

Miss Arti Sapru and Others

Vs

State of J&K and Others

Writ Petitions Nos. 5600, 5601, 5615, 5689-97, and 6283-307, of 1980

(R.S. Pathak, O. Chinnappa Reddy JJ)

27.02.1981

JUDGMENT

PATHAK, J. -

1. The petitioner challenges the admission of a number of candidates to the 111 course in the Government Medical College, Srinagar for the session 1980-81. The petitioner, who had also applied for admission was denied it. She contends that the criteria adopted in granting admission is discriminatory unreasonable and void.
2. The Principal, Government Medical College, Srinagar invited applications by April 3, 1980 for admission to the 111 course for the session 198-81 and the notice specified the qualifying examinations of the Board of Secondary Education, Kashmir or any other equivalent Board or University which constituted the basis of eligibility. The manner and procedure governing the eligibility for admission had been set forth in a Government order April 3, 1978, which laid down that a Selection Committee constituted by the Government would determine the inter se merit of eligible candidates on the basis of an interview for judging their (a) physical Fitness, (b) personality (c) aptitude, (d) general knowledge and (e) general intelligence. This Government order was modified by a subsequent Government order dated June 23, 1980 and in the result eligible candidates were now required to appear not only in the viva voce examination but also in an objective test. These two tests along with merit in the qualifying examination of the Board or University constituted the three elements which together combined to form a basis for selection. The qualifying examination carried 35 marks, the objective test was allotted 35 marks and the viva voce examination was assigned 30 marks.
3. Besides the examination base constituted by the aforesaid three criteria, the selection was also determined by a distribution of the seats into three distinct divisions. Of the total number of seats, 50 per cent were earmarked for being filled on the basis of open merit, 25 per cent were reserved for candidates from Scheduled Castes and other reserved categories, one of which was broadly described as "specially and educational backward classes" and (b) areas known as bad pockets including Ladhak. After selection had been made as above, the remaining 25 per cent of the seats were to be filled "on the basis of inter se merit to ensure rectification of imbalance in the admission for various parts of the State, if any, so as to give equitable and uniform treatment to those parts". It was also recited that in case there was no "visible imbalance", the seats earmarked under that head were to be distributed among further "open merit" candidates. On June 27, 1974 the percentage of seats reserved for the different categories was refixed, so that 60 per cent of the seats were now earmarked for admission on the basis of "open merit", 20 per cent for distribution among candidates from the Scheduled Castes and other reserved categories including socially and educationally

backward classes, and the remaining 20 per cent of the seats were earmarked for "ensuring rectification of imbalances". Still another order dated April 21, 1976 reduced the reservation for removing regional imbalances from 20 per cent to 18 per cent.

4. The selection of candidates for admission to the government Medical College, Jammu for the academic year 1979-80 was challenged in this Court in *Nishi Maghu v. State of J & K* and the court held that (SCC p. 101 "the classification made for rectification of regional imbalance without identifying the areas suffering from imbalance was vague and the selections made under (that) and (were) accordingly invalid". The court directed that the seats reserved under that head should be added to the quota of seats earmarked for selection on the basis of merit and filled accordingly.

5. Therefore, in an attempt to remove the deficiency pointed out by this Court in *Nishi Maghu* the State Government published Notification No. 41-GR of 1980 dated September 24, 1980 purporting to identify certain villages as socially and educational backward for applying the principle of "rectification of imbalance" in different parts of the State. A long schedule (covering over 60 pages of the record before us) was annexed and listed some hundreds of villages.

6. About the same time, a Government order was issued fixing 17 per cent of the seats in the 111 course of the medical colleges of the State as the admission quota for the purpose of "rectification of imbalances".

7. From July 14 to 17, 1980 as many as 660 candidate were interviewed by a committee at Srinagar by way of viva voce examination. On July 21, 1980 the State Government issued a directive that a total list of 125 candidates be prepared against all the seats of the two Government medical Colleges, at Srinagar and at Jammu. A Section List was finalised taking into account the reservations made for various categories and classes by the different Government orders, and was published on September 29, 1980, and the names of 75 candidates were announced for admission to the 111 course to the Government Medical College, Srinagar.

8. The principal contention of Mr. Soli J. Sorabjee appearing for the petition in Writ petition 5600 to 1981, is that notwithstanding this brave attempt to meet the constitutional requirement indicated in *Nishi Maghu* the State Government has failed in its purpose. It is urged that there was no material before the State Government affording a pertinent basis for classifying these villages. It is pointed out that almost whole tehsils of different districts have been identified as socially and educationally backward, 'bad pockets' and areas belonging to the line of actual control have been included and in the result with more than 95 per cent of the villages classified as socially and educationally backward, the inference must be that almost all of Kashmir Division calls for a reservation quota. It is asserted that a portion of Srinagar city, which includes Sangin Darwaza and Bhagwanpure, has also been identified as socially and educationally backward. To that class have also been added towns where Notified Area Committees exist. The submission is that the classification is wholly arbitrary and without any foundation to sustain it. The mere circumstance, it is urged, that the classification is defined on the basis of village without anything more demonstrates its unconstitutional character.

9. The case of the State Government is that the classification fully satisfies the criterion "social and education backwardness". In proof of the assertion it is pointed out that the present selection shows that candidates from areas not included in this classified category have taken 66 seats out of 75 on the basis of open merit. It is conceded that a large number of villages have been included in the classification, but it is pointed out that the greater bulk of the population resides in the two cities of

Srinagar and Jammu alone and would be equivalent to the population of hundreds of villages taken together. The classification is supported by the consideration that in the nature of things the inhabitants of the rural areas are socially and educationally backward. It is urged that merely because some of the villages are administered by Notified Area Committees does not remove the stigma of backwardness. It is admitted that two reports, popularly described as the Anand Committee Report and the Sikri Commission report, are under consideration by the government but it is said, as a comprehensive appreciation of the situation disclosed by the two reports of the aspects of social and educational backwardness in the State has not been made yet, the government has proceeded "in its own wisdom" to identify areas suffering from regional imbalance.

10. We are of opinion that the classification attempted by the State Government by its order dated September 24, 1980 suffers from the vice of arbitrariness and must be declared invalid. There is no intelligible data before us for sustaining the classification. No doubt the State Government has acted in its own wisdom, but the material to which that wisdom was applied has not been disclosed at all. The fact by itself that some hundreds of villages have been brought within the classification is no assistance whatever.

11. Over six years ago this Court in *State of U. P. v. Pradip Tandon* ruled that in the matter of admission of students to medical colleges a reservation in favour of candidates on the ground that they hailed from rural areas was unconstitutional. The court repelled the argument that it was necessary to reserve seats for candidates from rural areas because they were handicapped in the matter of education. It also rejected the plea that as the number of marks obtained by candidates from rural area in the qualifying test were much lower than the marks obtained by the general candidates that was an indication of the former's educational backwardness. Ray, C. J., speaking for the court, observed; (SCC p. 277, para 29) :

The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizen. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas.

The criterion adopted by the State Government cannot be accepted unless supported by other relevant considerations. That a comprehensive understanding of regional imbalances from the Anand Committee Report and the Sikri Commission Report has not been possible yet affords no justification for an arbitrary classification. We are not satisfied that the State Government has succeeded in bringing the case within Article 15(4) of the Constitution. The material before us is woefully inadequate and fails to sufficiently support the validity of the classification. We are of opinion that the order of the State Government dated September 24, 1980 must be declared invalid.

12. The next contention on behalf of the petitioner is that the allocation to the viva voce test of 30 per cent of the total marks is patently unreasonable and arbitrary. Our attention has been drawn to the observations of this Court in *Ajay Hasia v. Khalid Mujib* where an allocation of more than 15 per cent of the total marks for the oral interview was regarded as arbitrary and unreasonable and liable to be struck down as constitutionally invalid. It seems to us that the State Government would have done well too apply its mind seriously to the evaluation ratio between the three criteria adopted for admission. When the Government order of June 23, 1980 dividing the total marks between the three criteria was issued, there was ample evidence of the principle and practice adopted by examining bodies of high repute and status in the country. The marks ratio adopted by the Union

Public Service Commission provided wise example. Besides, almost 10 years before this Court in *A. Peeriakaruppan v. State of T. N.* had expressed its disapproval of the earmarking of 75 marks for the interview test out of 275 marks. And before the selection process was taken in the present case this Court has already observed in *Nishi Maghu* that reserving 50 marks for the interview out of a total of 150 marks appeared excessive, especially when the time spent was not more than 4 minutes on each candidate. This precisely is what happened here, because on the case of the State Government itself the average time devoted to the oral interview of each candidate was 4 minutes. However, we are reluctant to interfere on this ground because a clear pronouncement that an allocation of more than 15 per cent of the total marks to the viva voce examination would result in constitutional invalidity has been made only recently, in *Ajay Hasia*, by this Court and that was after the selection process in the present case had already been taken. We would prefer to impress on the State Government that there is need to revise the marks ratio because of the very real risk future selections will fact on this score.

13. The next contention for the petitioner is that having regard to the number of candidates interviewed and the time applied to conducting the interview to more than two minutes or so could have been given on the average to the oral interview of each candidate, a period demonstrating, in the submission of learned counsel, that the selection process was conducted in a perfunctory manner and there was no real application of the mind to the selection of candidates. The State Government maintains that the time spent was four minutes per candidates. We have given that matter our anxious consideration, and we are unable to hold that there is adequate material for striking down the selection on this ground. But here again the State Government would do well to note the observation made by this Court in *Ajay Hasia* in this matter, and to ensure that Selection Committees take care to devote sufficient time to the oral interview of individual candidates having regard to the several relevant considerations which must enter into their judgment respecting each candidate.

14. We are also told by the petitioner that the composition of the Interview Committee varied from time to time during the interview. therefore, it is said, the selection stands vitiated. It is alleged that while one member, Shri. N. S. Pathania, Principal, Medical College, Jammu joined the Committee sometime after the interviews had begun, another member, Shri. B. R. Kundal, Deputy Commissioner, Udhampur was present during a part of the proceedings only and left thereafter. In regard to Shri. N. S. Pathania, it is not possible too say that his joining with a slight delay has materially affected the validity of the proceedings. And as regards Shri. Kundal, it appears that he was present on July 14, 1980 and according to the petitioner, left on the morning of the next day. It will be noticed that all the members of the Committee except Shri. Kundal were persons closely associated with medical education. Shri. B. R. Kundal was Deputy Commissioner of Udhampur. We also do not know what was the mode of functioning employed by the Committee, whether it was such as to invalidate the proceedings if one of the members, ex necessities, was unable to participate throughout in them. The respondents maintain that at least three out of four members remained present throughout the proceedings. And according to the petitioner, a proportionately small number only of the candidates was interviewed when Shri. Kundal was present. In all the circumstances, we find it difficult to say that Shri. Kundal's absence from the Committee vitiated its proceedings.

15. Shri. Soli J. Sorabjee then contends that a number of candidates were selected for admission because of favoritism on account of relationship or friendship with members of the Selection Committee or because they were related to important and influential persons in the State. The allegations have for the most part been made for the first time in the rejoinder affidavit and there has been no reasonable opportunity to the respondents to reply to them. Such allegations on this point as

are contained in the writ petition are extremely vague and sketchy, and can form no basis for a finding in favour of the petitioner.

16. There is one more contention, and that is that respondent 7 to 12 did not apply for admission to the Principal, Government Medical College, Srinagar, and even if they are found to have done so their applications must have been submitted beyond the time prescribed as the qualifying examination in which they appeared was held late and the results were announced after the date prescribed for submitting the applications at Srinagar had expired. It appears from the record before us that inasmuch as the relevant examination was held late and the announcement of the results was delayed the State Government permitted the candidature of these applicants to be considered for inclusion in a common list drawn up to cover candidates for admission to either of the Government Medical Colleges, at Srinagar and at Jammu. Besides, it is conceded by the petitioner that those respondents have an excellent record and if they had applied in time for admission to the Government Medical College, Srinagar, they would certainly have been admitted on the basis of their merit. In the circumstance, we do not propose to interfere with the grant of admission to those respondents.

17. Accordingly, the only relief which, in our judgment, should be awarded to the petitioner is the quashing of admissions granted in the quota reserved for rectifying regional imbalances. In consequence, those seats must be filled up on the basis of open merit.

18. Writ petitions 5601 of 1980, 5615 and 5689 to 5697 of 1980, which proceed on the same lines as Writ Petition 5600 of 1980, must be disposed of in like manner.

19. The remaining cases, Writ Petitions 6283 to 6307 of 1980, fall in a separate category. The petitioners here challenge the selection of candidates for admission to the M. B. B. S. course in the Government Medical College, Jammu for the year 1980-81, and complain of the denial of admission to them. The facts on which these writ petitions have been brought and the grounds on which they claim relief are substantially the same as in Writ Petition 5600 of 1980. Indeed, Shri. M. K. Ramamurthi, learned counsel for the petitioner, states at the outset that he adopts the submissions urged in that case against the validity of the admissions granted for the purpose of rectification of regional imbalances, in regard to the invalidity alleged by the assigning of 30 per cent marks to the viva voce examination and also in regard to the legal effect on the interview proceedings of the absence of some members of the Selection Committee during part of the proceedings. These points have been considered and disposed of by us in that writ petition, and those findings are of equal validity in these writ petitions also.

20. Besides this, learned counsel for the petitioner raises other contentions. He urges that the selection made are not in accordance with the Regulations framed by the Indian Council under Section 33 read with Section 19-A, Indian Medical Council Act, 1956 and therefore violate the fundamental right of the petitioner guaranteed under Article 15 of the Constitution. It is contended that the Regulations are law and are enforceable in a court, and that if they are to prevail the only reservation permissible is that in favour of Scheduled Castes and Scheduled Tribes. According to the Regulations, it is asserted, a Selection Committee can either take into consideration the marks obtained in a qualifying examination or in the competitive test. Nor, it is said, can a viva voce examination be permitted as a vehicle for selection. The validity of holding a separate objective test is also assailed as also of assigning 35 per cent of the total marks to it. The merit test is challenged on the ground that no curricula have been prescribed in relation thereto.

21. Objection to the objective test and the viva voce examination is based on the ground that they fall outside the scheme envisaged by the Regulations made by the Indian Medical Council for admission to the M. B. B. S course. The respondents, however, question the validity of the Regulation. We are then referred by the petitioner to clauses (j) and (l) of Section 33, Indian Medical Council Act, 1956 in support of the contention that the power of the council to make regulations extends to making regulations prescribing the examinations and tests for admission. It seems to us prima facie that those provisions do not authorise the council to do so. But we refrain from expressing any final opinion in the matter as the Council is not a party before us. We are also not satisfied that the reservations permissible must be confined to Scheduled Castes and Scheduled Tribes. Nor do we find sufficient basis in the submission that there is arbitrariness in providing for 35 marks to a separate objective test in addition to the 35 marks earmarked for the qualifying examination. The grounds taken before us do not justify the conclusion that a competitive entrance examination is not permissible in law in addition to the qualifying examination. In regard to the sufficiency of the objective test, we are not satisfied that the absence of a prescribed formal curriculum vitiates the objective test.

22. The next contention on behalf of the petitions is that the presence of a Government official on the Selection Committee vitiates its constitution. It is stressed that the viva voce test to be acceptable should be conducted by persons who are men of high integrity, calibre and qualifications. There is no principle of law, so far as we know, disqualifying a Government official from participating on the Interview Committee merely because he is a Government official. Nor do we believe that a Government official cannot be a person of high integrity, calibre and qualifications. The constitution of a Committee lies in the wisdom of the State Government and it is expected that men suitably qualified in every respect will be appointed to discharge the functions of the Committee. So long as the State Government acts bona fide and on the basis of relevant considerations it is not possible to say that the appointment of a Government official is obnoxious to the law.

23. In the result, writ petitions are allowed insofar that the selection of candidates for admission to the M. B. B. S. course of the Government Medical Colleges at Srinagar and at Jammu for the year 1980-81 made on the basis of rectifying regional imbalances is quashed and the respondents are directed to fill up those seats on the basis of open merit. The candidates who will be displaced in consequence have already completed a few months of study and in order to avoid serious prejudice and detriment to their careers it is hoped that the State Government will deal sympathetically with their cases so that while effect is given to the judgment of this Court the rules may be suitably, relaxed, if possible by a temporary increase in the number of seats, in order to accommodate the displaced candidates in the circumstances, there is no order as to costs.

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