KERALA HIGH COURT

State of Kerala

Vs.

R. Jacob Mathew

Writ Appeal No. 164 of 1963

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

03.04.1964

JUDGMENT

M.S. Menon, C.J.

1. The first and second respondents in O.P. No. 1266 of 1963 are the appellants before us they are the State of Kerala represented by the Chief Secretary to Government, and the Principal of the Medical College, Trivandrum.

2. The controversy relates to the validity of Ext R-1, an order of the Government regarding the selection of candidates for admission to the Medical Colleges in the State. The order is dated the 7th June 1963, and is the successor of earlier orders on the subject.

3. Ext. R-1 reserves thirteen per cent, of the seats for the M.B.B.S. Course to Ezhavas, nine per cent, to Muslims and three per cent, to Latin Catholics inclusive of Anglo-Indians. The first question for consideration is whether these reservations can be sustained in the light of Articles 14, 15 and 29 of the Constitution.

4. Article 14 of the Constitution provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Clause (3) of Article 13 of the Constitution defines the expression "law" for the purposes of that article. According to that definition the expression, unless the context otherwise requires, includes "any ordinance, order, byelaw, rule, regulation, notification custom or usage having in the territory of India the force of law".

5. A contention on behalf of the appellants is that Ext R-1 being a mere executive direction wilt not come within, the ambit of the definition, and as a result no question of any violation of the equality before the law guaranteed by Article 14 of the Constitution can possibly arise for consideration. We do not agree. Any threat to the equality enshrined in Article 14 - whether it emanates from the legislature or the executive - is met by the Constitution. As stated by the Supreme Court in *Basheshar Nath v. Commissioner of Income-tax, Delhi and Rajasthan*[1],

[1] AIR 1959 SC 149

> "The very language of Article 14 of the Constitution expressly directs that the State, which by Article 12 includes the executive organ, shall not deny to any person equality before the law or the equal protection of the laws. Thus Article 14 protects us from both legislative and executive tyranny by way of discrimination."

6. The question as to whether Ext. R-1 is discriminatory in character and thus violative of Article 14, therefore, does arise for consideration and has to be dealt with on the merits. The discussion that follows, however, will show that there is a rational basis for the governmental action, and that the reservation of seats in favor of the three communities mentioned in paragraph 3 above cannot be considered as a violation of the fundamental right embodied in Article 14 of the Constitution.

7. Article 15(1) of the Constitution provides that

> "the State shall not discriminate against any citizen on grounds only of religion., race, caste, sex, place of birth or any of them";

and Article 29(2) that

> "no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

Clause (4) of Article 15 of the Constitution which was added by the Constitution (First Amendment) Act, 1951, says that nothing in that 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. We are not concerned in this case with any Scheduled Caste or Scheduled Tribe; and the only question for consideration-in view of Article 15(4) of the Constitution - is whether the Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians can be considered as "socially and educationally backward classes of citizens". In *M.R. Balaji v. State of Mysore*[2], the Supreme Court said :

> "The backwardness under Article 15(4) must be social and educational. It is not either social or educational, but it is both social and educational."

9. In these regions of human life and values the clear-cut distinctions of cause and effect merge into each other. Social backwardness contributes to educational backwardness; educational backwardness perpetuates social backwardness; and both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition. In view of the details furnished in the affidavit on behalf of the State dated the 10th August 1963 and the affidavit of the guardian of the third respondent dated the 14th August 1963, we have no

hesitation in holding that the Ezhavas, Muslims and the Latin Catholics inclusive of Anglo-Indians

[2] AIR 1963 SC 649

constitute "socially and educationally backward classes of citizens" within the meaning of Article 15(4) of the Constitution.

10. As a matter of fact the social and educational backwardness of the Muslims and the Latin Catholics inclusive of Anglo-Indians was not - and we think correctly - in serious dispute. The attack was essentially against the reservation of seats in favour of the Ezhavas.

11. The Ezhavas form about twenty-five per cent. of the population of the State, and on the material before us it is not possible to say that the Government was wrong in its assumption that they, constitute a community which is "socially and educationally backward". A perusal of the relevant entries in the Cochin Tribe and Castes by Mr. L.K. Ananthakrisnna Ayyar, the Cochin State Manual by Mr. C. Achyuta Menon, the Report of the Backward Classes Commission appointed by the President of India, the Report of the Evaluation Committee constituted by the Government of Kerala and the other publications to which our attention has been drawn indicates that tine three communities in whose favor the reservations have been made should be considered as backward, both "socially and educationally".

12. It was contended before us that the Travencore Temple Entry Proclamation of 1112 M.E., the Cochin Temple Entry Proclamation of 1123 M.E., the Madras Temple Entry Authorisation Act of 1947, and Article 17 of the Constitution of India which says :

> " "Untouchability" is abolished and its practice is forbidden. The enforcement of any disability arising out of 'Unreliability' shall be an offence punishable in accordance with law."

have altered the ancient character of the Ezhava community, and that they should not now be treated as Socially backward. It is true that at certain times, and in certain countries, society has given the lead to law. In India, however, it has been the other way about. In his introduction to "Some Aspects of Indian Law Today" Mr. M.C. Chagla says :

> "It is true that at certain times society has gives the, lead to law; but in India at least it is the other way about. Law has given the lead to society, and law has placed before society ideals and values to which people should conform."

13. Conformity in such cases does not synchronise with the promulgation of statutory enactments or constitution documents. Time has to play its part, and time alone transmutes the ideals of the law into the realities of everyday life. No one can say that the introduction of progressive measures is the end, and not the beginning, of a process of amelioration. Habits of thought the hard and slow, and occupations like toddy tapping carry their social stigma from one generation to another and through decades of conduct and behavior.

14. We have been furnished with a typed copy of the majority judgment of the
Supreme Court in *R. Chitralekha v. State of Mysore*[1], We have not seen the blueprint of the

decision and are quite unaware of what has been said in the judgment of the Judges who have dissented. Our pointed attention was drawn to the following passage in the decision :

> "The important fact to be noticed in Article 15(4) is that it does not speak of castes, but only speaks of classes, if the makers of the Constitution intended to take wastes also as units of social and educational backwardness, they would have said so, as they have said in the case of the scheduled castes and the scheduled tribes."

15. The contention on the basis of the majority decision was that there is the authority of the Supreme Court to say that there shall be no reservation on the basis of castes. We are unable to understand the decision in that way. The judgment refers to certain passages in AIR 1963 SC 649 and says :

> "Two principles stand out prominently from the said observations,, namely (1) the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness and (2) though it is a relevant factor to determine the social backwardness of a class of citizens, it cannot be the sole or dominant test in that behalf.";

and :

> "To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; by, if it does not, its order will not be bad on that account if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria."

16. According to Funk and Wagnalls Standard Dictionary "caste" is no more than an hereditary class into which Hindu society is divided. And we see nothing in the, decision of the Supreme Court which precludes the conclusion that if the whole or a substantial portion of a caste is socially and educationally backward, then the name of that caste will (not ?) be a symbol or a synonym for a class of citizens who are socially and educationally backward and thus within the ambit of clause (4) of Article 15 of the Constitution.

17. In the light of what is stated above we must reverse the judgment under appeal *R. Jacob Mathew v. State of Kerala*[2], in so far as it strikes down the reservation of seats in favour of the Ezhavas, Muslims and the Latin Catholics inclusive of Anglo-Indians. We do so.

18. In *Wealth Tax Officer v. Thuppan Namboodri pad*[3], the Supreme Court had to consider whether the provision relating to Hindu undivided families in the Wealth-tax Act, 1957, violated the equality before law guaranteed by Article 14 of the Constitution. The Supreme Court said :

[1] Civil Appeals Nos. 1056 and 1057 of 1963: AIR 1964 SC 1823

[2] 1963 Ker LT 783 : AIR 1964 Ker 39

[3] Civil Appeals Nos. 262 to 266 of 1963 (SC)

> "We should like to point out that the High Court seemed to take the view that it was for the State to show that Article 14 was not applicable. This is not correct, for it is for the party who comes forward with the allegation that equality before the law or the equal

protection of the laws is being defied to him to adduce facts to prove such denial."

In this view the burden of proof will be on the first respondent, and, perhaps, all that we need say is that he has not proved that the Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians are not entitled to the protection afforded by Article 15(4) of the Constitution.

19. This is a State where if anything untoward is done, there will be an immediate glamour on the floor of the assembly, in the press, and on tire platform. There is nothing on evidence to show that Ext. R-1 or its predecessors provoked an adverse criticism. The very quiescence may be indicative of the correctness of the reservation.

20. We must, however, point out that the paucity of up-to-date data has been a source of considerable worry. It is impossible to say that our conclusion has not been influenced, to some extent at any rate, by our own experience of life and work in this State.

21. An enduring conclusion, however, should not be based on data that is not absolutely up-to-date or on judicial experience which such data may disprove or modify. We think it is essential that the State should immediately embark upon a fact-finding enquiry into matters that are relevant and frame appropriate orders in the light of that enquiry. We direct the State to do so.

22. It may not fee possible to have the enquiry completed before the beginning of the academic year 1964-65. But there is no reason why it should not be completed before the beginning of the academic year 1965-66.

23. Ext. R-1 directs that fifty per cent, of the "seats for the M.B.B.S. Course should be distributed on a "District war merit basis", and says :

> "The seats reserved to the filled on District-war merit basis will be distributed among the nine districts on the basis of the population reported at the 1961 Census as follows :

District	Population (in lakhs)	Percentage of seats
Trivandrum	17.45	10.8 (10)
Quilon	19.41	11.4 (11)
Alleppey	18.11	30.7 (11)
Kottayam	17.33	10.2 (10)
Ernakulam	18.60	11.0 (11)
Trichur	16.40	9.7 (10)
Palghat	17.77	10.5 (11)
Kozkicode	26.17	15.4 (15)
Cannanore	17.80	10.5 (11)
Total...		100

The second question, for consideration is whether this reservation can be sustained.

24. The judgment under appeal dealt With this question in paragraphs 110 to 119 thereof and said in paragraph 120 :

> "To conclude on this aspect; The adoption, of the principle of district-war selection in the impugned order Ext. R-1 is arbitrary and has to be struck down."

We are in entire agreement with the conclusion, and as the matter has been elaborately discussed in the paragraphs mentioned above, we consider it unnecessary to go over the ground afresh, except to state that we too are unable to see any rational basis for the differential treatment embodied in the district-war reservation.

25. In dealing with the M.B.B.S Course Ext. R-1 says :

> "Two seats will be reserved for admission of children of registered Medical Practitioners in Modern Medicine of the State who are Science graduates in the subjects specified under item I above, on State-wide merit basis tram among applicants who have not been selected otherwise.";

and in dealing with the Pre-Medical Course :

> "One seat will be reserved for admission of children of registered Medical Practitioners in Modern Medicine-of the State on State-wide merit basis from among applicants who have not been selected otherwise."

The concluding paragraph of Ext. R-1 is :

> "Two seats have been reserved for First M.B.B.S. Course and one seat for the Pre-Medical Course, for children of Registered Medical Practitioners in the State; of these 3 seats two will be reserved for children of Registered Medical Practitioners in State Government Service and one seat for children of Registered Private Medical Practitioners."

As far as the Pre-Medical Course is concerned there is also a reservation in favour of outstanding sportsmen. The provision is :

> "Three seats will be reserved for outstanding Sportsmen who are otherwise qualified for admission to the Pre-Medical Course, the selection being made from a panel of candidates recommended by the Kerala Sports Council."

26. The third question for consideration is the validity of these reservations. The question is dealt with in paragraphs 121 and 122 of the judgment under appeal. The learned Judge says :

> "However much I sympathies with this claim made by the Government, regarding the

> children of Registered Medical Practitioners and also the necessity to encourage sports, I am not able to find any legal basis for sustaining these reservations either. After all, any reservation made, as I have already indicated, must be on a proper classification, and that classification must have a reasonable relation to the object sought to be achieved. The object sought to be achieved, is to get the best, among the student population, for admission into the professional colleges. The classification itself cannot be considered to be rational. In any event, in my view, it ran have no reasonable relation to the object, namely that of admitting the best students in the professional colleges." (Paragraph 122).

We are in agreement with the learned Judge as far as the reservation in favor of the children of Registered Medical Practitioners are concerned and are unable to see any rational basis for such a reservation.

27. The question of outstanding sportsmen, however, stands on a different footing. Various talents and attainments are necessary for the discharge of the various types of work that a generation of medical men may be called upon to perform. It cannot be said that achievements in athletics will not produce a necessary type, with reserves of physical energy, capable of leadership, and unafraid of emergencies. In this view the judgment under appeal should be reversed on this point and the reservation in favor of outstanding sportsmen should be sustained. We do so.

28. A similar question came up before the High Court of Andhra Pradesh in Writ Petn. No. 857 of 1953 (AP), Jaganmohan Reddy, J. said :

> "An integrated individual who is good at studies and good at outdoor activities is far more suited not only to this profession (medical) but also to any other profession, and if the Universities have given protection and encouragement in this field they can only be commended for their farsighted policy. I find no basis for declaring this reservation as arbitrary or irregular."

29. The appeal is allowed in the manner and to the extent indicated above and with the direction embodied in paragraph 21. No costs.

30. The learned Advocate-General submitted that whatever be our conclusion in the appeal, that conclusion will not react to the detriment of any of the students who have been admitted. The submission is recorded.
Appeal partly allowed.