

(1997) 02 MAD CK 0181

In the Madras High Court

Case No : W.P.No. 11189 and 11067 of 1995

Y. Kavitha and another

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 226

Citation : (1998) 1 CTC 173

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. P. Rathinam, Mr. S. Vasudevan, for the Appellant; Miss. Manjula, Government Advocate (Education), for the Respondent

Final Decision : Dismissed

Judgement

1. In W.P.No. 11967 of 1995 and the petitioner, who was not successful and could not secure admission in the first Year M.B.B.S. Course under Special Category 15 for the academic year 1995-96 has filed the present Writ Petition, seeking for the issue of a Writ of Madamus directing the respondents to admit the petitioner herein in the first year M.B.B.S. Course in any one of the Government Medical Colleges in Tamil Nadu under the special category 15 for the academic year 1995-96.

2. According to the petitioner, he was born out of inter- caste marriage. The petitioner's father belong to Pallan Community (SC) and mother belong to Backward Class Community. The petitioner sought for admission under the special category of seats reserved for the children born out of inter-caste marriage. According to the petitioner, the candidates who have secured marks less than the petitioner had been admitted to the first year M.B.B.S. Course and his non-selection is illegal. The petitioner contends that the admission of all the candidates under this category falling under Clause(a) is illegal and discriminatory. Counter has been filed by the respondents. There is no controversy as to the marks scored by the Writ Petitioner in the academic

examination as well as in the entrance examination and other particulars. In the counter-affidavit filed on behalf of the respondents, it has been stated that 57 candidates applied for admission claiming to be the children born to parents belonging to SC/ST and FC. Out of 57 candidates, the first 12 candidates were selected and admitted under the special category clause (a) of Clause 3.5. (viii) of the prospectus. In view of the non-filling of some seats in other special categories, one seat was added to the above category taking the total to 13 and therefore, one more candidate was also admitted from the children born of inter-caste marriage between SC/ST and FC. The Petitioner admittedly is a child born of inter-caste Marriage between SC and BC and he has secured 261.58 out of 300. The petitioner stands in Sl.No.7 in the merit list drawn for children born of inter-caste marriage between SC and BC. There is no scope for the selection committee to consider the applications received from the children born of inter-caste marriage between SC/ST and BC and so on. It is also contended that preference ought not to have been offered to those falling under category Clause (a) and that would result in total deprivation of or exclusion of those falling under Clause (b). It was contended that the said preference or selection of the candidates falling under Clause (a) is vitiated and it is also violative of Article 15 of the Constitution. In this respect, the learned counsel for the Writ Petitioner placed reliance on the judgment of the Supreme Court reported in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* . In this respect, the respondents contend that the judgment referred by the learned counsel for the petitioner has no application to this special category and it is also contended that the Government is competent to earmark certain number of seats for the special categories identified by the Government and also competent to allot the seats in the order of preference.

3. W.P.NO. 11189 of 1995 has been filed by one Kavitha, seeking for a declaration declaring the order of preference given in the inter-caste marriage quota, Category 14 i.e. specified Order Clause 3.5 (VIII) of the prospectus issued by the 3rd respondent for the Tamil Nadu Professional Courses study as unconstitutional and strike down the Selected candidates therein and direct the selection to be done in the order of merit for the year 1995-96. Even in the present case also, there is no factual controversy or there is controversy with respect to the particulars of marks scored by the petitioner. On the other hand, it is contended on behalf of the respondents that the contention raised by the petitioner are untenable and the reliance placed upon the judgment of the Supreme Court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* is also misconceived.

4. Both the Writ Petitions were taken up together and detailed arguments were advanced by the Learned counsel for the petitioner in both the writ petitions as well as the learned Government Advocate (Education) for the respondents.

5. The learned Government Advocate appearing for the respondents relied upon the judgment of a Division Bench of this Court in *Vinothkumar v. Government of*

Tamil Nadu ,W.A.No. 209 of 1995 and W.A.No. Rajarajan Minor v. Government of Tamil Nadu, It is also contended that the judgment of the Division Bench of this Court could govern the issue and the various contentions raised in these Writ Petitions as well.

6. In the prospectus for the year 1995-96 Tamil Nadu Professional Courses, Medical Courses Etc. 12 seats have been reserved for the children born of inter-case marriage.

Relevant Clause in the prospectus reads thus:-

"3.5 (viii) Seats Reserved for Children Born of Inter caste marriage: No. of seats reserved in M.B.B.S. - 12 Candidates claiming admission against the reservation for the children born of intercaste marriage should submit a certificate from the Tahsildar of the respective area regarding the castes of the parents, vide G.O.Ms.No. 477, Social Welfare Department, dated 27.6.1975. The following order of preference shall be followed for selection of candidates from this category:- (a) the children born of inter-caste marriage between SC/ST and Forward Communities.

(b) The children born of intercaste marriage between SC. / ST. and Backward Class communities.

(c) The children born of inter-caste marriage between S.C. / S.T. and Most Backward class and Denotified Communities"

7. The very Clauses 3.5 (viii) prescribes the Order of preference for selection of candidates who applied under this category. Preference has already been fixed in the prospectus itself. It is the specific case of the respondents that all the candidates selected during the year belong to the category (a) viz., children born of inter-caste marriage between SC/ST and F.C. As such, the petitioners cannot have any grievance and their claim if at all will fall under category (c) This preference prescribed in the prospectus has not been violated nor the preference provided for in the prospectus would be challenged at this stage. Both the Writ Petitioners have submitted their application claiming preference for the admission under the special category viz., children born of inter-caste marriage. Before submitting their applications, they did not challenge the preference provided for in the prospectus. Only after submitting their applications and after being unsuccessful, they have come before this Court as an after thought. In this respect, my attention was drawn to the judgment of this Court reported in Tanura v. Director of Medical Education, Madras 1985 W.L.R. 354 wherein Mainar Sundaraman, J. as he then was, applying the ratio laid down by the Supreme Court in I.L. Honnagouda v. State of Karnataka A.I.R. 1978 SC 28 has held thus:-

"The prescriptions and the procedure were there in the prospectus itself. Knowing fully well that there are such prescriptions and procedure the petitioner applied for admission. After having acquiesced in the prescriptions and procedure and

after having gone through the process of selection as per the same and now not having come out successful, it is not permissible for the petitioner to challenge the constitutional vires of the said prescriptions and procedure. This is a well settled principle counterenanced by the Highest Court in I.L. Honnegouda vs. State of Karnataka in the following terms:-

....."The facts that the appellant acquiesced to the 1970 Rules by applying for the post of the village Accountant, appearing before the Recruitment Committee for interview in 1972 and 1974 and taking a chance of being selected, the present appeal which questions the constitutionality of Rules 4 and 5 of the 1970 Rules cannot be allowed"

This has been followed by pronouncements of this court. Further, the learned counsel for the petitioner would submit that the valuation has of the marks in the entrance examination has not been done properly and the petitioner ought to have been granted higher marks. This allegation cannot be taken note of because if taken note of, practically it will lead to counterenancing a plea for revolution. This process has also been deprecated.

This process has also by the Highest Court in the land-vide Maharashtra SB.O.S. & H.S. Education v. Parttosh. There is no allegation of malpractice, fraud or improper conduct, etc., in the valuation in the entrance examination. In the said circumstances, this grievance also could not be taken note of".

This view has been reiterated subsequently by the Apex Court. That being the position, it follows that it is not open to the petitioners to challenge the preference provided for in the prospectus at this point of time.

8. Further as pointed by the learned Government Advocate, the very same Clause was the subject matter of consideration before the Division Bench in W.A.No. 209/95 - Vinoth Kumar v. State of Tamil Nadu. The Division Bench while following the earlier Division Bench Judgment of this Court S. Hari Ganesh and Another Vs. State of Tamil Nadu and Another, has held that the identical classification does not suffer from the vices of Article 14 of the Constitution. The Division Bench has held thus:-

"The contention of the learned counsel that such a classification is arbitrary and has no nexus to the object, as such it is Violative of Article 14 of the Constitution, cannot at all be appreciated. It may be pointed out here that the children born of inter caste marriage between S.C. & S.T. and Most Backward Class and denotified communities, will be having the benefit of reservation made either for the most backward community or for S.C. and S.T. depending upon the way of life in which they are brought up. Similarly, the children born of inter caste marriage between S.C. and S.T. and backward communities also, will have the reservation depending upon the way of life in which they are brought up, where-as the children born of inter caste marriages between S.C. and S.T. and forward communities will not have any benefit of such reservation, as one of the parties to the marriage is from a forward community. If all are treated alike,

then, the inter caste marriage that has taken place between the SC. and S.T. and forward community which removed the in balance between the communities in a greater measure, will not be in any way advantageous.

Further, the object of the reservation is also to encourage inter caste marriage between S.C. and S.T. and forward communities. As the classification is based on the intelligible differential and this differential has rational relation or nexus to the object sought to be achieved, viz., to encourage inter caste marriage between S.C. and S.T. and forward community, it is not possible to hold that the classification suffers from the vices of Article 14 of the Constitution."

With respect to Article 15(4) of the Constitution, in the very same case, the Division Bench has held thus:-

"Learned counsel also placed reliance on a Division Bench Decision of the High Court of Kerala in Raghava Panicker and Another Vs. The Administrator, Union Territory, Lakshdweep and Others, . That was the case in which reservation made for socially and educationally backward classes was challenged and it was held that such a reservation was valid in law, having regard to the fact that the interest of the weaker and socially and educationally backward sections of the people were required to be protected and such reservation was valid in law, having regard to the fact that the interest of the weaker and socially and educationally backward sections of the people were required to be protected and such reservation would be permissible under Article 15(4) of the Constitution. That being so, the question that arises in the present case did not arise in that case, therefore, it is not possible to apply the said decision."

9. In W.A.NO. 1002 of 1995 the Division Bench had occasion to consider the challenge to the admission under the special category and has held thus:-

"As the averments made in the counter affidavit are not refuted, the learned judge is justifiable relying upon the same and coming to the conclusion that the seats reserved for the special category under Clause 3.5 (viii) of the prospectus are filled up by the applicants falling in the first part of the special category whereas the petitioner/appellant falls under the second part of the special category. Therefore, we see no reason to interfere with the order of the learned Single Judge. The Writ Appeal is dismissed". In view of the above, there is no escape except to dismiss the above writ petitions."

10. What is sought to be pressed by the learned counsel is that certain observation of the Supreme Court made in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . If the preference is confined in the order shown in the prospectus that would result in total deprivation of the second clause viz., Clause (b) or that matter, clause (c) of Clause 3.5. (viii). This contention of the learned counsel, in my considered view, cannot be countendanced. The consideration before the Apex Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., is with respect to challenge of reservation of SC/ST and BC in professional courses. Nine Judges Bench of the Apex Court has laid down the

law on the subject. In my considered view, principle laid down by the Apex court has no bearing the respect of the issue viz., preference provided for in the prospectus in favour of the children born of inter-caste marriage between SC/ST and F.C. and other categories. The earlier Division Bench has considered the preference provided for in the prospectus and has also upheld that it is not violative of Article 14 of the Constitution. The contention of the learned counsel for the petitioner basing merely upon the interpretation of the word "preference" is not acceptable.

11. The learned counsel for the petitioner placed reliance upon the Judgment of the Apex Court reported in Sher Singh Vs. Union of India (UOI) and Others, . The said pronouncement of the Supreme Court is clearly distinguishable and has no application to the facts of the present case.

12. For the foregoing circumstances, following the Judgement of the Division Bench of this Court in W.A.No. 209 of 1995 and 1002 of 1995, these Writ petitions are dismissed but without costs.