

(1999) 11 KAR CK 0020
In the Karnataka High Court
Case No : Writ Appeal No. 5807 of 1998

State of Karnataka and Others

APPELLANT

Vs

Basavaraj Nagoor and Others

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 187, 229
Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 3B

Citation : (2000) ILR (Kar) 727 : (2001) 6 KarLJ 584 : (2000) 4 KCCR 156 SN

Hon'ble Judges : Y. Bhaskar Rao, C.J.; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : B.V. Nagarathna, S. Krishnaiah, Sheela Krishnaiah and Hemalata Mahishi, for the Appellant; Advocate-General, G. Papi Reddy, Government Advocate, T.A. Amar, T. Narayanaswamy, Deshraj, Changalaraya Reddy and M.R. Shailendra, for the Respondent

Judgement

Y. Bhaskar Rao, C.J.—This appeal is filed by the State assailing the order of the learned Single Judge quashing Rule 3-B of the Karnataka Civil Services (General Recruitment) Rules, 1977 (for short the "Rules"), providing weightage of marks to rural candidates as void and unconstitutional, as it violates Articles 14, 15 and 16 of the Constitution of India.

2. After disposal of the writ petitions, some more writ petitions are filed challenging the said Rule. So they are posted along with this writ appeal.

3. We have heard writ appeal and writ petitions, and are disposing them of by this common judgment.

4. The undisputed brief facts of the case are that the respondents-writ petitioners have appeared for the examination held by the Karnataka Public Service Commission for the Karnataka Civil Services Groups A and B post. They have questioned the validity of Rule 3-B read with Rule 2(1)(mm) of the rules, which provide for giving weightage of 10% of marks for the rural candidates while considering for public employment under the State's Civil Services.

5. The Karnataka State Civil Services Act of 1978 (for short the "Act") is enacted by virtue of the power under Clause (2) of Articles 187, 229 and 309 and under Entries 3 and 41 of List II of the Seventh Schedule to the Constitution of India to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs to the State of Karnataka and to the Secretarial Staff of the Houses of the Karnataka State Legislature and the conditions of service of officers and servants of the High Court of Karnataka, Section 8 of the Act empowers the State Government to make rules by issuing notifications, and said rules have to be laid before the State Legislature and rules as modified and affirmed by the State Legislature shall come into force.

6. Pursuant to the powers conferred on the State Government u/s 3 of the Act, the State Government has enacted Karnataka Civil Service (General Recruitment) (Forty-third Amendment) Rules, 1993, whereby it amended the rules by inserting Clause (mm) in Sub-rule (1) of Rule 2 defining "Rural Candidate" and an independent Rule 3-B providing for "weightage" of marks to rural candidates in order to give preference to them in public employment. In G.O. No. DPAR 5 SRR 92, Bangalore, dated 15-6-1994 for the first time "Rural Candidate" is defined by amending Rule 2 by inserting Clause (mm). Rule 3-B was inserted providing for weightage of marks to rural candidates; 5% marks to be added to the marks secured in the qualifying examination. Vide G.O. No. DPAR 16 SRR 95, Bangalore, dated 15-3-1996, the Karnataka Civil Services (General Recruitment) (Forty-seventh Amendment) Rules, 1996 came into force and amendment of Rules 2 and 3-B was made vide G.O. No. DPAR 59 SRR 96, Bangalore, dated 28-4-1997, by Karnataka Civil Services (General Recruitment) (Forty-ninth Amendment) Rules, 1997, Rules 2 and 3-B were further amended that rural weightage applies to all posts, that is Groups A, B, C and D and percentage of weightage enhanced from 5% to 10%. By G.O. No. DPAR 75 SRR 96, Bangalore, dated 5-12-1997 by Karnataka Civil Services (General Recruitment) (50th Amendment) Rules, 1997, Rule 2(1)(mm) was further amended by providing that a student who has been admitted directly to any standard other than the first standard in accordance with the provisions of the compulsory Primary Education Act, 1961 and has studied upto qualifying examination or upto the 10th Standard, as the case may be, in a school situated in an area or towns other than the areas or towns specified in the Schedule shall also be considered as rural candidate under this rule. These amendments are challenged in the present writ petitions.

7. The learned Single Judge after elaborately considering the rival contentions held that the rules are ultra vires of Articles 13, 14, 15 and 16 of the Constitution of India and accordingly struck down the same. However he held that the persons already appointed by virtue of the amended rule by giving rural weightage marks shall not be disturbed and their appointment will not be adversely affected by virtue of the judgment. Against that judgment, the writ appeal is filed by the State.

8. The learned Advocate General contended that the students who study in rural areas will not have all benefits as students who study in urban areas. The students who study in rural areas and urban areas are separate classes. Therefore, the rule providing weightage of marks to students who study upto 10th Standard providing 10% of weightage marks is a reasonable classification keeping in view the environment and socio-economic background. So, the learned Single Judge should not have struck down the rule as unconstitutional. It is contended that classification has a direct nexus to the object sought to be achieved to bring the students who have studied in rural sector on par with the students who have studied in urban sector. The classification which is based on locations in the State of Karnataka is a permissible classification and that students who studied in those sectors will be eligible for equality as per Article 16 of the Constitution of India. It is further contended that the rules have been made keeping in mind various aspects such as environment, education facilities, standards of life and allied matters in rural areas. The object of weightage is to provide equal opportunity to the students coming from rural sectors. There is a direct nexus between the classification and the object sought to be achieved. Therefore, the rules deserve to be upheld. The decisions relied upon by the learned Single Judge are not applicable to the facts of this case.

9. The learned Counsel appearing for the petitioners in writ petitions contended that the impugned rules are ultra vires the Constitution. The classification is not a reasonable classification. The rules are framed without any material or without any basis. Without making any structure of the areas for which the weightage is provided, there is no nexus in providing weightage of marks to rural candidates, who studied upto 10th Standard or below 10th Standard in rural areas. The hut dwellers and poor class in urban areas are more backward than the rural people. Therefore, the classification is discriminatory and further affects the merit of the candidate and it is violative of Article 14 of the Constitution of India. The learned Single Judge was right in allowing the writ petitions and striking down all the rules. There are no merits and appeal is liable to be dismissed and writ petitions have to be allowed.

10. In view of the above contentions, the important question of law that has to be considered is whether Rules 3-B and 2(1)(mm) of the Rules are violative of Articles 14, 16 and 21 of the Constitution of India and abrogate the fundamental rights.

11. To appreciate the above point, it is relevant to extract the amended Clause (mm) of Sub-rule (1) of Rule 2 and Rule 3-B of the Rules, which reads as follows:

"2(1)(mm) "Rural candidate" means a person who has studied in the State of Karnataka:

(i) from first standard to tenth standard where the qualifying examination prescribed for a post is SSLC or higher; or

(ii) from first standard to the qualifying examination, where the qualifying

examination prescribed for a post is lower than SSLC;

in a school situated in an area/town other than the areas/towns specified in the Schedule:

Provided that where a student who has been admitted directly to any standard other than the first standard in accordance with the provisions of the Compulsory Primary Education Act, 1961, and has studied upto qualifying examination or upto the 10th standard as the case may be in a school situated in an area or towns other than the areas or towns specified in the Schedule shall also be considered as rural candidate under this rule".

"3-B. Weightage of marks to rural candidates.--(1) Notwithstanding anything contained in these rules or in the Karnataka Civil Services (Direct Recruitment by Selection) Rules, 1973 or in any other rules made or deemed to have been made under the Karnataka Civil Services Act, 1978 (Karnataka Act No. 14 of 1990) in all direct recruitments to (any of the posts) in the State Civil Services, the respect of a rural candidate, a weightage of;

(i) ten per cent shall be added to the percentage of marks secured in the-

(a) qualifying examination where the selection is based upon the marks secured in the qualifying examination;

(b) qualifying examination where the selection is based upon the marks secured in the qualifying examination and interview;

(c) competitive examination or in the competitive examinations and interview/ viva voce, as the case may be, where the selection is based upon marks secured in the competitive examination or in the competitive examination and inter-view/ viva voce.

(ii) Ten per cent of the marks secured in the interview shall be added to the marks secured in the interview where the selection is made on the basis of the marks secured in the interview:

Provided that no weightage shall be allowed to a rural candidate for whom a rural weightage has already been allowed in accordance with the rural of recruitment specially made in respect of any service or post".

Rule 2(1)(mm) defines a rural candidate stating that the student who studied from first standard to tenth standard or from first standard to less than tenth standard in a school situated in an area/town other than the areas/towns specified in the Schedule and Rule 3-B provides for giving 10% of weightage marks to rural candidates.

12. The respondents-writ petitioners contended that giving of 10% of marks to the rural candidates in order to give weightage over the better merited candidate for giving preference in public employment is violative of the fundamental right of equal opportunity enshrined in Articles 14, 15 and 16 of the Constitution of

India as classification based on class is impermissible. We see sufficient force in the said contention.

13. It is apt to extract relevant constitutional provisions.

Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, except making a special provision for women and children or for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and no citizen shall be discriminated on ground of religion, race, caste, sex, descent, place of birth, residence or any of them except providing reservation of appointment or post in favour of backward class citizens, which, in the opinion of the State, is not adequately represented in the services under the State.

Thus, Articles 14 to 16 unequivocally make it clear that no citizen shall be discriminated on ground of his place of birth or residence.

14. The impugned rule provides giving of 10% of weightage marks to the rural candidates than the non-rural candidates. Therefore, it discriminates the urban candidates from rural candidates.

15. We will now examine the Supreme Court cases on the subject.

In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*,¹ the question which had fallen for consideration was as to whether the instructions framed by the State in making reservation in favour of the candidates from rural areas, hill areas and Uttarakhand were constitutionally valid. It was contended on behalf of the State that the people of rural area are normally socially and economically backward and so they constitute a well-defined class within the meaning of Article 15(4) of the Constitution of India. It was further contended that because of their common trades, occupation and residence in rural areas they are recognised as a separate class in the Indian Society and are commonly known as "rural people". The Supreme Court rejecting the said contention observed in paras 25 and 26 of the decision as follows:

"Some people in the rural areas may be educationally backward, some may be socially backward, there may be a few who are both socially and educationally backward, but it cannot be said that all citizens residing in rural areas are socially and educationally backward.

80 per cent of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. Their occupation is different. Their standards are different. Their lives are different.

Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State".

In *State of Maharashtra Vs. Raj Kumar*, Recruitment Rules similar to the present rules were under judicial scrutiny before the Supreme Court. In that case the Maharashtra Government framed a rule, which was adopted by the Public Service Commission, that a candidate coming from the rural areas will be a rural candidate and for giving 10% rural weightage to the candidates having passed SSC from rural areas. Justice Fazat Ali speaking for the Court held that giving of weightage to the rural candidates would virtually convert the merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being impermissible classification. The rule of weightage as applied in this case is wholly unreasonable and cannot be sustained. Their lordships have approved the opinion of the High Court in holding that the rule is unconstitutional and the following observations were made by the High Court:

""..... On the contrary, it places a rural candidate in an advantageous position by a sheer accident of his passing the SSC Examination from rural area.

..... Here we are faced with a problem that a candidate by sheer chance of his appearing and passing the examination from rural area gets an advantage over all others by arbitrary addition of ten per cent or marks which, as we have indicated above, has no reasonable nexus or connection with the object of getting the best candidates suitably adapted to rural life".

In *Suneel Jatley and Others Vs. State of Haryana and Others*, similar question regarding validity of a rule providing for giving weightage to the rural candidates in professional colleges had arisen and was declared to be constitutionally impermissible. The Supreme Court relied on its earlier judgment in the case of *Pradip Tandon*, supra, and with approval have given some additional reasonings for taking the said view. The Supreme Court in paras 11 and 12 of the said judgment has held as under:

"Assuming that the decision in *Pradip Tandon*'s case, supra, does not conclude the point as herein raised, the differential on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural school on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped. Agriculture in Haryana has been a very profitable pursuit and standard of life of average farmer in rural area has gone up compared to middle class and industrial workers and the slum dwellers whose children will attend as a necessity urban schools. And yet, the better placed will enjoy reservation. Further, the basis of classification based on education upto eighth standard is wholly irrational. And it has no nexus to the object sought to be achieved, of providing extra facility to students coming from rural schools to

enter medical college.

What was the object sought to be achieved by the classification? It was said that students taking education in common rural schools from first to eighth standard are at a comparative disadvantage to those taking education in urban schools in the same standards. The comparison in our opinion is fallacious for the reason that the same Government prescribes standards of education equipment, grants and facilities including the qualification of the staff for being employed in urban and rural schools imparting instructions from first to eighth standard".

After the judgment of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the primary education is held to be a fundamental right.

In *V.N. Sunanda Reddy and others Vs. State of Andhra Pradesh and others*, , following the decision in *Raj Kumar's case*, *supra*, the Supreme Court held that the rule providing for addition of 5% of the total aggregate marks to the assessment of Telugu medium candidates in recruitment to public posts is violative of Articles 14 to 16 of the Constitution and held as follows:

"This would weed out best available candidates from the open market and would give undue advantage to less meritorious candidates. That would seriously impair the efficiency of administration. It deserves to be pointed out that even while making reservation for members of the Scheduled Castes and the Scheduled Tribes as permitted by Article 16(4) of the Constitution, efficiency in administration is required to be borne in mind, as enjoined by Article 335; and it is principally this requirement which led the 9-Judge Bench of this Court in the *Mandal Commission case* to hold that reservation cannot exceed 50%. This aspect shall have to be borne in mind, a fortiori, here as the weightage to be given has no constitutional sanction".

16. Thus, the Supreme Court has considered the rules which are similar to the present rules and held that they are unconstitutional. Therefore, giving of 10% of marks as rural weightage is arbitrary and violative of Articles 14, 15 and 16 of the Constitution of India.

17. The Status Report on Elementary Education published by the Education Department of the Government of Karnataka in the year 1996 reveals that out of Rs. 12,33,915 lakhs representing the total State budget for the year 1996-97, Rs. 1,82,660.50 lakhs, which is 14.80% had been earmarked for being spent on education. Out of that amount, Rs. 99,454.05 lakhs and Rs. 58,084.15 lakhs were meant for primary and secondary education respectively. The Report further reveals that steps have been taken to open primary schools in areas having a population of more than 300 inhabitants in order to provide education to all the children to go to school from their place of residence. The Report states that there are 42,479 lower and higher primary schools in the State providing for free and compulsory education for the children in the age group of 6-14 years.

18. Under Karnataka Education Act, 1983, rules have been framed making them applicable uniformly to all the schools situated in the State irrespective of the fact whether the areas are rural or urban. The Karnataka Private Education (Discipline and Control) Rules, 1978 provide for qualification of teachers, their mode of recruitment and service conditions. The District Level Seventh Standard Public Examination Rules, 1997 provides for uniform examinations. Thus, for all the areas either in rural or urban, uniform rules will apply. Therefore, it cannot be said there was unequal opportunity to the students who have studied in urban areas and rural areas.

19. Even the impugned rules, examined from any angle, will not stand to judicial scrutiny. The reservation for the Scheduled Castes, Scheduled Tribes and other Backward Classes is provided as per the mandate of Article 16 of the Constitution of India and by virtue of Section 4 of the Karnataka State Civil Services Act. As per Rules, reservation is provided for Scheduled Castes, Scheduled Tribes and Backward Classes. The reserved candidates who appear in the qualifying examination or interview obtain marks and a merit list is prepared. If they come according to merit in the open quota, they are appointed in the open quota itself. If according to merit, they are not able to come in the open quota, then they will be accommodated in the reserved quota irrespective of whether they are from rural area or non-rural area. But, by adding 10% of marks to the rural candidates, the urban backward classes, Scheduled Castes and Scheduled Tribes are deprived to get the appointment though they got similar marks or more marks and merit is given a go-by. This, in other words, amounts to further classification or mini-classification, which is impermissible and violative of Article 14 of the Constitution.

20. The State has not placed any material on record to show that they have made any comparative study regarding the schools in the rural areas, their standard of education, teaching methods, etc. In some of the writ petitions, it is specifically stated that some of the schools in rural areas have more standard than the schools in non-rural areas, which are mentioned in the Schedule to the notification. It is a well-known fact that even in urban areas, the education standard of children of hut dwellers and other economically and socially backward classes is not of same standard as of the rural area. Therefore, giving of 10% of marks to rural candidates will cause a great hardship to the urban poor and middle class and eliminate the merit candidate, which is contrary to the spirit of Articles 14, 16 of the Constitution of India.

21. On a careful consideration of the impugned rules, we are of the considered view that they are violative of Article 14 of the Constitution of India and the law declared by the Apex Court in the decisions cited supra.

22. For the foregoing reasons, we do not see any merit in the appeal. The learned Single Judge was right in striking down the impugned rules. We affirm the observations made by the learned Single Judge that the candidates who have already been appointed by giving "rural weightage" should not be disturbed, and

also the persons who have been appointed during the pendency of these appeals until now on the basis of rural weightage.

23. Accordingly, writ appeal is dismissed and writ petitions are allowed.