State of Andhra Pradesh and Another

Vs

Lavu Narendranath and Others Etc.

Civil Appeals Nos. 2161-A and 2161-B of 1970

(CJI S. M. Sikri, J. S. K. Hegde, G. K. Mitter, P. Jagmohan Reddy JJ)

11.02.1971

JUDGMENT

MITTER, J. -

1. These two appeals are from a common judgment of the High Court of Andhra Pradesh rendered in two writ appeals for the judgment and order of a learned Judge of the same Court dismissing the applications filed by the appellants in the High Court and some others under Article 226 of the Constitution. The central question in these appeals is, whether the Entrance Test prescribed under notification of the Government, dated July 23, 1970, for selection of candidates in the four Medical Colleges run by the State in the Andhra area is justified in law.

2. The facts are as follows. In the Andhra areas of the State there are four Medical Colleges run by the Government and the total number of seats available for admission in the first year integrated M.B.B.S. course in all the four colleges is 550. The State Government has been issuing rules every year after the publication of the results of the H.S.C. or S.S.L. C. Board of the University for selection of candidates for admission into the Medical Colleges. The test which was prescribed in July 1970 was the first of its kind. The test was duly held after the Additional Director of Medical and Health Services had issued a notification inviting applications from candidates for the purpose on July 31, 1970. Any one desiring to enter any of these Medical Colleges had to complete and file his application in the prescribed form by August 14, 1970 and appear at the Entrance Test to be conducted by the Director of Medical and Health Services on August 30, 1970 at any of the centers indicated in the rules. There was an exemption from appearance at such examination for candidates who had taken an M. Sc. or B. Sc. Degree. The Government notification of July 23, prescribed inter alia the following standard of eligibility :

> (1) Candidates possessing the minimum qualification of B. Sc. (Multipurpose), I.S.C., P.U.C., A.I.H.S.C. or equivalent qualifications were eligible to appear for the Entrance Test provided that :
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> (a) In the above qualifying examinations, the candidates had taken up Physical Sciences and Biological Sciences for study and examination;
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> (b) Candidates had passed the qualifying examination in one attempt;
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> (c) Candidates had obtained not less than 50% of the marks in Physical and Biological Sciences put together in their qualifying examination.

(2) The Entrance Test was to consist of four papers of 50 marks each of the following subjects in two sessions -

(a) The subject of Physical Sciences (Chemistry and Physics);

(b) The subject of Biological Sciences (Zoology and Botany).

The candidates had to appear and answer two papers, i.e., Chemistry and Physical Sciences in the morning session and the remaining two papers, i.e., Zoology and Botany in the evening session. The Entrance Test was to be conducted in a single day in two sessions each of two hours' duration.

(3) The Standard of the test was to be comparable to the standard of qualifying examinations referred to above.

(4) The test was to be partly objective and partly narrative.

3. 5,137 candidates applied for the Entrance Test out of which 4,669 were accepted for the test. 4,331 candidate actually took the test. As the number of seats were limited the majority of the candidates who appeared for the test failed to secure admission. Several writ petitions were filed in the Andhra Pradesh High Court challenging the validity of the Entrance Test prescribed and the method of selection for admission to the Medical College.

4. Writ Petition No. 3859 of 1970 was filed on August 6, 1970, the main prayer bring that the State should be directed to withdraw the notification published by the Additional Director of Medical and Health Services with a further direction to he State to admit the petitioners into the first year Integrated M.B.B.S. course on the basis of the marks which had been awarded to them in the public examinations. Reliance was placed by the petitioners on certain provisions of the Andhra University Act (II of 1926) under which enter alia the Andhra University had been constituted as a body corporate with powers to provide for instructions in such branches of learning as might be considered suitable and to make provision for research and for the advancement and dissemination of knowledge, to hold examinations, to confer degrees on persons who had pursed courses of study in the University and to institute and maintain colleges and hostels, etc.

5. The contention of the petitioners was that it was the Academic Council of the University which was competent to prescribe qualifications for admission into all degree courses in the University and it was not for the Government to substitute itself for a statutory academic body and test the academic standards of candidates seeking admission into the Integrated M.B.B.S. course by the notification of the 23rd July. This was described as an attempt to assess the merits of the candidates on academic standards different from those fixed by the University. Holding the Entrance Test and making selection on the basis thereof in utter disregard of the marks obtained at the public examinations held by the University was further said to constitute an encroachment upon the central subject listed in Entry 66 of List I of the Seventh Schedule to the Constitution. Besides the above, other grounds were also taken, namely, that the Government order was discriminatory, that it was not valid for want of publication in the Official Gazette, that the candidates were handicapped by reason of the fact that they did not have sufficient time to prepare themselves for the test and lastly that the test held by the Government interfered with the personal liberty of the candidates violating Article 21 of the Constitution.

6. The learned Trial Judge dismissed the writ petitions. In appeal, however, the Appellate Bench took a different view. In substance the appellant Court was of opinion that although the State

Government had a right to prescribe rules and lay down its own criteria for making admissions into the colleges, it could not do so in total disregard of the marks obtained by the students at the University or other public examination necessary for eligibility and they could only do so if their action did not contravene the University Act or any other law. It was also held that the Government could hold a "test" in order to supplement or add to the qualifications already prescribed by the University or other educational authority for the purpose of assessing the merits of candidates but they could not hold a test in substitution for the qualifying examinations, as this would be encroaching upon the jurisdiction of the universities concerned in the matter of laying down academic standards of the students.

7. We have therefore to examine whether the Government had a right to prescribe a test for making a selection of a number of candidates from out of the large body of applicants for admission into the first year M.B.B.C. course and whether such action of the Government contravened any provision already made by the Legislature in that respect. Under Article 162 of the Constitution the executive power of a State extends to the matters with respect to which the Legislature of a State has power to make laws but this is subject to the provisions of the Constitution. As the Government runs these colleges, it undoubtedly has a right and a duty to made a selection from the number of applicants applying for admission if all could not be admitted. If there was no legislation covering this field Government would undoubtedly we competent to prescribe a test itself to screen the best candidates. We have next to scrutinies the provisions of the Andhra University Act relied on by the High Court to see whether the action of the Government ran counter to any of those provisions. Under Section 23 of the Act it was a body known as the Academic Council of the University which had the power by regulations of prescribing all course of study and of determining curricula and the general control of teaching within the University and was responsible for the maintenance of the standards thereof. Under sub-section (2)(h) of the Act these powers include the power to make regulations regarding the admission of students to the University or prescribing examinations to be recognised as equivalent to university examinations or the further qualifications mentioned in sub-section (1) of Section 33 for admission to the degree courses of the University. Under Section 33 no student was to be eligible for emission to a course of study qualifying admission to a post-matriculation university examination unless he had passed examination prescribed as qualifying for admission to to such course or an examination recognised by the Academic Council with the previous sanction of the State Government as equivalent thereto and possessed such further qualifications, if any, as might be prescribed. Sri Venkateshwara University, the only other University functioning in this area, was constituted under a similar statute and had almost identical provisions as those mentioned above.

8. The above provisions of law do not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant-candidates as the qualifying examination. Obtaining 50% of the marks at the qualifying examinations was the first hurdle to be crossed by any candidate before he could submit an application for admission into a medical college. The Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. Merely because they tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action cannot be impeached nor was there anything unfair in the test prescribed. The test prescribed by the Government must be considered in the light of a second hurdle for the purpose of a screening to find out who of all the candidates applying should be admitted and who should be rejected. Merely because the University made regulations regarding the admission of students to its degree courses, it did not mean that any one who had passed qualifying examination such as the P.U.C. or H.S.C. was ipso facto to be

entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available the University can have to make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course.

9. In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventy Schedule to the Constitution. The said entry provides :

> "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."
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> The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject.

10. Several decisions of this Court were cited at the Bar which throw some light on the subject. In R. Chitralekha v. State of Mysore ((1964) 6 SCR 368 : AIR 1964 SC 1823.), one of the contentions urged before this Court was that the Government of Mysore had no power to appoint a selection committee for admitting students to colleges on the basis of higher or different qualifications than those prescribed by the University. What the Government had done in that case was to appointe one common selection committee for settling admissions to the Engineering Colleges and another such committee for settling admissions to Medical Colleges. The Government of Mysore had sent a letter to the Director of Technical Education informing him :

> "That it had been decided that 25 per cent. Of the maximum marks for the examination in the optional subjects taken into account for making the selection of candidates for admission to Engineering Colleges shall be fixed as interview marks; it also laid down the criteria for allotting marks in the interview".

The selection committee converted the total of the marks in the optional subjects to a maximum of 300 marks and fixed the minimum marks for interview at 75. On the basis of the marks obtained by the candidates in the examination and those obtained at the interview, selections were made for admission to Engineering and Medical Colleges. Some of the candidates whose applications for admission to the said colleges were rejected filed petitions under Article 226 of the Constitution in the High Court of Mysore for quashing the orders issued by the Government in the matter of admissions to the said colleges and for a direction that they should be admitted in the colleges strictly in order of merit, i.e., according to the marks obtained in the qualifying examinations. The arguments advanced before this Court were similar to those advanced before us. Referring to Section 23 of the Mysore University Act which gave the Academic Council the power to prescribe the conditions for admission of students to the University and in exercise of which power, the University had prescribed the percentage of marks which a student had to obtain for getting admission in medical or engineering colleges it was observed by this Court :

> "The order of the Government does not contravene for minimum qualifications prescribed by the University; what the Government did was to appoint a selection committee and prescribe rules for selection of students who have the minimum qualifications prescribed by the University. The Government runs most of the medical and engineering colleges........ The colleges run by the Government, having regard to financial commitments and other relevant considerations, can only admit a specific number of students to the said colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed criteria for making admissions to colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a college will have, and the Government which run its won colleges cannot be denied that power".

Referring to Entry 66 in List I it was said :

> "If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciable abridge the central field, it may be stuck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State Legislature made a law prescribing a higher percentage of marks for extra curricular activities in the matter of admission on colleges, it colleges, it would be directly encroaching on the field covered by Entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any the law."

With regard to the scheme of selection in that case it was said :

> "So long as the order lays down a relevant objective criertia and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter. In this case the criteria laid down by the Government are certainly relevant in the matter of awarding marks at the interview."

11. With respect, it seems to us that the observations above quoted are equally applicable to the case before us, the only difference being the whereas in the Mysore case marks were awarded on the basis of the impression created at the interview and added in a certain manner to the marks obtained at the University examination in the case before us the marks obtained at the University only make candidates eligible to appear at the written test and it is the last test which is the determining factor as to who should be admitted and who should be rejected.

12. In Rajendran v. State of Madras ((1968) 2 SCR 786 : AIR 1968 SC 1012 : (1968) 2 SCJ 801.) the petitioners challenged an order of the State Government by which rules were promulgated for selection of candidates for admission to a medical course. These rules inter alia provided for selection and classification of candidates including one for awarding a maximum of 75 marks for extra-curricular activities which had been specified under five heads. Turning down the contention that there was no objective test laid down in the rules for the interview it was said : (p. 795) :

> "So far as admission is concerned it has to be made by those who are in control of the colleges, - in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the University as to eligibility and qualifications. This was what was done in these cases and therefore the selection cannot be challenged on the ground that it was not in accordance with the University Act and the Rules framed thereunder."

13. In Chitra Ghose and Another v. Union of India and Others, (1969 (2) SCC 228 : (1970) 1 SCR 413.) the appellants who had passed the pre-medical examination of the Delhi University obtaining over 82% marks were refused admission to the first year M.B.B.S. course at the Maulana Azad Medical College which was a constituent of the University of Delhi and was established by the Government of India. The college prospectus contained certain rules relating to the admission of students which made reservations of places in the college in favour of various categories of students and provided for nominations to be made by the Central Government to fill some of the reserved places. The appellants challenged primarily the power of the Central Government to make the nominations and contended that nine students nominated by the Government had obtained lower marks than theirs in the pre-medical examination so that if they were to be excluded, the appellants would become entitled to be admitted in the college. Rejecting this contention it was said :

> "It is the Central Government which bears the financial burden of running the medical colleges. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admissions will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and the categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification".

The above case is not directly in point but it at least shows that a candidate has not an unqualified right to a seat in a medical college merely because he has obtained higher marks than another candidate at the qualifying examination.

14. Mr. Choudhury the learned adovoacte for the respondents put before us his contentions with regard to the above in three propositions, namely, (1) The State has no power to trench upon the powers given to the University. The test prescribed contravenes Section 23 of the Act, (2) even if the matter is not covered by the Universities Act the executive cannot be allowed to usurp a law-making power in prescribing a test, (3) the rule affects prejudicially the right conferred on candidates by the University Regulations.

15. In our view there is no substance in any of the contentions as will be apparent from our conclusions noted above and the decisions of this Court bearing on this point. The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the filed and the

Government order in this case in no way affected the rights of candidates with regard to eligibility for admission : the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor.

16. Mr. Choudhury faintly tried to urge other points which may be briefly noted. One of the grounds was that some of the questions were not covered by the curricula, by the P.U.C. or the S.S.L.C. examinations. This was not a ground which has any merit. If some of the questions were outside the syllabi all the candidates were at an equal disadvantage. Alternatively the questions might have been put to find out whether the candidate's knowledge was limited to the syllabus or whether he was sufficiently interested in the subjects so as to acquire knowledge beyond the prescribed curriculum.

17. The next ground urged was that the written test was in substitution of the University examination and was altogether a novel experiment, no such test having been held before. In our view there is not substance in this contention either. The written test was not in substitution of the University examination but it was something additional to that the mere fact that a written test had been introduced in the year 1970 would be no ground for holding that the method of selection was invalid. Further no complaint can be made that the notice of examination was all to short or that it was never published in the Gazette. It it was short it affected everybody equally adversely and the figures showing how many candidates had taken the test demonstrates very clearly that everybody who had cared to sit for the examination had an opportunity of doing so. Publication of the notificiation in the Gazette was not called for by any law.

18. Lastly it was urged that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution. We fail to see how refusal of an application to enter a medical college can be said to affect one's personal liberty guaranteed under that article. Everybody, subject to the eligibility prescribed by the University, was at liberty to apply for admission to the medical college. The number of seats being limited compared to the number of applicants every candidate could not expect to be admitted. Once it is held that the test is not invalid the deprivation of personal liberty, it any, in the matter of admission to a medical college was according to procedure established by law. Our attention was drawn to the case of Sppottswood v. Sharpe (98 L ED 884.), in which it was held that due process clause of the Fifth Amendment of the American Constitution prohibited racial segregation in the District of Columbia. Incidentally the Court made a remark (at p. 887) :

> "Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily or restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restarted except in for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro Children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clauses."

The problems before us is altogether different. In this case everybody subject to the minimum qualification prescribed was at liberty to apply for admission. The Government objective in selecting a number of them was certainly not improper in the circumstances of the case.

19. Learned counsel also referred us to an observation of this Court in Satwant Singh v. Passport Officer ((1967) 3 SCR 525 at 540 : AIR 1967 SC 1836 : (1968) 1 SCJ 178.), that :

"'liberty' in our Constitution bears the same comprehensive meaning as is again to the expression 'liberty' by the 5th and 14th Amendments to the U.S. Constitution and the expression 'personal liberty' in Article 21 only excludes the ingredients of 'liberty' enshrined in Article 19 of the Constitution."

20. We do not find it necessary to dilate on this point in view of out conclusion that even if personal liberty extends to such conduct there has not been any deprivation thereof in violation of any procedure established by law.

21. In the result the appeals are allowed, but in the circumstances we leave the parties to bear their own costs.

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