

Dr. C. Surekha

Vs

Union of India and Others

Writ Petition No. 1625 of 1987

(M. N. Venkatachaliah, Ranganath Misra JJ)

20.09.1988

JUDGMENT

RANGANATH MISRA, J.-

1. Petitioner who passed the MBBS examination in December 1986, from the Osmania University in Andhra Pradesh and intended to take the All India Competitive Entrance Examination for admission to PG Medical courses in 1988, by this application under Article 32 of the Constitution challenges the vires of Article 371 D (2)(b)(iii) and (c)(ii) of the Constitution as also the Andhra Pradesh Educational Institution (Regulation of Admission) Order, 1974 as a consequence of which the students of Andhra Pradesh have been excluded from competing in the aforesaid examination.

2. This Court by the scheme framed pursuant to its decision in the case of Dr. Pradeep Jain v. Union of India directed that 25 per cent of the post-graduate seats available in the medical colleges would be reserved to be filled up by an All India Selection Test to be conducted by All Institute of Medical Sciences, New Delhi. The court further directed : (SCC p. 693, para 24)

The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories.

By a subsequent order in the case of Reita Nirankari v. Union of India this Court indicated : (SCC pp. 707-08, para 2)

We may make it clear that the judgment will not apply to the States of Andhra Pradesh and Jammu and Kashmir because at the time of hearing of the main writ petitions, it was pointed out to us by the learned advocates appearing on behalf of those States that there were special constitutional provisions in regard to them which would need independent consideration by this Court.

The notice issued for the holding of the All India Competitive Entrance Examination in 1988 stated :

The Scheme for selection of candidates for admission to post-graduate medical courses against open seats on All India basis shall be applicable to all medical colleges/ institutions throughout the country and no medical college / institutions shall hereinafter conduct competitive entrance examination of its own for the open

seats on All India basis, except those excepted by the Supreme Court. The States of Jammu and Kashmir and Andhra Pradesh have been excluded by the Supreme Court from the purview of their judgment in this regard. Therefore the students having passed their MBBS examination from an institution in these States shall not be eligible to participate in the All India Competitive Entrance Examination for selection of candidates against open seats.

Clause 7(d) dealing with the eligibility again reiterated :

As specified earlier, candidates who have done MBBS from any of the institutions in the States of Andhra Pradesh and Jammu and Kashmir are not eligible.

The petitioner has, therefore, asked for a declaration that the exclusion of students of Andhra Pradesh from eligibility to participate as per Clause 7(d) of the prospectus should be declared illegal and the All India Institute of Medical Sciences, respondent 6, should be directed to receive applications from students of Andhra Pradesh otherwise qualified to take the examination. The petitioner has also asked for a declaration that Article 371-D (2) (b) (iii) and (c) (ii) of the Constitution and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974, issued by the President in exercise of powers conferred under clauses (1) and (2) of the constitutional special provision are ultra the basis structure of the constitution of India. The petitioner has added a list under Annexure 'A' of persons similarly situated to whom relief is available but she has also specifically confined the petition to herself by saying :

This petition is being moved on behalf of Dr. C. Surekha.

3. The Union of India, respondent 1, and the State of Andhra Pradesh have filed counter-affidavits. In the return made by the Union of India it has been stated :

I deny the contents of para 1 of the writ petition and further submit that the contention of the petitioner that Article 371-D (2) (b) (iii) and (c) (ii) of the Constitution of India and the Andhra Pradesh Educational Institution of India and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974 have prevented the medical students of Andhra Pradesh from competing in the All India Competitive Entrance Examination conducted by the All India Institute of Medical Sciences for admission to Post Graduate Medical Course (MD/MS/Diploma) and Dental Courses on open merit for 1988 is not correct. The scheme of reservation in favour of local candidates as embodied in the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974, is applicable only to available seats in relation to any course of study. According to paragraph 2 (1)(a) of the said order, the expression available seats in relation to any course of study means the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. It is therefore for the Government of Andhra Pradesh to consider reservation of seats to be filled on the basis of the All India Competitive Entrance Examination for admission to the courses in question.

The State in its affidavit has taken the stand that it is governed by the special provision contained in the Constitution of India under Article 371-D and, therefore, this Court had in its order dated July 26, 1984 in Reita Nirankari case excluded the application of the scheme in Dr. Pradeep Jain case to

Andhra Pradesh. An additional affidavit was filed on behalf of the State of Andhra Pradesh where it was pleaded that in the Presidential Order of 1974 available seats in relation to any course of study mean the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. The intention, according to the contention, was to make provision for admission of candidates sponsored by the Government of India and not a wholesale reservation of seats for candidates coming from outside the State. It was pointed out that in 1974, 8 seats were reserved for admission of nominees of the Government of India though this had been increased subsequently to 12. According to the State's contention if a good number of seats are excluded from the purview of local candidates and if admission of more number of candidates is resorted to through the All India Entrance Test, there is likely to be an agitation and discontentment from the local candidates since the number of available seats to local candidates would be reduced.

4. Andhra Pradesh institutions were kept out from the purview of the Scheme by order of this Court. It is true that the direction in the order dated July 26, 1984, left the matter open to be agitated and petitioner's application seems to come within the limits left open. Mr. Choudhary appearing for the State of Andhra Pradesh referred to the historical background leading to the incorporation of Article 371f-D in the Constitution by the 32nd Amendment with effect from July 1, 1974. The decision of this Court in *P. Sambamurthy v. State of Andhra Pradesh* does not support the petitioner's contention that Article 371-D militates against the basic structure of the Constitution. The question that was considered by the Constitution Bench in *Sambamurthy* case was denial of judicial review on the principle accepted in *Minerva Mills Ltd. v. Union of India* and *Sampat* case (reference) decision. This Court came to hold that clause (5) which provided that the final order of the Administrative Tribunal shall become effective by its confirmation by the State Government and it was open to the State Government to modify or annul that order within 90 days militated against the Doctrine of Basic Structure. At the same time the court held that Article 371-D (3) was valid and intra vires the amending powers of the Parliament. This clearly means that the Scheme of Article 371-D was valid and the provision in clause (5) alone was bad. Clause (10) of Article 371-D provides :

The provisions of this article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this constitution or in any other law for the time being in force.

In view of the terms of clause (10) and the effect of the decision of the Constitution Bench in *Sambamurthy* case, the petitioner is not entitled to any relief on the first ground, namely, for a declaration that Article 371-D militates against the basic structure of the Constitution.

5. The only other question that survives for consideration is as to whether within the Presidential Order of 1974, the Scheme in *Dr. Pradeep Jain* case can be worked out. The Presidential Order of 1974 defines "available seats" and "local area" as also "statewide educational institutions" in sub-clauses (a), (b) and (e) of Clause 2. Clause 3 describes the three local areas. Clause 9 gives overriding effect to the Presidential Order. Under the Presidential Order, admission to the educational institutions is limited only to local and non-local candidates. It does not contemplate of admission into educational institutions otherwise. The contention of Mr Choudhary that if the Presidential Order has got to be given effect to in its true spirit, the scheme in *Dr Pradeep Jain* case cannot consistently with the Presidential Order, be implemented cannot be brushed aside and bears serious examination on certain important aspects. If the 15 per cent seats are not treated as reserved in terms of the Presidential Order and are intended to go to those who qualify at the All India Entrance Examination it is a storable possibility that the Presidential Order might be diluted. It may be doubtful if, in ascertaining the import of 'available seats', it would be permissible to deduct the 15

per cent seats for non-locals applying the formula of Dr Pradeep Jain case. We are inclined to think that the contention advanced by Mr Choudhary on behalf of the respondent-State that within the ambit of the Presidential Order, the scheme adopted by this Court in Pradeep Jain Case is eminently arguable and raises certain important issues. It is, however, not necessary to pronounce on this question finally as the petitioner, admittedly, has already been provided admission in one of the Medical Colleges.

6. Before we part with the case we would, however, like to indicate that the Scheme in Dr Pradeep Jain case is, in the opinion of this Court, in national interest as also in the interest of the States. Competition at the national level is bound to add to and improve quality. Andhra Pradesh students on the whole are not at all backward and we are of the opinion that they would stand well on comparative basis. It is for the State and the Central Governments, apart from the legal issues involved to decide whether in the general interest of the State, the scheme in the Presidential Order should either be so understood as to permit and assimilate the Pradeep Jain principle or should be explained, if necessary, by an appropriate amendment of the Presidential Order. We would, however, leave it to the respondents to take their decision in the matter. We would not like, therefore, to pronounce on the legal question finally in this case.

7. As the petitioner has already got admission elsewhere and is not interested in seeking admission into one of the Andhra Pradesh Colleges any more, the petition really becomes infructuous.

8. Parties are directed to bear their own costs.

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