

Miss Rita Kumar

Vs

Union Of India and Others

Suresh Elwadhi

Vs

Union of India and Others

Writ Petitions Nos. 347 and 348 of 1972

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, M.H. Beg, S. N. Dwivedi JJ)

24.01.1973

JUDGMENT

PALEKAR, J. -

1. These petitions under Article 32 of the Constitution are filed by Rita Kumar and Suresh Elwadhi complaining about discrimination under Article 14 of the Constitution. Both of them are repatriates from Burma, the former having come to India in January, 1965, and the latter in October, 1964. Both are citizens of India and are qualified for entry to the M.B.B.S. course. It appears that the Government of India introduced a Scheme under which a certain number of seats in Government Medical Colleges are reserved for pre-medical and M.B.B.S. courses for repatriates from Burma, Ceylon, Mozambique and new migrants from Bangla Desh. Pursuant to the scheme an advertisement was published on June 3, 1972, inviting applications from qualified repatriates from the above areas in prescribed forms. Repatriates claiming reservations of seats were required to produce a certificate. A note appended to the certificate is as follow :

Not : For the purpose of issuing the above certificate as bona fide repatriate as defined below :

"'Repatriate' means a person of Indian origin who was ordinarily resident in a foreign country, but who has come to India with the intention of settling down in India permanently and has arrived in India - (a) In the case of persons coming from Burma on or after June 1, 1964".

2. Since both the petitioners had come from Burma after June 1, 1964, they were entitled to apply for the reserved seats. The petitioners applied for the reserved seats but they were not selected. The petitioners made enquiries and found that while some of the respondents were less qualified on merits than the petitioners they were admitted to the reserved seats while the petitioners were not. Petitioner Rita Kumar had obtained an aggregate of 64.3% marks and Suresh had obtained an aggregate of 62% - both being placed in the first division. Some of the respondents got a lesser percentage of aggregate marks and hence it was contended that there has been discrimination.

3. The petitions were contested on behalf of the Government. It was pointed out in the counter-

affidavit filed on behalf of the Government by Shri P. Mukhopadhyay, Under Secretary to the Government of India, Ministry of Health and Family Planning, New Delhi that though it could not be denied that the petitioners were repatriates from Burma, there were other repatriates who had come to India more recently and, therefore, the latter case had to be treated with greater consideration. The number of seats at the disposal of the Government were limited and hence the Government had to make a choice between the migrants who have come recently and the migrants who had come comparatively earlier. In the opinion of the Government the more recent migrants required greater rehabilitation assistance and provision of facilities including facilities for medical education than those who had immigrated much earlier and since all the repatriates duly qualified could not be accommodated in the reserved seats, the Central Selection Committee had to draw the line somewhere. According to the affidavit the Committee decided to set a time-limit of five years. Thus the repatriates who came within five years prior to the selections were preferred to those who had been repatriated more than five years before the selection. Both the petitioners had migrated more than five years before the selection and, therefore, they were left out.

4. It is conceded before us that there are no statutory rules governing the matter. The question was left to the Central Selection Committee presided over by the Secretary of the Ministry of Health and Family Planning. At a meeting held on June 30 and July 1, 1972, the Selection Committee decided to make a selection from qualified candidates who arrived in India inside five years of the selection and accordingly all the 27 reserved seats were filled up. The petitioners could not be considered for these seats as they had migrated to India much earlier.

5. It is true that the petitioners are repatriates like some of the respondents but there is a different between the two categories as the petitioners had come to India earlier while the respondents had immigrated much later. The former were more re-settled than the latter and since the object of the rule creating reservations of seats was rehabilitation and re-settlement it can not be said that the classification so made administratively had no reasonable nexus to the object in view. The respondent candidates were also repatriates though, it is true, they received a lesser percentage of aggregate marks than the petitioners. If both the categories had been placed in similar circumstances it would have been possible to urge that there has been discrimination. But since the petitioners and their families have been better settled and rehabilitated than the respondents and their families it was open to the Selection Committee to decide administratively how best the purpose of rehabilitation of repatriates could be served. In our view, therefore, the discrimination is not invalid and the petitions must fail.

6. The petitions are dismissed. There shall be no order as to costs.

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