

Kumari K. S. Jayasree and Another

Vs

The State of Kerala and Another

Writ Petition No. 1596 of 1975

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

17.08.1976

JUDGMENT

RAY, C.J. -

1. The first petitioner is the minor daughter of the second petitioner. The petitioners in this writ petition challenge the government order dated May 2, 1966 on the ground that it offends Article 15(4) of the Constitution. The petitioners also ask for an order directing the respondents, viz., the State and the Principal of the medical college at Trivandrum to allot a set to the first petitioner.
2. The first petitioner applied for admission to the M.B.B.S. course for 1975-76 in one of the medical colleges at Trivandrum in the State of Kerala Clause 9 sub-clause (vi) in the prospectus for admission provided among other things that the applicant should produce certificate of community and income (from all sources) in the prescribed form in the case of candidates belonging to the communities recognised by the Government as socially and educationally backward classes.
3. The petitioner produced the certificate from the Tahsildar, showing that the total income of her family from all sources is Rs. 11,752 for the year 1975-76 and that she is an Ezhava.
4. The minimum marks prescribed for admission for candidates belonging to Ezhava community in the State is 363 in the optional subjects of Physics, Chemistry and Biology. The petitioner obtained 372 marks. The petitions alleges that the list of candidates belonging to the Ezhava/Thiyya community selected for the seats reserved to them under Article 15(4) of the Constitution was published on October 10, 1975 and the first petitioner was not selected though candidates belonging to Ezhava community who had obtained less marks than the first petitioner had been selected. The petitioners further allege that the list shows that candidate Nos. 6 to 27 obtained marks ranging between 371 and 357. The Principal, Medical College sent a memorandum to the first petitioner that, as the income exceeds Rs. 10,000 her case cannot be considered under reservation scheme.
5. Clause 11 of the prospectus for 1975-76 for admission to M.B.B.S. course in medical colleges in the State is as follows :

11. Selection for admission, reservation for S.Cs./S.Ts./socially and educationally backward class and reservation regional basis :- Selection of candidates will be on the basis of merits as laid down in G.R.Rt. 1361/70/Health dated 18.6.1970 and D.O.Ms. M.O. No. 216/71/Health dated 8.7.1971 and subject to the provisions contained in G.O. (P) 208/66/Edn. dated 2.5.1966 and subsequent orders of the Government regarding reservation for Scheduled Castes and Scheduled Tribes and

other socially and educationally backward class, reservation for Malabar and Travancore-Cochin, area etc. The decision of the Government on matters concerning admission shall be final.

6. On May 2, 1966 the State Government issued an order, inter alia, that only applicants who are members of families consisting of Ezhavas, whose aggregate annual income is below Rs. 6,000 would be entitled to admission to the seats reserved for students belonging to the socially and educationally backward class. It should be stated here that the said order of the State Government came to be issued on the consideration of the report of the commission appointed by the State to enquire into the social and educational conditions of the people and report as to what sections of the people in the State of Kerala should be treated as socially and educationally backward classes.

7. The commission assumed office on July 14, 1964 and submitted its report on December 31, 1965. The Recommendation of the commission was that only citizens who are members of families which have an aggregate income of less than Rs. 4200 per annum and which belong to the castes and communities mentioned in Appendix VIII constitute socially and educationally backward classes for purposes of Article 15(4).

8. When the Government passed the order on May 2, 1966 the government order stated inter alia as follows :

After the Commission collected data for its report, the cost of living has risen further and the income tax exemption limit has be raised. Having regard to the current cost of maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs. 4200 suggested by the Commission should appropriately be raised to Rs. 6000 per annum.

In the circumstances, the Government accepted the above recommendation subject to the modification that only citizens who are members of families which have an aggregate income of less than Rs. 6000 per annum and which belong to the castes and communities mentioned in the annexure to this government order will constitute socially and educationally backward classes for purposes of Article 15(4).

9. The order of the Government dated May 2, 1966 was challenged in the Kerala High Court. The learned Single Judge quashed the government order by decision dated February 24, 1975 reported in AIR 1975 Ker 131 (Kumari T. Shameen v. Principal, Medical College, Trivandrum, 1975 Ker LT 260). The State filed an appeal. The validity of the government order dated May 2, 1966 was upheld by the Kerala High Court. The decision of the High Court dated July 14, 1975 reversing the judgment of the learned Single Judge is reported in 1975 Kerala Law Times 851, State of Kerala v. Krishna Kumari. The High Court held that the commission had material before it. It is not for the court to weigh the evidence. The question is whether the approach made by the commission is correct. The High Court held that economic backwardness plays a part in social backwardness and in educational backwardness. Poverty or economic standards is a relevant factor. Economic backwardness contributes to social backwardness.

10. On September 2, 1975 the State Government passed an order which inter alia states as follows :

After the issuance of the government order the cost of living has risen further and the income tax exemption limit has been raised. Having regard to the current cost of

maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs. 6000 prescribed in the government order should be appropriately raised. In the circumstances, Government are pleased to enhance the income limit of Rs. 6000 prescribed to Rs. 10,000 per annum with effect from the academic year 1975-76.

11. The petitioners contended that there is no reason to exclude an insignificant part of the community on the basis of income alone. The petitioners emphasised that if the socially and educationally backward classes are set out in the annexure, income cannot be the criterion of admission to determine the benefit of Article 15(4).

12. The contention of the State is that the government order dated May 2, 1966 is not in violation of Article 15(4) because the expression "backward class" in Article 15(4) is not used as synonymous with backward caste or backward community. The members of an entire caste or community may in social, economic and educational scale of values, at a given time be backward and may on that account be treated as a backward class. The reason is that they are treated as socially and educationally backward not because they are members of a caste or community but because they form a class.

13. Backward classes for whose improvement special provisions are contemplated by Article 15(4) are in matter of their backwardness comparable to scheduled castes and scheduled tribes. This Court has emphasised in decisions that the backwardness under Article 15(4) must be both social and educational. In ascertaining social backwardness of a class of citizens, the caste of a citizen cannot be the sole or dominant test. Just as caste is not the sole or dominant test, similarly poverty is not the decisive and determine factor of social backwardness.

14. The report of the commission for reservation of seats in educational institutions found on applying the relevant test that the lower income group of the communities named in Appendix VIII of the report constitute the socially and educationally backward classes and they are identified as those whose family income is below the specified limit. The basis of the reservation is not income but social and educational backwardness.

15. The object of the reservation under Article 15(4) is to recognise the factual existence of socially and educationally backward classes in our country and to make a sincere attempt to promote the welfare of the weaker sections of the community. Article 15(4) gives effect to this principle. The concept of backwardness in Article 15(4) is not intended to be relative in the sense that classes who are backward in relation to the most advanced classes of society should be included in it.

16. The commission found that the rich people in the backward communities even though they have not acquired any high level of education are able to move in society today without being discriminated socially. The commission further found that the benefit of the existing reservation of seats in educational institutions in favour of the Ezhavas and other backward communities is today enjoyed by the rich people of the type mentioned above. Further, evidence before the commission was that the wealthy sections do not at present have any caste or communal disabilities worth mentioning and are not socially backward. The commission found that the benefit of the present system of reservation based solely on caste or community is, to a considerable extent, being enjoyed by the wealthy sections to the prejudice of the poorer sections. The commission, therefore, found that consideration of a means-cum-caste/community test should be adopted for the classification so as to take in the poor and deserving sections and exclude the wealthier sections.

17. The commission examined occupational test and found that all the persons belonging to a particular caste or community may not now be following its traditional occupation, but most of the persons who pursue any of those occupations belong to the caste or community whose traditional occupation it is. The commission found that in such cases very often person following the traditional occupation will be closely related to persons who are pursuing occupations to which there is no social stigma. In such cases, on account of the near relationship of the persons following the traditional occupation to the other persons and their caste/communal associations, the stigma affects even the persons not following these traditional occupations. The commission found that it is only the lower income group which is affected by the stigma. The commission found that changes occur at short intervals and therefore identification of persons occupation-wise becomes more difficult in their case.

18. The commission referred to the habitation test. The commission expressed the opinion that there are no great social differences in the State merely on account of places of residence. Complete and reliable tests on the subject were not available to the commission to compare the people of the Malabar area to that of Travancore-Cochin area. The commission, however, said that Malabar is educationally backward compared to Travancore-Cochin area.

19. As regards educational backwardness of the classes of citizens, the commission found that the State average of the students in the last of the High School classes can safely be taken as one of the elements of the composite test for ascertaining educational backwardness. The commission treated as backwardness the communities which have an abnormal fallout. In such cases if their educational backwardness is established by the total absence of any student from the community, the lower income group is included among the socially and educationally, backward classes on being satisfied of their social backwardness. Social backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness. Both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition.

20. The commission applied the tests for educational backwardness, test of habitation, necessity for a means-cum-caste/ community test, the income level for the means-cum-caste/community test, and came to the conclusion that citizens in the State of Kerala who are members of families which have an aggregate income of less than Rs. 4200 per annum from all sources and which belong to castes or communities mentioned in Appendix VIII constitute socially and educationally backward classes for purpose of Article 15(4). The commission found that generally the members of the castes and communities mentioned in Appendix VIII are educationally backward and that the lower income groups which have an aggregate income of less than Rs. 4200 per annum are socially backward also. The lower income group of these castes and communities belongs in the opinion of the commission to classes of citizens who are both socially and educationally backward.

21. In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste cannot however be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining factor of social backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on the caste of the citizen it will perpetuate the vice of

caste system. Again, if the classification is based solely on poverty it will not be logical. The society is taking steps for uplift of the people. In such a task groups or classes who are socially and educationally backward are helped by the society. That is the philosophy of our Constitution. It is in this context that social backwardness which results from poverty is likely to be magnified by caste consideration. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes. Social and economic consideration come into operation in solving the problem and evolving the proper criteria of determining which classes are socially and educationally backward. That is why our Constitution provided for special consideration of socially and educationally backward classes of citizens as also schedule castes and tribes. It is only by directing the society and the State to offer them all facilities for social and educational uplift that the problem is solved. It is in that context that the commission in the present case found that income of the classes of citizens mentioned in Appendix VIII was a relevant factor in determining their social and educational backwardness.

22. The problem of determining who are socially and educationally backward classes is undoubtedly not simple. Sociological and economic consideration come into play in evolving proper criteria for its determination. This is the function of the State. The Court's jurisdiction is to decide whether the tests applied are valid. If it appears that the tests applied are proper and valid the classification of socially and educationally backward classes based on the tests will have to be consistent with the requirements of Article 15(4). The commission has found on applying the relevant tests that the lower income group of the communities named in Appendix VIII of the report constitute the socially and educationally backward classes. In dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. It is necessary to remember that special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of the group of citizens may be relevant, its importance should not be exaggerated. If the classification is based solely on caste of the citizen, it may not be logical. Social backwardness is the result of poverty to a very large extent. Caste and poverty are both relevant for determining the backwardness. But neither caste alone nor poverty alone will be the determining tests. When the commission has determined a class to be socially and educationally backward it is not on the basis of income alone, and the determination is based on the relevant criteria laid down by the Court. Evidence and material are placed before the commission. Article 15(4) which speaks of backwardness of classes of citizens indicates that the accent is on classes of citizens. Article 15(4) also speaks of schedule castes and scheduled tribes. Therefore, socially and educationally backward classes of citizens in Article 15(4) cannot be equated with castes. In *R. Chitralakha v. State of Mysore* ((1964) 6 SCR 368 : AIR 1964 SC 1823) this Court said that the classification of backward classes based on economic conditions and occupations does not offend Article 15(4).

23. The different castes that have been described in Appendix VIII to the commission report have not been accepted by the commission as embodying the group of socially and educationally backward classes of people. Only those among the members of the castes mentioned in Appendix VIII whose economic means was below that stated by the commission were treated as socially and educationally backward. The educational backwardness is reflected to a certain extent by the economic conditions of the group.

24. For the foregoing reasons the petition is dismissed. Parties will pay and bear their own costs.

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