

Preston College and anr. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Feb-27-2007

Reported in : AIR2008MP99

Judge : Deepak Verma and ;R.C. Mishra, JJ.

Appellant : Preston College and anr.

Respondent : State of M.P. and ors.

Disposition : Petition dismissed

Judgement :

Deepak Verma, J.

1. This common order shall govern disposal of aforesaid petitions, pertaining to identical question of law, and heard analogously.

2. Essentially the question involved, in all the three matters, is with regard to constitutionality of the policy of reservation in admission to Bachelor of Education (hereinafter referred to as 'B.Ed.') course to the extent of 75% seats for residents of Madhya Pradesh (hereinafter referred to as 'MP'}, and 25% seats for the candidates coming from outside MP with a total restriction on conversion in favour of students not residing in MP. The constitutional validity of the corresponding norm/guidelines incorporated as Rule 1.5.1(a) of Rules of Admission to B.Ed.

Course, 2006 (hereinafter referred to as 'Rules'), is under challenge.

3. English transcription of the Rule, is reproduced hereinbelow:

1.5.1 (a). 75% of the total seats in B.Ed, course shall be for students residing in Madhya Pradesh. Remaining 25% of the seats would be for students, who are not residents of Madhya Pradesh.

The seats reserved for the students of Madhya Pradesh shall not, in any case, be converted for students, residing out of Madhya Pradesh.

4. However, the main thrust of challenge centres around the supplemental provision, prohibiting conversion of any seat in favour of a resident of any other State or Union territory. According to the petitioners, the Rules and the Policy providing for reservation of 75% seats for local candidates being arbitrary, discriminatory, are ultra vires the Constitution of India. The interveners, in Writ Petition No. 15432/2006, are residents of Rajasthan, who appear to be aggrieved on two counts:

(i) Absolute rigidity of Rule 1.5.1(a) of the Rules.

(i) Non-relaxation of the percentage of the minimum qualifying marks by the State in favour of the candidates belonging to SC/ST/OBC.

5. We shall take up the issue with regard to constitutional validity of the Rules, at a later stage.

6. Few material facts, as projected in these petitions, may be summed up, as under:

The petitioners/institutions, in Writ Petition No. 11544/2006 (Preston College v. State of M.P.) and Writ Petition No. 15432/2006 (Kalawati Smriti Mahavidyalaya, Sehore v. State of M.P.), are institutions recognized by the Regional Committee of the National Council for Teacher's Education Act, 1993, (hereinafter referred to as the 'Act'), for offering B.Ed. Course and training in teacher education. The norms and standards for Secondary Teacher Education Programme, have been determined by NCTE.

7. Writ Petition No. 17240/2006 (Ravindra Kumar v. State of M.P.) has been preferred by students who are admittedly not the residents of State of M. P., but have Joined the petitioners of other two petitions, for the purposes of challenging the constitutional validity of Rule 1.5.1 (a) on the ground that even though seats earmarked for the candidates of M. P. have not been filled up, yet students who are desirous of prosecuting aforesaid course are being deprived of the same on account of limited quota fixed in this regard for them. They have averred that in case of any relaxation in the Rules of 2006, they would become entitled to seek admission to B.Ed, course of their choice anywhere in India.

8. Respondent State has submitted its reply denying the claim of the petitioners and holding therein that the provisions as mentioned hereinabove, is intra vires and does not offend provisions contained in Articles 14, 15 or 19 of the Constitution of India. According to them, it had become necessary for the State to impose some sort of restriction, as 'No Objection Certificates' have been granted to 275 institutions recognized by NCTE. It has also been averred that the Rules and the Admission Policy framed in the light of guidelines laid down by NCTE could not be the subject-matter of challenge in a petition filed under Article 226/227, of the Constitution of India, as the same was within the competence of the State.

9. Board of Secondary Education has also submitted its reply to the petition mentioning therein that it has nothing to do with the selection of students of B.Ed, examination. The rules have been framed by State of M.P. and they have also prescribed the method in which the select list has to be prepared and the decision taken by respondent Nos. 1 and 2 is final. The Board was only required to prepare a list submitted to it by respondent Nos. 1 and 2. After preparation of the list and handing it over to respondent No. 2, there remains absolutely no role to be played by Board and even otherwise no reliefs having been sought against it, no detailed reply is needed.

10. NCERT, National Council for Teacher's Education, has been joined in one of the petitions, but despite service, it has not preferred to file any reply. It has been brought to our notice that a petition decided by learned single Judge of this Court,

at Bench Gwalior in Writ Petition No. 5564/2005 (Patiram Shivhare v. State of M.P.), had considered the reply of respondent No. 3, wherein challenge was to the condition that only residents of M. P. will be eligible to appear in Pre-B.Ed. Examination. Thus, at best, it could have taken the said stand only and nothing beyond it. For ready reference, the stand taken by respondent No. 3 at Gwalior Bench, which finds place in para 17 of the order, passed by the learned single Judge is reproduced hereinbelow:

17. Respondent National Council for Teachers Education submitted that they framed the rules and minimum educational qualification. But mode of admission and requirement for admission either on merit or by holding examination is by the respective State and the State is competent to admit students as per rules framed by them.

In the light of this reply, it has been contended by respondents that State was fully justified in framing the Rules and also fixing the quotas for the admissible seats of M.P. at 75%, and for other students than belonging to M.P. at 25% with further rider that in any case the seat shall not be reverted/converted.

11. In the light of the aforesaid contention so advanced by the learned Counsel for the parties, we have heard them at length and perused the record.

12. In fact, learned Counsel appearing for both parties have placed strong reliance on a judgment of the Supreme Court reported in : (1984)11LLJ481SC (Dr. Pradeep Jain v. Union of India), and have tried to assert that it provides a common springboard for venturing into their respective contentions.

13. At the outset, it has been fairly conceded by learned Counsel appearing for petitioners that looking to the requirement of State, certain reservation for admission to graduate level courses can be made which would be permissible and would be protective discrimination. However, in their opinion, for admission to post-graduate courses, reservation based either on institutional preference or domicile, is impermissible. It has also been contended that the course of B.Ed, has trappings of Post Graduation, as it cannot be done unless one is already a graduate. Further, uniform norms have been laid down by the NCTE, the Apex

body constituted under a Central Act for ensuring planned and co-ordinated development of teacher's education. As such, no compartmentalization is permissible in education, especially on the grounds of domicile. Even assuming that it is for the benefit of students of M. P. then also pragmatic approach would have to be adopted, in view of the salient idea, emphasized in a series of decisions by the Supreme Court to ensure that the sanctioned seats do not go waste. According to them, in case, no suitable or meritorious candidates are available from State of M. P., the vacant seats should be left open for the candidates belonging to States other than M. P. and should be allowed to be filled up on purely merit basis.

14. To put this point across, reliance has been placed on judgment of the Supreme Court reported in (2000) 5 SCC 686 (Parag Gupta v. Union of India) : AIR 2001 SC3418 (Dr. Prachi Almeida v. Dean, Goa Medical College).

15. In reply, the learned Dy. Advocate General has contended that the issue raised by the petitioners is no more *res integra*, after the judgment of the Apex Court in the matter of Dr. Saurabh Choudhary v. Union of India reported in : AIR 2004 SC361 . That In turn, is based on earlier judgments of the Supreme Court, including the *locus classicus* D. P. Joshi v. State of Madhya Pradesh : [1955]1SCR1215 , whereas a view has been taken consistently that reservation on the basis of domicile is permissible, provided it is not wholesale. In other words, such a reservation based on domicile does not offend Articles 14, 15(1) or 16 of the Constitution.

16. It has also been submitted that the Rules have been framed by the State in consonance with the objects set forth and guidelines laid down for framing such Rules in Act and Regulations made thereunder. The constitutionality of the Act and the Regulation has already been upheld by the Apex Court, in St. John Teacher Training Institute v. Regional Director, NCTE : [2003]1SCR975 . Accordingly, the Rules of 2006, also do not contravene the constitutional provisions of Article 19(1)(g) or 30(1). Even otherwise, the State has absolute power to reserve 75% of the total seats for students belonging to State of M. P. and leave only 25% seats in favour of all India students.

16A. Even though several authorities have been cited by the rival parties, but authorities relevant and germane to the question involved in the aforesaid matters are required to be considered in the light of the ratio of the judgment of Supreme Court reported in:

: [1955]1SCR1215 (D.P. Joshi v. State of M.P.).

: (1984)ILLJ481SC (Dr. Pradeep Jain v. Union of India).

: AIR 2004 SC361 (Dr. Saurabh Choudhary v. Union of India).

17. First of all, let us remind ourselves of the tests of valid classification, enumerated in Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar : [1959]1SCR279 , as under:

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest.

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation, and,

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislations.

18. As further explained by the Supreme Court, the above mentioned principles will have to be strictly borne in mind by the Court, when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

19. Advertising to the question of constitutionality of the Rules and the policy of admission under challenge, we are not inclined to burden this pronouncement with plethora of precedents on the point of reservation, based on domicile as paragraph 29 of the decision in Dr. Saurabh Choudhary's case (supra) AIR 2004 SC 361 provides a complete answer. It would be profitable to reproduce the paragraph in extenso:

29. The first question that arises for consideration is, whether the reservation on the basis of domicile is impermissible in terms of Clause (1) of Article 15 of the Constitution of India? The term 'place of birth' occurs in Clause (1) of Article 15 but not 'domicile'. If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to 'place of birth' alone, the latter refers to both 'domicile' and 'residence' apart from the place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression 'place of birth' is not synonymous to the expression 'domicile' and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr. Nariman, that both the expressions appeared to be synonymous to some of the members of the constituent Assembly but the same, in our opinion, cannot be a guiding factor. In D.P. Joshi's case (supra), a Constitution Bench held so in no uncertain terms.

20. However, we cannot resist the temptation of quoting the ratio decidendi of D. P. Joshi's case AIR 1955 SC 334 wherein the Constitution Bench was required to examine vires of the Rule laying down that no capitation fee should be charged from students bona fide residents of Madhya Bharat, but the fee would be leviable from non Madhya Pradesh students. While upholding the constitutionality of the Rule, Venkatarama Ayyar, J. speaking for the majority (4:1), observed:

The object of classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy (vide Article 41). The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settled down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in *The State of Punjab v. Ajaib Singh*, that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of article 14 must be rejected.

21. Following this view, the Supreme Court in *Pradeep Jain (supra)* : (1984) IILLJ481SC proceeded to uphold residential requirement for admissions to Medical College in a State, as non-violative of Article 16(2) of the Constitution. However, a wholesale reservation based on domicile was disapproved in the

following words:

20...We agree wholly with these observations made by the learned Judge and we unreservedly condemn wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university of the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservations to be unconstitutional and void as being in violation of Article 14 of the Constitution.

It was also suggested that the outer limit for reservation on the basis of residential requirement should not exceed 70%, meaning thereby that 30% for open seats should be available for students on all India basis, irrespective of the State or University, from which they come and such admission should be granted purely on merit on the basis of entrance exam. The outer limit, thus fixed, but subsequently extended to 75% has also been approved.

22. Learned Counsel for the petitioners while placing reliance on T.M.A. Pal Foundation v. State of Karnataka : AIR 2003 SC355 ; Islamic Academy of Education v. State of Karnataka : AIR 2003 SC3724 and P. A. Inamdar v. State of Maharashtra : AIR 2005 SC3226 next contended that ratio of judgments rendered by Constitution Benches in these cases have a binding effect as precedents, in view of the fact that petitioners, in Writ Petition No. 11544/2006 and 15432/2006, are private, unaided professional institutions. However, none of these precedents specifically deal with reservation to be made for admission to the extent of 75% on the ground of domicile. As such, they are of no avail to the petitioners.

23. Let us view the situation from a different angle. The Act is a Central Act, provisions of which are intra vires the Constitution. (See Union of India v. Shah Goverdhan Kabra Teachers College : [2002]SUPP3SCR220 . Further, the petitioners have not preferred to challenge the legality of the norms and standards subject to which the permission to open the institutions for teacher education was granted to them. Clause 3, of these norms and standards, deal with the eligibility criteria for admission to such recognized institutions. It reads as follows:

3. Eligibility:

(a) Candidates with at least 45% marks in the Bachelor's/Master's Degree with at least two school subjects at the graduation level are eligible for admission.

(b) Admission should be made either on the basis of marks obtained in the qualifying examination or in the entrance examination conducted by the University/State Government, as per the policy of the State Government/University, to which the institution is affiliated.

(c) There shall be reservation of seats for SC/ST/OBC, Handicapped, Women, etc. as per the rules of the concerned State Government.

24. Bare reading of Clauses (b) & (c) thereof makes it abundantly clear that reservation of seats for SC/ST/OBC, Handicapped, Women etc, has been left exclusively to the domain of the concerned State Government, subject to existing Rules in this regard. Thus, it would show that the said clauses contained in norms and standards fixed by Apex body, create no fetters for the State Government to frame rules of admission for B.Ed, course inter alia on domicile basis. Taking a cue from the aforesaid norms and standards fixed by the Apex body, rules of State Government have been framed comprising Rule 1.5.1. (a).

25. As indicated already, the petitioners did not appear to be aggrieved by the said norms and standards fixed by Apex body, as they have not sought to challenge the constitutionality of the said norms. As long as the clauses of the norms and standards continue to hold good, the State was fully justified in imposing its own conditions fixed different quotas for the residents of MP and other States.

26. Although, the issue in the matter of. State of Maharashtra v. Sant Dhyaneshwar Shikshan Shastra Mahavidyalaya 2006 AIR SCW 2048, is not germane to the main issue involved in this writ petition yet, the observation made by the Apex Court that the State Government could not have refused permission to open new B.Ed. Colleges after grant of necessary permission recognizes predominance of the NCET over the State in the matter of Teacher Education as defined in Clause 2 of the Act. As a necessary corollary, the State of Madhya

Pradesh is also not competent to relax in any way whatsoever the norms and standards prescribed by the NCET. In such a situation, the Court would also not be justified in directing that any other procedure than that notified by the State would be made applicable to the admission of B.Ed, colleges for Academic Session 2006-2007.

27. To conclude, the norms, guidelines and standards for admission to the institutions recognized by the NCET under Section 14 of the Act, are not only objective but are also mandatory in nature. Further, the residential requirement for admission to 75% of the total seats made available to such institutions is not violative of Article 16(2) of the Constitution. This apart, the prohibition that any seat remaining vacant against the State quota shall not be made available to any non-resident of the State is also constitutionally permissible, as it does not offend Articles 14 and 15(1) of the Constitution. It is relevant to note that the Rule 1.5.1(a) also does not provide that remaining unfilled seats in the All-India Quota could be reverted and be filled by the students from M.P. The Rule, therefore, is neither violative of the Constitution nor contravenes any guidelines laid down by the Apex Court, in this regard.

28. The net result of the foregoing discussions is that the Rules in general and Rule No. 1.5.1(a), in particular, and the admission policy framed by the State Government are constitutionally valid. Moreover, the State is not competent to relax any norm or standard fixed by NCET. As such, the grievance of the intervener is also misconceived.

29. In the light of the aforesaid, the petitions stand dismissed, but with no order as to costs. As a result thereof, the interveners' application is also rejected.

Copy of the order be retained in each case.