ALLAHABAD HIGH COURT

Subhash Chandra

Vs.

State of U.P

Special Appeal No. 540 of 1972. against judgment and order of G.C. Mathur, J

(Satish Chandra and N.D. Ojha, JJ.)

07.07.1972. 27.10.1972

JUDGMENT

SATISH CHANDRA, J

1. The State of Uttar Pradesh runs five medical colleges, one each at Allahabad, Kanpur, Meerut, Agra and Jhansi. In addition, Lucknow University has a medical college called King George Medical College. In consultation with the Lucknow University, the State Government decided to hold one combined Pre-Medical Test for selecting students for admission to the six medical colleges. The work of holding the combined Pre-Medical Test was entrusted to the Meerut University. There were in all 758 seats in the six medical colleges. Of these 26 had been allotted for nominees of the Government of India under various heads. The remaining 732 seats were to be filled in by the combined Pre-Medical Test. By different orders issued by the State Government a number of seats were reserved for various classes. The ultimate reservation of seats was as follows: -

(1) Girl Candidates	20%
(2) Candidates from rural areas	12%
(3) Candidates from hill areas	3%
(4) Candidates from Uttar Khand Division	3%
(5) Candidates belonging to scheduled castes	7%
(6) Candidates belonging to scheduled castes from rural areas	3%
(7) Candidates belonging to scheduled tribes	1%
Total	49%

As a result of the reservations, 368 seats remained as general seats. This was 51% of the total number of seats i.e., 732 which were open to the combined Pre-Medical Test, the balance 368 (49%) being reserved seats.

2. Subhash Chandra, the appellant appeared at the combined Pre-Medical Test held in 1971, for one of the general seats. He, however, was not selected. He challenged the order rejecting his application by a writ petition. The writ petition came on for hearing on 7th July, 1972. By this time the academic session for 1971 was well over and a competitive examination had been held in 1972. The appellant had not appeared at the 1972 examination. The learned Single Judge held that under the circumstances the petition has virtually become in fructuous. Since the appellant had not appeared at the 1972 examination no direction could legally be given to the respondents to admit him to the 1972 course. The learned Single Judge dismissed the writ petition without going into the merits of the case.

3. Since the Pre-Medical Test is held every year and since the vires of the reservation order is challenged by the appellant on the ground that it violated Article 14 of the Constitution, learned counsel for both parties invited us to decide the merits of this question.

4. For the appellant, it was urged that the reservation in favor of the various classes of candidates mentioned above introduced the vice of discrimination in the Pre-Medical Test, because there was no rational basis to classify candidates belonging to the hill areas or rural areas or girl candidates for a specially favored treatment. The differentia adopted by the reservation orders had no reasonable nexus with the objects sought to be achieved, namely to select the best possible material for admission to the medical colleges.

5. Article 15 of the Constitution prohibits discrimination, on grounds only of religion, race, caste, sex, place of birth or any of them. Sub-article (3) thereof provides that nothing in this article shall prevent the State from making any special provision for women and children. Sub-article (4) says that nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally

backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

6. Sub-articles (3) and (4) of Article 15 classify women and children, socially and educationally backward classes of citizens, Scheduled Castes and Scheduled Tribes as distinct groups. If the State Government makes reservation in respect of these groups, it cannot be said that the classification is not based upon rational differentia. The object of the reservation in favor of the various categories of candidates is obviously to make special provision for their advancement. This is specifically permitted by sub-articles (3) and (4) of Article 15. The differentia, are, therefore, reasonably related to the objects sought to be achieved by the reservation, namely to comply with the requirements of Article 15 (3) and (4). Reservation in favor of girls is clearly covered by Article 15 (3) of the Constitution as being a special provision for women. The reservation in respect of candidates from rural areas, hill areas and Uttar Khand Division has been stated to be because the citizens of these areas form a socially and educationally backward class of citizens. This, in our opinion, is undeniable from the point of view of education in medicine; because in this State there are only six medical colleges, each one of which is situated in a municipal town. There is no facility for imparting medical education in the rural or hill areas or in the Uttar Khand Division. From the point of view of imparting medical education, these areas were correctly treated by the State Government as having socially and educationally backward citizens.

7. In *M. R. Balaji v. State of Mysore* [1] the Supreme Court held that when Article 15 (4) contemplates that the State can make special provision in question, the said provision can be made by an executive order and legislation for the purpose was not necessary. It was ruled that Article 15 (4) was added by the Constitution (First Amendment) Act, 1951. The object of this amendment was to bring Articles 15 and 29 in line with Article 16 (4). Article 15 (4) has to be read as a proviso or an exception to Articles 15 (1) and 29 (2). The fundamental right guaranteed by Article 15, which is only a species of the right mentioned in Article 14, does not affect the validity of the special provision which is permissible under Article 15 (4).

8. While discussing the quantum of reservation that may be reasonable to be

made under Article 15 (3) and 15 (4) the Supreme Court held that in this country where social and economic conditions differ from one State to another it will be idle to expect absolute uniformity of approach; but in taking executive action to implement the policy of Article 15 (4), it is necessary for the States to remember that the policy which is intended to be implemented is the policy which has been declared by Article 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Article 15 (4) authorizes the making of special provisions for the advancement of the communities, even if such provisions may be inconsistent with the fundamental rights guaranteed under Article 15 or 29 (2). Reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centers to deserving and qualified candidates of other communities. A special provision contemplated by Article 15 (4) like reservation of posts and appointments contemplated by Article 16 (4), must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre, have to be adjusted with the interests of the community as a whole. Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent, would depend upon the relevant prevailing circumstances in each case.

9. In that case the reservation was 68 per cent in favour of such classes. The reservation was struck down. In the present case, the reservation is 49 per cent. It does not transgress the limits of reasonability. No special facts have been established in the present case to impel a decision that the reservations ought to have been of a lesser percentage. These principles laid down by the Supreme Court have been reaffirmed by it in several subsequent decisions. See *State of A. P. v. P. Sagar,* [2] *Chitra Ghosh v. Union of India,* [3] and *State of A. P. v. U.S. V. Balaram,*[4]

10. For the appellant, it was urged that the percentage of reserved seats comes to 49 per cent, only if the 26 seats reserved for nominees of the Central Government are excluded from consideration. Since reservation of 26 seats is also a reservation which precludes candidates for general seats to be selected against them, these 26 seats should also be taken into consideration while calculating the percentage of the reserved seats. If these 26 seats are included,

the reserved seats would come to 62 per cent, which is, according to the Supreme Court, unreasonable. The submission proceeds upon a fallacy. The Government which runs the medical colleges and bears the entire burden of their expense is entitled to lay down sources from which selection will be made. The Supreme Court in *D.N. Chanchala v. State of Mysore,* [5] para 23 observed:-

> "A provision laying down such sources strictly speaking is not a reservation. It is not a reservation as understood by Article 15, against which objection can be taken on the ground that it is excessive."

11. The State Government may have been under obligations to the Government of India to provide some seats for its nominees. These 26 seats were not open to be filled by the Pre-Medical Test. All other categories of reserved seats were to be filed through the combined Pre-Medical Test. These 26 seats cannot, in our opinion, be taken into account while determining the reasonability of the reservation of seats.

12. For the appellant, it was also suggested that the State Government has changed the percentage of reserved seats after the Pre-Medical Test was held. There seems to be no substance in it. It appears that candidates belonging to the reserved classes were able to secure some of the general seats on the basis of their individual merit. The appellant seeks to add such candidates who have been selected against general seats to seats which were reserved for candidates belonging to the reserved classes, and thereby suggests that the number of reserved seats have been increased. That is not so. The number of seats have not at all been changed. The accident that some of the candidates belonging to such classes were able to be selected against the general seats does not in any way mean that the reservation has been changed.

13. Reliance was placed by learned counsel for the appellant on *Ramesh Chandra v. State of Punjab,* [5] There the reservation was for 60% seats. The case is inapplicable. Learned counsel invited our attention to *V. Raghuramulu v. State of Andhra Pradesh,* [6] This case does not help the appellant. In this case, reservation order for admission to a medical college run by the Andhra State provided for reservation of a maximum of 15% of the total number of seats for backward class candidates. Subba Rao, C. J. speaking for the Bench held that

the reservation of a maximum may work against the interests of the backward classes. Where the members of the backward class may be able to successfully compete with the other classes, they would be deprived of their right to get admission into the colleges beyond the quota allotted to them. It was observed that the rule should have provided a minimum of percentage instead of a maximum.

14. Since the appeal fails on the merits, we deem it unnecessary to express any opinion on the question whether the writ petition had become in fructuous by lapse of time.

In the result, the appeal fails and is accordingly dismissed. But we make no order as to costs.

Appeal dismissed.

Cases Referred.

1. AIR 1963 SC 649
2. AIR 1968 SC 1379
3. AIR 1970 SC 35
4. AIR 1972 SC 1375
5. AIR 1966 Pun 476
6. AIR 1958 And Pra 129