
(1992) 08 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 1424 of 1992

Tripura Guardians" Forum and Another	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226, 29

Citation : AIR 1993 Guw 68

Hon'ble Judges : R.K. Manisana, J;M. Sharma, J

Bench : Division Bench

Advocate : S.N. Medhi and T.K. Deb, for the Appellant; Government Advocate and R. Gopal, for the Respondent

Judgement

Manisana, J.—The facts leading to this petition under Article 226 of the Constitution of India may, in brief, be noted. The Tripura Board of Joint Entrance Examination conducted Joint Entrance Examination, 1992 for admission to professional degree colleges and or institutes. The comparative merit of the candidates was published on 16-6-92. Thereafter, the Government of Tripura issued a memorandum on 17-6-92 for reservation of seats in the professional courses for sons and daughters of Freedom Fighters, Political Sufferers and Social Workers, and for the persons having special career in sports and games belonging to the State of Tripura.

The relevant part of the order runs as follows :

"The Governor has been pleased to order that there shall be not exceeding 10% of total seats available for the State in the following Professional Courses be reserved as Discretionary Quota of the Chief Minister of the State :--

- (i) Medical courses will comprise of M.B.B.S., B.D.S. and B. V. Sc. Course.
- (ii) Engineering Course of studies which include B.E./B. Tech in any discipline and also Agriculture Engineering.

Provided that at least 50% of the reserved seats from Chief Minister's Discretionary Quota for Engineering Courses to be determined on the basis of total available seats shall be allotted to Tripura Engineering College and the remaining outside the State.

In making reservation of Chief Minister's Discretionary Quota the seats to be reserved should not exceed 10% of total seats available for the State each in Engineering Group and Medical Group. The candidates of all categories who will be selected to be sponsored out of the Discretionary Quota of the Chief Minister must have secured at least 55% marks in E.P.C.B./E.P.C.M. Group in the final Examination of Class 10 + 2 standard Examination from any recognised Board/University and must be a Citizen of India".

NB : EPCB Group : English, Physics, Chemistry and Biology Group. EPCM Group : English, Physics, Chemistry and Mathematics Group.

2. Mr. S. N. Medhi, learned counsel for the petitioner, has contended that the memorandum issued by the Government for reservation of seats is unconstitutional and is violative of Articles 14, 15 and 29 of the Constitution of India.

3. It is settled that Article 14 forbids class legislation; it does not forbid reasonable classification. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

4. The groups of persons for whom seats have been reserved are (i) persons having special career in sports and games and (ii) sons and daughters of the Freedom Fighters, Political Sufferers and Social Workers.

5. Reservation of seats in professional courses for Sportsman is concerned, in Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors, the Supreme Court has observed that the reservation of seats in professional courses for Sportsmen is not irrational or arbitrary but had reasonable nexus to the object sought to be achieved in public interest, namely, promotion of sports. In that case the order of preference was a candidate who had participated in International level would exclude a candidate participating at National level and a person who had participated in National level would exclude a person participating at State level.

6. Reservation of seats in favour of sons and daughters of Political Sufferers and

Freedom Fighters have been approved by the Supreme Court in *M. Satyanarayana Vs. State of Karnataka and Another*. But, Supreme Court has held that a person to be a Political Sufferer or Freedom Fighter must fall within the definition given under the rule of that case.

7. In view of the above decisions of the Supreme Court, for Sportsman and sons and daughters of Freedom Fighter and Political Sufferer seats can be reserved in the professional courses. But the definition of Freedom Fighter" and "Political Sufferer" must be given as guidelines to avoid vice of arbitrariness. Similar is in the case of sportsman. There should also be guidelines by which choice has to be made as between the candidates in the same field.

8. In respect of sons and daughters of Social Workers, it is the Government who bears the financial burden of sending the students to the professional colleges. The scheme for nomination to the professional colleges outside the State is distinct altogether from the scheme of admission to professional colleges within the State. Therefore, Government cannot be denied the right to decide from what source nomination shall be made. But, if the sources are not properly classified, trial is to say, -- if classification offends constitutional provisions, the classification shall be bad.

9. In the impugned memorandum, there is no definition of the terms "Political Sufferer", "Freedom Fighter" and "Social Worker" had been given. In the given circumstances, any type of work may be termed as social work. Similar is the case of Freedom Fighter or Political Sufferer. No guidelines in respect of these terms have been laid down. The particulars of the sportsmen have also not been given in the impugned memorandum. The expression "candidate having special career in sports and games" is vague for no guidelines have been laid down for judging as to whether a particular candidate has the special career in the sports and games. Choice of a candidate cannot be made if there are more than one candidate unless there are guidelines. In Civil Rule No. 1136 of 1992, *Papari Bharali v. State of Assam*, this Court has held that if the provision which confers discretionary powers on the executive authority (however high he may be) does not lay down guidelines for its exercise, it shall be violative of Article 14 of the Constitution, and it cannot be defended on the ground that the power conferred by it was exercised by the Chief Minister as the "high authority" theory is now obsolete. In the above view of the matter, the impugned memorandum is liable to be quashed.

10. However, we are of the view, that it is not obligatory for the Court to interfere in all the cases unless justice of the case so demands. At this stage, it would be helpful to refer to a decision of the Supreme Court reported as *I.T.C. Ltd. and Others Vs. State of Karnataka and Others*, In that case the Supreme Court has held :

"Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. "Thou

shall not do "t" used to be the previous form of, remedy encouraged by courts. But the new attitude is towards positive affirmative actions, directing people or authorities concerned that "thou shall Do" in this manner. While it is true that if a law is bad, the Court must strike it down, if the law by and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the Court can and should ensure that implementation should be done in such particular manner and give directions to that effect."

11. The next question which arises for consideration is whether the impugned memorandum is to be set aside. In the additional affidavit of the State, it has been stated thus. The Government of Tripura has decided to fill up the Chief Minister's discretionary quota in accordance with the under mentioned guidelines in addition to those in the impugned office memorandum dated 17-6-92:--

1. (a) Children of freedom fighters not exceeding 2%,
- (b) Children of political sufferers not exceeding 2%,
- (c) Children of social workers not exceeding 5%, and
- (d) Candidates having special skill in games and sports not exceeding 1%.

2. Freedom Fighter,--

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, Ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) A person who remained underground to more than six months provided he was :

- (1) a proclaimed offender; or
- (2) one on whom an award for arrest/head was announced, or
- (3) one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A person who became permanently incapacitated during firing or lathi charge.

(f) A person who lost his job, (Central or State Government) and thus means of livelihood for participation in national movement.

In case of women and SC/ST freedom fighters the period for eligibility in place of six months it shall be 3 months.

3. Political Sufferer,-- Persons belonging to categories (a) to (c) enumerated above whose period of imprisonment, remaining underground, internment/

externment is less than 6 months or 3 months, as the case may be.

4. Social Worker,-- Persons dedicated to elimination/eradication of social evils like dowry sytem, participating in antidrug movement, consumer's protection, literacy movement, running of orphanages and treatment homes and upliftment of social life and standard.

5. Sportsmen,-- Proficiency in sports giving preference according to level of participation.

6. In filling up the discretionary quota of the Chief Minister, the Government of Tripura will follow the principles of merit to be decided on the basis of the results of the intending candidates at the last qualifying public examinations besides the other conditions laid down in the impugned Memo dated 17-6-92.

12. Mr. Medhi, learned counsel for the petitioner, has contended that the above guidelines laid down by the subsequent decision of the Government of Tripura (which we shall refer to as "the Scheme") cannot be accepted at this stage for a decision which was invalid at the moment of its existence cannot be validated by a subsequent decision of the Government. Time factor is to be considered in the present case. If there is delay to select candidates for nomination there is possibility of losing the seats by lapse of time. Therefore, we are of the view that, if the Scheme does not offend the constitutional provision we may direct the State Government to act according to the Scheme applying the principles laid down by the Supreme Court in ITC Ltd.'s case (supra).

13. Let us now examine the Scheme. In Khalid's case (supra), although there was provision for rule of preference, there were no guidelines for chosing a candidate if there were more than one candidate falling within a particular category and classification. But, Supreme Court observed that the best method was to go by marks obtained at the qualifying examination, i.e., selection must depend on the academic merits. Therefore, para 6 of the Scheme can be accepted.

14. With regard to the meaning of the term "Social Workers" in the Scheme, we are of the view that the definition given therein is vague. Any type of participation in any of the movements mentioned in the definition, in the given circumstances, may be termed a social worker. If a mere participation in any of the movements would be enough to make him or her a social worker, that would defeat the rationale behind Article 14. Therefore, the classification in respect of Social Workers offends Article 14.

15. In respect of the Sportsmen, the Scheme has clarified the earlier expression "candidates having special career in sports and games". It has already been stated that reservation for the Sportsmen have been approved by the Supreme Court on the ground that it is for "promotion of sports". Therefore, the Sportsmen is referable to outstanding Sportsman or Sportswoman. This being the position, if the scheme is implemented by selecting candidates from

outstanding Sportsmen or Sportswomen with due regard to the guidelines laid down in Paras 5 and 6 of the Scheme, the Scheme would be valid. indicates that the definition of "Freedom fighter" has been borrowed from Freedom Fighters" Pension Scheme, 1972 made by the Government of India. A reading of the definition of the Freedom Fighter and Political Sufferer together with the guidelines laid down in para 6 of the Scheme, the Scheme in respect of the sons and daughters of Freedom Fighters and Political Sufferers can be implemented in view of the decisions in the above cited cases of the Supreme Court.

17. Considering all the aspects of the matter, it is directed that, for the year 1992, the nomination shall be made in terms of the Scheme in so far as sportsmen and children of freedom fighters and political sufferers are concerned in the light of the above observations. The impugned memorandum relating to sons and daughters of Social Workers is quashed as the classification is vague.

18. Before parting with the case, it may be stated here that we have not dealt with the percentage of reservation although percentage of the total reservation may go beyond 50 percent.

19. With the aforesaid direction the writ petition is disposed of.

Mrs. M. Sharma, J.

20. I agree.