

The Indian Law Reports

Before; J. M. Tandon, J.

AJAY KUMAR MITTAL,—Petitioner.

versus

THE HARYANA AGRICULTURAL UNIVERSITY AND
OTHERS,—Respondents.

Civil Writ Petition No. 2510 of 1979

May 1, 1984

Constitution of India 1950—Articles 14 and 15(4)—Reservation of seats for purposes of admission—35 per cent seats reserved for children of bona fide farmers and landless labourers from rural areas—Total reservation of seats for different category of students exceeding 50 per cent—Reservation for the wards of university employees—Such reservations—Whether unconstitutional.

Held, that reservation of 35 per cent of the seats for the children of bona fide farmers and landless labourers from rural areas violates Articles 14 and 15 of the Constitution of India and is not valid.

(Para 9).

Held, that reservation for weaker sections of the society under any label whatsoever should not in the aggregate exceed 50 per cent of the total available seats and any reservation beyond such percentage is invalid and violative of the rule of equal protection of laws and amounts to a fraud on Article 15(4) of the Constitution of India.

(Para 10).

Held, that reservation of seats in favour of the wards of University employees is unconstitutional.

(Para 11).

Petition under Articles 226/227 of the Constitution of India, praying that:—

- (a) *that the record of the case be summoned and a writ of mandamus may be issued thereby declaring that the reservation of seats for candidates from rural area,—vide*

Annexure P-I is illegal, ultravires, null and void and unconstitutional and, therefore, respondents 1 to 3 be restrained from enforcing the same;

- (b) *that selection of the respondents 4 to 33 is also illegal, ultravires, null and void and, therefore, the same may be quashed;*
- (c) *that Respondents 1 to 3 may be directed to admit the petitioner to the B.V.Sc. & A.H. Course for the year 1979-80 because he is duly qualified for admission but has been denied admission only due to reservation made for candidates from rural areas;*
- (d) *or such other appropriate writ, order or direction as may be deemed fit in the circumstances of the case may be issued in favour of the petitioner and against the respondents;*
- (e) *that in view of the extreme urgency of the matter there is no time at the disposal of the petitioner the condition regarding service of notice on the respondents may be dispensed with;*
- (f) *filing of the original or certified copy of Annexure P-I may be dispensed with; and*
- (g) *cost of the petition may be awarded against the respondents.*

C. M. Chopra, Advocate, for the Petitioner.

A. S. Nehra, Advocate, R. P. Bali, Advocate, for the State.

JUDGMENT

J. M. Tandon, J.

(1) The petitioner applied for admission to the degree course of Bachelor of Veterinary Sciences and Animal Husbandry of the Haryana Agricultural University, Hissar, in 1979. The University had made reservations for purposes of admission under rule 1.3 (P. 1), the relevant part of which reads;

“For admission to various programmes both undergraduate and master degree there will be reservation for categories as under :—

- (i) Government of India nominee or candidates from other States or Union Territories ... 10 per cent
- (ii) Scheduled Castes/Scheduled Tribes ... 20 per cent

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(iii) Backward Classes	... 5 per cent
(iv) Children of <i>bona fide</i> farmers and landless labourers from rural areas	... 35 per cent
(v) Ex-servicemen or their children	... 5 per cent
(vi) Sportsmen	... 3 per cent
(vii) Children of University employees	... 2 per cent
(viii) Open quota	... 20 per cent

The reservation in categories in serial No. (ii) to (viii) will be for candidates belonging to Haryana only. In the open quota too, preference will be given to candidates from rural areas. However, exception may be made in the College of Sports, if good candidates are not available under reserved categories.

Candidates claiming reservation under category (iv) mentioned above must have passed at least the Primary or Middle or Matriculation Examination from a village school.

* * * * *

The fact whether an applicant belongs to rural area family of farmers, will be judged from the existence of his/her father's name in the concerned list of voters or from the revenue record indicating land held in rural area."

(2) The petitioner having failed to secure admission from the open quota category has filed the present writ assailing the reservations (P. 1) for purposes of admission being violative of Article 14 and 15 of the Constitution and has prayed for a direction to be issued to the University authorities to admit him to the B.V.Sc. and A.H. course for the year 1979-80.

(3) In the written statement filed by the Registrar of the Haryana Agricultural University on behalf of the respondents Nos. 1

and 2 it has been averred that the reservations made for various categories is constitutionally valid and is not violative of Articles 14 and 15 of the Constitution.

(4) The learned counsel for the petitioner has argued that 35 per cent reservation for children of *bona fide* farmers and landless labourers from rural areas is violative of Articles 14 and 15 of the Constitution. Reliance has been placed on a Division Bench decision of this Court in (*Kumari Promila Jain and others vs. The State of Haryana and others* (1), wherein a similar reservation for candidates from rural areas was struck down.

(5) The contention of the learned counsel for the University is that this 35 per cent reservation is justified under clause (4) of Article 15 and is not violative of Article 14 of the Constitution. According to him, the social and educational backwardness of the section of the Society for which this reservation has been made can be made use of to treat it as a distinct class for purposes of Article 14. This class being a weaker section of the society deserves special treatment in the matter of admission in educational institutions. The learned counsel has further argued that this case is covered by the ratio of *Amar Bir Singh and others v. Maha Rishi Dayanand University, Rohtak and others*, (2), wherein reservation for candidates from rural areas has been held constitutionally valid.

(6) In *Kumari Promila Jain's case* (supra), 25 seats for admission to Medical College, Rohtak, were reserved for students from rural areas. The following three conditions were prescribed for being eligible for such reserved seats:—

- (1) The name of parent of the candidate should be in the village electoral roll.
- (2) The parent should be engaged in cultivation or allied activities in the village.
- (3) The candidate should have received at least Primary Education from a school situate in any village not having a Municipality or notified area or Town Area Committee."

In *Amar Bir Singh's case* (supra) 25 seats in Medical College, Rohtak, were reserved for candidates from rural areas. The

(1) C.W. 3371/78, decided on 26th February, 1979.

(2) I.L.R. 1980 (II) Pb. & Hary. 493.

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following condition was prescribed for being eligible for such reserved seats:—

“The candidate must have received education up to 8th Standard in a common rural School situated in any village not having any Municipality or notified area or town area Committee.

For this purpose a certificate is required to be submitted which may be seen in Appendix ‘C’.”

(7) In Amar Bir Singh's case (supra), the Division Bench decision in *Kumari Promila Jain's case* (supra) was noticed and it was held that the facts of the latter's case are totally distinguishable and the ratio thereof is, therefore, not attracted. In other words, in *Amar Bir Singh's case* (supra), the Full Bench did not find any fault with the ratio of the decision in *Kumari Promila Jain's case* (supra).

(8) In this background the point for consideration is whether the impugned 35 per cent reservation in the instant case is similar to the reservation which was struck down in *Kumari Promila Jain's case* (supra) or not. It is obvious that if the impugned 35 per cent reservation in the instant case is similar to the reservation made in *Kumari Promila Jain's case* (supra), then the same cannot be sustained. The comparison of the two reservations hardly leaves any doubt that they are similar in substance. In the impugned 35 per cent reservation the candidate must fulfil the following conditions for becoming eligible to be considered for admission:—

- (1) He must have passed Primary or Middle or Matriculation Examination from a village school.
- (2) His father's name is entered in the voter's list or in the revenue records indicating that he held land in the rural area.

(9) In *Kumari Promila Jain's case* (supra), a candidate should have fulfilled the following conditions for becoming eligible to be considered for admission against 25 per cent seats reserved for rural areas :—

- (1) The name of the parent of the candidate should be entered in the village electoral roll.

- (2) The parent should be engaged in cultivation or allied activities in the village.
- (3) The candidate should have received at least Primary Education from a village school.

The impugned 35 per cent reservation in the instant case is similar to the reservation which was struck down in *Kumari Promila Jain's case* (supra). The reservation made in *Amar Bir Singh's case* (supra) is completely different and, therefore, the ratio thereof cannot be availed for sustaining the impugned reservation. The Division Bench decision in *Kumari Promila Jain's case* (supra) is a binding precedent. The impugned reservation of 35 per cent for children of *bona fide* farmers and landless labourers from rural areas in the instant case cannot be sustained as constitutionally valid. In view of this finding, the contention of the learned counsel for the University that this reservation is justified on the ground that the rural area is the source is misplaced and without force.

(10) The learned counsel for the petitioner has argued that apart from 35 per cent reservation for children of *bona fide* farmers and landless labourers from rural areas 20 per cent reservation has been made for Scheduled Castes/Scheduled Tribes and 5 per cent for Backward Classes apart from 20 per cent reservation for other categories. The reservation being more than 50 per cent is unconstitutional. Reliance has been placed on *Ramesh Chander Garg v. State of Punjab, through the Secretary, Health and Medical Education, Civil Secretariat, Chandigarh and others*, (3). It has been held in *Ramesh Chander Garg's case* (supra) that reservation for weaker section of the society under any label whatsoever should not in the aggregate exceed 50 per cent of the total available seats and the reservation of 60 per cent is invalid and violative of the rule of equal protection of laws and amount to a fraud on Article 15(4) of the Constitution. In the instant case, the impugned reservation (P. 1) cannot be held to be constitutionally valid on this ground as well.

(11) The learned counsel for the petitioner has further specifically assailed 2 per cent reservation for University employees. It has been argued that such reservation is unconstitutional and reliance has been placed on *Ajay Kumar v. Chandigarh Administration, Union Territory, Chandigarh and others*, (4) and *Umesh*

(3) A.I.R. 1966, Pb. 476.

(4) A.I.R. 1983, Pb. & Hary. 8.

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Chandra Sinha v. V. N. Singh and others, (5). The contention of the learned counsel for the petitioner must prevail. In *Ajay Kumar's case* (supra), the view expressed in *Parsanna Dinkar Sohale and etc., etc. v. The Director-in-charge, Laxminarayan Institute of Technology, Nagpur and others*, (6); that the reservations in favour of the wards of the University are unconstitutional and invalid was followed. A similar view was taken in *Umesh Chandra Singh's case* (supra).

(12) The petitioner had applied for admission to a degree course of B.V.Sc. and A.H. of Haryana Agricultural University, Hissar, in 1979. The impugned reservations pertain to that year. The learned counsel for the University has stated that the impugned reservations are no more *in vogue* and further in the absence of 35 per cent reservations for the children of *bona fide* farmers and landless labourers from the rural areas, the petitioner would have secured admission in 1979 on merits. Some of the reservations, including 35 per cent reservation for children of farmers and landless labourers from rural areas has been held to be unconstitutional and invalid. It is futile to quash the impugned reservation at this stage because it is no more in vogue. It will also not be appropriate to quash the admission of the candidates against invalid reservations because most of them must have completed the course by now. Keeping in view the facts and circumstances it will be proper that the University authorities allow admission to the petitioner in the forthcoming B.V.Sc. and A.H. course on the basis of his merit in 1979, if he so desires.

(13) In view of discussion above, the writ petition is allowed to the extent that the Haryana Agricultural University authorities are directed to admit the petitioner in the forthcoming B.V.Sc and A.H. course on the basis of his merit in 1979. No order as to costs.

N. K. S.

(5) A.I.R. 1968, Patna 3.

(6) A.I.R. 1982, Bombay 176.