

Diptimayee Behera and anr. Vs. State of Orissa and ors.

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Court : Orissa

Decided On : May-08-1985

Reported in : AIR1985Ori249; 60(1985)CLT331

Judge : R.C. Patnaik and ;D.P. Mohapatra, JJ.

Acts : [Constitution of India](#) - Articles 14, 15(4) and 16

Appeal No. : Original Jurn. Case Nos. 2034 and 2050 of 1984

Appellant : Diptimayee Behera and anr.

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Govt. Adv. and ;Addl. Standing Counsel

Advocate for Pet/Ap. : S. Misra-1, ;J.M. Mohanty, ;S.K. Nayak-2, ;G.P. Mohapatra, ;Saroj Mishra and ;R. Saha (in LJC No. 2034/84), S.C. Dash and ;B.K. Patnaik (in OJC No. 2050/84), Advs.

Disposition : Petition dismissed

Judgement :

R.C. Patnaik, J.

1. The twopetitioners in O. J. C. No. 2050 of 1984 and the petitioner in O. J. C. No. 2034 of 1984 have filed these applications under Article 226 of the Constitution for

a mandamus to the opposite parties to admit them to the M. B. B. S. course in any of the medical colleges of the State against the quota reserved for the Scheduled Castes and the Scheduled Tribes candidates.

2. Prospectus for admission to the M. B. B. S. and B. D. S. courses in the Government Medical Colleges of Orissa was issued on April 26, 1984. Each college provided 107 seats. Besides, there were 20 seats for the B. D. S. course in the dental wing of the S. C. B. Medical College, Cuttack. In all, thus, there were 341 seats. 16 seats were reserved for Government of India nominees, three seats for the children of Armed Forces Personnel and three seats for the physically handicapped candidates of Orissa. Of the balance 319 seats, 8 per cent was reserved for Scheduled Castes and 12 per cent for the Scheduled Tribes candidates. 20 seats were set apart for candidates securing the first ten positions in the qualifying examination (according to the university ranking) held by each of the Universities. One seat was set apart for the candidate who secured the first position in the examination conducted by the Orissa University of Agriculture and Technology.

3. An entrance examination was conducted for selection of candidates. Para 9.2 of the prospectus provided that candidates belonging to the Scheduled Castes and the Scheduled Tribes securing less than 40 per cent in the entrance examination would not be selected. The rest, namely, general candidates, physically handicapped candidates and candidates belonging to the category of 'Children of Armed Forces Personnel and 'children of Green Card Holders' securing less than 50 per cent of marks were not to be selected. There were in all, as alleged by the petitioners, 4998 candidates. The performance at the entrance examination was miserable. Only 31 candidates qualified. The situation was disturbing. 250 seats would remain vacant. The Selection Board then suggested to the Government to step up the marks secured by the candidates by 20 per cent (40 marks out of 200) In other words, candidates belonging to the Scheduled Castes and Scheduled Tribes securing 20 per cent of the marks would qualify for selection and candidates belonging to the rest of the categories would qualify for selection if 30 per cent of the marks were secured by them. There were in all 133 Scheduled Castes and Scheduled Tribes candidates. In spite of stepping of the marks, only

11 candidates qualified for selection. The total number of seats earmarked for them was 64. State Government again deliberated on this matter and granted a further grace of 10 per cent of marks to the Scheduled Castes and the Scheduled Tribes candidates, that is to say, a candidate belonging to the Scheduled Castes/Scheduled Tribes securing 10 per cent (20 marks out of 200) in the entrance examination would qualify for selection. 32 candidates belonging to the Scheduled Castes and Scheduled Tribes thus ultimately qualified for selection against 64 seats reserved.

4. The petitioners have alleged that relaxation by way of granting additional 10 per cent of grace marks was no relaxation at all and was violative of Articles 14 and 16 of the Constitution. They have contended that no qualifying marks should have been prescribed for the Scheduled Castes and the Scheduled Tribes candidates. All the 64 seats reserved for them should have been filled up in order of merit on the basis of their performance at the entrance examination.

5. In the return submitted by the opposite parties, the factual aspects are not disputed. The authorities were faced with an unprecedented situation due to the miserable performance of the candidates. It was decided to relax the qualifying marks by 20 per cent, that is to say, if a candidate belonging to the general category secured 30 per cent (60 marks out of 200) and if a candidate belonging either to the Scheduled Castes or the Scheduled Tribes category secured 20 per cent (40 marks out of 200), was eligible for selection. 20 per cent of the seats, as stated earlier, had been reserved for the S. C. and S. T. candidates. When despite the relaxation adequate number of candidates belonging to the S. C. and S. T. did not qualify for selection and unless a further relaxation was made, the State would be having a dearth of doctors belonging to the S. C. and S. T. in future, it was decided at the highest level that a further relaxation by 10 per cent should be accorded to candidates belonging to S. C. and S. T. So, in their case, a further relaxation of 10 per cent was made. In other words, a candidate belonging to S. C. and S. T. secures 10 per cent (20 marks out of 200) would qualify for selection.

6. The file which was made available to us substantiates the stand of the opposite parties.

7. The stand of the petitioners is that when despite the relaxation and reducing the qualifying mark to 10 per cent only 32 candidates belonging to S. C. and S. T. were found eligible for selection and admission, the Government should have totally relaxed and should not have set any test for admission, that is to say, no qualifying marks at the entrance examination should have been fixed.

8. We have considered the submissions of the petitioners, virtually what they have advocated is that having regard to the reservation, all the seats reserved for S. C. and S. T. should have been filled up by candidates according to their performance at the entrance examination, i.e., in order of merit.

9. Entrance examinations are now-a-days held for selection of candidates for admission to various courses of studies. The reasons interalia are : the syllabi prescribed by the universities are not uniform, the teaching and examination standards vary from university to university etc. The Indian Medical Council too recommended holding of an entrance examination for selection of candidates for admission to medical colleges. They also suggested what should be the qualifying marks for general candidates as well as candidates belonging to the Scheduled Castes and the Scheduled Tribes. The Government acted on the Council's recommendation by fixing 50 per cent of the marks as the qualifying mark for the general candidates and 30 (40?) per cent of the marks as the qualifying marks for the candidates belonging to the Scheduled Castes and the Scheduled Tribes. A peculiar situation, however, surfaced in the year in question due to the poor performance of the candidates. So, relaxation had to be made. The petitioners did not challenge the original prescription of 40 per cent of marks as the qualifying marks. They took the entrance examination and performed miserably, they could not secure even 20 marks out of 200. Hence, they have come forward to contend that there ought not to have been prescribed any qualifying marks for the S. C. and S. T. candidates and seek constitutional support for the contention from Article 15(4). The Article reads as follows : --

'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.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children,

(4) Nothing in this article, or in Clause (2) of Article 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) was inserted by the Constitution (First Amendment) Act, 1951 to override the decision of the Supreme Court in *State of Madras v. Sm. Champakam*, AIR 1951 SC 226, where it was held that the Constitution did not intend to protect the interest of the backward classes in the matter of admission to educational institutions. Clause (1) forbids discrimination on the ground of race or caste etc. but historical and sociological considerations made it imperative that the society and educationally backward classes of persons and the Scheduled Castes and Scheduled Tribes so that they join the mainstream of national progress and prosper and enjoy and share with others the fruits under democracy. Article 15(2)(a) is proviso or an exception to Article 15(1) and Article 29(2). The object was to bring Articles 15 and 29 in line with Article 16(4). In *M. R. Balaji v. State of Mysore*, AIR 1963 SC 649, it was held (at. p. 662) :

'.....It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of

an exception completely excludes the rest of the society, that clearly has ousted the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Constitution intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, fundamental rights of the Citizens constituting the rest of the society were to be completely and absolutely ignored.'

In this case the challenge is not by a person belonging to the general category complaining exclusion of rest of the society either by reservation or by relaxation. The three petitioners belong to the Scheduled Castes/Scheduled Tribes. They do not challenge the reservation but their contention is that the relaxation should have been total, i.e., no qualifying marks should have been prescribed for the candidates belonging to the Scheduled Castes and Scheduled Tribes, Balaji's case is, therefore, no authority for the contention.

Clause (4) enables the State to make special provisions for the advancement of the socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes. In this case, the counsel for the petitioners has relied upon Article 15(4) to contend that relaxation by way of fixing 10 per cent (20 marks out of 200) was violative of the constitutional guarantee. Some authorities were cited. We would examine a few of them which we consider relevant.

In *Gopal Krishna Gupta v. Union of India*, AIR 1974 All 288 for admission to the Engineering Courses at certain institutions run by Government of India, qualifying marks for selection for all candidates had been fixed at 40 per cent. After the examination was over an instruction was issued that the prescription of qualifying marks should not be applicable to Scheduled Castes and Scheduled Tribes candidates. The relaxation was assailed as not coming within the purview of Clause (4) of Article 15 and as offending Clause (1) of the Article 15 Clause (2) of Article 29. It was held (at. p. 289) :

'.....admission of the Scheduled Caste and Scheduled Tribes candidates in the circumstances mentioned above is saved by Clause 4 of Article 15, and is valid. Clause (1) Article 15 bars discrimination and enjoins that the State shall not discriminate against any citizen on the ground of religion, race, caste, sex, place of

birth or any of them. Clause (4) of Article 15 makes Clause (1) inapplicable if the State makes any special provision for the advancement of socially or educationally backward classes of citizens or for members of the Scheduled Caste and Scheduled Tribes. The Union of India by making a special provision for admission of Scheduled Caste and Scheduled Tribe candidates to technological Institutions must be held to have done so for securing their advancement. Such a provision will be within the scope of Clause (4) of Article 15 and will thus not be hit either by Clause (1) of Article 15 or Clause (2) of Article 29 of the Constitution. The purpose of reservation of seats in technological institutions is to make them available for Scheduled Caste and Scheduled Tribe candidates as they cannot be available to them without such reservation. Once reservation has been made the method of filling up of reserved seats may be different from the one adopted for filling up to unreserved seats. The qualifying marks for his class may also be different or there may be no qualifying marks at all.'

This decision is no authority for the proposition contended for. It does not lay down that once relaxation is decided upon, it should be total.

In *State of Madhya Pradesh v. Kumari Nivedita Jain*, AIR 1981 SC 2045 the State Government relaxed the condition relating to obtaining of minimum qualifying marks as regards candidates belonging to Scheduled Castes and Scheduled Tribes for admission to medical colleges against seats reserved for them. Nivedita was a candidate belonging to the general category. The decision of the Government was impugned as violating Article 15 (1) and (2) of the Constitution. The challenge was negated with the following observations (at p. 2057) :

'It cannot be disputed that the State must do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and the State is entitled to make reservations for them in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation, taking into consideration the realities and

circumstances prevailing in the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving the purpose for which reservation has been made and if there be no law to the contrary.....'

This decision is of no assistance to the petitioners.

In *Ramesh Chander v. State of Punjab*, AIR 1966 Punj 476 reservation of 60 per cent and the procedure of carry over were attacked as violative of Article 15(4). We are not confronted, in this case, with the said situation. Hence, the said authority has no relevance. In this case, the reservation is not questioned and cannot be questioned by candidates for whom the seats have been reserved and who seek admission against the reserved quota.

The law, therefore, is well settled that the state is authorised under Article 15(4) to make provision for reservation of seats in educational institutions for the classes enumerated therein. In what manner the provision for reservation in the matter of admission to medical and technical institutions should be made and what measure should be taken by the State for its effective implementation would depend upon the realities and circumstances prevailing in the State. If there be no law to the contrary, the State is authorised to act under Article 166 of the Constitution to vary and modify conditions to achieve the purpose for which reservation is made.

10. No legislation covering the field has been brought to our notice. Hence, the State was competent to make special provision; vary and modify the conditions. The return filed by the opposite parties indicates the reasons for the relaxation. We have also gone through the deliberation at highest level culminating in the decision to further relax in favour of the S. C and S. T. candidates. We are satisfied that the decision was well-intentioned. It was a measure for the advancement of the S. C. and S. T. and did not suffer from any constitutional vice. It is difficult to accept the contention that having decided to relax, the government could not have stopped mid-way. There is no law which so prescribes and curbs the power of the Government. As the Supreme Court has observed, the Government have to take into consideration the realities and circumstances of the situation in coming to a decision. If Government had fixed no qualifying marks for the candidates

belonging to Scheduled Castes and Scheduled Tribes, no exception, perhaps, could have been taken as was held in Gopal Krishna's case. (AIR 1974 All 288) If, however, the Government fixed 10 per cent of the marks as qualifying marks as regards the candidates belonging to Scheduled Castes and Scheduled Tribes, the decision cannot be branded as arbitrary. We, therefore, see no merit in these writ applications which are accordingly dismissed.

In the facts and circumstances, there would be no order as to costs.

D.P. Mohapatra, J.

11. I agree.

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