

Chamaraja Vs. State of Mysore and anr.

Chamaraja Vs. State of Mysore and anr.

SooperKanoon Citation : sooperkanoon.com/374497

Court : Karnataka

Decided On : Oct-21-1965

Reported in : AIR1967Kant21; AIR1967Mys21; ILR1966KAR170; (1966)1MysLJ119

Judge : K.S. Hegde and ;K. Bhimiah, JJ.

Acts : Mysore Government Order; [Constitution of India](#) - Articles 15(4), 29(2), 162 and 336; [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : Writ Petition No. 1787 of 1965

Appellant : Chamaraja

Respondent : State of Mysore and anr.

Advocate for Def. : B. Venkataswamy, High Court Govt. Pleader

Advocate for Pet/Ap. : K. Jagannatha Shetty, Adv.

Judgement :

Hegde, J.

1. In this writ petition under Article 226 of the Constitution, the petitioner requires this Court to issue a writ of mandamus or direction in the nature of mandamus to the respondents to admit him to one or the other of the Medical Colleges run by

the Slate.

2. He passed his P. U. C. Examination in the Mysore University in the Examination held in April last. In that Examination, he secured 176 marks in his optional subjects. He was interviewed by the Selection Committee At the interview, he secured 21 marks. Therefore, the total marks secured by him are 197 He belongs to a socially and educationally Backward Class. The last student admitted to the Mysore Medical College from a socially and educationally Backward Class had secured 210 marks. Therefore, quite clearly, on the basis of the Rules relating to the admission to Medical Colleges, the petitioner is not entitled to a seat. This much is conceded on behalf of the petitioner.

3. But it was strenuously urged on behalf of the petitioner that Rule 10 in Order No. PLM 778 MMC 64, dated, Bangalore, the 11th June 1965, issued in the name of the Governor of Mysore, is an invalid Rule, and that being so the petitioner's case for admission had to be considered without reference to that Rule.

4. Under Order No. ED 75 TGL 63 dated 26th July 1963, 30 per cent of the seats in the Professional and Technical colleges were reserved for Backward Classes.

5. The impugned Rule 10 reads as follows :

'10. Manner of preparing lists of selected candidates - (1) In respect of the eighty per cent seats apart for distribution to persons who have passed the P. U. C. Examination or XI Standard of the Higher Secondary School Examination or other equivalent examinations under the proviso to Rule 1.

(a) the Selection Committee shall first prepare a consolidated list of all applicants in respective of castes or classes to which they belong arranging them in the order of merit thereafter called the First List), merit being assessed applying the following principles.

(i) The Aggregate of the marks obtained by the candidate in the subjects taken into account for making the selection and the marks obtained by the candidate at the interview.

(ii) If candidates have obtained the same total marks (optional marks plus interview marks), the candidates with higher optional marks will be assigned higher rank

(iii) If candidates have secured equal number of marks both in the optional and at the interview, the candidate having higher aggregate (marks in all the subjects) will be assigned higher rank.

(b) The Selection Committee will then prepare from out of the First List, a Second List containing the names of applicants equal in number to the total number of seats to be selected for admission by the Committee arranging them in the order of merit, commencing with the first name in the First List.

(c) If the Second List contains the names of as many members of each of the three categories, namely, Scheduled Castes and Scheduled Tribes and Socially and Educationally Backward Classes as the number of seats respectively reserved for them, then the said Second List will constitute the list of applicants finally selected for admission.

(d) If, in the case of any of the aforesaid three categories, viz., Scheduled Castes Scheduled Tribes and Socially and Educationally Backward Classes, the number of applicants belonging to such categories in the Second List falls short of the number reserved for them in the Government Order No. ED 75 TGL 63, dated 36th July 1963, issued in this behalf, additional number of applicants of those categories required to make up that deficiency shall be selected in the order of merit to the extent available from out of that portion of the First List remaining after excluding the portion corresponding to the Second List.

(e) If and when such additional number of applicants belonging to one or more of the three categories, namely, Scheduled castes, Scheduled Tribes and Socially and Educationally Backward Classes, come to be selected under the last preceding Clause (d). an equal number of names of applicants not belonging to any one of these categories, shall be deleted from out of the Second List counting from the bottom of the said list upwards.

(f) The list finally settled by confirming to the Clauses (a) to (e) shall constitute the list of candidates finally selected.

(2) In respect of the twenty per cent seats for graduates set apart under the proviso to Rule 1. the Selection Committee shall follow the same procedure mutatis mutandis indicated in Sub-rule (1). It is hereby clarified that only the marks obtained at the degree of equivalent examination shall be taken into consideration and the marks obtained in the P. U. C. examination or XI Standard of the Higher Secondary School Examination shall not be taken into consideration.

(3) Two separate lists of candidates finally selected, one for persons who have passed the P. U. C. Examination or XI Standard of the Higher Secondary School Examination and the other for persons who are graduates shall be prepared by the Selection Committee

(4) The Selection Committee shall also prepare a list of persons selected from out of the persons belonging to the categories (e), (g), (h), (i) and (j) of Sub-rule 1 of Rule 4 according to merit, on the basis of marks obtained, in the qualifying examination and at the interview and the procedure set out in Sub-rule (i) shall be followed, mutatis mutandis, in this respect.'

6. It is urged on behalf of the State that the impugned Rule must be held to have either modified Rule 6 in Order No. ED 75 TGL 63, dated 26-7-1963 or in the alternative must be held to have regulated the application of that Rule. It must be remembered that both the Orders had been issued by the State Government. Both of them had been issued in the name of the Governor. Both of them have been signed by one of the Secretaries to the Government. It is true that the earlier order specifically says that it is issued under Article 15(4) of the Constitution. The impugned Rule refers to the earlier order. It is not denied that the State Government had competence to issue the latter order. The fact that the latter order does not purport to have been issued under Article 15(4) of the Constitution is an irrelevant circumstance. So long as that order is referable to a valid power exercisable by the State, its validity cannot be questioned. On a reading of that order, it is clear that the same had been issued by the Government in exercise of its powers under Article 162 of the Constitution read with Article 15(4) of the

Constitution.

7. Unless we read the impugned Rule as explaining the order issued in ED 75 TGL dated 26-2-1963, the two orders cannot be reconciled. There would be a conflict between the two. Therefore, by adopting the rule of harmonious construction, we reach the conclusion that the latter order modified the earlier order.

8. From these two orders, it follows the State has reserved for Socially and Educationally Backward Classes a minimum of 30 percent of the seats in the Professional and Technical Colleges run by the State. In other words, the reservation of 30 per cent made under the orders in question is not an absolute reservation. What these two orders say is that under any circumstance, Socially and Educationally Backward Class students should at least get 30 per cent of the seats in Professional and Technical Colleges. They may get more, but not less. The procedure laid down is at the first instance a selection has to be made solely on the basis of merit. Then the selection committee has to see how many students belonging to Socially and Educationally Backward Classes would come in on the basis of merit only, If their number exceed 30 per cent of the total seats, then there is no question of any reservation. But, if it is less than 30 per cent, the deficit will be filled up from the reserved quota, therein the competition being only between the students belonging to Socially and Educationally Backward Classes. For every seat got by a Socially and Educationally Backward Class student, in the merit pool a Mat is deducted from the reserved pool and added on to the merit pool. To put it differently, assuming that there are 100 seats available for admission, at the outset 80 of them will be reserved for Socially and Educationally Backward Classes. First, a list for all the available seats will be prepared on the basis of merit. If out of the first 52 seats available in the merit pool 15 are backward class students, 15 seats from the backward pool will be de-reserved and added to the merit pool. The same process has to be continued till all the seats are filled up. The validity of this method of selection is challenged.

9. It was urged by Mr. K. Jagannatha Shelly, the learned counsel for the petitioner, that those students, who come in the merit pool, get their seats on the basis of the fundamental right guaranteed to them under Article 29(2) of the Constitution. That

has nothing to do with the reservation made under Article 15(4) of the Constitution. Therefore, in filling up the seats reserved under Article 15(4) of the Constitution, the State Government is not competent to take into consideration the seats secured by the Backward Class students in the merit pool. According to him, reservation made under Article 15(4) of the Constitution cannot be dovetailed into the selections made under Article 29(2) of the Constitution which has to be done solely on the basis of merit. We are unable to accept this contention as correct.

10. The guarantee given under Article 29(2) of the Constitution is a guarantee given to individual citizens. That guarantee is not given to any class. Article 15(4) of the Constitution empowers the State to make special provisions for the advancement of any Socially and Educationally Backward Class of citizens or for the Schedule Castes and Schedule Tribes. That Article does not compel the State Government to make any special provision for the advancement of the Classes, Castes, tribes mentioned therein. The State is empowered to make provisions in that regard. But it is not compelled to do so. It is entirely left to the discretion of the State, Even the nature and extent of the special provisions under that Article is left to the discretion of the State. If the State Government chooses not to make any reservation under that Article, the Court cannot compel it to do so. This aspect has to be borne in mind while deciding the contentions advanced by Mr. K. J. Shetty and Mr. L. G. Havanur.

11. As seen earlier, the State has merely given a minimum guarantee to seats to students belonging to Backward Classes. The seats reserved, will be available to them only and to the extent they do not get adequate representation in the merit pool. We fail to see how such a reservation can be considered as an invalid reservation. The power conferred on the State Government under Article 16(4) of the Constitution, as mentioned earlier, is a very wide power. It is only limited by the other provisions in the Constitution. No provision in the Constitution has been brought to our notice regulating the exercise of the discretion conferred on the State under Article 15(4) of the Constitution. Mr Havanur relied on Article 386 of the Constitution in support of his contention that the reservation made in favour of the Backward Classes under Article 15(4) must be in addition to the seats obtained by the students belonging to that Class under Article 29(2). We do not

think that that contention is correct. Article 336 deals with the reservation of appointments in the Railway, Customs, Postal and Telegraph Services for the Anglo-Indian Community. That Article has not only Quantified the posts reserved for them, but has also said that it is in addition to what they might get otherwise. There is no similar provision in the Constitution as regards the seats that may be reserved under Article 15(4) of the Constitution. Merely because the Constitution had reserved certain posts for a particular community in addition to what it may get under Article 29(2). it does not follow that the same is true of the reservation under Article 15(4).

12. On the basis of the decision of the Andhra Pradesh High Court in *Raghuramulu v. State of Andhra Pradesh*, AIR 1958 Andh Pra 129, it was contended that whatever reservation is made under Article 15(4) of the Constitution, the same must be exclusive of the seats secured by the Backward Class students in the merit pool, We do not think that that decision supports that contention. That decision merely lays down that any reservation made under Article 15(4) of the Constitution, should not limit the number of seats that may be available to the students belonging to the Backward Classes, under Article 29(2) of the Constitution. In other words, if by merit Backward Class students can secure more seats than those reserved under Article 15(4) of the Constitution they are entitled to do so. The power conferred under Article 15(4) can only be exercised to advance the interests of the Backward Class persons and not to restrict them. In the present case, the reservation made in favour of the Backward Class students does not place any restriction on those students from getting, on the basis of merit, more seats than the 30 per cent reserved. The Rules in question do not say, as was done by the Rules considered by the Andhra Pradesh High Court that the backward class students cannot get more seats than those reserved for them They merely say that under any circumstance they must at least get 30 per cent of the total seats.

13. We are also not able to agree with Mr. K. J. Shetty that the decision of Kerala High Court in *R. Jacob Mathew v. State of Kerala*. : AIR1964 Ker39 is of any assistance to the petitioner. In that case, the Rule came up for consideration before the Kerala High Court was similar to Rule 6 in Government Order No. ED

75 TGL 63 dated 26-7-68 The controversy was whether the seats reserved under that Rule were in addition to the seats available to the Backward Class students under the merit pool. The Kerala High Court upheld the contention of the learned Advocate General that those seats were in addition to those got under the merit pool the ratio of that decision would have been helpful to the petitioner if the said Rule 6 had remained unamended. The Rule that we are considering is substantially different from that rule as seen earlier.

14. For the reasons already mentioned, we are clearly of the opinion that, the State had competence to issue the impugned Rule, and the Rule in question is valid.

15. For the reasons mentioned above, this petition fails and the same is dismissed
No costs.

16. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com