

S. SATHYAPRIYA ETC. ETC.

A

v.

STATE OF ANDHRA PRADESH ETC. ETC.

AUGUST 18, 1994

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

B

*Constitution of India—Art. 15—Reservation—Professional courses—Admission to—Directions to State of Tamil Nadu—Issued.*

*Education—Higher Education—Admission to Professional courses in the State of Tamil Nadu—Directions issued.*

C

In these contempt petitions, in continuation of its orders dated August 1, 1994, this Court further *Directed* :

1. On account of the application of 69% reservation provided by the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institutions and of appointment or posts in the service under the State) Act, 1993, 62 candidates are said to have been deprived of admission in spite of their merit. These 62 candidates would have been admitted if the rule of 50% had been followed. Of these 62 candidates, 36 belong to 'other communities' and 26 belong to Backward Classes category. [725-E-F]

D

E

2. The 161 seats meant for All India merit quota are not yet filled up. This Court does not know whether all the seats will be filled up by the students allotted by the appropriate authority against that quota or any seats will be left vacant and surrendered to the State Government. Secondary, the 54 seats earmarked to be filled up from among the members of the special categories are deducted from the total number of seats. (these 54 seats are in lieu of 5% reservation in favour of certain special categories in Tamil Nadu.) This 5% reservation for the said special categories cannot be in addition to 69% reservation. Whereas 69% reservation is under Article 15(4) of the Constitution, the 5% reservation for special categories is under Article 15(1). As held in *Indira Sawahney v. Union of India*, [1992] Supp, 2 SCR 454, the seats reserved under Article 15(1) corresponding to Article 16(1) should have to be spread across the social reservation categories. In other words, while the reservations made under Article 15(4)

F

G

H

A can be broadly described as vertical reservations, the reservations provided under Article 15(1) can be described as horizontal reservations. The students admitted against horizontal reservation (5% quota in this case) will necessarily belong either to open competition category or to the BC/MBC/SC/ST category. Once selected they have to be adjusted against their respective quota prescribed under Article 15(4). Thus, in law, these 54 seats must also be deemed to be now available. The students who will be admitted against these 54 seats will have to be spread across the appropriate categories as mentioned above, which would necessarily mean elimination of some students at the bottom of the respective OC/BC/MBC/SC/ST list to the extent necessary. At this stage, however, this Court is not inclined to cancel any of the admissions already granted. Nor is it proposed to interfere with the method adopted by the respondents in filling up these 54 seats at this stage though it means a total reservation of  $69 + 5 = 74\%$  reservation. [725-H, 726-A-D]

D 3. In the case of Ramachandra Medical College, it was directed in another application that for the current academic year (1994-95), the free seats quota shall be 60% and payment quota 40%. In the statement filed by the State of Tamil Nadu, the free seats in this College are taken only as 50. 10 More seats will thus be available against free seats category in this college. Accordingly, the Government of Tamil Nadu is directed to create 52 extra seats in the government medical college for the current academic year 1994-95. The Medical Council of India and other appropriate authorities shall for with grant the necessary permission for this enhanced capacity for this years. As against these 52 seats *plus* 10 seats available in Ramachandra Medical College—a total of 62 seats—62 students out of the consolidated merit list shall be admitted. In other words, candidates from S. No. 301 (in the consolidated merit list) onwards, excluding those already admitted under one or the other reserved category, shall be admitted upto 62 candidates. After admitting them, the respondents shall file a statement giving full particulars of the 62 candidates so included including their marks, their position in the Merit List and their social status.

G [726-F-H, 727-A]

4. If any seats remain unfilled out of the 161 seats allocated towards All India merit quota, those seats shall not be filled up except under the order of this Court. [727-B]

H 5. The 54 seats earmarked for special category may, however, be

filled up as already proposed by the Government though this Court has indicated that the principle adopted by the Government in filling up the said 54 seats is wrong. [727-C] A

6.1 As against 10 seats reserved for Scheduled Tribes category, only seven appear to have been admitted. The remaining three seats shall also not be filled up except under the orders of this Court. [727-E] B

6.2 If any of the 54 seats meant for special categories remain unfilled, they too shall not be filled up except under the orders of this Court. [727-F]

7. Having seen the list of MBBS selected candidates of all categories, it is directed that the respondent shall publish the merit list upto and inclusive of the candidates obtaining 266.00 marks. This shall be done within one week. [727-H] C

8. So far as the admission to Engineering College is concerned, it is stated by the Government of Tamil Nadu that admissions have not yet been finalised and that they are in the process of being finalised. After the said admissions are finalised, the State of Tamil Nadu shall file a statement like the one they have now filed with respect to Medical College admissions before this Court for appropriate orders. The same observation/direction will apply with respect to post-graduate medical admissions as well. D

[728-A-B] E

CIVIL ORIGINAL JURISDICTION : Contempt Petition Nos. 43-54 of 1994.

In

Writ Petition (C) No. 607 of 1992 Etc. Etc. F

(Under Article 32 of the Constitution of India.)

C.S. Vaidyanathan and K.V. Mohan for the Petitioners.

Shanti Bhushan for Applicant/Intervenor (in I.A. No. 2 in W.P. No. 454/94). G

H.N. Salve in IA No. 3 in W.P. No. 454/94 A.G. Ganguli.

A. Ranganathan and A.V. Rangam for the Applicant/intervenor in IA No. 4 in W.P. No. 454/94. H

A R. Krishnamurthy, Adv. General, Ashok H. Desai, Kapil Sibal, Muthukumaraswamy, Addl. Govt. Pleader, P. Shanmugam, Spl. Govt. Pleader, A. Mariarputham for Arputham Aruna & Co. for State of Tamil Nadu.

B Jitendra Sharma, Ms. Gunwant Dara and P. Gaur for the Applicants in IA No. 5 in WP. (C) No. 454/94.

C B. Babu, Vijay Kr. Verma, C.V.S. Rao Ms. Indu Malhotra, P.R. Tripathian, Shailendra Bhardwaj, Ajit Kr. Sinha, R.N. Keshwani, V. Krishnamurthy, M.A. Krishnamurthy, A.T.M. Sampath, S.Srinivasan, S.R. Setia. M.T. George and P. Gaur for the Union of India.

The following Orders of the Court was delivered :

In continuation of the orders dated August 1, 1994 and August 9, 1994, the following further orders are made :

D According to the statement filed by the Learned Advocate General, Appearing for the State of Tamil Nadu - which is made a part of this order, marked as Appendix-A - the position is the following: the total number of seats in government medical colleges is 870. Free seats in two private medical colleges together are 100 making a total of 970. *In addition to*

E *above*, 161 seats are allocated to be filled up on the basis of All India merit. *Another*, 54 seats are earmarked to be filled up from among the members of the special categories on the basis of merit in the respective categories. In short, the total number of seats comes to 1185.

F Out of 970 seats, only 300 seats representing 31% were filled up on merit basis as against the open competition quota. Against the 30% reservation for Backward Classes, 291 students were admitted. Similarly, against the 20% quota of Most Backward Classes, 194 were admitted, against the 18% quota of scheduled castes 175 were admitted and against 1% of scheduled tribes quota seven candidates were admitted as against the 10

G seats reserved for them.

H It is stated that of the 300 candidates admitted as against the open competition quota of 31% the candidates belonging to Backward Classes, Most Backward Classes and Scheduled Castes are 213, 29 and 2 respectively. (None from the Scheduled Tribes were admitted in the O.C. Category.) The students not belonging to any of the reserved categories

admitted against the O.C. quota is 56. This shows and affirms the trend disclosed last year - *a trend both heartening and highly significant*. The candidates belonging to Backward Classes are getting 80% of the seats in merit quota on the basis of their merit. In addition, they are getting 50% of the total seats (excluding All India merit quota) under the rule of reservation. This was also the trend during the previous academic year 1993-94, as would be evident from the orders of this Court relating to that year. The candidates not belonging to any of the social reservation categories who got admission in the merit quota this year is only 56 - against a total of 970 seats, i.e., not even 6%.

If the rule of 50% reservation had been followed - which would mean a proportionate decrease in the quota of Backward Classes and Most Backward Classes, the position, would have been as follows : O.C. (50%) - 485, B.C. \*18.6%) - 180, Most Backward classes (12.4%) - 120, Scheduled Castes (18%) - 175 and Scheduled Tribes (1%)-10. The ultimate result, as disclosed by the statement Appendix-A, is that on account of the application of 69% reservation provided by the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational institution and of appointment or posts in the services under the State) Act, 1993, 62 candidates are said to have been deprived of admission in spite of their merit.\* These 62 candidates would have been admitted if the rule of 50% had been followed. Of these 62 candidates, 36 belong to 'other communities' and 26 belong to Backward Classes category. Our immediate concern is to provide seats for these merit students. The question is how?

As stated above, the 161 seat meant for All India merit quota are not yet filled up, we do not know whether all the seats will be filled up by the students allotted by the appropriate authority against that quota or any seats will be left vacant and surrendered to the State Government. Secondly, the 54 seats earmarked to be filled up from among the members of the special categories are deducted from the total number of seats. (These 54 seats are in lieu of 5% reservation in favour of certain special categories in Tamil Nadu.) In our opinion, this is wrong. This 5% reservation for the said special categories cannot be *in addition* to 69% reservation. Whereas

---

\* Sri Vaidyanathan, learned counsel for the petitioner does not admit the correctness of the said statement. He submits that the said statement was given to him just before the arguments in the matter commenced and that, therefore, he had no time or opportunity to verify the correctness of the facts set out in the Statement. For the time being, however, we are proceeding on the basis of the said Statement.

- A 69% reservation is under Article 15(4) of the Constitution, the 5% reservation for special categories is under Article 15(1). As held in *Indira Sawhney v. Union of India*, [1992] Supp. 2 SCR 454, the seats reserved under Article 15(1) (corresponding to Article 16(1), should have to be spread across the social reservation categories. In other words, while the reservations made under Article 15(4) can be broadly described as vertical reservations, the reservations provided under Article 15(1) can be described as horizontal reservations. The students admitted against horizontal reservation (5% quota in this case) will necessarily belong either to open competition category or to the BC/MBC/SC/ST category. Once selected they have to be adjusted against their respective quota prescribed under Article 15(4). Thus, law, these 54 seats must also be deemed to be now available. The students who will be admitted against these 54 seats will have to be spread across the appropriate categories as mentioned above, which would necessarily mean elimination of some students at the bottom of the respectively OC/BC/MBC/SC/ST list to the extent necessary. At this stage, however, we are not inclined to cancel any of the admissions already granted. We, therefore, do not propose to interfere with the method adopted by the respondents in filing up these 54 seats at this stage *though it means a total reservation of  $69 + 5 = 74\%$  reservation* - an aspect rightly emphasised by Sri Vaidyanathan. Our concern at present is to provide for the 62 merit students who have been deprived of admission because of the 69% reservation provided by the said Tamil Nadu Act without disturbing the admissions already made.

There is one more fact to be mentioned at this stage. In the case of Ramachandra Medical College, we have directed in another application that for the current academic year (1994-95), the free seats quota shall be 60% and payment quota 40%. In the statement filed by the State of Tamil Nadu, the free seats in this college are taken only as 50. 10 more seats will thus be available against free seats category in this college.

- G Accordingly, we direct the Government of Tamil Nadu to create 52 extra seats in the government medical colleges for the current academic year 1994-95. The Medical Council of India and other appropriate authorities shall forthwith grant the necessary permission for this enhanced capacity for this year. As against these 52 seats *plus* 10 seats available in H Ramachandra Medical College - a total of 62 seats - 62 students out of the

consolidated merit list shall be admittedly In other words, candidates from S. No. 301 (in the consolidated merit list) onwards, excluding those already admitted under one or the other reserved category, shall be admitted upto 62 candidates. After admitting them, the respondents shall file a statement giving full particulars of the 62 candidates so including their marks, their position in the Merit List and their social status.

It is further directed that if any seats remain unfilled out of the 161 seats allocated towards All India merit quota, those seats shall not be filled up except under the orders of this Court.

The 54 seats earmarked for special category may, however, be filed up as already proposed by the government though we have indicated that the principle adopted by the government in filling up the said 54 seats is wrong. (We are told that the process of selection against these 54 seats is at an advance stage and is likely to be finalised soon. More particularly because the application of the correct principle indicated above in this behalf may mean cancellation of admission of some of the students already admitted in OC/BC/MBC/SC/ST quotas, we are not disturbing the said process at this stage. This matter can be looked into at a later stage.)

In this connection, we may also mention that as against 10 seats reserved for Scheduled Tribes category, only seven appear to have been admitted. The remaining three seats shall also not be filled up except under the orders of this Court.

It is also directed that if any of the 54 seats meant for special categories remain unfilled, they too shall not be filled up except under the orders of this Court.

A grievance is made by Sri Vaidyanathan, learned counsel for the petitioner that the Government of Tamil Nadu has not published the merit list pursuant to common entrance test held by it, as directed by this Court in *Unnikrishnan, J.P. v. State of Andhra Pradesh*, [1993] 1 SCR 594. Having seen the list of MBBS selected candidates of all categories, we direct that the respondent shall publish the merit list upto the inclusive of the candidates obtaining 266.00 marks. This shall be done within one week from today.

- A** So far as the admission to engineering college is concerned, it is stated by the learned Advocate General that the admission have not yet have finalised and that they are in the process of being finalised. After the said admissions are finalised, the State of Tamil Nadu shall file statement like the one they have now filed with respect to medical college admissions before this court for appropriate orders. The same observation/direction will apply with respect to post-graduate medical admissions as well.
- B**

G.N.

Petition disposed of.