

(1995) 11 AHC CK 0051

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ Petition 2427 (MS) of 1995

Subject Pal

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(4), 19

Citation : AIR 1996 All 214

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : D.S. Chaube, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The fate of this writ petition hinges on the reply to the question as to whether the State Government by a Government Order can include the residents/ candidates of Hill Area and Uttrakhand, as socially and educationally backward class without any distinction to the caste which they belong and include them within the reserved category of 27% for purpose of admission in certain Engineering Colleges in Uttrakhand.

2. Even earlier, the State Government had provided reservation for the residents of hill areas in matters of employment and admission in various educational institutions, in the Hill areas but it was limited to the extent of two or four percent. It was pointed out that as far as in the combined entrance examination for admission to Engineering Colleges are concerned, the State Government has earlier provided 4% reservation for the candidates belonging to hill areas.

3. The petitioner who himself belong to backward classes applied for his admission in the Combined Entrance Examination for the year 1995. According to the petitioner on the basis of the merit list prepared after the said examination, his name was mentioned at serial No. 274, 157 candidates have already been selected, but the petitioner could not be selected only for the reason that the

residents of entire hill region, popularly known as Uttrakhand in Uttar Pradesh was declared by the State Government as socially and educationally backward class irrespective of what caste they belong. In view of the aforesaid Government order, the petitioner who himself belongs to backward class could not be selected for admission.

4. The main thrust of the learned counsel for the petitioner is that the hill areas of the Uttar Pradesh cannot be declared to be socially and educationally backward class and the Govt. order which was issued subsequent to the combined entrance examination cannot be given retrospective effect. The petitioner on the basis of the brochure and the terms and conditions of the admission appeared into the said examination and in accordance with the merits he was called for counselling on 28th August, 1995, but subsequent to this on 6th Nov, 1995 entire hill region of the State known as Uttrakhand was declared as socially and educationally backward for purposes of admission in some of the Universities and Engineering colleges which are situated in Hill areas of Uttar Pradesh. Learned counsel for the petitioner has also drawn the attention of this Court towards the similar Government orders, which have been issued in respect of remaining engineering institutions in the hill areas.

5. As far as the first contention of the petitioner that the entire hill areas of the State could be declared as socially and educationally backward area is concerned appears to be misconceived in view of clause (4) of Art. 15 of the Constitution of India which provides that nothing in this Article of clause (2) of Art. 19 shall prevent the State from making any special provision for the advancement of any social and educationally backward classes of the citizens or for schedule castes and scheduled tribes. The Constitution of India does not provide reservation for castes; although it has been the consistent view of Hon''ble Supreme Court in several pronouncements that caste in India is synonymous to a class, but it does not mean that the citizens of a particular region, which is inhabited by forward castes as well, cannot be declared as socially and educationally backward classes. Besides caste, there may be other factors for which the citizens of a particular region can be declared as" socially and educationally backward classes. But, whether the citizens of a particular region as a whole can be declared as socially and educationally backward class depends on the socially and educationally backwardness of the citizens of that particular region even if they belong to forward classes. To determine the citizens of such as area as socially and educationally backward classes depends upon the sociological and anthropological study and analysis of the area by the competent authorities. The petitioner has not been provided to this Court any data to arrive-at a conclusion that the citizens of a hill region as a whole cannot be declared as socially and educationally backward classes.

6. In *Anil Kumar Gupta, etc. v. State of Uttar Pradesh* 1995 (4) Scale (sic) in which, a notification of the State Government was issued on May 17, 1994 providing sixty five percent of seats were reserved in favour of various classes/

categories leaving only thirty five percent for open competition (O.C.) category, was assailed, Hon"ble Supreme Court observed;

"In other words, the reservations in favour of hill areas and Uttarakhand areas are understood and treated as reservations relating to Article 15(1) of the Constitution and not as reservation in favour of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes within the meaning of Article 15(4) of the Constitution. It has been held by this Court in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, that the reservation of seats in favour of candidates belonging to hill areas and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution, they are reservations in favour of socially and educationally backward classes of citizens. This court found that "the State has established that the people in hill and Uttarakhand areas are socially and educationally backward classes of citizens." It therefore, follows that a separate horizontal reservation of six percent of the seats in favour of candidates from hill area and Uttarakhand apart from and in addition to twenty seven percent reservation in favour of other backward class candidates is clearly illegal. Though, this contention has not been specifically raised in these writ petitions, we must yet take notice of this circumstance while making the appropriate directions in these matters. It is indeed surprising that the State of Uttar Pradesh which is a party to the above decision has failed to bear it in mind. Said decision has also been referred to approvingly in *Indra Sawhney v. State of U.P.* shall keep this in mind for future selections as also in respect of those which may be now under way and make necessary corrections."

7. In *Anil Kumar Gupta's case (supra)*, Hon"ble Supreme Court clearly laid down that it would be better that in future the horizontal reservations are compartmentalised. Notification inviting applications should itself state not only the percentage of horizontal reservations but should also specify the number of seats reserved for them in each of the social reservation categories, viz. S.T., S.C., O.B.C. and O.C. If this is not done, there is always a possibility on one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone and none from the O.B.C, or for that matter, from S.C. or S.T. it can well happen the other way also in a given year.

8. It was further indicated that the proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit, then fill up each of the social reservation quotas i.e. S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed "for horizontal reservations is already satisfied in case it is an over-all horizontal reservation no further question arises. But, if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation

categories by deleting the corresponding number of candidates therefrom.

9. Hon'ble Supreme Court in Anil Kumar Gupta's case (supra) what actually deprecated, was a separate horizontal reservation of 6% seats in favour of a candidate from hill areas and Uttarkhand apart from and in addition to 27% reservation in favour of other backward classes candidates, but it did not rule out the reservation for the candidates of Uttarkhand and hill areas of the State for purposes of admission in various technical institution, in the reserved category of O.B.C.'s to the extent of 27%.

10. In State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, , it was observed:

"The hill of Uttarkhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons;

1. Backwardness is judged by economic-basis that each region has its own measurable possibilities for the maintainance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness, is observed;

2. When effective territorial specialisation is not possible in the absence of means of communication and technical process as in the hills and Uttarkhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people."

It was further observed;

"Educational backwardness in ascertained "with reference to these facts. Where people have traditional apathy for education in account of social environmental condition or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions and educations aids. People in the hill had Uttrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education."

11. Question of reservation for backward classes for admission to educational institutions Kumaun and Garhwal Districts, came up for consideration before this Court in Manvendra Shah v. State of U.P. (1995) 2 UPLBEC 1060 . A Division Bench of this Court after referring to K.C. Vasanth Kumar and Another Vs. State of Karnataka, observed that Hon. Supreme Court dealt with the aspect of looking at backwardness. Cautioning that the problems of reservation can never be resolved through litigation, the Supreme Court, reflected that reservation in its intent and process is a changing phenomenon of which a sociological and economic study must be carried out "from State to State and from region to region within a State" touching on the theme that there could be reality in

regional backwardness and the individuality of community backwardness may not be primary test of class poverty.

It was further observed;

As this judgment has noticed the decision of the Supreme Court which interprets reservations areawise and geographically, the State of U.P. may make reservations for Backward Classes, for admission to schools, colleges and universities of Kumaon and Garhwal District-wise and division-wise and fix reservations according to the demographic pattern and ration between the population of each District and Division and those receiving benefit of reservation. It should be District wise for primary schools, schools upto class ten, including plus two and division wise for universities. If in any District or Division, if the date of reservation based on the census abstract, exceeds what the law permits, then it would be subject to the limitation of the law. This is explained as an example thus. If in any, district in the Commissioner's Division of Kumaon and Garhwal, the ratio of reservation for Backward Classes in context, were to exceed, the limit of 27 per cent as prescribed, then the reservation would not be beyond this limit."

12. In view of the aforesaid observations of Hon"ble Supreme Court, a Division Bench of this Court, the Govt. orders providing reservation to the candidates belonging to hill areas and Uttrakhand in certain Engineering Colleges which are situated in the said area, cannot be assailed, because admittedly the area in which the people live is socially and, economically backward region, which has been identified earlier, but such a reservation in can be provided only within 27% of reservations for the other backward classes. Any reservation above 50% will be in violation of various pronouncement of Hon"ble Supreme Court. As by means of the impugned Govt. orders, reservation for the residents of hill areas have been provided only in certain educational institutions which are situated in hilt areas and Uttrakhand, it cannot be said that it infringes rights of other classes or other backward classes candidates to be selected, because they can compete amongst other candidates of their categories. The State can make internal classification into backward and more backward individuals and families but such classification are to be made on economical or educational consideration, as has been held in the case of Indra Sahney.

13. As far as the next submission of the learned counsel for the petitioner is concerned, it has no substance. The contention that the Government order cannot be made applicable retrospectively, particularly when initially it was not known that the citizens of a hill areas as whole would be declared socially and educationally backward classes for purposes of admission into the combined entrance examination for engineering institutions situate at the hill areas of the State. It was vehemently argued that no such term and condition existed when the petitioner applied for admission. A further scrutiny of the events pertaining to the admission in Engineering institutions which are situated in hill regions, on the basis of the combined entrance examination, will indicate that the process of

admission was not complete, when the said Govt. order was issued. It has been the settled view that no person has a fundamental right to seek admission in any educational institution. What Article 14 of the Constitution abhors is discrimination amongst the equals. As the Constitution, itself, provided that the State can make special provisions for the advancement of any socially and educationally backward class of citizens or for Schedule Castes or Schedule Tribes, such reservation cannot be assailed. Question of prospectivity or retrospectivity in such a situation has no application, in as much as, at the time of issuance of that Govt. order, the process of admission was not complete, the State Govt. was within its right to issue such a Government order to provide reservation for socially and educationally backward classes in hill region and Uttarakhand in the matter of admission in certain educational colleges situated in Hill areas and Uttarakhand.

14. In view of what has been indicated hereinabove, this writ petition is devoid of merit and it is dismissed accordingly.

15. Petition dismissed.