

S. Santhosh Kumar Vs. State of Andhra Pradesh and ors.

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Court : Andhra Pradesh

Decided On : Jul-05-1984

Reported in : AIR1985AP228

Judge : Rama Rao, J.

Acts : Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fees) Act, 1983 - Sections 3 and 15; [Constitution of India](#) - Article 14; Andhra Pradesh Regulation of Admission to Super Specialities in Medical Colleges Rules, 1983 - Rules 1(3) and 5

Appeal No. : Writ Petn. Nos. 9091, 9811 and 9992 of 1984

Appellant : S. Santhosh Kumar

Respondent : State of Andhra Pradesh and ors.

Advocate for Def. : Govt. Pleader for ;Medical and ;Health

Advocate for Pet/Ap. : E.D. Nathan and ;P. Babul Reddy, Advs.

Judgement :

1. These writ petitions are for issue of a writ declaring that R.1 (3) of the Rules made under G.O. Ms. No. 740 M & H dated 22-11-1983 reserving all the seats in Super Specialities in medical faculty in favour of in-service candidates as unconstitutional illegal and ultra vires and direct the respondents to consider the

case of the petitioners without reference to the said rule and further direct the respondent to make selection for D.M. Cardiology for two seats.

2. The averments in the affidavits in support of the writ petitions may be epitomised. The petitioners having taken M.D. and M.S. Degrees are interested in pursuing further studies in Super Specialities of Medical faculty. The petitioners have brilliant academic career and they did not opt to join in Government service with a view to pursue higher education. In the State of Andhra Pradesh Super Specialities were introduced in the year 1979. There are in all 14 seats allocated for Super Specialities in different subjects. The number of seats should have been fifteen pursuant to the order of this Court as two seats should be allotted to D.D Cardiology pursuant to the principles evolved by the Indian Medical Council. For the post-Graduate courses in various subjects in the medical colleges there is reservation of 15% in clinical subjects 30% in non-clinical subjects to be eligible Government servants. From the inception there was no reservation in super specialities in the interests of efficiency and as the seats are very few and they did not exceed three in any subject. G.O. Ms. No. 740 M & H dated 22-11-1983 by the Government of Andhra Pradesh providing that in-service candidates alone are eligible to apply for super specialities is impugned as illegal and arbitrary.

3. In the common counter-affidavit filed by the Assistant Secretary to the Medical and health Department, it is stated that the G.O. is issued in exercise of the powers conferred by Sec. 3 read with sub-section (1) and S.15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and prohibition of Capitation Fees) Act, 1983, (Act 5 of 1983). It is stated that treatment is provided in Government Hospitals free of cost and in some cases on nominal charges, and as majority of people cannot afford to go to private hospitals for medical treatment it was considered necessary in the public interest to train doctors who are actually working in the Government hospitals to enable them to serve the public more efficiently and to provide specialised services to them. The courses were introduced for giving training to the in-service doctors in super specialities. The Government is incurring heavy expenditure in the field of post-graduate medical education and they have a right to introduce courses in super specialities to train doctors working in the Government hospitals and teaching institutions for more

efficient service. After acquiring the training and qualification in super specialities, the in-service candidates will be of great assistance and will render more efficient service to the public. To ensure the continuity in service after acquiring training and qualification in super specialities Government prescribed, the execution of a bond to serve in the Government hospitals for a period of five years after completion of the said training. To provide medical facility for the common man it is essential that the persons holding super speciality qualification are made available in the Government hospitals, and with this view R.1 (3) was made and doctors working in the government hospitals is a class by themselves and there is no discrimination and courses can be arranged by the Government to improve their efficiency for the benefit of the public in general.

4. The learned counsel Sarvasri P. Babul Reddy and E.D. Nathan for the petitioners contended that R.1 (3) of the rules relating to the admission of students into super specialities in the Medical Colleges of Andhra Pradesh enabling regularly appointed service candidates alone to apply for these courses to the inclusion of thereby excluding other qualified candidates is arbitrary and violative of Art. 14 and Art. 21 of the Constitution. It is further contended that R.1 (3) reserving all the seats for in service candidates only is not in conformity with Sec. 3 of Andhra Pradesh Educational Institutions (Regulation of Admission and prohibition of Capitation Fees) Act, 1983 (Act 5 of 1983) (sic) confined to reservation of seats to members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes alone and as such ultra vires. It is also contended that two seats should have been allotted to D.M. Cardiology instead of one in accordance with the decision of this Court in W.A. No. 620 of 1982 dated 20-11-1982. The learned Government Pleader contended that in-service candidates are class by themselves and such classification is founded upon intelligible differentia and bears prominent relation to the object of providing ensuring efficient service by employed doctors who are having practical experience by rendering service in hospital and also imparting training to them and as such R.1 (3) does not offend Arts. 14 and 21 of the Constitution. It is further contended that Sec. 3 of Act 5 of the 1983 explicitly provided that the provisions contained in Sec. 3 are subject to the rules that may be made and as such the question of ultra vires does not arise. With reference to one more seat for D.M. Cardiology it is contended by

Government Pleader that the provisional admission was converted into regular admission in view of the concession made by the University for that year and such increase must be confined to that year only on the particular facts in W.A. No. 620 of 1982.

5. To appreciate the rival contentions it is necessary to have grips over the purport of Sec. 3 of Act 5 of 1983 and G.O. Ms. No. 740 M & H and the rules, for admission to super specialities. Section 3 of Andhra Pradesh Educational Institutions (Regulation of Admission and prohibition of Capitation Fees) Act, (Act 5 of 1983) is as follows:

'Regulation of Admission into educational institutions: (1) Subject to such rules as may be made in this behalf, admission into education institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed;

Provided that admission into Medical and Engineering Colleges shall be made only on the basis of the ranking assigned in the common entrance test conducted as aforesaid.

(2) That admission into educational institutions under sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order 1974.'

Section 15(1) of the said Act is as follows: -

'Power to make rules: (I) The Government may, by notification, made rules for carrying out all or any of the purposes of this Act.'

The G.O Ms. No. 740 M & H framing the rules relating to the admission, of students in to the super specialities is as follows: -

'In exercise of the powers conferred by S.3 read with sub-sec. (1) of S.15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and prohibition of Capitation Fees) Act, 1983 (Andhra Pradesh Act 5 of 1983), the Government of Andhra Pradesh hereby makes the following Rules relating to the admission of students into the Super Specialities in the Medical Colleges of the State of Andhra Pradesh.

These rules shall come into force with effect from the academic year 1983-84.'

Rules 1, 3 and 5 of the rules are as follows: -

'1. (1) These Rules may be called the Andhra Pradesh Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983.

(2) They shall apply to the course in Super Specialities in the Medical Colleges.

(3) Only in-service candidates who are regularly appointed in Andhra Pradesh Medical & Health Services are eligible to apply for these courses.

3. Reservation:

No reservations will be followed for Scheduled Castes, Scheduled Tribes and Backward Classes, since these are common to all regions of the State and are less than four in each subject. 5. Eligibility:

Prior qualifications required to apply for the courses are shown as noted against each:

(i) D.M. (Neurology) MD Genl. Medicine or Paediatrics.

(ii) M.S. (Neuro-Surgery) M.S. Genl. Surgery or orthopaedics.

(iii) D.M. (Cardiology) M.D. Genl. Medicine or Paediatrics.

(iv) M. Ch. (Cardio-Thoracic) M.S. Genl. Surgery.

(v) M. Ch. (Genito-Urinary Surgery) M.S. Genl. Surgery or M.D. (Obst).

(vi) M. Ch. (Paediatric Surgery) M.S. Genl. Surgery or Orthopaedics.

(vii) M. Ch. (Plastic Surgery) M.S. Genl. Surgery or Orthopaedics or E.N.T.

(viii) D.M. (Gastro Enterology) M.D. Genl. Medicine or Paediatrics.'

6. The provisions of Act 5 of 83 are designed to regulate admission on the sole criteria of merit. Sub-sec. (1) of Sec. 3 postulates the assessment of merit on the basis of the marks obtained in the qualifying examination or the ranking assigned in the entrance test. Sub-sec. (2) enables the rule making authority to provide reservation of seats of Scheduled Castes, Scheduled Tribes and Backward Classes and in consonance with Andhra Pradesh Educational Institutions (Regulation of Admission) Rules, 1974. The Act does not contemplate any reservation or weightage save the reservation embedded in Sec. 3(2) of the Act. By G.O. the rules relating to admission of the students into the super specialities enumerated in R.5 are framed and Rule 5 specified M.D. or M.S. in subject correlated to super specialities subject as primary qualification for eligibility to admission. Rule 3 ferrets out reservations to Scheduled Castes etc. in view of the paucity of availability of seats as the provision for seats is less than four in each subject. Rule 1(3) of the Rules provides that in-service candidates only are eligible to apply for the courses. In view of this rule the candidates other than doctors employed in the Government hospitals or teaching institutions are denied the eligibility for admission though they possess primary qualification specified in Rule 5.

7. The essence of the contention of the learned counsel for the petitioners is that Rule 1(3) postulating reservations of all seats in super specialities in favour of service personnel to the exclusion of other qualified candidates is arbitrary and manifestly unjust and violative of Arts. 14 and 21 of the Constitution. The learned Government Pleader sought to sustain the rule on the ground that in-service candidates constitutes distinct class or group and the classification founded on intelligible differentia bears reasonable relation to the object of attaining high level efficiency and as such not violative of Art. 14 or 21 of the Constitution. It is contended by the learned counsel for the petitioners that a new dimension has been given to Art. 14 and reliance is placed upon the latest decision of the

Supreme Court in *Ajay Hasia v. Khalid Mujib* : (1981)ILLJ103SC wherein it is held as follows at 498.

'It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that the article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions namely, (i) that the classification is 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 has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa v. State of Tamil Nadu*, : (1974)ILLJ172SC , that this Court laid bare a new dimension of Art. 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness.'

In *Maneka Gandhi v. Union of India*, : [1978]2SCR621 it is held as follows: -

'Equality is dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu* : (1974)ILLJ172SC namely, that 'from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness, are sworn enemies; one belongs to the rule of law in a republic, while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.' Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment.'

The new dimension given to Art. 14 as regards the guarantee against arbitrariness is rooted in *Royappa's case* : (1974)ILLJ172SC and nurtured and nourished in *Maneka Gandhi's case* : [1978]2SCR621 and *International Airport Authorities case*, : (1979)ILLJ217SC and blossomed in *Ajay Hasia's case* : (1981)ILLJ103SC . The doctrine of classification or grouping founded upon intelligible differentia and

its proximate relation to the object sought to be achieved is dethroned by the doctrine of bulwark against arbitrariness. Considering from this perspective the monopoly showered on in-service candidates only under the guise of toning up the efficiency of medical services in the Government hospital excluding totally the candidates possessing primary qualifications of M.S. and M.D. degrees is plainly arbitrary and totally unsustainable. The object of providing super efficient service can be achieved by selecting the cream of the candidates out of service personnel and other candidates by screening all of them through entrance test and filtering the candidates in the order of merit. It cannot be postulated that in-service candidates alone are endowed with efficiency and medical experience and the purported devaluation of the merit of other candidates is devoid of rational approach. Having explicitly indicated the primary qualification of M.D. or M.S. in Rule 5 all candidates possessing such qualifications should have been permitted to apply and compete with others. Instead of indenting the best talent from out of the wide range the impugned rule funneling into selection out of service personnel only is tantamount to denial of participation of a segment in rendering efficient service in the hospitals and denying educational and employment opportunities to them. The presumption that in-service candidates only are competent and efficient is far-fetched and unrealistic and the efficiency can be assessed in the entrance examination and the candidates not raising up-to expectations or standards of merit can be weeded out. Even considered from the perspective of doctrine of classification, the rule does not satisfy the requirements. The two-fold object of enabling the in-service candidates to apply for the course is that they are expected to continue to render efficient service to the poorer sections of the society in the hospital and it is in the nature of imparting training. The object of training can be achieved by deputing service personnel for the said purpose but the admission to a course with a label of training appears to be a camouflage.

8. The learned Government Pleader contended that Art. 14 permits reasonable classification and the common man who seeks medical treatment and assistance cannot afford to approach private doctors or private hospitals in view of prohibitory expenses, and they will have recourse to Government hospitals where medical treatment is provided free of cost and with this view doctors already working in Government hospitals and teaching institutions are alone given admission, and

this is a reasonable classification and there is nexus to the object of providing medical treatment and facilities to common man in Government hospitals. In support of this contention, reliance is placed upon a decision of the Supreme Court in Ram Krishna Dalmia v. Justice Tendolkar, : [1959]1SCR279 wherein it is held that reasonable classification is permissible provided it bears nexus to the object sought to be achieved. Reliance is also placed upon a decision of the Supreme Court in Pandurangarao v. Andh. Pra. P.S. Commission, : [1963]1SCR707 wherein it held as follows: -

'Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Art. 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question.'

The super specialities course is introduced with a view to equip the candidates with up-to-date and expertise knowledge. It cannot be said that service personnel alone can render efficient service, and the candidates who are having qualifications of M.D. or M.S. can render equally efficient service. The reservation in favour of in-service candidates only is unreasonable and does not constitute an intelligible differentia and does not bear relation to the objects sought to be achieved. Further the prescription of execution of bond ensuring the service in the Government for a period of five years can be insisted upon in case of other candidates also. Therefore Rule 1(3) is patently arbitrary and discriminatory and in breach of Art. 14 of the Constitution. In this view it is not necessary to consider the contention regarding violation of Art. 21 of the Constitution.

9. The other formidable contention of the learned counsel for the petitioners is that the rule 1(3) allotting entire seats to the in-service candidates is ultra vires Sec. 3 of the Act. The question of total reservation to the in-service candidates is not visualised under the provisions of the Act, and as such, the rule allotting all the

seats to the in-service candidates is beyond the power conferred on the rule making authority. The learned Government Pleader contended that in view of the expression 'subject to such rules as may be made in this behalf' prefacing Sec. 3 of the Act, the provisions of Sec. 3 are intended to be controlled by the rules, and therefore, the deviation from the provisions of the Act by the rules is permissible. I am unable to appreciate this contention. The expression 'subject to rules as may be made in this behalf' visualises the modalities that may be prescribed by the rule making authority in consonance with and within the framework of the provisions of the Act. It is well settled that the rules framed by the rule making authority have to be in conformity with the provisions of the Act, and any rule in deviation of the Act is liable to be struck down. Further the sub-sec. (1) of Sec. 3 postulates admission on merit basing upon the marks obtained in qualifying examination or on the basis of ranking assigned in the entrance test. The proviso to sub-sec. (1) cuts a slice in the main provision by providing that the ranking in the common entrance test is the sole criterion for admission into Medical and Engineering Colleges. The only exception to this meritorious provision is contained in sub-sec. (2) containing reservations to Backward Classes etc. The reservation of any sort other than mentioned in sub-sec. 2 is totally-excluded. The insertion of total reservation to in-service candidates clearly collides with sec. 3. Further, the contention of the learned Government Pleader necessarily leads to conflict between Sec. 3 and Sec. 15. Sec. 15 enables the rule making authority to frame rules for carrying out all or any of the purpose of this Act in consonance with the provisions of the Act. If the contention of the Government Pleader is accepted, Sec, 15 will be forfeited of its reach and purport, and this results in irreconcilable conflict between Sec. 3 and Sec. 15. Therefore Rule 1(3) is ultra vires Sec. 3 of the Act and the reservation of all seats for in-service candidates is unsustainable.

10. The petitioners sought for provision of one more seat in M.D. Cardiology. It is contended that one more seat should have been provided in accordance with the decision of this Court in W.A. no. 620 of 1982 dated 10-11-1982. Essentially it is for the Government in consultation with University and medical Council to provide seats. In the decision rendered in the writ appeal the provisional seat accorded pursuant to the interim direction was confirmed in view of the concession of the University. The provision of one more seat must be confined to that year on the

facts of the case in the light of concession and the decision cannot be considered as a general direction to provide one more seat (i.e.) two seats instead of one seat. The relief sought for by the petitioners to this extent cannot be granted.

11. In the result, R.1 (3) of A.P. Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983, is struck down as violative of Art. 14 and unconstitutional and ultra vires the provisions of A.P. Educational institutions (regulation of Admission and prohibition of Capitation Fees) Act, 1983. Writ petitions partly allowed. No costs. Advocate's fee Rs.250/- each writ petition.

12. Petitions partly allowed.

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