

Suman Gupta and Others

Vs

State of J & K and Others

Writ Petitions Nos. 9078 To 9106, 9025-43 of 1982; 24, 35, 43-46, 2839 of 1983 and Civil Appeals Nos. 3812 and 3813 of 1983, With Cmp Nos. 13616, 16617, 22151, 22152 and 23486 Of 1983

(CJI Y. V. Chandrachud, R. S. Pathak, Sabyaschi Mukharji JJ)

19.09.1983

JUDGMENT

PATHAK, J. –

1. This Court has had occasion in the past to entertain the complaints of several young men and women who aspired to admission to the medical colleges of their States and had been wrongly denied admission thereto. In the writ petitions and civil appeals now before us, the grievance voiced by the petitioners and the appellants takes us to a new category of cases and to a new dimension. They question the validity of nominations by the State Government of Jammu and Kashmir and the State Government of Andhra Pradesh of candidates to seats reserved in the medical colleges of other States. The civil appeals are directed against the judgment dated December 31, 1982 of the Andhra Pradesh High Court dismissing writ petitions filed by the appellants.

2. The Medical Council of India, in its report on under-graduate medical education, recommended that with a view to encouraging national integration ten per cent of the seats in every medical college, other than those where admissions were planned on an all India basis, should be reserved, on a reciprocal basis for students from other States. At the Joint Conference of the Central Council of Health and the Central Family Welfare Council, held from December 28, 1977 to January 31, 1978, the matter was considered and a resolution was passed recommending that five per cent of the seats in medical colleges should be reserved for candidates from other States on a reciprocal basis. After protracted correspondence between a number of State Government, the States of Andhra Pradesh, Jammu and Kashmir, Karnataka, Kerala and Tamil Nadu agreed upon such an arrangement. It was decided that each of them would have the right to nominate candidates to seats reserved in the medical colleges of the other participating States. We are concerned here with nominations made by the State Government of Jammu and Kashmir and the State Government of Andhra Pradesh. Twenty-two of the thirty nominations made by the State Government of Jammu and Kashmir for the year 1982-83 have been challenged in these writ petitions and all the nominations made by the State Government of Andhra Pradesh have been assailed in the associated civil appeals.

3. The petitioners in the writ petitions and the appellants in the appeals were candidates for admission to the M.B.B.S. course of studies in the medical colleges of their respective States, and not having succeeded in that object, they claim that they should have been properly considered for nomination by their State Governments to the seats reserved in the medical colleges outside their home States because they have secured higher marks in the qualifying examination than the nominated candidates. They urge that the nominations actually made by the State Governments have

been made in their absolute and arbitrary discretion, without reference to any objective criterion, or any controlling norms or guidelines. They also allege that the nominations have been influenced by the personal relationship of the candidates to person in the ruling political party or to Government officers in positions of high authority.

4. The position taken by the Jammu and Kashmir Government and by the Andhra Pradesh Government is that to serve the objective of national integration the selection of a candidate has to be determined not merely by the marks obtained by him in the qualifying examination but also by his ability to project an appropriate image of the culture of his home State in the State to which he is nominated. It is submitted that no objective criterion is possible in that context, and the selection must perforce be left to the absolute and unfettered choice of the State Government. The Andhra Pradesh Government relies on G.O.M. No. 508, M & H dated July 27, 1979, which brings the scheme into effect from the academic year 1979-80. It expressly provides that the selection of candidates for such nominations is excluded from the purview of the selection committees constituted for admission to the M.B.B.S. course in the States.

5. At the outset, we may dispose of an objection taken on behalf of the respondents. It is pointed out that the petitioners in the writ petitions and the appellants in the civil appeals applied merely for admission to the medical colleges of the home State and have not alleged anywhere that they applied for nomination to a seat in a medical college outside the State. It is urged that inasmuch as the scheme of nominations to medical colleges outside the State is distinct altogether from the scheme of admissions to medical colleges within the State the petitioners and the appellants are not entitled to question the validity of those nominations. We are referred to *Chitra Ghosh v. Union of India* [(1970) 1 SCR 413, 420 : (1969) 2 SCC 228, 234 : AIR 1970 SC 35]. In the civil appeals before us, however, we find that some of the appellants did apply for nomination to a seat in a medical college outside the State. Besides, the Andhra Pradesh High Court has elaborately considered the question on its merits, and it seems desirable in the circumstances to pronounce our opinion on the controversy. The objection is overruled.

6. For the purpose of these cases, we shall proceed on the assumption that national integration, which is undeniably in itself a highly commendable and laudable objective, will be effectively served by a policy encouraging the admission of candidates of one State to seats in the medical colleges of another State. After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government. We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in *Maneka Gandhi v. Union of India* [(1978) 2 SCR 621 : (1978) 1 SCC 248 : AIR 1978 SC 597] has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason. To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life. We do not doubt that in the realm of administrative power the element of discretion may properly find

place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether. Proceedings from there, it is evident that if the State Government desires to advance the objective of national integration it must adopt procedures which are reasonable and are related to the objective. In this age of reason, all law must measure upto that standard, and necessarily so also must all executive acts. Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object, nevertheless confine the flow of that power within constitutional limits. We are not convinced that an adequate system of Standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid.

7. Now, the selection of an appropriate procedure lies ordinarily within the domain of administrative policy, and when the objective can be fulfilled by more than one constitutionally valid method, the selection must be left to administrative choice. The courts are generally concerned merely with the legal validity of the choice made. We think it desirable, therefore, to leave it to the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State. The problem is one which needs to be tackled at the national level, having regard to the objective which is sought to be achieved and to the circumstances that it calls for reciprocal arrangements between medical colleges throughout the country. Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nominations be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the medical colleges of the home State.

8. Before concluding it is desirable to advert to the contention raised on behalf of the respondents that as the State Government finances medical education within the State it is entitled to exercise an absolute discretion in the nomination of candidates to seats in medical colleges outside the State, specially when the nomination is part of a reciprocal arrangement between the different States. In our opinion, the contention cannot be regarded as valid in view of what has been laid down now by this Court in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628 : (1979) 2 LLJ 217].

9. Considerable and vehement argument has been addressed on behalf of the petitioners and the appellants that we should make an order revoking the nominations already made by the Jammu and Kashmir Government and the Andhra Pradesh Government. We do not propose to do so. The State Government proceeded in the bona fide belief that the procedure adopted by it was just and proper, the basis being one which appears to have uniformly adopted by all the participating States. Besides, the candidates nominated have already covered a substantial part of their course of studies. These considerations considered cumulatively dissuade us from interfering with the nominations already made.

10. In the result, we allow the writ petitions and the civil appeals insofar that the principle adopted

by the State Governments of nominating candidates in their absolute and unfettered choice to seats in medical colleges outside the State is declared invalid. The Medical Council of India is directed to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State in the light of the observations contained in this judgment. Until a policy is so formulated and concrete criteria are embodied in the procedure selected, the nominations shall be made by selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately below the candidates selected for admission to the medical colleges of the home State. The judgment dated December 31, 1982 of the Andhra Pradesh High Court is modified accordingly. In the circumstances of these cases, we make no order as to costs.

11. A copy of this judgment and order shall be sent to the Medical Council of India.

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