

(1957) 08 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 565 of 1957

V. Raghuramulu and another

APPELLANT

Vs

State of Andhra Pradesh and another

RESPONDENT

Date of Decision : 30-08-1957

Acts Referred:

Constitution of India, 1950 — Article 15, 15(4), 16, 226, 29

Citation : AIR 1958 AP 129

Hon'ble Judges : Subba Rao, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : P.A. Chowdary, for the Appellant; M. Seshachalapathy, Government Pleader, for the Respondent

Judgement

Subba Rao, C.J.—This is an application under Art. 226 of the Constitution of India to issue a writ of (sic)tiorari calling for the records relating to the selection of medical candidates from region No. 2 of the Tererigana, area and to quash the proceedings. relating to the said Selection and to order fresh reelection.

2. The 1st petitioner belongs to Munnu Kapu caste declared to be a backward class and the second petitioner belongs to the Laddaf caste which is also a backward class. The 1st petitioner passed his B. Sc. examination in the year 1957 with Zoology main and Botany and Chemistry as subsidiaries. He secured 51 percent in his optionals.

The second petitioner also passed his B. Sc. examination in the year 1957 with Botany main and Chemistry and Zoology as subsidiaries and secured 52-1 per cent, in his optionals. The former from Suddal, Karimnagar district and the latter from Yeldurti, Medak District applied for admission into the 1st M.B.B.S. Class in the Osmania Medical College, Hyderabad.

Both of them were interviewed by the Selection Committee but were net selected on the ground that the maximum seats allotted for the backward classes were exhausted by the other applicants from backward classes who secured higher

marks than the petitioner though, in fact, they got higher marks than the two candidates who were selected for the seats thrown open for general competition. The petitioners' complaint is that the selection so made is violative of the fundamental right guaranteed to them under Arts. 15 and 29 of the Constitution of India.

3. The respondent issued an order prescribing a scheme for the selection of candidates for the Medical Colleges in the State. The whole of the former Telengana area was divided into two regions for the purpose of admission of students into Medical Colleges, namely, region 1 comprising the twin cities of Hyderabad and Secunderabad and region 2 comprising the rest of the area.

The 2nd region, on the basis of the population was allotted 97 seats of which 14 were reserved for backward classes 14 for scheduled castes and 29 seats for lady candidates, and the balance of 40 seats were thrown open for general competition. The Selection Committee made selections to the 2nd region on the said basis. The Selection Committee selected 14 candidates (10 boys, 4 girls) from the backward classes and rejected the applications of the rest of the candidates belonging to those classes on the ground that the quota fixed for the backward classes was exhausted. But they selected Chintayya and Appa Rao who secured 49 per cent, and 50.3 per cent, respectively for the general seats. The petitioners admittedly secured higher marks than those two selected candidates.

4. Learned counsel for the petitioners contends that the scheme of selection laid down by the Government and implemented by the Selection Committee is violative of their fundamental right under Art. 29 (2) of the Constitution while the learned Government Pleader contends that the fundamental right conferred on a citizen under Art. 29 (2) of the Constitution is subject to Art. 15 (4) which empowers the State to make fit special provision for educationally backward classes of citizens and therefore the reservation of 15 percent of the seats in the 2nd region for backward classes is valid and as the seats so reserved were exhausted by the admission of students from backward classes who secured higher marks than the petitioners, no question of violation of their fundamental right arises in the cases.

5. The relevant articles on the basis of which the conflicting arguments are advanced may conveniently be read at this stage:

Article 29:

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 15 :

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(4) Nothing in this article or in Cl. 2 of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

(Clause 4 of Art. 15 was inserted by the Constitution (First Amendment) Act, 1951.)

6. These two articles were the subject of judicial scrutiny both by the Madras High Court and by the Supreme Court of India.

7. The State of Madras maintained four Medical Colleges and only 330 seats were available for students in those four Colleges. Out of those seats 17 seats were reserved for students coming from outside the State and 12 seats were reserved for discretionary allotment by the State and the balance of the seats available were apportioned between four distinct groups of districts in the State.

The same procedure was followed in respect of the Engineering Colleges. The seats so apportioned between the four distinct groups of districts were filled up according to certain traditions set forth in the communal G. O. then in force. For every 14 seats to be filled by the Selection Committee the Candidates were selected on the following basis:

Non-Brahmins.

.... 6

Backward Hindus.

.... 2

Brahmins.

.... 2

Harijans.

.... 2

Anglo Indians &

Indian Christians.

.... 1

Muslims.

.... 1

This G. O. was impugned by two applicants on the ground that their fundamental right to get admission into the educational institutions maintained by the State was violated. The Madras High Court agreeing with the contentions held that the said G. O. violated the fundamental right of the petitioners and was therefore

bad. On appeal the Supreme Court of India in *The State of Madras Vs. Srimathi Champakam Dorairajan*, , agreed with the High Court of Madras, Das "J. (as he then was) who delivered the judgment on behalf of the Court observed at p. 315 (of SCJ): (at p. 227 of AIR):

"The right to get admission into any educational institution of the kind mentioned in Cl. 2 is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizen on grounds only of religion, race, caste, language or any of them.

If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to complain of an infraction of his fundamental right under this Article. But on the other hand if he has the academic qualifications but is refused admission only on grounds of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right."

8. Adverting to the argument that the reservation of seats for backward classes in enjoined by the Constitution and therefore the communal G. O. implementing the said object is valid. His Lordship proceeded to observe a p. 316 (of SCJ) : (at p. 228 of AIR) :

"Seeing however, that Cl. 4 was inserted in Art. 16 the omission of such an express provision for Art. 29 cannot but be regarded as significant. It may well be that the intention of the Constitution was not to introduce a(sic) all communal considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds.

The protection of backward classes of citizens may require appointment of member of backward classes in State services and the reason why power has been given to the State to provide for reservation of such appointments for backward classes may under those circumstances be understood. That consideration, however, was not obviously considered necessary in the case of admission into a educational institution and that may well be the reason for the omission from Art. 29 of clause similar to Cl. 4 of Article 16."

9. The effect of Art. 29 (2) as interpreted by the Supreme Court would substantially b(sic) students of backward classes from getting admission into professional colleges for as like as not, at any rate for some time to come the could not succeed in a competition with the students belonging to advanced communities. Naturally therefore there was a furore in those communities which led to the amendment the Constitution by the insertion of Cl. Art. 15.

By the amendment nothing in Art. 29 (sic) prevents a State from making any special provision for the advancement of any socially a educationally backward classes of citizens. (sic) that extent the fundamental right of the citizen under Art. 29 (2) can be abridged by the State. But the abridgment is conditioned and circumscribed by the provisions of the clause. Any special provision made by the

State should be for the advancement of the backward classes of citizens and not to abridge the rights guaranteed to them under the Constitution or retard their progress.

10. To illustrate: The State may allot a minimum number of seats in professional Colleges for backward classes. This provision would be for the advancement of the backward classes for irrespective of the marks they secured, certain seats would be guaranteed to those classes. But if in a particular locality the members of the backward classes secure high marks and are able to compete with students of other classes they would not be deprived of their right to get admission into colleges beyond the quota allotted to them.

Such a provision would certainly be for the advancement of the backward classes. On the other hand, if a maximum be fixed, instead of providing for the advancement of those classes in the contingency visualised above, it would retard their progress; for students of those classes who secure more marks than students who compete for the general seats and get less marks than students belonging to their classes would not get seats.

To that extent the provision made by the State would be in excess of the power conferred on it under Cl. (4) and therefore cannot effect the fundamental right of the citizens whether they belonged to backward classes or (sic) not. To put it differently, every individual citizen as a citizen whether he belongs to the backward classes or not has a right to get admission into an educational institution of the kind mentioned in Cl. 2 of Art. 29.

The said fundamental right is abridged by the special provision made by the State for (sic) advancement of any socially and educationally backward classes of citizens. If the provision is for the advancement of such classes the fundamental right of a citizen is not infringed for his right itself is reduced by (sic) provision.

If the provision though it purports to be (sic) the advancement of the backward classes, effect abridges their rights, the entire rights, (sic) entire provision or that part of it which bridges their rights would be bad leaving untouched the fundamental right of every citizen whether he is a member of the backward classes or not.

11. In the instant case the State directed that a maximum of 15 per cent of the total number of seats in any faculty may be reserved for backward class candidates. The said (sic) is obviously made on the assumption that under no contingency more than 15 per cent the total number of seats in any faculty would be or could be captured by the members of the backward classes in open competition.

This assumption has been belied in the present case. Therefore, the effect of the provision instead of advancing the cause of the backward classes prevented some members of those classes from getting seats which they would have otherwise got if all the seats were brought under a common pool. It may be that

in other localities where the members of the other communities are more advanced educationally than in the second region of the Telengana Area, this rule may work for the advancement of the backward classes candidates.

It is therefore not necessary to hold that the rule is bad but it would be enough to confine the operation of that rule to a case where the assumption underlying that rule applies and to hold that in other cases where the rule does not operate for the advancement of the backward classes the fundamental right of a citizen of that class is unaffected by the provision.

We would suggest that the rule may be modified by substituting the words "minimum of 15 per cent." for the words "maximum of 15 per cent." or by any other appropriate way. It is not disputed that but for the provision, the names of the two petitioners would have been considered along with the applicants selected from the general pool, and, if so considered, they would have been selected.

12. It is represented to us that the selection Committee had finished its work and the students selected have been admitted into the Colleges. This Court did not give any interim stay in matters of selection of candidates to Colleges as it would introduce complications and prejudicially affect the boys in regard to their collegiate education. However, the fact that selections have been made could not affect the rights of the petitioners. The applications of the two petitioners may now be considered by the respondent and if they, have preferential claims over others who have already been selected they may be provided for by creating two additional seats.

13. In this view it is not necessary to express our opinion on the question raised by the learned counsel for the petitioners that G. O. Ms. No. 1254, Health, dated 26-6-1957 having no legislative sanction behind it is void.

14. In the result, we issue the aforesaid direction to the respondent. The respondent will pay the costs of the petitioners. Advocate's fee Rs. 100/-.