

ALLAHABAD HIGH COURT

Dilip Kumar

Vs

Govt. of U.P

Special Appeal No. 130 of 1970. in W. P. No. 1044 of 1969

(D.S. Mathur and K.B. Srivastava, JJ.)

20.08.1970. 31.01.1973

JUDGMENT

D.S. Mathur, J.

1. This is a special appeal by Dilip Kumar against the order of the learned single Judge dismissing his writ petition challenging paragraph 10 of the Instructions issued by the Registrar, Combined Pre-Medical Test, Agra University, while holding the Pre-Medical Test in 1969. The request made in the writ petition was that the respondents, namely, the Govt. of Uttar Pradesh, the Vice-Chancellors of Agra, Lucknow, Allahabad, Kanpur and Meerut Universities, and the Deans of the Faculties of Medicine be directed to declare the petitioner selected at the Combined Pre-Medical Test held in June, 1969 and to admit him to the course of study prescribed for the degree of Bachelor of Medicine and Bachelor of Surgery.

2. A joint competitive test was held in the year 1969 for the admission to the 1st Year Class of six Medical Colleges at Agra, Allahabad, Kanpur, Lucknow, Meerut and Jhansi and the petitioner was one of the candidates who appeared in this test. The Medical College, Jhansi, is within the jurisdiction of Kanpur University and for this reason no one of this Medical College was impleaded in the writ petition. The petitioner was not declared successful, because of the restrictions imposed by the aforementioned paragraph 10. His case is that had the selection been made on merits without the illegal reservations contained in paragraph 10 of the Instructions he would have been selected and admitted in one of the Medical Colleges.

3. The main challenge to these instructions is that they are hit by Article 15 (4) of the Constitution. It was also contended that the classification contravenes the equality clause of Article 14 of the Constitution.

4. The learned single Judge was of opinion that the reservations made were within the limits permitted by Article 15 (4) of the Constitution and were not hit by Article 14 of the Constitution.

5. The material part of paragraph 10 of the Instructions runs as follows :-

"10. The respective distribution of seats will be as under on the basis of the result of the

Competitive Test in order of merit :-

Medical College

	Luck.	Kan.	Agra.	All.	Meerut.	Jhansi.
(a) Seat for general candidates (Male)	103	104	63	55	55	26
(b) For Girl candidates	35	37	24	20	20	10
(c) For candidates from Rural areas	28	28	19	15	15	8
(d) For candidates from Hill areas (excluding Uttarkhand Division)	5	6	4	3	3	2
For candidates from Uttar khand Division (of these seats 50 per cent are reserved for female candidates from Uttarkhand Division)	5	6	4	3	3	2
(e) For Scheduled Caste candidates	5	6	4	3	3	2
(f) For Scheduled Caste candidates	5	6	4	3	3	2
Total	181	187	118	99	99	50

(Note :-The Convener of the C. P. M. T. Committee is authorised to make additions or alteration in the number and reservation of seats as and when desired by the State Government).

(i) No candidate who fails to obtain less than 25% marks in each subject and less than 33% marks in the aggregate shall be eligible for admission. For the reserved seats for Scheduled Caste, it shall be 30% in the aggregate and 25% in each subject.

(ii) No minimum percentage shall be applicable to the candidates hailing from the Uttarkhand Division.

(iii) A candidate wishing to be considered for a reserved seat should in his application form specify one category of reserved seat for which he is eligible ; this will not prejudice his chance of being selected against a general seat.

(v) The candidates belonging to the reserved categories who qualify themselves for admission against general seats on the basis of merit, will, except the girl candidates, be treated as general and admissions against the reserved seats, except in the case of girl candidates will be made only from amongst those candidates of reserved categories who do not qualify themselves for admission against the general seats.

(vi) In the case of the girl candidates, those who are admitted against general seats will also be counted for the purpose of reservation allowed for girl candidates. If the girls

admitted against general seats fall short of the number of seats reserved for them in the combined Pre-Medical Test then the requisite number of girls from among those who have not qualified for admission against the general seats,

(x) Candidates applying for admission to the reserved seats will be required to submit a certificate from the District Magistrate of the district to which they belong, that they and their families are permanent residents of rural areas or one of the hill districts or Uttarkhand Division as the case may be, and they have had a major part of their education in that area."

6. It may here be mentioned that these Instructions were issued in compliance of G. O. No. 8949A/V-97/1968, Annexure A to the counter-affidavit filed on behalf of the State. There are two broad features of these Instructions, firstly, that in respect of general candidates, girl candidates and candidates from rural areas, the minimum qualifying marks are 25% in each subject and 33% in the aggregate ; while for Scheduled Caste candidates these minimum figures are 25% and 30%. In case of candidates from Uttarkhand Division, there is no such minimum qualifying marks, with the result that a candidate not securing any marks in any subject shall be admitted provided that the total number of candidates from Uttarkhand Division does not exceed the figures prescribed in the aforementioned instructions. Another feature of the Instructions is that the reservations have been made not only for Scheduled Caste candidates but also for girl students, candidates from rural areas, candidates from Hill areas other than Uttarkhand Division and candidates from Uttarkhand Division. In case of girl candidates if any girl candidate is selected from general candidates, the reservation for girl candidates shall stand reduced to that extent but not in the case of others. Consequently, if sufficient number of qualified candidates are available more candidates from those categories (other than girl candidates) than prescribed in the Instructions can be admitted in Medical Colleges.

7. Article 15 (4) of the Constitution runs as below :-

"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."

8. The meaning and the scope of this provision has been the subject of decision by the Supreme Court in numerous decisions. It is now the settled law that the State can make special provision not only for the Scheduled Castes and the Scheduled Tribes but also for the advancement of socially and educationally backward classes of citizens, but it is necessary that such a class of citizens must be both socially and educationally backward. Classes of citizens which are not socially backward but are educationally backward are not covered by this provision. It is also the settled law that the classification of socially and educationally backward classes must be reasonable, not to infringe with the general fundamental rights contained in the various clauses of Article 14 of the Constitution. No class of citizens can be declared socially and educationally backward merely on the ground of caste or place of birth. Whether any class of citizens is or is not socially and educationally backward can be determined properly by a Commission appointed under Article 340 of the Constitution, or a Commission or authority of a similar kind. It is also settled law that even though religion, race, caste, sex or place of birth by itself alone cannot be

the basis of classification of such backward classes, these factors can be taken into consideration while determining the classes of citizens entitled to the benefit of Article 15 (4) of the Constitution.

9. It has also been held that a mere assertion that the benefit was being given to socially and educationally backward classes of citizens is not enough, but the State should produce material before the Court to show that there was a proper inquiry, relevant criteria were adopted and the decision on this point is reasonable. Mere expression of opinion is not sufficient. See *M. R. Balaji v. State of Mysore*¹ *State of Andhra Pradesh v. P. Sagar*² and *State of Andhra Pradesh v. U.S. V. Balram*.

10. In the instant case the State has tried to justify why the various groups or areas detailed in the Instructions were considered to be educationally backward but nothing has been indicated why and how could they all be treated as socially backward also. For educational backwardness the main criterion appears to be the percentage of marks obtained in the Pre-Medical Test, the number of candidates from reserved areas appearing in the Pre-Medical Test and also the shortage of Higher Secondary Schools in those areas. We must say that this is not sufficient for classifying all the residents of those areas as belonging to educationally backward classes. All the residents of one village may be educationally backward but the same cannot be said in regard to all the rural areas. Instances are not unknown where literacy in a rural area is very high, in some villages nearing cent per cent. Similarly, in the Hill areas other than Uttarkhand Division there are classes of citizens who cannot be classed as educationally backward. Uttarkhand Division stands in a different category and in the absence of data it may be said that major part thereof is socially and educationally backward; but in Uttarkhand Division also there are certain areas all the residents whereof cannot be classed as socially and educationally backward.

11. To put it differently, even if there may be some justification for placing Uttarkhand Division in the category of socially and educationally backward classes, there is no justification to place all the rural areas and Hill areas other than Uttarkhand Division in that category.

12. Before making any special provision under Article 15 (4) of the Constitution, it is necessary that mind be applied to all the factors necessary for declaring any class of citizens to be socially and educationally backward. Where it appears that there was no application of mind in determining the social backwardness of a class of citizens and the criterion adopted for determining any class of citizens to be educationally backward is not proper, the reservation ; made for persons of those areas can be struck down being violative of Article 15 (4) of the Constitution.

13. Under Article 14 a reasonable classification connected with the nexus can be made. In so far as Medical Colleges are concerned the object is to train students who can practise the science of medicine and surgery in the country. For this purpose it is necessary that the candidates selected for admission should have sufficient knowledge of subjects without which it will be difficult to impart medical education within the prescribed period. Consequently, from the limited viewpoint of admission in Medical Colleges classification based on areas may not be proper; but another object which can be kept in mind is that the services of qualified doctors be available to all the residents of the country and be not confined to merely urban areas or to areas in which rich persons reside. With this aim in view, there can be a reasonable classification based on areas,

for example rural area. Hill area and Uttarkhand Division. However, to achieve the first object it is necessary that a candidate having knowledge of subjects like Physics, Chemistry and Biology be admitted in the college where the same course of education and the same duration is prescribed for All. It will also be permissible to reduce the minimum qualifying marks for candidates of Uttarkhand Division, but to admit any candidate of Uttarkhand Division even though he secures nominal marks or even zero mark shall be against the object of classification. It was open to reduce the minimum qualifying marks to any reasonable figure below 30 per cent but to lay down that there shall be no minimum qualifying marks for the candidates from Uttarkhand Division shall be unreasonable and arbitrary.

14. Such a direction is also contrary to Regulation 11 of the Ordinances of the Agra University framed under Section 28 of the Agra University Act. The Regulation authorises the reduction of the minimum percentage. For candidates from Uttarkhand Division the minimum percentage must therefore be as may be prescribed in this regard. To say that the minimum prescribed percentage can be nil will be against the object of securing suitable candidates for being educated in medicine and surgery. We are of opinion that such an instruction in respect of the candidates from the Uttarkhand Division violates Regulation 11 and can be struck down on this ground.

15. Paragraph 10 of the Instructions of the Combined Pre-Medical Test is, therefore, invalid in so far as the candidates from rural areas. Hill areas other than the Uttarkhand Division and candidates from Uttarkhand Division are concerned and must be struck down at least to this extent. We are further of opinion that reservation for these areas is well knit with the other provisions and to enforce the remaining instructions shall be difficult as a large number of seats shall remain unfilled. Admissions in Medical Colleges are generally made in the month of July. The State and also the University authorities have at their disposal about five months time to properly consider the matter and lay down the conditions for admission in the six Medical Colleges. In the circumstances, it will be more appropriate to quash the whole of paragraph 10 of the aforementioned Instructions and also the Government order so that future admissions may not contravene the provisions of the Constitution.

16. This takes us to the consideration of the reliefs prayed for in the writ petition. It will be desirable for us not to encroach upon the jurisdiction of the authority conducting the Combined Pre-Medical Test. The purpose shall be served if the option is left upon that authority to take action in accordance with the law being laid down by this Court. It is true that the petitioner, if successful, would have been admitted in one of the Medical Colleges in July, 1969 but he was refused admission for no fault of his. We can therefore, direct that he be admitted in one of the Medical Colleges in July 1973 provided that he has secured sufficient marks to justify his admission on merits. The possibility of the petitioner not now joining any of the Medical Colleges cannot be excluded. In case one seat is kept vacant for him that can cause dis-service to others. It is, therefore, necessary that the petitioner should indicate his mind in writing whether he wishes to join one of the Medical Colleges in July 1973.

17. The special appeal is hereby allowed and paragraph 10 of the Instructions on the basis of which a Combined Pre-Medical Test was conducted by the Registrar of Agra University and also G. O. No. 8949AI/V-97/1968, Annexure A to the counter-affidavit filed on behalf of the State, are quashed. Considering that no Combined Pre-Medical Test is being held now, the Vice-Chancellor and the Dean. Faculty of Medicine, of the Lucknow University are directed to admit

the petitioner, Dilip Kumar, in the First Year Class of the Medical College. Lucknow, in July, 1973 provided that he had secured sufficient marks to justify his admission on merits and applies to the Vice-Chancellor, Lucknow University, latest by the end of April 1973 that he intends to join the Medical College, Lucknow, for that Session. Costs of both the Courts shall be easy.

Appeal allowed.

Cases Referred.

1AIR 1963 SC 649

2AIR 1968 SC 1379