

# KARNATAKA HIGH COURT

R. Srinivasa

Vs.

Chairman, Selection Committee

Writ Petn. No. 15648 of 1980

(M. Rama Jois, J.)

21.10.1980

## ORDER

### **M. Rama Jois, J.**

1. The petitioner, who was an applicant for selection and admission to the First Year M.B.B.S. Course before the Selection Committee constituted by the State Government, has presented this writ petition praying for issue of a writ of mandamus directing the selection committee to select and admit him to the First Year M.B.B.S. Course during the current academic year.
2. The petitioner belongs to Padmasali (Naige) community. This is one among the several communities classified as backward class by the State Government by an order made under Clause (4) of Article 15 of the Constitution. The petitioner passed the Pre-University Examination held in April 80 securing 81.33% in the optional group consisting of Physics, Chemistry, Mathematics and Biology. He applied to the 1st respondent-Selection Committee-for selection and admission to the First Year M.B.B.S. course during the current academic year. In the application the petitioner claimed that he was entitled to be selected against seats reserved in favour of backward communities. This claim was made on the basis that the petitioner had been adopted by one G.V. Rangappa who also belongs to Naige community and the income of the said Rangappa was below Rs. 10,000/-. He has not been selected. Therefore he has presented this writ petition. The petitioner has also stated that respondent-2 belonging to Naige community who has secured less marks than the petitioner, has been selected.
3. It is not the case of the petitioner that the income of his natural father was less than Rs. 10,000/-. According to the petitioner the adoption took place in the year 1976, but it was evidenced by a registered document dated 8th Aug., 1979.
4. The question, whether persons, who belonged to forward class and who get themselves

adopted to a family belonging to educationally and socially backward class, according to the classification made by the Government under Clause (4) of Article 15 of the Constitution, could claim that the benefits made available to the socially and educationally backward classes in view of such adoption, is covered by the following two earlier decisions of this Court :

- (i) *N.M. Nataraja v. Selection Committee, Medical and Dental Colleges*<sup>1</sup>,
- (ii) *B.M. Tarakeshwari v. State of Karnataka*<sup>2</sup>

5. Sri S.K.V. Chalapathy, learned counsel appearing for the petitioner, however, tried to distinguish the above decisions, on the ground that the selection rules themselves made it obligatory for the selection committee to accept the income of the adoptive father for purposes of determining as to whether the concerned applicant belongs to backward class. He relied on sub-rule (3) of the R.5 of the Selection Rules made by the State Government by its order dated 6th June, 1980. It reads-

"5. Reservation of seats in favor of the Scheduled Castes, Scheduled Tribes, Backward Tribes, Backward Castes, Backward Communities and Special Groups :

(3) For determining eligibility for reservation provided in this rule, adoption by a person belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Tribes, the Backward Castes, the Backward Communities or the Special Group of persons not belonging to the said caste, tribe or groups shall not be recognized."

He argued that according to the above sub-rule if only the adoption of a person belonging to scheduled caste or scheduled tribe or backward tribe or backward caste was by a person belonging to any caste other than to which the former belonged, such adoption should not be recognized and as in the present case the petitioner belonged to Naige community and the adoptive father also belonged to Naige community, the selection committee was bound to treat the petitioner as belonging to the backward class taking into account the income of the adoptive father.

6. I am unable to agree. Sub-rule (3) of R.5 only provides that in cases where adoption of a member from one caste or tribe or community to another caste or tribe or community shall not be recognized. The rule is silent on the question as to whether a person, who all along belonged to the forward class, applying the very criteria prescribed in the order of the State Government made under Clause (4) of Article 15 of the Constitution, could claim to have become a person belonging to educationally and socially backward class by the device of adoption. In my view, a person, who all along did not belong to socially and educationally backward class cannot by going in adoption to a family whose income is less than Rs. 10,000/- claim to have become backward. Therefore the petitioner cannot compare his case with that of the 2nd respondent, who really belonged to backward class on the basis of the Government order.

7. Government order dated 18th March, 1977 declared the communities and castes which were

identified as backward for purposes of Clause (4) of Article 15 of the Constitution. The relevant portion of the Government order reads as follows:

"A candidate who belongs to either of the Backward Communities, Backward Castes or Backward Tribes listed below and whose family income from all sources is Rs. 10,000/- \*(Rupees ten thousand only) or less per annum, shall be eligible to be considered for seats reserved for these communities, castes or tribes as the case may be.

<sup>1</sup>(1972) 1 Mys LJ 226)

<sup>2</sup>(W.P. No. 15375 of 1980, D/- 22-9-1980)

'Family Income' means the income of the candidate and his parents and if the parents are dead the income of his guardian."

From the above portion of the order, it is clear that for purposes of deciding as to whether an applicant belongs to backward class or not, the income of the parents of the applicant has to be taken into account and the income of his guardian could be taken into account only when the parents are dead. The above rule read with sub-rule (3) of R.5 of the Selection Rules gives no room for doubt that the intention of the State Government was only to make reservation in favor of persons who belong to backward class in the family of their birth and not in favor of persons who choose to get themselves adopted to a family of a lower income shortly before applying for M.B.B.S. course.

8. As stated earlier, the question is concluded by the earlier two decisions. But the learned counsel for the petitioner, however, relied on the decision of the Supreme Court in *Principal, Guntur Medical College v. Mohan Rao*<sup>3</sup> In my opinion, the ratio of the said decision is not apposite to the facts of this case. In the said case, the question for consideration was whether a person, who originally belonged to scheduled caste and who had got himself converted to Christianity, could again come back to Hindu-fold and claim that he belongs to scheduled caste. The Supreme Court observed that a person in such a position could get himself converted into Hinduism and he could claim to belong to scheduled caste on the relevant date provided the members of the caste had accepted and admitted him to the caste. It is in that context, the Supreme Court observed that the status of a person has to be determined on the date relevant for consideration. The facts of this case are entirely different. The petitioner did not belong to a family which was identified by the state as belonging to the backward class. He had all the environmental advantages of a socially forward family for a substantial portion of his educational career and if the date of registration of adoption deed is taken into account, he was in the family belonging to forward class till the year 1979. Therefore, on account of adoption, the petitioner, who belonged to socially and educationally forward class, cannot be held to have been converted into that of a socially and educationally backward class. Therefore, even on the date when he

applied for M.B.B.S. course, taking into account the advantages he had in the family of his birth during the period when he was studying in the schools and the college, he could not be considered as belonging to educationally and socially backward class and, therefore, he had no right to claim selection and admission against the seats reserved in favor of the backward communities.

9. Learned counsel for the petitioner next relied on the decision of the Supreme Court in *Sita Bai v. V. Ramachandra*<sup>4</sup> The ratio of the said decision is that adoption of a person from one family to another, brings about severance of membership in the family of his birth and he becomes a member of the family of adoptive father. The said ratio is also not applicable to the facts of this case. Here the question for consideration is not the right to inheritance of an adopted son but the question is as to whether the petitioner, who did not

<sup>3</sup>(AIR 1976 SC 1904)

<sup>4</sup> (AIR 1970 SC 343)

belong to backward class became backward because of the adoption. By the device of adoption he no doubt ceases to be a member of the family of his birth and becomes a member of the family of adoptive father, but the fact remains that throughout his educational career prior to the date of his application before the selection committee, he did not belong to the educationally and socially backward class and by adoption his educational and social status did not get reduced and he did not become a person belonging to educationally and socially backward class. In the circumstances, I do not find any substance in the contention urged for the petitioner.

10. For the reasons aforesaid, I make the following order:

(i) Rule discharged.

(ii) Writ petition dismissed with costs. Advocate's fee Rs. 100/-.

Sri Srinivasa Reddy, High Court Government Pleader, is permitted to file memo of appearance within two weeks.

Petition dismissed.