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M. SATYANARAYANA

v.

THE STATE OF KARNATAKA & ANR.

MARCH 12, 1986

[SABYASACHI MUKHARJI AND K.N. SINGH JJ.]

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A. Supreme Court Rules 1966 Rule 5A of order XV - When the certificate issued under Article 133(1)(b) of the Constitution by the High Court is unwarranted on the facts of the case the certificate must be revoked and the appeal be dismissed.

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B. Construction of a statute, explained - Construction of the word "and" in clause (iii) of Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission) Rules 1984 explained - Subb-clause (a) cannot be read independently of sub-clause (b).

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The appellant who is a student of some academic distinction and ability sought admission to the 1st year of MBBS Course under the special category 'being a son of a freedom fighter or political sufferer within the meaning of clause (iii) of Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission), Rules 1984 who had participated in 1942 Movement and was imprisoned from 10th of September, 1942 to 2nd of October, 1942. Since he was not granted admission under that category, he filed a writ petition before the Karnataka High Court contending that sub-clause (a) of clause (iii) of Rule 4 of the 1984 Rules should be read independently as well as sub-clause (b) not only of each other but also what follows by way of proviso though not so mentioned. Both the Writ Petition and a further appeal to the Division Bench were dismissed. However, the High Court granted a certificate under Article 133(1)(b) of the Constitution.

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Dismissing the appeal, the Court,

HELD : 1. Under Rule 5A of Order XV of the Supreme Court Rules, 1966 when a party to whom a certificate of fitness to appeal has been granted by the High Court, the Supreme Court

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may, either dismiss it summarily or direct issue of notice to all necessary parties or may make such orders as the circumstances of the case may require. In this case the question involved is a simple one and the intention and the purpose of Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission) Rules 1984 is manifest and in the language there is no difficulty. The certificate under Article 133(i)(b) of the Constitution to the effect that in the opinion of the Karnataka High Court the question involved needs to be decided by the Supreme Court is unwarranted. [696 D-E]

2.1 A statute cannot be construed merely with reference to grammar. Statute, whenever the language permits, must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. The expression "and" in clause (iii) of Rule 4 has generally cumulative effect requiring the fulfilment of all the conditions that it joins together and it is the antithesis of "or". The expression "and" in the instant case, cannot be read disjunctively. [696 C-D]

A.K. Gopalan v. The State of Madras, [1950] S.C.R. 88 at 126; and **Ishwar Singh Bindra & Ors. v. The State of U.P.**, [1969] 1 S.C.R. 219 applied.

2.2 It is not possible to hold that sub-clause (a) should be read independently of sub-clause (b). If the expression "and" in clause (a) is read independently then there was no need for him to suffer at all and mere participation would be enough to make him a political sufferer. If it were to be held so it would defeat the rationale the Rule 4 defining a political sufferer or freedom fighter in the Rules. [695 G-H; 696 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 600 of 1986.

From the Judgment and Order dated 2.12.1985 of the Karnataka High Court in Writ Appeal No. 2665 of 1985.

P.R. Ramasesh for the Appellant.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, J. This is an appeal by certificate under article 133 (1)(b) of the Constitution from the decision of the Division Bench of the High Court of Karnataka dismissing the appeal against the judgment of the learned single Judge of that High Court. The appellant herein who is a student of some academic distinction and ability sought admission to the 1st year of M.B.B.S. Course to the Directorate of Medical Education, Karnataka. The appellant was an applicant to one of the Government seats in the Medical Colleges managed by the Government or one of the seats to which the Government was entitled to in the private medical colleges.

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The appellant was seeking admission under special category reserved for sons of political sufferers or freedom fighters. The relevant rule is Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission) Rules 1984. Note (iii) of the said Rule has defined a political Sufferer or Freedom Fighter as follows :

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"A person

(a) who prior to 15th August, 1947 participated in the National Movement for the emancipation of India, that is in the struggle for Indian Independence; and

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(b) who even after 15th August, 1947 participated in the struggle in any princely State for securing accession of such State to the then dominion of India, who on account of such participation -

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(i) has suffered imprisonment or detention for a period of not less than three months, the said period being calculated taking into account the period of remission, if any, granted for good conduct, other like reasons; or

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(ii) has been awarded capital punishment; or

(iii) had died while undergoing sentence or detention; or

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(iv) was killed or became permanently incapacitated by Police or Military firing or lathi charge; or

(v) lost his job, property or other means of livelihood;

(vi) where certificates of imprisonment are not available due to records being destroyed, etc., an affidavit by the political sufferer about his imprisonment supported by a certificate from a Member of Parliament or a Member of the State Legislature, who has been in jail with him specifying the period of imprisonment would be accepted."

The case of the appellant was that his father had participated in 1942 Movement and was imprisoned from 10th of September, 1942 to 2nd of October, 1942. His further case is that because of the aforesaid participation, his grand father i.e. father of the appellant's father, was annoyed and turned him out of the house and so the father of the appellant could not pursue his studies and therefore could not qualify himself well for good job. The appellant claimed admission on the ground of being a son of a freedom fighter or political sufferer and that he belongs to a special category and should be treated as such. It is contended that sub-clause (a) of clause (iii) of the note 4 of the Rules should be read independently as well as sub-clause (b) not only of each other but also what follows by way of proviso though not so mentioned. The learned judge was unable to accept that contention. The division Bench accepted this view of the learned single Judge.

Reservations in favour of sons of political sufferers are considered to be belonging to a special category. There is rationale behind it. Those who are political sufferers undergo certain disadvantages and pass on such disadvantages to their children. They will be in a worse position than the children of those who are not political sufferers for the purpose of taking adequate education, attention etc. because their parents might have languished in any prison or might have been deprived of property. Looked at from that point of view, political sufferer should be an identifiable person who could be recognised as such on certain rational basis. It is, therefore, manifest that a person to be a political sufferer must have suffered in any one of the five ways stated in sub-clause (i) to (v) of clause (b).

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If the expression 'and' in clause (a) is read independently then there was no need for him to suffer at all and mere participation would be enough to make him a political sufferer. That would defeat the rationale behind the rule. It would, therefore, frustrate the intention and purpose of the legislature. The expression 'and' in these circumstances cannot be read disjunctively. It is not possible to hold that sub-clause (a) should be read independently of sub-clause (b). A statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. The expression 'and' has generally a cumulative effect, requiring the fulfilment of all the conditions that it joins together and it is the antithesis of 'or'. In this connection reference may be made to **A.K. Gopalan v. The State of Madras**, [1950] S.C.R. 88 at 126. See also the observations of this Court in **Ishwar Singh Bindra & Ors. v. The State of U.P.**, [1969] 1 S.C.R. 219.

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This construction, put by High Court, in our opinion, is logical and reasonable construction. The High Court as mentioned hereinbefore has granted a certificate under article 133 (1)(b) of the Constitution. We find that the question is a simple one and the intention and the purpose of the rule is manifest and in the language, there is no difficulty. The certificate under article 133 (1)(b) of the Constitution, in our opinion, was therefore unwarranted. We, therefore, revoke the certificate and dismiss the appeal summarily under Rule 5-A of Order XV of the Supreme Court Rules, 1966. We, however, make it clear that the appellant, the student in question, is a student of some credit and distinction and has obtained 74% of the marks in his examination. His case should be considered favourably and objectively in the general category for admission.

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In the facts and circumstances of the case, there will be no order as to costs.

S.R.

Appeal dismissed.

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