

# HIMACHAL PRADESH HIGH COURT

Sukhvinder Kaur

Vs.

State of Himachal Pradesh

Civil Writ Petn. No. 12 of 1972

(R.S. Pathak, C.J. and Chet Ram Thakur, J.)

30.11.1973

## JUDGMENT

### **Chet Ram Thakur, J.**

1. This petition has been filed by Sukhvinder Kaur against an order refusing her admission in the Medical College.
2. The petitioner passed her Matriculation Examination, from the Government Higher Secondary School, Sundernagar, which caters for the needs of various people residing in the town of Sundernagar and for the needs of neighboring villages. The petitioner wanted to join the Medical College after doing her pre-Medical in the year 1969 but at that time she could not compete in order of merit in her own group. At that time, according to the terms of the prospectus of the Medical College, B. Sc. students were given preference and this practice continued till the Session of 1970-71. Therefore, the petitioner did her B.Sc. securing 60.16 per cent marks in her compulsory subjects.
3. For the Session 1971-72 the respondents issued a prospectus inviting applications for admission to the M. B. B. S. Course. The petitioner also applied. But the prospectus for the said year was drastically amended by the respondents and many reservations had been made in various provisions of paragraph I, Part A of the aforesaid prospectus. She was not selected although she had obtained above 60 per cent, marks in her B. Sc. Examination and the respondents 4 to 48 who had qualified F. Sc. or pre-Medical examination had been given admission without taking into consideration the higher qualifications of the petitioner. Even many people who had secured less than the qualifying marks were selected, which was absolutely in contravention of the provisions of the rules. The petitioner, therefore, challenged the virus of the rules. According to her the rules were in contravention of Articles 14 and 15 of the Constitution, inasmuch as the main object of the rules is to find the best talent available for admission to the M. B. B. S. Course. The various reservations made under the prospectus do not purport to achieve that object. Further, it is said, the qualifications made under various groups in paragraph 2 also do not have a reasonable nexus between the object sought to be achieved nor are saved by the saving clauses of Articles 14 and 15 of the Constitution. In any case the

reservations made exceed 50 per cent, of the total seats available inasmuch as only 23 seats out of 63 seats have been kept for open competition.

4. Further it is urged, the reservation made in favor of 12 students who had passed their Matriculation or Higher Secondary Examination from the schools located in the rural areas is unreasonable, having no nexus with the objects sought to be achieved. It is an arbitrary formula devised without having any reasonable classification or nexus with the object. The reservations so made are illegal, ultra vires and violative of the principles of equity and law. In category H it is provided that two seats were reserved for the sons/daughters of political sufferers and persons of Himachal Pradesh with outstanding social background. It is contended that this itself does not advance the cause of the backward classes, but on the other hand affords benefit to people who have a higher social background. Further, powers had been given to the Chief Minister to nominate three candidates at his discretion over and above the prescribed quota of admissions for candidates from outside Himachal Pradesh and in this no guideline is given as to the method of selection or nomination by the Chief Minister. It is said that an arbitrary power has been conferred on the Chief Minister to show patronage at public expense to such persons whom he may wish to patronise. Further no guideline has been laid down as to judge the comparative merits of two groups of people, i.e., B. Sc. on the one hand and F. Sc./pre-Medical on the other. In all other universities B. Sc. have been given preference over F. Sc. students provided they obtain the minimum qualifying marks, The selection of respondents 4 to 48 has been challenged as having been made arbitrarily without following rules or guidelines prescribed in the prospectus inasmuch as no interviews were held for selection, and no standard had been fixed for selecting the various candidates. The entire selection had been made on arbitrary basis and without considering the comparative merits and qualifications of students. They did not possess even the minimum qualifying marks as prescribed in the Calendar of Punjab University. This Calendar is still in force. The aforesaid regulations provide that B. Sc. students should be given preference over F. Sc. students. Since the Medical College is affiliated to the University which in turn, is authorized to make regulations, inter alia, laying down the conditions and preferences for admission to the Medical College, the regulations framed by the Punjab University have been made applicable. In those regulations, it is provided that B. Sc. students have to be given preference over the F. Sc. students. Further, the selection has been made by some other Selection Board which was not a validly constituted Board under the rules. Hence the entire selection has been made on political considerations rather than considerations of merits and qualifications. In the premises of these averments it was prayed that the admission of respondents 4 to 48 be quashed and the respondents be directed to admit the petitioner in accordance with the terms and conditions laid down by the University Calendar by giving her preference over all candidates who have passed only pre-Medical Examination. Further, a relief has been claimed declaring ultra vires, void and violative of the Constitution of India sub-para (d), (e), (f), (g) and (h) of Para 1 of the rules as indicated in the prospectus at page 2; for declaring the nomination clause of the Chief Minister as violative of the provisions of Articles 14, 15 and -16 of the Constitution; for the deletion of para 7 at page 3 as illegal, ultra vires and void and for a direction requiring the respondents to admit the petitioner in accordance with the provisions of para 7 as it stood in the prospectus for the year 1970-71.

5. In reply the respondents 1 to 3 pleaded the following case. According to the practice existing in every institution, the prospectus is usually amended every year subject to the requirements of the institution as well as to fulfil the requirements of the day, and as such the amendment was incorporated in the prospectus in the year concerned. The amendments were justified. The

selection of candidates for admission to the 1st year of the M. B. B. S. Course for the Session 1971-72 was made strictly in accordance with the rules provided in the College prospectus and no student was admitted with lesser marks. The last candidate admitted against open seats and against those reserved for girl candidates had obtained 64.33 and 61.66 per cent, marks in the qualifying examination respectively. The petitioner with 60.16 per cent, marks could not compete on merit and therefore could not be brought on the select list. Merit was the sole criteria over and above the minimum requirement of 50 per cent, marks obtained in pre-Medical or its equivalent examination recognized by the University. There had been no violation whatsoever of Articles 14 and 15. The various reservations made in respect of the seats were valid and legal. The 12 seats reserved in favor of the candidates who have passed their Matriculation or Higher Secondary Examination from the schools located in rural areas have been reserved just to give a fillip to the candidates coming from far flung areas. The reservations thus made are not violative in any way, rather Article 29(2) of the Constitution has clearly provided that the State has got a right to reserve the seats for the minority people. In regard to category H, the two seats have been reserved for the sons/daughters of political sufferers, etc., so that the people of outstanding social background could come forward who could not give better educational qualifications to their sons and daughters on account of their taking active part in the National Freedom Movement or for any other political reason. So, reservations stand justified in the interest of suffering people. The Chief Minister had been conferred the power to nominate three candidates not at the public expense but to promote the cultural and educational facilities, and mutual relations with other States. Hence there was no favoritism and preferential treatment. It was pleaded that it was nowhere provided in the prospectus that B. Sc. candidates would be given any preference over the F. Sc./pre-Medical candidates but 60 per cent, marks in B. Sc. would make candidates eligible for admission while the qualifying criterion for pre-Medical or F. Sc. candidates would be 50 per cent, marks. The rules or guidelines prescribed in the prospectus were adhered to strictly. The selection was based solely on merit. It was denied that the respondents 4 to 48 possessed lesser qualifications. After coming into being of the Himachal Pradesh. University all the rules of the Punjab University were still being carried out but it was nowhere provided in the said Calendar that B. Sc students would be preferred over F. Sc./pre-Medical students. The selection had been made by a validly constituted Board by the Government and the Principal was a member of the Board. It was also denied that any nomination by the Chief Minister, had been made of a person who had secured less percentage of marks.

6. In the rejoinder it was submitted that the reservation for the sons and daughters of political sufferers and persons of Himachal Pradesh with outstanding social background was also not warranted, as the words 'political sufferer' were not defined.

7. From the pleadings of the parties the virus of the reservation under the various heads arise for consideration. Against the total number of 60 seats the admissions are to be done as under :

(a) Scheduled Castes 15% : 9

:

(b) Scheduled Tribes 5% : 3

(c) Backward Classes 2% : 1

(d) Son (s) daughter (s) of Defense Services Personnel of Himachal Pradesh who : 1

distinguished themselves in the National Emergency

(e) Candidates who have passed Matriculation or Higher Secondary Examination from the schools located in the rural areas : 12

(f) Son(s) daughter (s) of Defense Service Personnel posted in Himachal Pradesh during the submission of application of the candidates till his/her admission is finalized : 1

(g) son(s)/and daughter(s) of the Central Government employees posted in Himachal Pradesh during the submission of the applications of the candidates till their admissions are finalized : 2

(h) Son(s)/daughter(s) of political sufferers and persons of Himachal Pradesh with outstanding social background : 2

(i) Women students : 6

(j) Remaining seats to be filled on merit : 23

According to the petitioner, the reservation exceeds 50 per cent, which is quite unreasonable and is hit by the provisions of Articles 14 and 16 of the Constitution. The second point is with regard to the reservation made in clause (e) of para 1 for students who have passed Matriculation/Higher Secondary Examination from the schools located in the rural areas. The third point is the invalidity of the reservation in clause (h) four sons/daughters of political sufferers and persons of Himachal Pradesh with outstanding social background as being an unreasonable classification. The fourth point is with regard to the distinction made amongst the B. Sc. and F. Sc/Pre-Medical students, as no credit is allowed for higher education and, therefore, it is unreasonable that only F. Sc./pre-Medical candidates with a certain percentage should get preference over B. Sc. candidates. The fifth point is about the legality of the constitution of the Selection Board. The sixth point is about the legality of nomination of three candidates by the Chief Minister.

8. As regards the fifth and sixth points, the same are not pressed and, therefore, they do not require any consideration.

9. Now we are left only with the reservation : Firstly, the reservation which exceeds 30 per cent, under various heads; secondly, the reservation under clause (e) reserving 12 seats for the candidates who have passed their Matriculation/Higher Secondary examination from the schools located in the rural areas and clause (h) which provides for reservation of two seats for the sons/daughters of political suffered and person of Himachal Pradesh with outstanding social background; and lastly, about the distinction between B. Sc. and F. SC/Premedical candidates.

10. The number of seats reserved is 37. According to the argument advanced by the learned counsel for the petitioner the reservation should in no case exceed 50 per cent, otherwise the reservation would be unreasonable and would be hit by the provisions of Articles 14 and 15 of the Constitution and reliance is placed on *M.R. Balaji v. State of Mysore*<sup>1</sup>, In this case reservation of 68% of the seats was made for the socially and

<sup>1</sup> AIR 1963 SC 649

educationally backward classes in the Medical and Engineering colleges and it was held by the Supreme Court that a high percentage would amount almost to exclusion of the deserving and qualified candidates of other communities which also was not in the interest of the society as a whole. It further held that in adjusting the claim of both the categories the reservation of the

former should ordinarily be less than 50 per cent, although no inflexible percentage can be fixed and it could depend upon the prevalent circumstances in each case. In the instant case no doubt the total number of seats which are reserved for various categories of people exceed 50 per cent, but the percentage fixed for the scheduled castes is only 15%, scheduled tribes 5% and backward classes 2% which comes to 22%, whereas the reservation under the various other heads relates to the other categories and 23 seats have been left for open competition on merits. Therefore, the principle of this authority there 68% of the seats were reserved only for the socially and educationally backward classes cannot be made applicable to the facts of the present case because here the reservation for all the first three categories as mentioned above is only 22% and the remainder reservation is for the other classes or categories of people, therefore, it cannot be said that this classification or reservation is unreasonable. The Government has got the right to make reservation for the betterment and amelioration of weaker and economically backward sections of the community and to implement the directive principles of State policy as contained in Article 46 of the Constitution, which provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

11. The further authority relied upon is *D.N. Chanchala v. State of Mysore*<sup>2</sup>, to show that the reservation was not excessive. In this case out of a total number of 720 seats for distribution 48% of the seats were, reserved under Rule 5 of the Mysore Medical Colleges (Selection for Admission) Rules, 1970, and it was said in that case that the case of M.R. Balaji AIR 1963 Supreme Court 649 (supra) was not applicable to that law because of the fact that the reservation did not exceed 50 per cent. More-over in that case the question that fell for consideration was the university wise distribution of seats of Medical Colleges run by the Mysore State. There were three Universities in Mysore State, namely, Karnatak, Mysore and Bangalore Universities. The challenge to such distribution of seats was that candidates having lesser marks might obtain admission at the cost of another having higher marks from another university. The Supreme Court in view of this held :

"As 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 rule. So long as there is, no discrimination within each of such sources (emphasis mine), the validity of the rules laying down such sources cannot be successfully challenged. In our view the rules lay down a valid classification. Candidates passing through the qualifying examination held by the university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of

<sup>2</sup> AIR 1971 SC 1762

candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rates cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article

14".

Therefore, from this authority also it would appear that the reservation of a particular class should not exceed 50 per cent, so as not to be unreasonable and arbitrary or to discriminate one category from the other.

Similarly, in *State of Andhra Pradesh v. U.S.V. Balaram*<sup>3</sup>, where the reservation of the seats in the professional colleges under the Government was 25% for the backward classes, 4% for the scheduled tribes and 14% for the scheduled castes, their Lordships of the Supreme Court held that the quantum of reservation was within the limits mentioned in the decision referred to in M. R. Balaji's case AIR 1963 Supreme Court 649 (supra). Therefore, on the same principle the reservation cannot be said to be excessive and unreasonable. In *Chitra Ghosh v. Union of India*<sup>5</sup>, the appellant was refused admission to the Maulana Azad Medical College, Delhi. According to the college prospectus 125 students were admitted annually. 15 per cent, seats were reserved for scheduled castes candidates and 5 per cent, for scheduled tribes candidates, 25 per cent, of the seats (excluding the seats reserved for Government of nominees) were reserved for girl students who were taken on the basis of merit. Then there were seats for residents of Delhi, sons/daughters of Central Government servants posted in Delhi at the time of the admission. Then there is a class of candidates, who were, wholly dependent on brother/sister, who were Central Government servants posted in Delhi, sons/daughters of residents of Union Territories, including displaced persons registered therein and sponsored by the Administrations of Union Territories. According to the note in the prospectus 23 seats were reserved for the categories, i.e., sons/daughters of the residents of Union Territories and Jammu and Kashmir State scholars. The case of the appellants was that they had obtained 62.5% marks and were domiciled in Delhi. According to them they were entitled to admission and would have been admitted but for the reservation of the seats which were filled by nomination by the Central Government. It was held therein :

"It is the Central Government which bears the financial burden of running the Medical College. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends, inter alia, on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification."

It was further held that the reservation of seats in the Maulana Azad Medical College, Delhi, in categories (c) to (h) contained in Rule 4 of the college prospectus relating to the eligibility for admission was not violative of Articles 14, 15 and 29 of the Constitution. It

<sup>3</sup> AIR 1972 SC 1375

<sup>4</sup> AIR 1970 SC 35

was observed that the rules did not discriminate between any citizen on grounds only of

religion, race, caste, sex, place of birth or any one of them and, therefore, Articles 15 and 29 could not be invoked. Keeping in view the principles of this authority it is not difficult to hold that the reservation in the instant case is not discriminatory or arbitrary or excessive, because the reservation does not exceed 50 per cent. Therefore, the first contention that the reservation is excessive and is violative of the principles of equality of opportunity is not substantiated.

12. The second point is that clause (e) of para 1 of the prospectus, as amended, with regard to reservation of 12 seats is discriminatory. As regards this it would suffice to say that this is a reservation for children coming from schools in the rural areas. This reservation does not appear to be unreasonable inasmuch as the children in the rural areas who usually attend such schools are socially, economically and educationally poor and they cannot compete with the children of their age-group coming from the urban areas and, therefore, the reservation is valid.

13. The further submission is, that the reservation as contained in clause (h) of para. 1 of the prospectus, i.e., the reservation for the sons/daughters of political sufferers and persons of Himachal Pradesh with outstanding social background, is not warranted. There can be no denying the fact that the Government can place reasonable restriction or can make reasonable discrimination in the matter of providing educational facilities, to backward classes. But, here in the instant case the reservation is made for sons/daughters of political sufferers and persons of Himachal Pradesh with outstanding social background. The object, which is to attract the best talent for the Medical College, is not achieved by this reservation. Children of other sections of society, who are more deserving, are deprived of the right of admission. It appears that the seats have been reserved for persons of higher social status who have got a higher social standing and for sons of political sufferers. The term 'political sufferer' is not defined in the prospectus and it cannot be said what type of political sufferers are entitled to reservation for their wards. Similarly 'persons with outstanding social background' is a very vague term. By this expression what can be understood is that a man is quite influential and holds a very good social status and that he is a man of substance. Such a man can get admission in any institution and can afford to get good education in a good institution. Therefore, there does not appear to be any justification for any reservation for such a class unless the words 'persons with outstanding social background' are understood in some other way, of which there is no indication given in the prospectus. Therefore, this is a vague term and in view of this it needs to be struck down as it constitutes unreasonable and discriminatory classification. Consequently, I hold that this reservation, as contained in clause (h), is unreasonable and is violative of Articles 14 and 16 of the Constitution.

14. The last submission is that the petitioner is B. Sc. with 60.16% marks and that candidates with lesser marks and lesser education were admitted to the M. B. B. S. course and that this was also discriminatory. There can be no doubt that B. Sc. is a higher Degree as compared to F. Sc./pre-Medical and, therefore, on that account she can be said to have attained better maturity and understanding. She cannot be compared with an F. Sc./pre-Medical, because she has acquired higher knowledge after having studied for two years at the College after F. Sc./pre-Medical. Learned Counsel for the petitioner has contended that the prospectus for the year 1969-70 provided for preference for B. Sc. Graduates for admission to the Medical College and that is why the petitioner also did her B. Sc. but when she did qualify, the Government amended the prospectus so as not to give preference to B. Sc. candidates. The amended rules, as regard the education eligibility, are as under :

- (a) The minimum qualification for admission is F. Sc. (Medical Group) or pre-Medical or equivalent examination as recognised by the Punjab University in 2nd Division, which for this purpose will be 50% of total marks obtained in compulsory subjects, viz., English, Physics, Chemistry (including Organic Chemistry) and Biology only, of the qualifying examination, after deducting the marks, if any, obtained in the optional subjects.
- (b) B. Sc. candidates securing 1st Class (60% and more marks) in the compulsory subjects are also eligible, provided :-
- (i) They have passed B. Sc. with English as one of their subjects, according to old regulations or any of the three subjects, viz., Botany, Zoology, Chemistry, Physiology, Physics, Human Anatomy and Biochemistry according to the new regulations; and
- (ii) They have passed F. Sc. (Medical Group) as mentioned in clause (a) above.

The submission made by the learned Counsel is that the rules previously gave preference to B. Sc. but now the rules have been changed. Here it may be stated that the Government who runs the institution and meets the expenses has got the right to change the conditions of eligibility. Learned Counsel for the petitioner had submitted that there was some Ordinance issued by the Punjab University, which was also applicable to this University under which preference was still to be given to the B. Sc. candidates over F. Sc. candidates and that Government cannot frame inconsistent rules. But this is not borne out from the Ordinance. There is no such provision in the Ordinance which has been placed before the Court. Therefore, this argument deserves to be rejected. The rules say that a B. Sc. Graduate is also eligible for admission only in case he secures 1st Class (60% and more marks) in compulsory subjects and has also passed F. Sc. (Medical Group) obtaining 50% of total marks in compulsory subjects. There does not appear to be anything arbitrary or unreasonable in these rules. The educational qualification for admission to the Medical College is F. Sc. with 50% marks. The qualifying standard of 60% has been laid down for B. Sc. Graduates. That can be viewed as an attempt to equalise the chances for admission as between F. Sc. and B. Sc. candidates. After graduation a candidate no doubt would acquire more knowledge, experience and maturity, and would have an advantage over an F./Sc. candidate in the matter of admission. To scale down that advantage a higher percentage of marks was required of B. Sc. candidates. An F. Sc. candidate could have applied for admission and could have failed in securing admission. His applying for admission again after passing the B. Sc. would amount to a second attempt and the advantage so arising could also be neutralised by prescribing a higher percentage of marks in the case of B. Sc. candidate. It may be noted that the provision for deduction of 2% marks was deleted in regard to the year under consideration. The petitioner is not comparable to the respondents 4 to 48 who had secured higher marks in F. Sc. and as such she could not compete with them at that particular point of time, as admitted by her, and that is why she went for higher education. Therefore, the petitioner can have no complaint on this account.

15. I have held that the reservation made in clause (h) para 1 of the prospectus is violative of Articles 14 and 15 of the Constitution and, therefore, the same is struck down. In so far as the other submissions are concerned they are hereby rejected.

16. The petition is allowed. The petitioner shall be considered for admission on the basis of the prospectus for the year 1971-72 to a seat added to the general seats by reason of the observations and findings mentioned above, and if found entitled to admission, she shall be admitted to the

M..B. B. S. course of studies commencing in 1973. In case the existing strength of seats in the Medical College has already been filled up a seat shall be added for accommodating the petitioner.

17. The petitioner is entitled to her costs, which I assess at Rs. 150/-.

**R. S. Pathak, C. J.**

18. I agree.

Petition allowed.