

Surendra Kumar

Vs

State Of Bihar and Others

Civil Writ Petition No. 15329 of 1984

(O. Chinnappa Reddy, A. P. Sen, E. S. Venkataramiah JJ)

09.11. 1984

ORDER

CHINNAPPA REDDY, J.

1. Even after thirty-four years of the Constitution proclaiming equality before the law and equality of opportunity, the Chief Minister of some States continue to regard admission to professional colleges and appointments to Government posts as their little private empires. So recently as on September 19, 1983, this Court had to disabuse this impression in *Suman Gupta v. State of J & K* (AIR 1983 SC 1235 : (1983) 4 SCC 339). The question in that case arose this way : A certain number of seats in the medical colleges of one State were reserved for candidates from other States to be nominated by the Governments of the other States. Was an absolute power vested in the State Governments in the choice of candidates for nomination or was it incumbent on the State Governments to adopt definitive criteria and follow pre-defined norms ? Pathak, J. speaking for himself, Chandrachud, C.J. and Sabyasachi Mukharji, J. said : (SCC pp. 343-44, paras 6, 7)

After considering the matter carefully, we confess, we are unable to subscribed 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. 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. 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 convicted 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. 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 college of the home State.

The pronouncement of this Court has apparently not yet been heard in the distant corridors of the Bihar Secretariat. It appears nine seats are reserved in the medical colleges of Jammu and Kashmir for candidates from Bihar. Thirty-five students applied for the nine seats. A list of seven candidates was prepared by the Controller of Examinations-cum-Additional Director of health Services for

being recommended to the Government of Jammu and Kashmir. He has not disclosed on what basis he prepared the list but the name of the petitioner, Surendra Kumar, figured as No. 3 in the list. It appears that another tentative list of seven candidates has also been prepared on the basis of merit from the candidates in the waiting list. This list received nobody's consideration. We have it from the counter-affidavit filed by P. K. Khare, Officer on Special Duty-cum-Under Secretary in the Chief Minister's Secretariat Patna that "applications along with recommendations of VIPs were received from time to time by the Chief Minister" and from the counter-affidavit filed by M. Das, Controller of Examinations-cum-Additional Director of Health Services that "the names of ten persons other than 7 persons of the tentative list had been recommended by the Chief Minister from time to time for admission to medical colleges in Jammu and Kashmir". Neither the counter-affidavit filed by M. Das nor that by P. K. Khare gives the least indication for the basis of the selection made by the Chief Minister. There can thus be no doubt that there was blatant abuse of power by the Chief Minister of Bihar. Whatever excuse there might have been in the past, there can be no such excuse after the judgment of this Court in Suman Gupta case (AIR 1983 SC 1235 : (1983) 4 SCC 339) to which, we find, reference was made in the file now produced before us. Shri Lal Narain Sinha, who appeared for the respondents frankly told us that he was unable to support the action of the Government. The list of names recommended by the Chief Minister is quashed. As already directed by us at the conclusion of the hearing, the Government of Bihar shall forthwith prepare a list according to merit and offer successively to candidates according to merit the opportunity of pursuing medical education in the medical colleges of Jammu and Kashmir. Lest there be any misunderstanding the merit lists shall be prepared of all candidates who sought admission into the local medical colleges, as was done in Suman Gupta case (AIR 1983 SC 1235 : (1983) 4 SCC 339) and should not be confined to the 35 candidates who applied for admission to colleges in Jammu and Kashmir. We give this direction because admittedly the Government never invited applications separately for the seats reserved in the colleges in Jammu and Kashmir. The respondents will pay the costs of the petitioner which we quantify at Rs. 1000.

2. We desire to add by way of expression of our concern and regret that this is not the first occasion that such interference and abuse of power at such high level has come to the notice of this Court from the State of Bihar. In Chandrika Jha v. State of Bihar ((1984) 2 SCC 41), it related to the constitution of Board of Directors of a cooperative society; here it relates to nomination of candidates for admission to medical colleges, But in both there is clear misuse of power. The less said the better.

</html