

SUPREME COURT OF INDIA

Nishi Maghu

Vs.

State of J. and K.

(A. C. Gupta, S. Murtaza Fazl Ali and P. S. Kailasam, JJ.)

W.P.Nos.1488-89 of 1980

09.05.1980

JUDGEMENT

GUPTA, J.:-

1. The selection of candidates admitted to the Government Medical College, Jammu, for the academic year 1979-80 is challenged in these petitions under Article 32 of the Constitution by some of the candidates who were not selected. By notification published in the Jammu and Kashmir Government Gazette on June 21, 1979 applications were invited for admission to the M. B. B. S. course in the aforesaid college. Only those candidates who had passed the Pre-Medical or Inter-Science or First Year T. D. C. (Medical Group) examination from the University of Jammu or any other equivalent examination and had secured not less than 50 per cent marks in science subjects in aggregate (theory and practical) were eligible to apply for admission; however, for scheduled castes, scheduled tribes, Bakarwal and Gujjar candidates and candidates from Ladakh district and 'Bad pockets' the qualifying marks was 45 per cent. Candidates who had been selected or nominated by the Government of Jammu and Kashmir or had been already selected by a selection committee constituted by the Government for any training course in or outside the State were not eligible to apply or to appear for interview for admission to this college. The notification added: "Comparative merit of the candidates will be adjudged with respect to physical fitness, aptitude, personality,

general knowledge and general intelligence in the interview, for which marks will be awarded according to the performance of the candidates". It was further provided that the selection would be made in accordance with the manner and procedure laid down in the various orders issued by the Government from time to time. The total number of seats filled by selection in this college for the year 1979-80 was 52. The candidates numbered 526, out of which 473 actually appeared for interview. In addition 10 seats were filled by candidates nominated by the Government. It appears from the supplementary affidavit filed on behalf of the State of Jammu and Kashmir that the nominations had to be made only from two sources: wards of non-resident Defence personnel, and students from other States.

2. Before we proceed to consider the grounds on which the selection is challenged, it will be necessary to refer to the contents of the orders issued by the Government of Jammu and Kashmir to regulate the selection. The earliest order which is relevant in this context was made on July 9, 1973. This concerns admission to technical institutions which include medical colleges. The order starts by saying that "the man power requirements of various parts of the State have not received uniform and equal treatment with the result that there has been imbalance in the development of human resources in these parts", and "since the admission to technical institutions also lead to the development of human resources", it had therefore "became necessary to provide equal opportunities to the permanent resident candidates of all parts of the State and all sections of society". The order then lays down the following rules for admission until further orders, it is said, with the aforesaid object in view:

(1) 50 per cent of the seats "should be straightway earmarked for being filled upon the basis of open merit in accordance with the criteria to be adopted by the concerned selection committee constituted by the Government in this behalf".

(2) Of the remaining seats, 25 per cent is reserved for candidates falling under the categories specified below to the extent indicated against each, to be filled on the basis of merit in each category:

- (a) Scheduled castes. 8%
- (b) Children of freedom fighters 7%
- (c) Children of permanent resident Defence personnel. 3%
- (d) Candidates belonging to the following socially and educationally backward classes as recommended by the Backward Class Committee:
 - (i) Areas adjoining actual line of control. 3%

(ii) Areas known as bad pockets including Ladakh. 3%

(iii) Social castes. 1%

It is further provided in the order that after selection as indicated in cls. (1) and (2) above had been made, the remaining 25 per cent of the seats "should be filled on the basis of inter se merit to ensure rectification of imbalance in the admissions for various parts of the State, if any, so as to give equitable and uniform treatment to those parts". It is added that in case there is no "visible imbalance" or where no candidates are available under a particular category mentioned in clause 2 above the seats earmarked under these two heads "shall be added to the percentage under 1 above". The selection committee while making selections is required by the order to indicate separately the category under which a candidate falls. There is an annexure to the order containing instructions concerning the "identification of the persons claiming benefit" under clause 2 of the order and the "procedure connected therewith". The instructions define the different categories mentioned in clause (2). For the present purpose it will be necessary to refer to the definitions of "Areas adjoining actual line of control", "Bad pockets", and "Social castes".

"Areas adjoining actual line of control - Candidates permanently residing in any village of the State specified in Appendix I to these instructions."

"Bad pockets - Candidates permanently residing in any village of the State specified in Appendix II to these instructions."

"Social castes - Candidates of the State belonging to any of the castes indicated in Appendix III to these instructions."

The instructions also provide for the issue of a certificate by the concerned authority stating that a candidate falls under any of the categories.

3. On June 27, 1974 another order was issued refixing the percentage of seats reserved for the different categories "with a view to affording more accommodation for open merit". The following changes were made to the earlier order:

(1) Instead of 50 per cent, 60 per cent of the seats is now earmarked for admission on the basis of "open merit".

(2) Instead of 25 per cent, 20 per cent is earmarked for admission under the categories mentioned in clause 2 of the order dated July 9, 1973. The percentage of seats allotted for children of freedom fighters is reduced from 7 per cent to 2 per cent. Under the category "socially and educationally backward classes" the earlier order had reserved 3 per cent of the seats for candidates belonging to areas known as bad pockets including Ladakh, by this order Ladakh is excluded from that category reducing the percentage of seats from 3 per cent to 1 per cent and a separate category has been made for candidates from the Ladakh district allotting 2 per cent of the seats to them.

(3) Whereas in the earlier order 25 per cent of the seats was earmarked to ensure rectification of imbalance, here the figure is reduced to 20 per cent.

4. About two years later, on April 21, 1976 another order was issued reducing the existing reservation of 20 per cent for meeting regional imbalance to 18 per cent and allotting "the resultant 2% vacancies" for candidates "possessing outstanding proficiency in sports".

5. It is necessary to refer to two more orders. An order made on April 16, 1976 provides that 10 seats at the Government Medical College, Jammu, shall be earmarked for girl students "subject to enough girl students being found otherwise suitable". The order also lays down the procedure to be followed by the selection committee in selecting candidates for admission to technical training courses. By this order, comparative performance of the candidates at an interview to be conducted for the purpose by the selection committee is made the only basis of selection. The order adds that the marks obtained by a candidate in the qualifying university examination shall be taken into consideration only to determine the initial eligibility to compete for selection.

This order was modified by a subsequent order issued on April 3, 1978. Instead of the marks obtained by a candidate in the qualifying university examination being treated as relevant only to determine eligibility, the subsequent order provides : "there will be 100 marks for academic merit which shall be allotted to each candidate in accordance with the percentage of marks secured by him/her in the basic qualifying examination or its equivalent". This order further provides that 50 marks will be allotted for interview, 10 marks for each of the five factors: physical fitness, personality, aptitude, general knowledge and general intelligence,

6. Some of the categories mentioned in these orders have been challenged as arbitrary and unconstitutional. We may begin with the classification made for 'rectification of regional imbalance' for which 18 per cent of the seats is reserved. The criticism is that the order creating this category does not identify the areas which suffer from imbalance nor does it supply any guidelines for the selection committee. It appears that the selection committee has admitted 9 candidates under this head whose names appear at serial Nos. 43 of 51 of the list of selected candidates annexed to the

supplementary affidavit filed on behalf of the first respondent, State of Jammu and Kashmir. How exactly the selection committee understood what regional imbalance was and on what basis they accepted certain areas of the State as suffering from imbalance is not known. The supplementary affidavit seeks to explain the category as follows : ".....the State Government has found that for peculiar historical, geographical and topographical reasons there prevails an imbalance in the matter of development of the various parts of the State which has resulted in certain areas being backward as compared with the rest. In order therefore to rectify the distortion which inevitably would otherwise creep into the selection, the State Government has reserved 18% of sets for rectification of such imbalance". The affidavit refers to the disadvantages suffered by areas which adjoin the actual line of control and the bad pockets and states: "likewise there are other areas in the State which have received lesser attention in the past in the matter of economic development. These areas, inter alia, are either inaccessible on account of difficult geographical terrain or suffer from difficult climatic condition.... Naturally therefore the human resources from those areas have also not developed". It may be recalled that the notification dated June 21, 1979 by which applications were invited for admission to the medical college provided that the selection of candidates would be made in accordance with the manner and procedure laid down in the various orders issued by the Government from time to time, but none of these orders contains an explanation as the one now offered in the supplementary affidavit. Even with this explanation the affidavit does not identify the areas of imbalance. There was thus no objective standard to guide the selection committee. Mr. Kacker appearing for the State of Jammu and Kashmir sought argue that by area of imbalance what was meant was really the same thing as areas adjoining actual line of control and bad pockets. But in all the orders issued by the Government from time to time the area of imbalance has been treated as a distinct category. Even in the supplementary affidavit it is not claimed that the area of imbalance is only another name for the areas adjoining the actual line of control and the bad pockets, what is said is that these are similar in being equally backward. But this does not mean that these categories are all identical and co-extensive in all respects. It will be noticed that, in spite of the similarity, even areas adjoining the actual line of control and the bad pockets have been put under different categories.

7. Mr. Kacker also urged that as the areas suffering from imbalance were backward areas, constituting a separate category for candidates coming from such backward areas was in accordance with the report of a committee headed by Mr. Justice Anand of Jammu and Kashmir High Court. The Anand Committee was appointed on August 24, 1976 to examine and remove defects in the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation) Rules, 1970 and the Jammu and Kashmir Scheduled Castes and Backward Classes (Reservation of Appointment by Promotion) Rules, 1970. These rules were framed on the basis of the recommendations of a committee, called the Wazir Committee, set up in 1969 for drawing up a list of backward classes in the State. Mr. Justice J. N. Wazir, a former Chief Justice of Jammu and Kashmir High Court, was the Chairman of the Committee. The Wazir Committee submitted its report in November 1969 recommending several classes of citizens to be classified as backward classes. The validity of these Rules came up for scrutiny before this Court in *Janki Prasad Parimoo v. State of Jammu and Kashmir* (1973) 3 SCR 236 : (AIR 1973 SC 930). In Parimoo's case certain defects in the 1970 Rules were pointed out and the Anand Committee was constituted, as stated already, "with a view to examine removal of defects" in the 1970 Rules. The Anand Committee submitted its report in September 1977. Mr. Kacker drew our attention to the fact that the report was debated on the floor of both houses of the Jammu and Kashmir legislature which resolved as follows : "The report need to be adopted by the Government as quickly as possible and rules made so that the backward classes

could derive benefits quickly." It is not necessary to examine whether the Anand Committee report identifies the areas of imbalance in the State because the selection committee was required to follow not the Anand Committee report but what was provided in the orders passed by the Government. There is no order containing any reference to the Anand Committee report. There is also nothing to show that the Government had adopted the report or that the selection committee proceeded on the basis of that report. It appears from page 59 of the Anand Committee report that the Committee did not accept "social castes" as a category indicative of backwardness, but the selection under this category which plainly shows that the selection committee was not guided by the Anand Committee report. There can be no doubt that the selections made were not and could not be on the basis of that report. It must therefore be held that the classification made for rectification of regional imbalance without identifying the areas suffering from imbalance is vague and the selections made under this head are accordingly invalid.

8. In support of his contention that area of imbalance was only another name for bad pockets or areas adjoining actual line of control, Mr. Kacker claimed that the 9 candidates selected for 'rectification of imbalance' all came from either bad pockets or from areas adjoining actual line of control. The claim was questioned by the petitioners who sought to disprove it by reference to the material on record. We do not consider it necessary to examine the individual cases here. It may be that some of these candidates really came from areas adjoining actual line of control or bad pockets, yet they cannot be accommodated unless the percentage of seats reserved for these two categories was raised.

9. Another category under challenge is : "social castes". Included in this category are candidates of the State belonging to any of the castes indicated in Appendix III to the instructions forming part of the order dated July 9, 1973 to which reference has already been made. The Wazir Committee in their report mentioned 23 low social castes "as educationally and economically extremely backward" but 4 of them have been held by this Court in Parimoo's case (AIR 1973 SC 930) as having no basis for inclusion in the list. In Appendix III 19 of these castes have been retained which were not disapproved in Parimoo's case. Chapter XIII of the Wazir Committee report makes it clear that the classification is with reference to the nature of occupations which the people belonging to this category pursue. That being so we find no substance in the challenge that the classification offends Article 14 or Article 15 of the Constitution. Under this category only one candidate has been selected whose name, Edwin Khokkar, appears at serial No. 33 in the list of selected candidates annexed to the supplementary affidavit filed on behalf of the State of Jammu and Kashmir. An objection was raised against his selection that he being a Christian, as his name shows, could not belong to any of the castes mentioned in Appendix III. But as the category is based on occupation and not on caste as such, the objection must be overruled.

10. The classifications based on areas adjoining actual line of control and bad pockets are also challenged as violative of Article 14 of the Constitution. These are really backward areas and the residents of these areas are indisputably socially and educationally backward. Reservations made for candidates from such backward classes cannot be said to offend Article 14. In fact in Parimoo's case the reservation made for residents of bad pockets which were identified in the report of the Wazir

Committee, was accepted as valid. We therefore hold that the challenge to these two categories is not justified.

11. Apart from the challenge to some of the categories mentioned in the Government orders, the validity of interview as a test for selection has also been questioned, not only in principle but also in regard to the manner in which it was conducted. It was contended that interviewing candidates to judge their suitability was not a reliable test as many uncertain factors were likely to affect the result of the interview. The criticism reflects a legitimate point of view but it is a point of view only and cannot be taken as the last word on the subject. In this connection we may refer to the observations of this Court in *R. Chitralekha v. State of Mysore*, (1964) 6 SCR 368 : (AIR 1964 SC 1823). "In the field of education there are divergent views as regard the mode of testing the capacity and calibre of students in the matter of admissions of colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric test etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one". In *A. Peeriakaruppan, v. State of Tamil Nadu* (1971) 2 SCR 430 : (AIR 1971 SC 2303) this Court said : "In most cases the first impression need not necessarily be the best impression. But under the existing conditions in this country we are unable to accede to the contention of the petitioners that the system of interview as in vogue in this country is so defective as to make it useless".

12. In almost all the writ petitions before us the oral test as conducted has been described as a "farce". The criticism is based on the allegation that the time spent on each candidate was between 1 1/2 and 2 minutes within which, it was contended, one could hardly assess the suitability of the candidate on a consideration of the five factors : physical fitness, aptitude, personality, general knowledge and general intelligence, some of which are also difficult to evaluate objectively. In an affidavit filed on behalf of the State of Jammu and Kashmir, sworn by Dr. A. H. Fazli, Professor of Pharmacology, Srinagar, who was one of the members of the selection committee, it is stated that on an average the time spent for interview was "4 minutes per candidate". Mr. Kacker for the State of Jammu and Kashmir submitted that it was a policy decision by the Government to convert the full marks of the qualifying examinations to 100 marks and allot 50 marks for interview for the purpose of selection. He explained that the conversion was necessary because the candidates had appeared in different qualifying examinations and the total marks in the different examinations varied between 550 and 300. It was pointed out on behalf of the writ petitioners that allotment of 50 marks for interview after reducing the total marks of the written examination, where it was 550 to 100, amounted to allotting 275 marks for interview as against 550 marks for written examination. It was contended that this was beyond all reasonable proportion especially considering the facts that only 4 minutes were spent in evaluating a candidate's performance in the interview. Our attention was drawn to Peeriakaruppan's case where this Court thought "earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive". However the conclusion reached in Peeriakaruppan's case (AIR 1971 SC 2303) on the point was : "While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview...." Reserving 50 marks for interview out of a total of 150 (100 for written examination and 50 for interview) does seem excessive especially

when the time spent was not more than 4 minutes on each candidate. It is difficult to see how it is possible within this short span of time to make a fair estimate of a candidate's suitability on a consideration of the five specified factors which are not capable of easy determination, such as physical fitness, personality, aptitude, general knowledge and general intelligence. It is also not clear how by merely looking at a candidate the selection committee could come to a conclusion about his or her physical fitness. The fact that the allotment of marks is in accordance with a policy decision may not conclude the matter in all circumstances, if that decision is found to be arbitrary and infringing Article 14 of the Constitution, it cannot claim immunity from challenge. When we say this we are not unmindful of the observations in Peeriakaruppan's case quoted above, which were made in a somewhat similar but not altogether identical situation. It was also contended for the petitioners that reserving such high marks for interview leaves room for discrimination and manipulation. It has been held in Chitralkha's case (AIR 1964 SC 1823) that the fact that a system is capable of abuse is not a ground for quashing it. There is no reliable material before us to prove that there has been discrimination or manipulation of the interview marks in any of these cases. That being so and considering the possible hardship, if the selections were now set aside, to the students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed two terms, we are not inclined to annul the entire selection, though allotment of 50 marks for interview in the circumstances stated above seem to us excessive. However, we expect the Government of Jammu and Kashmir to reconsider the matter in the light of what we have said above and, other things remaining the same, for future years to reduce the percentage of marks allotted for interview to a reasonable proportion of the total marks for the selection test.

13. Counsel for the petitioners in Writ Petitions 1556-57 of 1979 sought to make a point that the regulations framed by the Medical Council under the Indian Medical Council Act, 1965 do not contemplate interview as a selection device regulating admission of students. The position is not so clear from the affidavit filed on behalf of the petitioners and in any case these regulations came into effect after the interviews were concluded in September 1979.

14. The selection of one candidate has been questioned on the ground that he does not fall under any of the categories mentioned in the orders. Shri Sanjay Pathania whose name appears at serial No. 52 in the list of candidates annexed to the supplementary affidavit filed on behalf of the State of Jammu and Kashmir appears to have been selected under the category "Wards of Medical College Staff". It was argued that this category is not based on a valid classification and infringes Article 14 of the Constitution. It is not necessary to examine the validity of the classification for the simple reason that this is not a category mentioned in any of the orders. That being so the selection of Shri Pathania must be set aside.

15. Earlier in this judgment it has been stated that following a request made by the Government of India 10 per cent of the seats in the college was reserved for students from other States on reciprocal basis. This was a policy decision. However, the way the policy has been worked is criticised by the writ petitioner in Writ Petition No. 29 of 1980. Miss Anita Jain. Pursuant to this policy 5 students from Rajasthan and 1 from Andhra Pradesh were admitted to the Government Medical College, Jammu. Miss Jain states that she was a candidate for admission to the Medical College, Jammu, for

the session 1979-80. On November 8, 1979 the Government of Jammu and Kashmir informed her by a letter that she had been nominated for admission to the first year M. B. B. S. course in one of the medical colleges in Madhya Pradesh. When she went to Bhopal for admission on the basis of the said letter she was refused admission on the ground that the State of Jammu and Kashmir had not admitted nominees of the Madhya Pradesh Government and unless they were admitted she would not be admitted to any medical college in the State of Madhya Pradesh. Her grievance is that even after she had informed the Government of Jammu and Kashmir of what had happened, the Government did not take any step to get her admitted to any medical college in the State or outside. It does not appear from the affidavits filed by the State of Jammu and Kashmir if the candidates admitted to the Government Medical College, Jammu, from outside the State are equal in number to those from the State who have been nominated for admission to outside institutions, and on what basis the nominations, whatever the number is, have been made. Anita Jain's case makes it clear that the reciprocity policy has not worked as it should have. Miss Jain's counsel informed us that Miss Jain was willing to go to any State for admission to a medical college. Having nominated her for admissions to an outside institution, we do not think the Government can avoid responsibility now. We therefore direct the first respondent, State of Jammu and Kashmir, to find her a seat in any medical college outside the State on the basis of reciprocity, unless as a result of our judgment a few more seats are available in the medical college at Jammu and she is entitled to one of them on merit. For disposing of this writ petition it is not necessary to dilate on the problems that failure of the reciprocity policy in Miss Jain's case brings to prominence.

16. It now remains to deal with two more individual cases, one of improper nomination and the other of unjust rejection. In the list of nominated candidates, the name of Harish Kumar appears against serial No. 62, Nomination, as stated earlier, was to be made from two classes of students - candidates from outside the State of Jammu and Kashmir and wards of Defence personnel (non-residents). There is no dispute that Harish Kumar belongs to the State of Jammu and Kashmir and it is not claimed that he falls in the other class. There was therefore no basis on which Harish Kumar could be validly nominated. Mr. Kacker, counsel for the State of Jammu and Kashmir, also did not try to justify Harish Kumar's nomination. Harish Kumar's admission to the medical college must therefore be set aside.

17. The petitioner in writ petition No. 201 of 1980 Kulbhushan Gupta obtained 104 marks out of total 150 marks, Of the 31 candidates who were selected on open competition, the one whose name appears 25th in order of merit got 103.25 marks out of 150. But Kulbhashan Gupta was not selected on the plea that he had been selected earlier for Regional Engineering College. The notification dated June 21, 1979 by which applications were invited for admission to Medical College, Jammu, for the year 1979-80 includes two clauses Nos. 17 and 18 which are as follows:

"17. The candidates, while applying for admission to the M. B. B. S. course, should specifically mention in their application forms that they have not been selected/nominated by the Govt. of J. and K. for any training course within or outside the J. and K. State.

18. The candidates, who have already been selected by any other selection committee constituted by the Govt. of J. and K. for any other training course within or outside the State, are not eligible to apply or to appear for interview for admission to this college. A candidate who tries to cheat the Selection Committee on this account, will be disqualified and even if selected under false pretense will not be given admission, or if he/she has secured admission, his/her admission will stand null and void."

18. It was contended that in view of these conditions Kulbhusan Gupta was not eligible for selection though no objection was raised when he appeared for interview. That he is a student of the Regional Engineering College is not disputed, but it appears that he was not selected or nominated by the Government of Jammu and Kashmir for admission to the engineering college nor was he selected by any selection committee constituted by the Government of Jammu and Kashmir. Clearly therefore the bar in clause 17 or clause 18 cannot apply to his case, and it must be held that he was improperly refused admission to the Government Medical College, Jammu. Kulbhusan Gupta is entitled on merit to a seat in the College.

19. The conclusions we have reached on the various issues do not warrant cancellation of the entire list of candidates admitted to the Government Medical College, Jammu, for the 1979-80 session of the M. B. B. S. course but call for a revision of the list. We therefore direct as follows:-

(1) As the classification made for rectification of regional imbalance" without identifying the areas of imbalance has been held invalid, the seats reserved under this head may be added to the quota of seats earmarked for selection on the basis of merit and filled accordingly.

Even if some of the candidates who have been selected under this category were eligible for selection as candidates from areas adjoining actual line of control or bad pockets, they cannot be accommodated unless the percentage of seats reserved for these two categories was raised.

(2) As the selection of Shri Sanjay Pathania (No. 52 in the List of selected candidates) under the category "wards of medical college staff" has been set aside, one more seat should therefore be added to the "open merit" quota and filled accordingly.

(3) The Government must find a seat for the petitioner in writ petition No. 29 of 1980. Miss Anita Jain, who was nominated for admission, to an outside institution, in any medical college outside the State unless as a result of the revision of the list of candidates admitted she finds a place in the Medical College, Jammu on the basis of merit.

(4) The admission of Harish Kumar (No. 62 in the list of admitted candidates) has been set aside. To complete the quota of nominated candidates another candidate in his place may be nominated if the Government so desires.

(5) The petitioner in writ petition No. 201 of 1980 Kulbushan Gupta, it has been found, was wrongly refused admission. He is entitled to merit to a seat.

20. The writ petitions therefore succeed to the extent indicated above. In the circumstances of the case there will be no order as to costs.

21. We are conscious that revision of the list of selected candidates at this stage will not only cause hardship to the students who will be excluded but some of those who might get into the list now are also likely to experience certain difficulties. We are also conscious that the late revision of the list will create problems for the authorities but that, we are afraid, cannot be helped. We hope the authorities will deal sympathetically with the cases where it may be possible for them to render some help to the students in this situation and relax the rigour of the rules to the utmost permissible extent for the purpose.

Order accordingly.