SUPREME COURT OF INDIA

Mohan Bir Singh Chawla

Vs.

Punjab University, Chandigarh

C.A.No.15704 of 1996

(B. P. Jeevan Reddy and K. S. Paripoornan JJ.)

11.12.1996

JUDGEMENT

B.P.JEEVAN REDDY J.:-

1. The rule governing admission to L.L.B. course among other courses prescribed by the Punjab University provided that while admission shall be made on the basis of merit, ten percent of the marks obtained in the qualifying examination shall be added in the case of candidates who have passed the qualifying examination from the Punjab University. The impugned rule reads:

"(vi) Admission shall be made on merit which shall be determined after giving weightage as under :

(a) 10% marks obtained in the aggregate marks of the qualifying examination passed from Punjab University."

2. A number of writ petitions were filed in the Punjab and Haryana High Court by students, who have passed the qualifying examination from universities other than Punjab University, questioning the validity of the said weightage rule. According to them, the rule violates the equality clause enshrined in Articles 14 and 15 of the Constitution and ought to be struck down. The writ petitions have been dismissed by the High court. Only one of the writ petitioners has approached this Court by way of this Special Leave Petition.

3. Leave granted. Heard the counsel for the appellant and the Punjab University.

4. There is little doubt that addition of ten percent of marks to candidates who have passed their qualifying examination from Punjab University confers a substantial advantage to the candidates from the university over the candidates who have passed the qualifying examination from other universities. The result of the operation of the said rule is stated in the judgment of the High Court on the basis of the information furnished by the counsel for the university. In the Academic Year 1991-92, out of 360 students admitted into the L.L.B. course, 74 students were from other Universities. For the Academic Year 1992-93, the non-Punjab University students were 57 out of 300. In the Academic Year 1993-94, their strength came down to 47 out of a total admission of 300 students. The question is - is this rule valid? In other words, the issue is whether the weightage of ten percent marks given to students of one's own university in the matter of admission to different courses in its constituent of affiliated colleges is permissible where the admission is not based upon a common entrance test? Inasmuch as a certain dissonance is found in the decisions on the subject, we have heard the counsel at some length. Sri Dhruv Mehta, learned counsel for the Punjab University, has brought to our notice the several decisions on the subject to which a brief reference would be in order.

5. In D.N. Chanchala v. State of Mysore, 1971 Suppl SCR 608 : (AIR 1971 SC 1762), a three-Judge Bench of this Court considered the validity of Rule 9(1) of the Mysore Medical Colleges (Selection for Admission) Rules, 1970 relating to admission to M.B.B.S course. Rule 9(1) provided that the seats in the general pool shall be distributed university-wise, i.e., seats in colleges affiliated to the Karnataka University shall be allotted to persons passing from colleges affiliated to that university and seats in colleges affiliated to Bangalore and Mysore Universities shall respectively be allotted to persons passing from colleges affiliated to each such university provided that not more than twenty percent of the seats in the colleges affiliated to any university may, in the discretion of selection committee, be allotted to students passing from colleges affiliated to any other university in the State or elsewhere in India. The validity of the rule was questioned on the ground that it brings about an unreasonable classification which is neither intelligible nor has a rational nexus with the object of the rule. It was submitted that when there is one selection committee for all the Government medical colleges in all the three universities and 59 private colleges affiliated to them, the reservation of eighty percent of seats in favour of students of the same universities is neither reasonable nor valid. The challenge to the validity was repelled holding that "there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training is specialised subjects like medicine satisfied through colleges affiliated to their own universities.....The fact that a candidate having lesser marks might obtain admission at the cost of

another having higher marks from other universities does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well-known, different universities have different standards in the examination held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not uncommon.....Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided, of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules." The argument of excessive reservation in favour of same university candidates was also repelled.

6. In Jagdish Saran v. Union of India, (1980) 2 SCR 831 : (AIR 1980 SC 820), the admission rules prescribed by the Delhi University provided that seventy percent of the seats at the post-graduate level in the medical courses shall be reserved for students who have obtained their M.B.B.S. degree from the same university. The remaining thirty percent seats were open to all, including the graduates of Delhi. Krishna Iyer, J., speaking for the three-Judge Bench, reviewed all the decisions rendered till then on the subject including D. N. Chanchala (AIR 1971 SC 1762). From the last mentioned decision, the learned Judge drew the conclusion that "University-wise preferential treatment may still be consistent with the rule of equality of opportunity where it is to correct an imbalance or handicap and permit equality in the larger sense.....If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differential has a nexus to the larger goal of equalisation of educational opportunities, the vice of discrimination may not invalidate the rule." The learned Judge rejected the argument that since every university is providing similar reservation, the reservation cannot be said to be unreasonable. The reasonableness of any such rule has to be examined on a totality of the facts and cannot be justified, the learned Judge said, merely because other universities have provided a similar rule. The learned Judge pointed out that the admissions to post-graduate medical courses are determined on the basis of a common entrance test. Inasmuch as the students of Delhi University are drawn from all over India and are not confined to the Delhi region, the learned Judge held, the rule is "not that individious". The learned Judge also recognised the desire of the students for institutional continuity in education and recognised it as one of the ground justifying the reservation. The argument of excessive reservation was rejected on the ground that the material placed before the Court was imperfect and inadequate to form a basis for invalidating the rule.

7. In Dr. Pradeep Jain v. Union of India, (1984) 3 SCC 654 : (AIR 1984 SC 1420), the Court opined that wholesale reservation made by some of the State Governments on the basis of domicile or requirement of residence within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State and excluding all students not satisfying the said requirement, regardless of merit, is unconstitutional being violative of Article 14. Affirming that anyone from anywhere in the country, irrespective of his language, religion, place of birth or residence, is entitled to be afforded equal chance of admission to any secular educational course anywhere in the country, but, at the same time, recognising the de facto inequalities existing in the society and the need for affirmative action on that account, the Court directed that thirty percent of the seats in the M.B.B.S. course and fifty percent of the seats in the post-graduate medicalcourses in all the Government colleges in the country should be set apart for being filled purely on the basis of merit. Students from all over the country were held entitled to

compete for these seats and the admission was directed to be based upon merit and merit alone. (The above percentage was brought down to fifteen percent and twenty five percent respectively in the subsequent decision in Dr. Dinesh Kumar v. Motilal Nehru College, (1986) 3 SCC 727 : (AIR 1986 SC 1877). The discussion in Para 19 of the Judgment is relevant since it refers to the various contending factors, the earlier decisions of this Court and the direction in which the Court ought to proceed. The Court also held that so far as super-specialities are concerned, there should be no reservation either on the basis of institutional preference or otherwise and that admissions should be granted purely on merit determined on All-India basis.

8. In State of Rajasthan v. Dr. Ashok Kumar Gupta, (1989) 1 SCC 93 : (AIR 1989 SC 177), the Rajasthan University provided that admission to post-graduate medical courses in the colleges affiliated to the said university shall be based upon the merit determined at the competitive examination called "PG". The PG competitive examination was common to all the five medical colleges in the State. The rule, however, provided further that "(d) the total marks so obtained (at the PG competitive examination) shall be converted into percentage. The percentage so obtained shall be increased as follows:

(i) by five if the applicant passed the final MBBS examination from the Rajasthan University; (ii) by another five if the applicant passed the final MBBS examination from the same institution from which selections are being made." The validity of sub-clause (ii) of Clause (d) alone was challenged as violative of Article 14. The Court noticed that all the five medical colleges in the State (located at Jaipur, Bikaner, Udaipur, Jodhpur and Ajmer) were not similarly situated in the sense that Jaipur Medical College was generally considered to be the best - also because it offered many more PG course than other colleges. The Court held that addition of five percent marks to the marks obtained by students who have passed their examination from, say, Jaipur Medical College, in the matter of admission to post-graduate medical courses in that medical college, brings about an extremely unfair and unjust result. In the case of admission to post-graduate medical courses where each mark counts, addition of five percent marks on the ground of institutional (same college) preference was held to be excessive and unreasonable and, therefore, void. It was pointed out that by virtue of the said rule of preference, students with far less marks would steal a march over a student securing higher marks only because he has passed his M.B.B.S. examination from the same college.

9. In Municipal Corporation of Greater Bombay v. Thukral Anjali Dev Kumar, (1989) 2 SCC 249 : (AIR 1989 SC 1194), the admission rules provided a preference at the parent institution". The note appended to the rule defined the expression "parent institution" to mean "the medical college at which the candidate has passed his qualifying examination". The matter again related to admission to post-graduate medical courses. The rule was struck down by this Court holding that it practices a patent discrimination and that there is no intelligible differentia to justify the said classification, viz., college-wise preference. The Bench comprising M.M. Dutt and T. K. Thommen, JJ. followed the decision in Dr. Ashok Kumar Gupta (AIR 1989 SC 177) and held that college-based institutional preference is impermissible. The unfairness of the rule was held to be demonstrable and patent. The Court also rejected the contention that because the standard of examination and evaluation of the merit of the students in practical examination differ from college to college, the college-wise

preference was not invalid.

10. In P. K. Goyal v. Uttar Pradesh Medical Council, (1992) 3 SCC 232 : (1992 AIR SCW 1563), the relevant rule provided that "based on the marks obtained at the competitive entrance examination and the candidates' choice of the course, a merit list shall be prepared for each college out of the institutional candidates of that college." To wit, while the admission to post-graduate medical courses in Uttar Pradesh was determining on the basis of marks obtained at the combined entrance examination conducted by the Government, the rules provided at the same time that admission shall be institution-wise, i.e., from among the students who have passed M.B.B.S. course from that particular college. This was held to be violative of Article 14 following the decisions in Dr. Ashok Kumar Gupta (AIR 1989 SC 177) and Thukral Anjali Dev Kumar (AIR 1989 SC 1194).

11. In Anant Madaan v. State of Haryana, (1995) 2 SCC 135 : (1995 AIR SCW 914), decided by a Bench of two Judges including, one of us (B. P. Jeevan Reddy, J.), the challenge was to a rule made by the Government of Haryana providing that in the matter of admission to M.B.B.S./B.D.S. courses, eighty five percent of the seats shall be reserved for candidates who have studied 10th, 11th and 12th standards as regular candidates in recognised institutions in the State of Haryana. The challenge to the validity of the said rule was levelled by students who had passed their 10th, 11th and 12th examination from schools/colleges outside the State of Haryana but whose parents were either residing in or domiciled in the State of Haryana. The challenge to the rule was repelled following the decision of the Constitution Bench of this Court in D. P. Joshi v. State of Madhya Bharat, (1955) 1 SCR 1215 : (AIR 1955 SC 334) and the decisions in Jagdish Saran (AIR 1980 SC 820), Dr. Pradeep Jain (AIR 1984 SC 1420) and Dinesh Kumar (AIR 1986 SC 1877). The impugned rule was, however, treated as a rule providing preference on the ground of domicile/residence.

12. Sanjay Ahlawat v. Maharishi Dayanand University Rohtak, (1995) 2 SCC 762 : (1995 AIR SCW 228) was again a case from the State of Haryana. The decision was rendered by a Bench of two Judges, including one of us (B. P. Jeevan Reddy, J.). The challenge was to the rule providing that in the matter of admission to post-graduate medical courses, preference be given to local candidates by adding ten extra marks, i.e., to students passing the M.B.B.S. examination from the Rohtak Medical College. The rule further provided that students who are residence or domiciled in the State of Haryana but who have passed their M.B.B.S. examination from a medical college outside the State of Haryana shall be added five marks. The validity of the rule was sustained observing that it was not a case of college-wise, or for that matter university-wise, reservation but it is a rule providing for preference on the basis of domicile. It was held on the basis of facts and figures furnished by the State that the said rule did not have the effect of shutting the doors of admission to students passing their M.B.B.S. course from other medical colleges than the Rohtak Medical College, which was said to be the only medical college in the State of Haryana. It was shown to the Court that outside students also got admission in reasonable numbers. The Court accepted the explanation furnished by the State that extra marks were awarded to graduates of the Rohtak College to ensure that medical facilities in the State are not impaired because of dearth of doctors. The Court accepted the explanation that residents of Haryana will, by and large, remain in

Haryana after obtaining medical degrees and that their services will be available to the people of the State. In view of these circumstances, the rule was held to be not violative of Articles 14 and 15 of the Constitution.

13. Lastly, we may refer to a three-Judge Bench decision in Gujarat University v. Rajiv Gopinath Bhatt, (1996) 4 SCC 60 : (1996 AIR SCW 2483). The Gujarat University invited applications for admission to two super-speciality courses, D.M. and M.C.H., the admission whereto was to be made based upon the marks obtained at the entrance examination conducted by the university. Because of the small number of seats available in the said courses, the rule provided that "first preference will be given to candidates from Gujarat University. Second preference will be given to candidates from other universities of Gujarat State. Any vacancy remaining after this shall remain unfilled". By the time, the appeal came up for hearing before this Court, the appeal had become infructuous as noticed in Para 4 of the Judgment, inasmuch as the respondent was allowed to join the course and had also completed the course by that date. In that view of the matter, the Court was of the opinion that it is not actually required to examine the grievance made on behalf of the appellant-university against the judgment of the High Court which had struck down the rule. Even so, at the instance of the counsel for the university, the Court examined the validity of the rule. The High Court had relied upon the decisions of this Court in Jagdish Saran (AIR 1980 SC 820) and Dr. Pradeep Jain (AIR 1984 SC 1420) for invalidating the rule. This Court, however, sustained the rule, except the last sentence therein, on the following reasoning (at p. 2484, Para 5 of AIR):

"Without examining that question in detail, it may be pointed out that the aforesaid judgments (Jagdish Saran and Pradeep Jain) were not in connection with the admission in super-speciality course. At the same time, we reiterate that object of any institution while selecting applicants for admission is to select the best amongst the applicants, regional and other considerations which do not satisfy the test of Art. 14 of the Constitution should not affect the merit criteria. But from time to time, this Court taking into consideration the local and regional compulsions have been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super-speciality courses arises in which the seats are limited in number."

After referring to certain observations in Dr. Pradeep Jain and Anant Madaan, the Court observed, "(T) herefore if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super-speciality courses to the students of the University in question, per se it cannot be held to be arbitrary, unreasonable or violative of Art. 14 of the Constitution."

14. From the decided cases, following principles emerge :

(a) College-wise preference is not permissible in any event.

(b) University-wise preference is permissible provided it is relevant and reasonable. Seventy to eighty percent reservation has been sustain, even where students from different universities appear at a common entrance test. The trend, however, is towards reducing the reservations and providing greater weight to merit. The practice all over the country today, as a result of the decisions of this Court, is to make fifteen percent of the seats in M.B.B.S. course and twenty five percent of the seats in post-graduate medical courses in all the Government medical colleges in the country (except Andhra Pradesh and Jammu and Kashmir) available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an All-India test conducted by the designated authority.

(c) The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits, i.e., it does not result in reserving more than eighty five percent seats in graduate courses and more than seventy five percent seats in post-graduate courses. But district-wise reservation are an anathema.

(d) Where the students from different universities appear at a common entrance test/examination (on the basis of which admissions are made) the rule of university-wise preference too must shed some of its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Governments (which have established and maintained these institutions) the regulate the process of admission and their desire to provide for their own students should also be accorded due deference.

(e) The fair and proper rule is : the higher you go, in any discipline, lesser should be the reservations - of whatever kind. It is for this reason that it was said in Dr. Pradeep Jain (AIR 1984 SC 1420), that there should be no reservation in the matter of admission to super-specialities, though in the recent decision in Rajiv Gopinath Bhatt (1996 AIR SCW 2483), a different view appears to have been taken while affirming the principle of merit, at the same time. In the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field.

15. Now let us examine the facts of the case before us from the standpoint of above principles. The reservation being university-wise, it cannot be said to be bad. Having regard to the fact that the case is one of admission to LL.B course and also having regard to the fact that admissions are not made on the basis of marks in an entrance test - but on the basis of marks obtained in the qualifying examination - we are inclined to think that addition often percentof marks is yet on the higher side. The result of the rule is evident in the figure mentioned hereinbefore. The representation of students from other universities appears to be coming down steadily. In the present competitive age, ten percent of marks will make a substantial difference. May be, the addition, if any, should not exceed five percent.

16. Inasmuch as the admissions concerned herein pertain to the year 1993-94, it is not possible to give any relief to the appellant herein. We do, however, hope and trust that the university will take into consideration the observations made herein and modify the rule accordingly so as to avoid any avoidable litigation and complications for the next academic year.

17. The appeal is disposed of in the above terms. No order as to costs.

Order accordingly.