness of the said statement. He submits that the said statement was given to him just before the arguments in the matter commenced and that, therefore, he had no time or opportunity to verify the correctness of the facts set out in the Statement. For the time being, however, we are proceeding on the basis of the said Statement.] These 62 candidates would have been admitted if the rule of 50% had been followed, Of these 62 candidates, 36 belong to 'other communities' and 26 belong to Backward Classes category. Our immediate concern is to provide seats for these merit students. The question is how?

6. As stated above, the 161 seats meant for All India merit quota are not yet filled up. We do not know whether all the seats will be filled up by the students

allotted by the appropriate authority against that quota or any seats will be left vacant and surrendered to the State Government. Secondly, the 54 seats earmarked to be filled up from among the members of the special categories are deducted from the total number of seats. (These 54 seats are in lieu of 5% reservation in favour of certain special categories in Tamil Nadu). In our opinion, this is wrong. This 5% reservation for the said special categories cannot be in addition to 69% reservation. Whereas 69% reservation is under Article 15(4) of the Constitution, the 5% reservation for special categories is under Article 15(1). As held in *Indira Sawhney v. Union of India* the seats reserved under Article 15(1) (corresponding to Article 16(1)), should have to be spread across the social reservation categories. In other words, while the reservations made under Article 15(4) can be broadly described as vertical reservations, the reservations provided under Article 15(1) can be described as horizontal reservations. The student's admitted against horizontal reservation (5% quota in this case) will necessarily belong either to open competition category or to the BC/MBC/SC/ST category. Once selected they have to be adjusted against their respective quota prescribed under Article 15(4). Thus, in law, these 54 seats must also be deemed to be now available. The students who will be admitted against these 54 seats will have to be spread across the appropriate categories as mentioned above, which would necessarily mean elimination " of some students at the bottom of the respective OC/BC/MBC/SC/ST list to the extent necessary. At this stage, however, we are not inclined to cancel any of the admissions already granted. We therefore, do not propose to interfere with the method adopted by the respondents in filling up these 54 seats at this stage though it means a total reservation of $69+5 = 74\%$ reservation - an aspect rightly emphasised by Sri Vaidyanathan. Our concern at present is to provide for the 62 merit students who have been deprived of admission because of the 69% reservation provided by the said Tamil Nadu Act without disturbing the admission already made.

7. There is one more fact to be mentioned at this stage. In the case of Ramachandra Medical College, we have directed in another application that for the current academic year (1994-95), the free seats quota shall be 60% and payment quota 40%, In the statement filed by the State of Tamil Nadu, the free seats in this college are taken only as 50. 10 more seats will thus be available against free seats category in this college.

8. Accordingly, we direct the Government of Tamil Nadu to create 52 extra seats in the government medical colleges for the current academic year 1994-95. The Medical Council of India and other appropriate authorities shall forthwith grant the necessary permission for this enhanced capacity for this year. As against these 52 seats plus 10 seats available in Ramachandra Medical College- a total of 62 seats - 62 students out of the consolidated merit list shall be admitted. In other words, candidates from S. No. 301 (in the consolidated merit list) onwards, excluding those already admitted under one or the other reserved category, shall be admitted upto 62 candidates. After admitting them, the respondents shall file a statement giving full particulars of the 62 candidates so included including their

marks, their position in the Merit List and their social status.

9. It is further directed that if any seats remain unfilled out of the 161 seats allocated towards All India merit quota, those seats shall not be filled up except under the orders of this Court.

10. The 54 seats earmarked for special category may, however, be filled up as already proposed by the government though we have indicated that the principle adopted by the government in filling up the said 54 seats is wrong. (We are told that the process of selection against these 54 seats is at an advance stage and is likely to be finalised soon. More particularly because the application of the correct principle indicated above in this behalf may mean cancellation of admission of some of the students already admitted in OC/BC/ MBC/SC/ST quotas, we are not disturbing the said process at this stage. This matter can be looked into at a later stage).

11. In this connection, we may also mention that as against 10 seats reserved for Scheduled Tribes category, only seven appear to have been admitted. The remaining three seats shall also not be filled up except under the orders of this Court.

12. It is also directed that if any of the 54 seats-meant for special categories remain unfilled, they too shall not be filled up except under the orders of this Court.

13. A grievance is made by Sri Vaidyanathan, learned Counsel for the petitioner that the Government of Tamil Nadu has not published the merit list pursuant to common entrance test held by it, as directed by this Court in Unnikrishnan, J.P. v. State of Andhra Pradesh. Having seen the list of MBBS selected candidates of all categories, we direct that the respondent shall publish the merit list upto and inclusive of the candidates obtaining 266.00 marks. This shall be done within one week from today.

14. So far as the admission to engineering college is concerned, it is stated by the learned Advocate General that the admissions; have not yet been finalised and that they are in the process of being finalised. After the said admissions are finalised, the State of Tamil Nadu shall file a statement like the one they have now filed with respect to medical college admissions before this Court for appropriate orders. The same observation/direction will apply with respect to post-graduate medical admissions as well.