

(1972) 11 AHC CK 0018

In the Allahabad High Court

Case No : Special Appeal No's. 576 to 578 of 1972

The Board of High School and Intermediate Education, U.P.
and Another

APPELLANT

Vs

Gopal Narain Singh

RESPONDENT

Date of Decision : 10-11-1972

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1973 All 345

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Shanti Swarup Bhatnagar, for the Appellant; R.K. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

1. This and the three companion Special Appeals arise out of a judgment disposing of four writ petitions. They all raise common questions and can be conveniently disposed of together.

2. On December 23, 1965 the State Government in its Education Department addressed a semi order to the Director of Education U. P. It informed the Director that the Governor has been pleased to order that with effect from July, 1966, the minimum age limit for admission to class VI in all the recognised educational institutions in the State shall be 9 years on July 1 of the year in which admission to class VI is sought. Consequently at the High School stage, the minimum age limit for all students appearing at the High School Examination of 1971 onwards, shall be 14 years on July 1 of the year in which the student appears at the High School Examination of the Board of High School and Intermediate Education. The Director was asked to take immediate action to notify this decision to all the educational officers and institutions concerned and to request the Board of High School and Intermediate Education, U. P. to take suitable action for the amendment or the Board's Regulations.

3. As a result of this directive, the Education Code was amended. Clause (E) was added to paragraph 90 thereof providing for a restriction for admission to class VI at the minimum age of 9 years. In due course, the Board by Notification dated 21st February, 1966 added Regulation 33 to Chapter XII of the Regulations made by it under the U. P. Intermediate Education Act. It provided that no candidate shall be eligible for admission to the High School examination of 1971 and onwards unless his/ her age on the 1st July of the year in which he/she intends to appear at the examination is 14 years or more.

4. The respondents in these appeals sought admission to the High School Examination held in 1972. Their applications were rejected by the Board on the ground that they were below 14 years in age. One of the respondents was, however, given the admission card but subsequently his examination was cancelled on the same ground.

5. The respondents filed writ petitions to challenge the validity of Regulation 33. Our brother G. C. Mathur held that the basis of classification for appearing in the High School Examination on the ground of age has no nexus with the object sought to be achieved by the law. Regulation 33 violated Article 14 of the Constitution. On this view, the writ petitions were allowed and the Board was restrained from disentitling the respondents from appearing at the Examination on the ground that they were below age. Aggrieved the Board of High School and Intermediate Education, U. P. has come up in appeal.

6. In the writ petitions, the validity of Regulation 33 was challenged on the ground that there was no reasonable basis for debarring students below the age of 14 years from appearing at the High School Examination. The grouping together of all students below the age of 14 into a separate class, which was ineligible for the High School Examination was arbitrary and had no rational relation to the object sought to be achieved by the U. P. Intermediate Education Act.

7. The State filed a supplementary counter-affidavit to indicate the basis upon which the State has classified the students below the age of 14 years. This affidavit refers to the Reports of the Kothari Commission and the Mudaliar Commission. Neither of these two Commissions recommended a rigid fixation of age limit as a qualification for the High School Examination. They recommended an integrated system of education commensurate with the age of the students, Mudaliar Commission Report provides that particular care will have to be taken to ensure that the education imparted during the first 8 years in the Primary (or Junior Basic) and the Middle (Senior Basic) stage forms an integrated and complete whole, so that when free and compulsory education is extended upto the age of 14, as envisaged in the Constitution, it will constitute a uniform pattern of education. Similarly the Kothari Commission recommended that the first 10 years of schooling, covering a primary stage of seven or eight years and a lower secondary stage of three or two years, will provide a course of general education without any specialization. One of its recommendations was that the

age of admission to class I will ordinarily be not less than 6. In this Report also the emphasis was on the kind of courses that should be prescribed for students at different stages of education. It did not envisage a rigid and an inflexible fixation of minimum age for any particular class. Acharya Narendra Deo Committee in its Report expressed the opinion that the minimum age which a regular student must attain before appearing at the Intermediate Examination should be 16 years. It also recommended that its minimum should be raised again by one year at the end of three or four years. The Supplementary counter-affidavit does not indicate the reasons which impelled this Committee to make this re-recommendation. In any event, this recommendation does not appear to have been accepted as such by the State Government.

8. Learned Advocate-General invited our attention to the Report of the Secondary Education Committee, 1961. This Committee was entrusted with the task of considering the Recommendations of the Departmental Committees on Secondary Education and pave final recommendations for improvement in the Secondary Education in the State. The Departmental Committee had not recommended any age limit for admission in secondary schools. The Secondary Education Committee, however, was of the opinion that an age limit should be fixed because at present very immature boys are going up to Higher Secondary classes resulting in fall in standards".

9. In its semi order dated 23rd December, 1965 the State Government expressed the view that various committees appointed by the Government from time to time also deliberated over this important question and made observations to the effect that "very often" children of immature age and frail physique get promoted to secondary classes and later to the Intermediate and Degree stages and it was necessary that some minimum age limit was prescribed for admission of "those" students. In this the State Government went one step further than the Secondary Education Committee Report. That Committee had confined its observation to the condition obtaining in higher secondary classes. The directive of the Government includes the Intermediate and Degree stages as well. A student can get promoted to Intermediate and Degree classes if he has successfully passed the High School Examination. If a student, though of immature age and "frail" physique, is able to pass the Examination, it cannot be inferred that he had displayed a lesser degree of standard than other boys who were not so immature in age. As a matter of fact the frailness of physique is not dependent upon age alone. There is no allegation or evidence that students below 14 years of age are generally in a great majority of cases frail in physique. Hence frailness of physique could not rationally form basis of any general classification.

10. So far as immaturity of age is concerned, the State Government or the Board has furnished no material to suggest that students below the age of 14 are immature from the point of view of appearing at the High School Examination than boys who are above that age. The Board of High School is conducting the

High School Examination for the last several decades. The State Government has had supervisory powers over the Board. These authorities could have collected data of all students below the age of 14 who have appeared at the High School Examination. It could have then examined and analysed the condition of their physique mental capacity and if after an examination of the matter from these points of view the State or any of its Committees had come to the conclusion that in a great majority of cases students below the age of 14 appearing at the High School Examination displayed immaturity of mind and were of frail physique, which was not proper then a rational basis for the classification would have been established. But there is not even a whisper in any of the counter-affidavits that any effort was made to examine the question from these relevant and material aspects. The classification made by the State Government and the impugned Regulation appears to have been based on theory, not on facts.

11. In the State of U. P. v. Kishan Chand Dhuan, Civil Appeal No. 1832 of 1968, D/- 12-12-1968 (SC) the Supreme Court rules that a valid classification must be based on facts, not merely on theory. Further, a general classification cannot be justified on the basis of exceptional cases.

12. The directive of the State Government dated 23rd December, 1965, itself states that "very often" children of immature age and frail physique get promoted to secondary classes and later to the intermediate and Degree stages. The expression "very often" refers to several occasions. It does not refer to a large majority of cases. To us it appears that the State Government based its classification upon exceptional cases. A classification having such a basis cannot be justified.

13. It is true that age can form the basis of a classification. Article 24 of the Constitution prohibits employment of a child below the age of 14 years in any factory or mine or hazardous employment. Article 45 contemplated that the State will give compulsory education to all the children until they complete the age of 14 years. But this does not mean that the age of 14 years can, form the basis of a classification which is based upon illusory or the critical considerations.

14. It was urged that the experts have unanimously found that several changes take place at the ages of 5, 10 and 13 years. It is one of the reasons for making the classification at the age of 14. If this was the reason, then surely the classification would have taken some other form. The Heads of Institutions could have been authorised to see that the boys below the age of 14 years, who are mentally immature or physically frail, be barred. It was also stressed by learned Advocate-General that the State Government wanted to achieve the objective, that only students, who have capacity to receive the higher secondary education, should be promoted to reach the higher classes. That is why it prescribed the minimum age for admission to class VI at 9 years. The supplementary counter-affidavit does not furnish any material to sustain the case that students below the age of 9 are not fit to receive higher Secondary education. This classification again seems to have been based upon the critical considerations rather than an

objective analysis based upon factual data.

15. In our opinion, the directive of the State Government dated 23rd December, 1965, as well as Regulation 33 suffered from the vice of discrimination in violation of Article 14 of the Constitution.

16. In the result, the appeals fail and are accordingly dismissed with costs.