

(1981) 07 KAR CK 0019
In the Karnataka High Court
Case No : Writ Appeal No. 77 of 1981

State of Karnataka and Another	Vs	APPELLANT
M.P. Shylaja and Others		RESPONDENT

Date of Decision : 24-07-1981

Acts Referred:

Constitution of India, 1950 — Article 15 (4), 16 (4)
Karnataka Medical Colleges (Selection for Admission) Rules, 1981 — Rule 10 (2) (b)

Citation : AIR 1982 Kar 40 : (1981) ILR (Kar) 873 : (1981) 2 KarLJ 204

Hon'ble Judges : D.M. Chandrashekhar, C.J;N. Venkatachala, J

Bench : Division Bench

Advocate : V.C. BramharaVappa, Addl. Government Advocate, for the Appellant;
S.K. Venkataranga Iyengar, N. Santosh Hegde and Murlidhar Rao, for the Respondent

Judgement

D.M. Chandrashekhar, C.J.—This. is an appeal from the order 61 Puttaswamy. J., allowing Writ Petition No. 17569 of 1980. Respondents 1 and 2 therein, the State of Karnataka and the Selection Committee for admission to Government Medical Colleges and Government Seats in Medical Colleges (hereinafter referred to as the Selection Committee), have presented this appeal For the sake of convenience the parties will hereinafter be referred to according to their respective positions in the writ petition.

2. The facts which led up to this appeal are briefly these: The petitioner was an applicant for admission to the M. B. B. S. Course. In her application, she described her caste as Bestar and claimed to belong to one of the Backward Tribes. Her father is a Medical Practitioner. His, income was not stated in her application. She had enclosed with her application a Caste Certificate issued by the Tahsildar certifying that she belonged to Bestar caste. The selection Committee interrogated her regarding the caste to which she belonged. During the course of such enquiry, she gave a letter addressed, to the Chairman of the Selection Committee which read as follows:

"With reference to my application, I write to state the following:

(i) My community profession is Fisherman, The following people whom I know, are belonging to my caste:

(i) Giryappa, Retd. Chief Engineer,

(ii) Devendrappa Ghalappa, Ex Minister."

3. The Selection Committee held that she did not belong to Bestar caste which is one of the castes in the list of Backward Tribes, but belonged to Bestha caste which is a synonym for Gangakula one of the castes in the list of Backward Castes appended to the Government order providing for reservation for Backward Classes for admission to colleges. As the marks secured by her were not sufficiently high for being selected in the category of seats reserved for Backward Castes, she was not selected.

4. The petitioner presented the writ petition, Writ petition No. 17569 of 1980, impugning her non-selection. She prayed for issue of a writ in the nature of mandamus directing respondents 1 and 2 therein (the appellants herein) to admit her to the first year class of the M. B. B.S. Course in any one of the Government Medical Colleges in the State, in the academic year 1980-81 in substitution of respondents 3 to 11 who had been selected for admission to the first Year class of Government Medical Colleges in the category of seats reserved for Backward Tribes.

5. In the writ petition, the petitioner contended, inter alia thus: The Selection Committee was not justified in holding that she did not belong to Bestar caste which is one of the Backward Tribes. If she were treated as belonging to Bestar caste, she would have been selected for one of the seats reserved for Backward Tribes in the 1st year class of the M.B.B.S. Course, on the strength of the marks secured by her. Respondents 3 to 11 belong to Muslim religion which is included in the list of Backward Communities in the said Government Order. They had described themselves in their applications as belonging to Darwesu which is included in the list of Backward Tribes in that Government Order. Among Muslims there are no castes or tribes and hence respondents 3 to 11 could not be regarded as belonging to Backward Tribes. They had secured caste certificates from Tahsildars who issued such certificates on the basis of personal affidavits of their parents and the report of Village Accountants and other subordinate's of the Revenue Department, who issued such reports without proper verification. The Selection Committee had favoured respondents 3 to 11, whereas she was subject to hostile discrimination by the Selection Committee.

6. In the writ petition. respondents 1 and 2 (the appellants herein) did not file any statement of objections. The learned single Judge, while allowing the Writ petition, held that the Selection. Committee was not justified in rejecting the petitioner's claim that she belonged to Bestar Community which was recognised as one of the Backward Tribes though she had Produced a certificate issued by

the Tahsildar in support of her claim. The learned single Judge observed that the Selection Committee had laid undue emphasis on the inaccuracy in the spelling of the name of the community and had taken an extremely technical view in holding that Bestar Community was different from Bestha Community and that if the claim of the petitioner had been properly considered, she would have been selected in preference to respondents 3 to 11, because she had secured higher marks than they had secured. However the learned single Judge did not disturb the selection of respondents 3 to 11 already made, but directed the Selection Committee to select the petitioner for one of the 50 additional seats sanctioned by the Government during the pendency of the Writ petition.

7. In this appeal, we directed the learned Additional Government Advocate to file a statement of objections on behalf of respondents 1 and 2 to the writ petition. Accordingly, such statement of objections was filed on 16-2-1981. On behalf of the petitioner a reply statement was filed on 18-2-1981. We permitted the Petitioner to amend the writ petition so as to include a prayer that the selection of respondents 3 to 11 should be declared as null-and void by issue of an appropriate writ.

8. In the statement of objections filed in this appeal on behalf of respondent 1 and 2. it is stated, inter alia. as follows: Bestar or Bunda Besta caste comes under the category of Backward Tribes and is separate and distinct from Bestha caste. According to the report of Karnataka Backward Classes Commission, the traditional occupation of Bestar or Bunda Besta, is begging and such occupation is distinct from fishing which is the traditional occupation of Bestha caste. When the petitioner was interviewed by the Selection Committee, she made a statement that she belonged to fisherman Community and she also mentioned the names of Sri Giriappa, retired Chief Engineer, and Sri Deven drappa Ghalappa, ex-minister, as belonging to her caste. In the light of the statement made by her, the Selection Committee found that she belonged to Bestha caste which was included in the list of Backward Castes. The certificate furnished by the petitioner was not a conclusive proof of the caste to which she belonged. Merely adding of the letters "ar, or "er" to the word "Besta", will not alter the caste to which the petitioner belongs. The petitioner being the daughter of a Medical Practitioner, had not shown her caste as coming under the category of Backward Castes because of the income limit fixed for claiming the benefit of reservation in the category of Backward Castes, while there was no such income limit to claim the benefit of reservation in the category of Backward Tribes. The Selection Committee found candidates impleaded as respondents 3 to 11 in the writ petition, as belonging to Darwesu Community which came under Backward Tribes and therefore, their selection under that category was Proper. The petitioner could, not have any grievance respect of selection of candidates coming under the category of Backward Tribes since she did not belong to Backward Tribes.

9. The reply filed on behalf of the petitioner stated, inter Alia, as follows: The

petitioner had Produced the certificate issued by the Tahsildar which was conclusive that she belonged to Bestar Community which comes under Backward Tribes. This certificate could not be ignored by the Selection Committee and it had no power to doubt that certificate. Under R. 10 (2) (b) of the Karnataka Medical Colleges (Selection for Admission) Rules, 1980 (hereinafter referred to as the Rules), the Selection Committee had only the Power to interview candidates or to verify the particulars furnished by them or to obtain clarification which the Committee might need. The Procedure adopted by the Selection Committee was violative of principles of natural justice. A leading question was put to her as to whether Sri Giriappa and Sri Devendrappa Ghalappa, belonged to her community. The answer given by her to such leading question was that Sri Devendrappa Ghalappa belonged to a Scheduled Tribe and Sri Giriappa belonged to Parivar caste which is included in Backward Tribes. The Selection Committee had no material to hold that she did not belong to Backward Tribes. The Selection Committee yielded to political influence and did not make proper enquiries as to whether respondents 3 to 11 belonged to Darwesu community which is a beggar community.

10. In the light of the pleadings and arguments addressed by the learned Additional Government Advocate for the appellants and Sri S. K. Venkataranga Iyengar learned counsel for the petitioner. the following questions arise for determination in this appeal;

(i) Whether Bestar caste is different from Bestha caste,

(ii) Whether the Selection Committee had power not to accept the certificate issued by the Tahsildar regarding the caste of an applicant and to determine independently to what caste he or she belonged;

(iii) Whether the procedure followed by the Selection Committee in determining the caste of the petitioner, was reasonable:

(iv) Whether Darwesu are a Backward Tribe: and

(v) Whether the Selection Committee made a proper enquiry to verify whether respondents 3 to 11 belonged to Darwesu section of Muslims.

11. We shall proceed to deal with the above contentions seriatim.

12. The State Government constituted in the year 1972 the Karnataka Back ward Classes Commission to investigate into the living and working conditions of socially and educationally backward classes and to make a list of classes which may be regarded as Backward Classes in the State. After an elaborate enquiry that Commission submitted its report. After considering that report, the Government of Karnataka, by its order dated 22-2-1977, directed who shall be treated as Backward Classes for the purposes of Arts. 15(4) and 16(4) of the Constitution, in that Government Order, Backward Classes other than Scheduled Castes and Scheduled Tribes, have been divided into the following four categories:

(a) Backward Communities;

(b) Backward Castes:

(c) Backward Tribes; and

(d) Special Group comprising of persons whose family income does not exceed Rs. 4,800 Per annum and who follow certain occupations.

13. In the list of Backward Castes is included Gangakula and one of its synonyms or local names is stated as Bestha. In the list of Backward Tribes, item No. 9 reads:

(a) Bestar

(b) Bunde-Bestha (Bestar).

The synonyms or local names of that caste are stated as Bestar. BundeBestha.

14. In E. Thurston's Castes and Tribes in Southern India (Vol. 1). the following is the passage relating to Bestha, at page 218:

"Bestha.- The Besthas are summed up, in the Madras Census Report, 1891, as a Telugu caste, the hereditary occupation of which is hunting and fishing, but they have largely taken to agriculture and the professions of bearers and cooks. In the Census Report 1901, it is stated that "the fisherman caste in the Deccan districts are called Besthas and Kabberas, while those in some parts of the Coimbatore and Salem district style themselves Toreyar. Siviya, and Parrvarattar. These three last speak Canarese like the Kabberas, and seem to be the same as Besthas or Kabberas."

15. In the report of the Karnataka Backward Classes Commission. Vol. 1, Part 1, the passage under the heading "Bestar", (Bunda Besta). reads thus at page 234:

"The traditional occupation of the caste is fishing and some are Palanquin bearers. (Note- The enumerators guide Published by the Census Department in December, 1940 does not contain Bunda Besta (Bestar) as a sub-caste of Gangatnatha). The Kalelkar Commission also has shown Bunde Bestar separately from Besta, and it is shown that the traditional occupation of Bunde Bestar is begging. in the 1031 Old Mysore Government Order declared Besta as synonymous with Gangakula. Bunda Bestar is not shown, to be by Debhar Committee Report, Kalelkar Commission Report, Lokur Committee Report, Nagana Gowda Committee Report or any Government Order as being synonymous with Gangakul. The State Social Welfare Department also is not recognising Bunda Bestar as synonym for Gangakula."

16. Though fishing is one of the traditional occupations of Bestar (Bunda Besta) caste as well as Bestha caste there can be no doubt that the two castes are distinct and separate. since the main traditional occupation of Bestar (Bunda Besta) is begging, that caste was included in the list of Backward Tribes. If Bestha and Bestar were the same caste, they would not have been put under two

different categories, namely, Backward Castes and Backward Tribes.

17. The learned single Judge was in error in holding that Bestha and Bestar (Bunda Bestar) are the same caste and that the difference in the spelling of the name Bestha and that of the name Bestar, was inconsequential. The mere fact that fishing is also One Of the traditional occupations of Bestar (Bunda Bestar), is not sufficient to hold that that caste is the same as Beshta caste whose main traditional occupation is fishing. Begging is not one of the traditional occupations of Besthas. Hence, we have no hesitation in holding that Bestha and Bestar (Bunde Bestar) are entirely two different castes.

18. The relevant portions of sub-rule (2) of R. 10 of the Rules, read:

(2) Selection Committee shall, (a) call for interview such number of the applicants required to select the required number on date time and Place as it may determine.

(b) Interview the applicants referred to in clause (a) for verifying the particulars furnished by the applicants or to obtain any clarification which the Selection Committee may need. The Selection Committee shall have power to make such enquiry as it deem fit to verify the particulars,- furnished by the applicant and shall also have power to reject any application for reasons to be recorded in writing.

(c) The interview shall be construed to be an opportunity given to applicants of being heard in case of rejection of applications.

19. It is seen that the Selection Committee has the power to verify the particulars furnished by applicants and to make enquiry to verify such particulars. Such particulars include the caste or community stated by an applicant to claim the benefit of reservation for such castes and communities. The Selection Committee need not, and should not accept, without scrutiny the particulars furnished by applicants, and the certificates produced by them including the certificates issued by Tahsildars and other persons and authorities. Such certificates are not conclusive, but are subject to scrutiny by the Selection Committee. It is well-known that the Tahsildar is a very busy officer at the Taluka level with numerous duties and responsibilities. Soon after the announcement of results of examinations, a very large number of students and their parents approach Tahsildars for certificates as to castes and communities. It is too much to expect Tahsildars to hold immediately detailed enquiries as to castes and communities of such students and their parents. Not unnaturally Tahsildars rely largely upon statements made by such students and/or their parents as to castes and communities to which they belong or reports of Revenue Inspectors and Village Officers in this regard, False statements by student, and/or their parents as to castes and communities to which they belong, incorrect, or perfunctory reports of Revenue Inspectors and Village Officers, political and other kinds of pressure brought on such officials, bias and corruption. are not unknown. If such certificates issued by Tahsildars or other persons and authorities are held to be

conclusive and the Selection Committee is held to have no power to verify the correctness and truth of such certificates, there will be a large number of false claims on the part of applicants that they belong to Backward Communities, Backward Castes, Backward Tribes. Scheduled Castes and Scheduled Tribes resulting in deprivation of the benefit of reservation to those applicants who really belong to those categories.

20. On the language of R. 10 and having regard to the necessity to prevent false claims to avail of the benefit of reservation for Backward Classes, it is reasonable to hold that the certificates issued by the Tahsildar or any person or authority are not conclusive and that the Selection Committee has the power to verify the truth and correctness of such certificates.

21. As seen earlier when the petitioner appeared before the Selection Committee the Selection Committee put certain questions to her to verify whether she belonged to Bestha or Bestar caste. No doubt she stated in writing before that Committee that the People of her community were fisherman by profession. As stated earlier, she also gave the names of two persons who, according to her belong -to her castes. But. in the statement of objections filed on behalf of respondents 1 and 2, it has not been stated that the information furnished by her that Sri Giriappa and Sri Devendrappi Ghalappa belong to Bestha or Gangakula community was correct. In her reply statement. she has asserted that to leading questions put to her. she stated that those two persons belonged to her caste. She has asserted in her reply statement filed in this appeal that Sri Devendrappa Ghalappa belongs to a Scheduled Tribe and that Sri Girivappa belongs to Parivar caste which comes under Backward Tribes and that the Selection Committee had no material to hold that she did not belong to Bestar caste.

22. In our opinion, there should be a more satisfactory enquiry by the Selection Committee before rejecting the certificate produced by the petitioner regarding the caste or community to which she belongs and she should have fuller opportunity to establish her claim that she belongs to Bestar caste. Hence, the Selection Committee should be directed to consider afresh whether the petitioner belongs to Bestar community. While so doing the Selection Committee should give her a reasonable opportunity to establish her claim and it will be open to the Selection Committee to rely on any material or information that it may gather bearing on this point, provided that such material or information is made known to her so that she may have an opportunity to rebut such evidence.

23. Sri Venkataranga Iyengar contended that among persons professing Muslim religion, there are no castes or communities and that the Selection Committee was in error in accepting the claims of respondents 3 to 11 that they belong to Darwesu tribe which is one of the tribes in the list of Backward Tribes.

24. In the report of Karnataka Backward Classes Commission. Vol. I. Part I, at page 222. it is stated that although there is no caste system, as such, in the Muslim social order (and) the conventional Idea of high and low is peculiar to

Hindu society and is unknown to Muslim society, unfortunately the Muslim community is divided and stratified into hereditary, Professional and functional groups, following Professions which are most un-remunerative and uneconomic and which has relegated them to lowest strata of society of the State, economically and educationally and that certain groups amongst Muslims can be readily identified by their occupations or Professions,

25. A section of Muslims known as "Darwesu" whose traditional occupation is begging, has been included in the list of Backward Tribes, at item No. 12. Hence, we are unable to accept the contention of, Sri. Venkataranga Iyengar that persons belonging to Darwesu section of Muslims, could not be regarded as coming in the category of Backward Tribes for the purpose of reservation of seats in Government Medical Colleges.

26. However. Sri Venkataranga Iyengar is right in his criticism that the Selection Committee accepted the claims of respondents 3 to 11 that they belonged to Darwesu section of Muslims, without Proper scrutiny and verification. The learned Additional Government Advocate made available to us the applications of only respondent-4, Syeda Tabaseem Rehana. and respondent-11. Farhat Begum. It is seen from those applications that the father of respondent-4 is a Lecturer in Electrical Engineering in a Government Polytechnic and his annual income is stated as Rs. 14,000/- The father of respondent-11 is a retired Government official. The Selection Committee does not appear to have called upon these applicants to show how their parents could be regarded as belonging to Darwesu section which is an occupational or Professional group among Muslims whose traditional occupation is begging. When the Selection Committee examined with such meticulous care the claim of the petitioner that she belonged to Bestar caste, it is understandable why the Selection Committee did not exercise similar care and scrutiny in regard to the claims of respondents 3 to 11 that they belonged to Darwesu section of Muslims. Unless such care and scrutiny is exercised by the Selection Committee, the reservation provided for Darwesus in the category of Backward Tribes is likely to be misused on a reservation being deprived to applicants who really belong to Backward Tribes.

27. Since the academic year 1980-81 is already over, and respondents 3 to 11 have completed the first year of M. B. B. S. Course, we do not propose to disturb at this distance of time, the admission of respondents 3 to 11 to Medical Colleges, as it would result in great hardship to them. But. we consider it necessary to impress upon the Selection Committee that in future they should scrutinise strictly the claims of applicants who claim to be Darwesus and seek the benefit of reservation for Backward Tribes It is needless to say that to avail of the benefit of reservation in any category of Backward classes, the burden of proving that he belongs to that category, is on the applicant who claims such benefit.

28. As the petitioner has secured higher marks than those secured by respondents 3 to 11, if the Selection Committee after a fresh determination, holds that she belongs to Bestar caste which is one of the Backward Tribes, it is

plain that she should be selected and admitted to one of the Government Medical Colleges. No doubt the academic year 1980-81 is already over. But, she cannot be denied relief on that ground, as she has approached this Court well in time. If she is held to belong to Bestar caste, she should be provided admission to the first year of the M. B. B.S. Course in one of the Government Medical Colleges in the academic year 1981-82. If she is held not to belong to Bestar caste, she is not entitled to be selected as the marks secured by her are not sufficiently high to be selected in the category of Backward castes.

29. In the result, we allow this appeal partly reverse the order of the learned single Judge allow the writ petition partly, and direct the Selection Committee to consider afresh the claim of the petitioner that she belongs to Bestar caste and in the event of her claim being accepted by the Selection Committee, to provide her a seat in the First Year Class of the M. B. B. S. Course in one of the Government Medical Colleges for the academic Year 1981-92.

30, In this appeal we direct the parties to bear their Own costs.

31. Before concluding we suggest that the Government may consider whether an income limit should not be put for claiming the benefit of reservation for Backward Tribes also in cases of Backward Communities and Backward Classes, the Government Order provides that no applicant whose parents" or guardians" annual income exceeds Rupees 10,000/- can claim the benefit of reservation for those categories. Similar income ceiling in the case of Backward Tribes also will prevent the benefit of reservation being taken away by comparatively affluent sections of Backward Tribes and will help the really lower strata of that category which needs most the reservation to get the benefit of reservation.

32. Let copies of this judgment be sent forthwith to the Selection Committee for admission to Government Medical Colleges and Government seats in Medical Colleges and the learned Additional Government Advocate.

33. Appeal partly allowed