Kumari Chitra Ghosh And Anr. vs Union Of India (Uoi) And Ors. on 25 April, 1969

Equivalent citations: AIR1970SC35, (1969)2SCC228, [1970]1SCR413, AIR 1970 SUPREME COURT 35

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Bench: M. Hidayatullah, A.N. Grover, K.S. Hegde, J.M. Shelat, V. Bhargava

JUDGMENT

A.N. Grover, J.

1. This is an appeal by certificate from a judgment Of the Delhi High Court dismissing a petition filed by the appellants under Articles 226 and 227 of the Constitution in the matter of their admission to the Maulana Azad Medical College, New Delhi, hereinafter called the "Medical College."

2. The appellants are residents of Delhi. They passed the pre-medical examination of the Delhi University held in April 1968 and obtained 62.5% marks. In June 1968 they applied for admission to the first year M.B., B.S. class at the Lady Hardinge Medical College, New Delhi but they were, not admitted. Thereafter they applied for admission to the Maulana Azad Medical College. This college, which is a constituent of the University of Delhi, was established by the Government of India in June 1958. According to the college prospectus, 125 students are admitted annually; 15% seats are reserved for schedule caste candidates and 5% for scheduled tribes candidates, 25% of the seats (excluding the seats reserved for Government of India nominees) are reserved for girl students who are taken on the basis of merit. The following categories of students only are eligible for admission :

(a) Residents of Delhi....

(b) (i) Sons/Daughters of Central Government Servants posted in Delhi at the time of the admission.

(ii) Candidate whose father is dead and is wholly dependent on brother/sister who is a Central Government Servant posted in Delhi at the time of the admission.

(c) Sons/Daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective

Administration of Territory :-

(i) Himachal Pradesh (ii) Tripura (iii) Manipur (iv) Naga Hills (v) N.E.F.A. (vi) Andaman.

(d) Sons/Daughters of Central Government servants posted in Indian Missions abroad.

(e) Cultural Scholars.

(f) Colombo Plan Scholars.

(g) Thailand Scholars.

(h) Jammu & Kashmir State Scholars.

According to the note 23 seats are reserved for categories (c) to (h) above. The minimum percentage of marks which a candidate seeking admission must have obtained in the aggregate of compulsory subjects is 55.

3. Now the appellants 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 nominations by the Central Government. In the year 1968 when the appellants sought admission 9 students had been nominated by the Central Government out of the 23 seats which had been reserved for categories (c) to (h) mentioned above. These students had obtained less percentage of marks than the appellants. The appellants filed a writ petition in the High Court challenging primarily the power of the Central Government to make the nominations. It was prayed that these nominations be struck down and the respondents (Union of India, Medical College, University of Delhi etc.) be directed to admit the appellants and all other students who were eligible strictly in the order of merit. The writ petition was disposed of by a division bench of the High Court. The authority of the Central Government to select candidates for the reserved seats was upheld. It was, however, found that among the nine seats filled in the Medical College by the Government, two nominations had been made contrary to the admission rules. The High Court was of the view that these two seats would also become a part of the general pool for admission of candidates on merit. The order was, therefore, made in the following terms :

> We, therefore, direct the respondents 1 to 4 as follows : two seats shall be filled immediately for admission to the first year M.B., B.S. Course of the College from the merit list in which petitioner No. 1 is number 4 and petitioner No. 2 is number 9. The respondents 1 to 4 shall immediately enquire from the candidates who are above the petitioners in order of merit whether they want the admissions and on their failure to reply in a short time or on their refusal to accept the offer, the admission shall be made either of the petitioners or of other candidates who are above them in the merit list within one week from today.

In December 1968, the appellants filed a petition under Section 114 and Order 47, Rule 1 read with Section 141, Civil Procedure Code seeking a review of the judgment and order dated December 3, 1968. This petition was dismissed by the High Court by a detailed order dated January 27, 1969. On February 1, 1969, a petition was filed under Articles 133(1)(c) and 132(1) of the Constitution for leave to appeal to this Court. In the prayer leave was sought against the judgment dismissing the writ petition as also the order by which the review petition was disposed of. In the certificate, however, in the heading only the judgment dated December 3, 1968 is mentioned. It would appear that the certificate was limited to the appeal against the writ petition. This would be so because under Order 47, Rule 7 the order of the court rejecting the application for review is not appealable. If the appellants desired to challenge that order it could have been done only by asking for leave of this Court under Articles 136 which was never done. In these circumstances the arguments of Mr. B.C. Misra for the appellants were confined to the matters decided by the judgment dated December 3, 1968.

4. It is common ground that the University of Delhi is a statutory body incorporated by the Delhi University Act of 1922 as amended from time to time. Under Section 30 of that Act Ordinances can be made providing for various matters which include the admission of students to the University and their enrolment as such. Ordinance II provides that there shall be a Medical Courses Admission Committee. It is this committee which finalises the cases of admission except those which are to be referred to the Standing Committee on account of any special features. The Medical Courses Admission Committee at its meeting held on November 5, 1965, recognised that 23 seats in the Medical College shall be reserved for certain categories for nomination. This reservation was approved by the Standing Committee of the Academic Council of the Delhi University and finally by the Academic Council itself by means of a resolution dated March 3, 1966. In the High Court and before us both sides argued on the footing that the rules set out in the prospectus of the Medical College relating to admission have statutory sanction and are not of a purely administrative nature.

5. Before the High Court only two questions were raised. The first was whether the provision for reservation of seats was unConstitutional. The second was whether the nominations to the reserved seats had been made contrary to the rules. Mr. Misra has amplified the first submission by urging that the reservation of seats for admission to the Medical College was not based on any reasonable classification and suffered from the vice of discrimination. According to him such reservation was hit by Article 14 read with Clauses (1) and (4) of Article 15 and Clause (2) of Article 29 of the Constitution. In addition the system of nominations being made by the Government and not by the Admission Committee was per se discriminatory.

6. Article 29(2) may be read first. It says, 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, Under Clause (1) of Article 15 the State cannot Discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them. Clause (4), however, provides that nothing in the Article 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 tribes. According to Mr. Misra the categories (c) to (h) contained in Rule 4 renting to eligibility for admission for whom seats are reserved do not fall within the exception contained in Clause 4 of Article 15. The persons in these categories, it is said, cannot be regarded as socially and educationally backward classes of citizens nor can it be supposed that all of them must belong to schedule castes and tribes.

7. We are unable to see how Article 15(1) can be invoked in the present case. The rules do not discriminate between any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Nor is Article 29(2) of any assistance to the appellants. They are not being denied admission into the Medicial College on grounds only of religion, race, caste, language or any of them. This brings us to Article 14. It is claimed that merit should be the sole criterion and as soon as other factors like those mentioned in Clauses (c) to (h) of Rule 4 are introduced, discrimination becomes apparent.

8. As laid down in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. [1959] S.C.R. 279, Article 14 forbids class legislation it does not forbid reasonable classification. In order to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved. The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu & Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong.

9. 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.

10. The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In Minor P. Rajendran v. State of Madras it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

11. The case of Minor P. Rajendran is clearly distinguishable because there the classification had been made district-wise which was considered to have no reasonable relation with the object sought to be achieved. Nor can the decision of a full bench of the Patna High Court in Umesh Ch. Sinha v. V.N. Singh, Principal, P.M.C. & Hospital and Ors. I.L.R. 46 Patna 616 be of any avail to the appellants. In that case preferential treatment had beep given to the children of the employees of the Patna University in the matter of admission to the Patna Medical College. It was held that there was no reasonable nexus between the principle governing admission to the college on the one hand and the pecuniary difficulties or the meritorious services rendered by the employees of the University on the other and that preferential treatment to the children of these employees would amount to favouritism and patronage. There is no question of any preferential treatment being accorded to any particular category or class of persons desirous of receiving medical education in the present case. The mere fact that the Central Government has to make the nominations with regard to the reserved seats cannot be considered to be preferential treatment of any kind. As the candidates for the reserved seats have to be drawn from different sources it would be difficult to have uniformity in the matter of selection from amongst them. The High Court was right in saying that the standards of the examinations passed by them, the subjects studied by them and the educational background of each of them would be different and divergent and there-tore the Central Government was the appropriate authority which could make a proper selection out of those categories. Moreover this is being done with the tacit approval and consent of the Medical Courses Admission Committee. It appears that the Central Government has been acting in a very reasonable way inasmuch as when nominations were made only to nine seats the rest were thrown open to the general pool.

12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving maximum benefit to candidates belonging to the non-reserved seats release them but it cannot be compelled to do so at the instance of students who have applied for admission from out of the categories for whom seats have not been reserved. In our

opinion the High Court was in error in going into the question and holding that out of the nine seats filled by nomination two had been filled contrary to the admission rules and these would be converted into the general pool. Since no appeal has been filed against that part of the order we refrain from making any further observations in the matter.

13. Finally Mr. Misra attempted to agitate the question of some of the nominations being illegal as the candidates who had been nominated had not applied in time-the prescribed date being August 1, 1968. This contention cannot be entertained for two reasons. The first is that no such point appears to have been raised before the High Court when the writ petition was disposed of on December 3, 1968. It is only at the stage of review that this matter seems to have been pressed. Secondly it has been held by us that the appellants had no right to challenge the nominations which had been made by the Central Government. It was not, therefore, open to them to assail any of the nominations which had been made.

14. The appeal fails and it is dismissed with no order as to costs.