SUPREME COURT OF INDIA

Union of India (Uoi)

Vs.

R. Rajeshwaran

(S. R. Babu and Doriaswamy Raju JJ.)

27.07.2001

ORDER

1. Leave granted.

2. The respondent filed a writ petition in the High Court of Madras seeking a direction to the petitioner to apply the rule of reservation to the Scheduled Castes and Scheduled Tribes in respect of those seats which are set apart for all-India pool in MBBS or BDS list. He had applied specifically in the category of Scheduled Caste and Scheduled Tribe for the All-India Pre-Medical Entrance Examination, 1999. However, when the results were published, he found that no separate list had been published in respect of that category. He contended that there is a constitutional obligation to provide a special reservation to the advancement of socially and educationally backward classes in the all-India quota as otherwise it would be violation of Article 15(4) of the Constitution of India. He sought for a direction to apply the rule of reservation.

3. A learned Single Judge of the High Court held that the seats that are made available from various States are normally subject to the rule of reservation and the 15% of the seats allowed to the all-India quota would, in the ordinary circumstances, have been reserved for the Scheduled Caste and Scheduled Tribe candidates but for the directions of this Court under a scheme. He also noticed that there is no specific order of this Court not to apply the reservation rule to the all-India quota which is provided only to overcome the difficulty of residential requirement and, therefore, these seats must also provide for reservation on the ground of social and economic backwardness in terms of Article 15(4) and the directive principles of State policy. Thus, he allowed the writ petition directing to set apart and, reserve seats for the socially and educationally backward classes as per the policy of the Government making it clear that out of the 15% of the seats allocated there should be reservation for Scheduled Castes and Scheduled Tribes.

4. Against that order a writ appeal was preferred by the petitioner herein with an application seeking interim order for stay of the judgment of the learned Single Judge. A limited interim order was granted to the effect that if the 15% reservation is nationally implemented and the first respondent is found eligible to get admission under that quota, he should be given admission. It is against this order this special leave petition is filed.

5. Considering the nature of the matter and the issues involved in the case, the learned counsel on both sides agreed that we should transfer the writ appeal that had been filed and dispose of the same on merits instead of merely considering the appeal against the interim order made on the interlocutory application. Hence we proceed to transfer under Article 139A the writ appeal (filed in the High Court) to this Court and dispose of the same by this order.

6. In Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College, the question of 15% of the total seats being made available for admission to MBBS or BDS course without taking into account any reservation made by the State Government was considered in the following manner:

> "Firstly, it was contended that the suggestion that 15 per cent of the total seats available for admission to MBBS/BDS course without taking into account any reservations which may be made by the State Government, would tend to produce inequality of opportunity for admission to students in different States since the percentage of reservations varied from State to State and secondly, it was urged that the proposal of the Government of India that valid reservations should not exceed 50 per cent of the total number of seats available for admission, will reduce the opportunities which were at present available to Scheduled Castes, Scheduled Tribes and Backward Classes as a result of reservations exceeding 50 per cent of the total seats made in some of the States and particularly in the State of Tamil Nadu where the reservations exceeded 68 per cent. We agree with the second objection raised on behalf of some of the State Governments but so far as the first objection is concerned, we do not think it is well founded. There can be no doubt that if in each State, 30 per cent of the seats were to be made available for admission on the basis of All India Entrance Examination after taking into account reservations validly made, the number of seats which would be available for admission on the basis of All India Entrance Examination would vary inversely with the percentage of reservations validly made in that State. If the percentage of reservations is high as in the State of Tamil Nadu or the State of Karnataka, the number of seats available for admission on the basis of All India Entrance Examination would be relatively less than what would be in a State where the percentage of reservation is low. There would thus be total inequality in the matter of making available seats for admission on the basis of All India Entrance Examination. It would be open to a State Government to reduce the number of seats available for admission on the basis of All India Entrance Examination by increasing the number of reserved categories or by increasing the percentage of reservations. We therefore agree with the Government of India that the formula adopted by us in our main judgment dated 22-6-1984, Pradeep Jain (Dr) v. Union of India, for determining the number of seats which should be made available for admission on the basis of All India Entrance Examination should be changed. We would direct, in accordance with the suggestion made in the Scheme by the Government of India, that not less than 15 per cent of the total number of seats in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All

India Entrance Examination. This new formula is in our opinion fair and just and brings about real equality of opportunity in admissions to the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State. The same formula must apply also in regard to admissions to the postgraduate courses and instead of making available for admission on all-India basis 50 per cent of the open seats after taking into account reservations validly made, we would direct that not less than 25 per cent of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled."

7. In respect of undergraduate course, the scheme works out like this. If a State has a total of 100 seats and in that State 15% of the seats are reserved for Scheduled Castes and 10% for Scheduled Tribes, the State will fill up 15% seats for Scheduled Caste candidates and 10% for Scheduled Tribe candidates, of the remaining 75 seats 60 seats will be filled by the State Government as unreserved and 15 seats will be earmarked for the all-India quota.

8. Inasmuch as 15% all-India quota has been earmarked under the scheme framed by this Court and that scheme itself provides the manner in which the same should be worked out, we do not think, it would be appropriate to travel outside the said provisions to find out whether a person in the position of the petitioner would be entitled to plead in the manner sought for because each of the States could also provide for reservation for the Scheduled Caste and Scheduled Tribe category in respect of 85% of the seats available with them. If we meddle with this quota fixed, we are likely to land in innumerable and insurmountable difficulties. Each State will have different categories of Scheduled Castes and Scheduled Tribes and the Central Government may have a different category and hence adjustment of seats would become difficult. The direction fixing 15% quota for all-India basis takes note of reservations and hence the High Court need not have made any further directions.

9. In Ajit Singh (II) v. State of Punjab, . this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation. Language of Article 15(4) is identical and the view in *Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan*[1]*, and Superintending Engineer, Public Health v. Kuldeep Singh*[2], that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High Court could have granted the same.

10. Hence we allow the writ appeal transferred to this Court and set aside order made in the writ petition. The appeal also shall stand disposed of accordingly.

[1]*(1999) 9 SCC 199* [2]*1997 SCC (L & S) 1044*