

Dr. Anil Kumar and Others Vs. the State of Karnataka and Others

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Court : Karnataka

Decided On : May-26-2011

Judge : S. Abdul Nazeer

Appeal No. : W.P. Nos.10779-782 of 2011 (EDN-RES), M.W. Nos.4087 of 2011 and 4088 of 2011

Appellant : Dr. Anil Kumar and Others

Respondent : The State of Karnataka and Others

Advocate for Pet/Ap. : For the Petitioners: Ravivarma Kumar, Senior Counsel for B.M. Irshad, Advocate. For the Respondents: R1 to R4, R.B. Satyanarayana Singh, HCGP, R5, N.K. Ramesh, Advocate.

Judgement :

Abdul Nazeer, J.

In these cases, the petitioners have questioned the constitutional validity of Rule 12 of the Karnataka Conduct of Entrance Test for Selection and Admission to Post Graduate Medical and Dental Degree and Diploma Course Rules, 2006 (for short 'the Rules 2006') in so far as not extending the reservation to Category-I candidates and also questioning the legality and validity of the provisional merit list dated 5.3.2011 published by the 5th respondent. The petitioners have also sought for a direction to the respondents to consider their case for admission to PG course through the PGET-2011 under the reservation quota of Category-I (in-

service quota) extending all benefits which are available to the Scheduled Castes and Scheduled Tribes.

2. The petitioners are the General Duty Medical Officers working in various Government hospitals. They all belong to Category-I. The petitioners have produced the certificates showing that they belong to Category-I as per Annexures-'B' to 'E'. It is contended that in response to the Notification issued by the respondents, the petitioners prepared themselves to apply for the PGET-2011 under Category-I through on-line application. However, there was no option for category-I candidates through on-line application. Only three options were given in the application namely, Scheduled Caste, Scheduled Tribe and General Merit. It is contended that they requested to respondents to accept their application for PGET-2011 under Category-I. Since the respondents did not accept the claim of the petitioners, left with no option, they applied under general merit quota. They made a representation to the respondents requesting them to make admission under Category-I quota. Ignoring their request, the 5th respondent has published the impugned provisional merit list at Annexure-A. Therefore, they have filed these Writ Petitions seeking the reliefs stated above.

3. Sri. Ravivarma Kumar, Learned Senior Counsel appearing for the petitioners, would contend that the Karnataka State Legislature has enacted the Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Appointments etc.) Act, 1990 (Karnataka Act No.7/1991) (for short 'the 1990 Act') to provide for the reservation in appointments or posts in favour of the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes in the State Civil Services and establishments in the Public sector and in Admission to Universities and to the Educational Institutions established or maintained or aided by the State Government. He draws my attention to Section 4 of the said Act and submits that there is a legislative mandate to reserve certain number of seats to the candidates belonging to Category-I. It is further contended that the State legislative has enacted yet another Act called the Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the services under the State) Act, 1994 (for short 'the 1994 Act'). The said Act has been enacted with the

object of providing reservation of seats in educational institutions in the State of Karnataka and of appointments or posts in the services under the State for the Other Backward Classes of citizens and for persons belonging to the Scheduled Castes and the Scheduled Tribes in the State. He has drawn my attention to section 4 of the said Act which provides for reservation of seats in educational institution in the State for the Backward Classes of citizens and for persons belonging to the Scheduled Castes and the Schedule Tribes. Rules have been made under sub-Section (1) of Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (for short 'the 1984 Act'). Rule 6 of the said Rules provides for reservation of the seats. He has also drawn my attention to Rule 12 of the said Rules, which provides for reservation of seats for in-service candidates. The said Rule does not provide for reservation of seats to the candidates belonging to Category-I. Thus, the said Rule is arbitrary and violative of Articles 14 and 15(4) of the Constitution of India as also violative of the 1990 Act and the 1994 Act. It is submitted that the State ought to have treated the petitioners belonging to Category-I on par with SC and ST candidates for PGET-2011. He has also drawn my attention to the Government Order dated 30.3.2002 providing for reservation of seats to SCs and STs and Category-I of backward classes in the educational institutions and employment. The Government Order was issued under Articles 15(4) of the constitution of India. As per the Government Order, 4% of the seats should have been reserved to Category-I. He submits that the 2006 Rules issued under sub-Section (1) of Section 14 of the 1984 Act is ultravires of the Constitution of India as also violative of the 1990 Act and 1994 Act and the Rules at Annexure-F. Therefore, the provisional merit list of PGET-2011 issued at Annexure-A by the 5th respondent is illegal inasmuch as not providing reservation of seats to the candidates belonging to Category-I.

4. Learned AGA appearing for respondent Nos.1 to 4 and the Learned Counsel appearing for respondent No.5 have sought to justify the impugned provisional merit list of PGET-2011 at Annexure-A.

5. I have carefully considered the arguments of Learned Counsel for the parties made at the Bar and perused the materials placed on record.

6. It is not in dispute that the petitioners belong to Category-I. This community is most backward among the backward classes. Article 15(4) of the constitution of India enables the State Government to make any special provision for the advancement of any specially and educationally backward classes of citizen or for the Scheduled Castes and the Scheduled Tribes. Therefore, the State Legislature has enacted the Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Appointments etc.) Act, 1990 (Karnataka Act No.7/1991) (for short 'the 1990 Act') to provide for the reservation of appointments or posts in favour of the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes in the State Civil Services and establishments in the Public sector and in admission to Universities and to the Educational Institutions established or maintained or aided by the State Government. Sub-Sections (1) and (3) of Section 4 of the said Act, which is relevant for the purpose of these cases, is as under:

“(1) After the appointed day, while making appointments to any office in a civil service of the State of Karnataka or to a Civil posts under the State of Karnataka appointments or posts shall be reserved for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes to such extent and in such manner as may be specified from time to time in the order made by the Government under Clause (4) of Article 16 of the Constitution of India.

(3) Subject to such rules as may be prescribed, while making admissions, after the appointed day, to a course of study in a university established or deemed to be established by or under any law of the State Legislature or an educational institution established or maintained or aided by the State Government, there shall be made reservation for the persons belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes to such extent and in such manner as maybe prescribed.”

7. The State legislature has enacted yet another Act called the Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the services under the State) Act, 1994 (for short 'the 1994 Act'). Section 4 of the said Act

provides for reservation of seats in educational institution in the State of Karnataka and of appointments or posts in the services under the State for the Other Backward Classes of citizens and for person belonging to the Scheduled Castes and the Scheduled Tribes in the State at 73%. The schedule to the Act specifies the percentage of seats reserved for SC, ST and Category-I etc. 7% of the seats was reserved for the candidates belonging to Category-I. However, the Government Order No. SWD 225 BCA 2000 dated 30.3.2002 (Annexure-F) has been issued with a list of backward classes. It is clear from the said order that 4% of the seats have been reserved for the candidates belonging to Category-I. The total percentage of reservation to the candidates belonging to SC, ST and other backward classes for admission to professional courses is fixed at 50%. The 2006 Rules made by the State Government under sub-Section (1) of Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, has not provided any reservation to the candidates belonging to Category-I. Rule 12 provides for reservation of seats for in-service candidates. Out of total number of seats, 15% of the seats is reserved for the persons belong to SC, 3% of the seats to the persons belong to ST. The provisional merit list of PGET-2011 has been issued in terms of Rule 12 of the said Rules. It is clear that the said Rules are violative of the 1990 Act as also the 1994 Act. I am of the view that the 2006 Rules formulated under sub-Section (1) of Section-14 of the 1984 Act ought to have followed the reservation policy formulated under the 1990 Act as also the Government order at Annexure-F dated 30.3.2002. It is also relevant to note here that the creamy layer does not apply to SC, ST and Category-I of the backward classes. In my view, Rule 12 of the 2006 Rules is ultravires of the 1990 Act and the 1994 Act inasmuch as not providing reservation to the candidates belonging to Category-I.

8. In the light of the above discussion, I am of the view that since the petitioners belong to Category-I, their applications should have been considered under the reservation quota of category-I (in-service quota). Therefore, I direct the respondents to provide reservation of 4% to the candidates belonging to Category-I and permit them to participate in the counseling/re-counseling, as the case maybe, for PGET-2011 for the academic year 2011-12 and onwards. The Writ Petitions are allowed in the aforesaid terms.

9. In view of allowing the Writ Petitions as above, Misc.W.Nos.4087/2011 and 4088/2011 do not survive for consideration. They are accordingly dismissed. No costs.

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