

(1993) 07 MAD CK 0057

Madras High Court

Case No: W.A. No. 751 of 1993

V. Arunachalam

APPELLANT

Vs

The Registrar, University of
Madras, Madras

RESPONDENT

Date of Decision: July 16, 1993

Acts Referred:

- Constitution of India, 1950 - Article 15, 240, 261, 29, 340

Hon'ble Judges: K.A. Swami, C.J; Somasundaram, J

Bench: Division Bench

Advocate: K.P. Krishna Shetty, for the Appellant; P. Jyothimani, for the Respondent

Final Decision: Dismissed

Judgement

K.A. Swami, C.J.

This appeal is preferred against the order dated 21.6.1993 in W.P. No. 11353 of 1993 passed by the learned single Judge. In the writ petition, the petitioner sought for quashing a portion of paragraph 4 of the "Instructions to the candidates" which states "in case of candidates from other States, all of them except SC/ST will be considered as O.C. category only and also to issue appropriate directions in the matter of admission to M.B.A. course in the University of Madras. The learned single judge has rejected the prayer holding that there is nothing wrong with the aforesaid clause contained in paragraph 4 of the Instructions to Candidates, as issued by the University of Madras. Hence, the petitioner has come up in Writ Appeal.

2. The petitioner is one of the applicants for admission to M.B.A. course. He has also appeared for the entrance examination which was held on 13th June, 1993 at Meenakshi College, Madras. He claims that he belongs to the most backward class and the "Instructions to the Candidates, as issued by the University of Madras do not take into consideration the backward class certificates, as issued by the various States and the backward class and most backward class, as recognised by other

States are treated on par with the other candidates who are entitled to compete in the open competition category and consequently, it is his case that the benefits which the backward class and the most backward class are entitled to are denied to them. Hence it is his case that the clause contained in paragraph 4 of the "Instructions to the candidates" regarding the admission procedure treating all the backward and most backward classes of the other States as belonging to merit category and considering them as falling in open competition category is opposed to the provisions contained in the Constitution.

3. Before us, the following contentions are put forth by Dr. K.P. Kishna Shetty, learned counsel appearing for the appellant: that the impugned portion of the Instructions to the candidates issued by the University and the reservation made therein are based on residence qualification, that 15% seats for All India competition with necessary reservations are not made and that, therefore, the instructions are violative of the decisions of the Supreme Court reported in [Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others](#), and Dinesh Kumar v. Motilal Nehru Medical College Allahabad (AIR 1986 S.C.1877), that during the last year, the very same university admitted students from other States, recognising the backward class and most backward class certificates issued by the other states authority and there is no reason or rhyme whatever for discontinuing the same pattern during this year, that the refusal to grant the benefit to the candidates belonging to other States on the basis of the certificates produced by them, as belonging to backward class and most backward class would amount to violating the provisions of Article 261 of the Constitution of India and as such the clause in question is bad in law that as the candidates belonging to scheduled caste and scheduled tribe categories are treated so throughout the country, even though they are recognised as belonging to scheduled caste and scheduled tribe in a particular State, so also the backward class and most backward class stand in the same footing and a candidate or a person declared or certified as belonging to backward class or most backward class in one State must be considered as belonging to backward or most backward class in the other States of the Union of India.

4. The correctness of these contentions are refuted by the learned counsel appearing for the University. It is the contention of the learned counsel for the University that each State has got its own criteria for determining whether a person belongs to backward class or most backward class and as such a person declared as belonging to backward or most backward class in one State cannot at all be considered as belonging to backward or most backward class in another State, that a certificate issued by a particular State authority as to backward class and most backward class is in respect of that State only and such a certificate cannot have any force in the other states inasmuch as the determination of the backward class and most backward class is confined to the particular state alone. Hence, there is no question of violating the provisions of Article 261 of the Constitution of India when the very certificate itself cannot be held to be operative in the other State. It is also

further submitted that 31% of the reservation for open competition category would result in reserving more than 15% to the candidates belonging to other States because it is open to them to secure all the 31% seats, as it depends upon the ability and competency of the candidates and their performance in the entrance examination and that, if 15% of 40 seats is reserved for All India candidates, it would be less than 60, whereas now all the 72 seats are available to the candidates belonging to other States. Of course, candidates belonging to Tamil Nadu who do not fall in any one of the categories of scheduled caste, scheduled tribe, backward and most backward class will fall in open competition category, and that by itself will not in any affect the chance of the candidates belonging to other States to secure all the 12 seats as it depends upon individual performance in the entrance examination.

5. We shall now take up for consideration the respective contentions. It is not possible to agree with the contention of the learned counsel for the appellant that the clause in paragraph 4 of the Instructions to candidates regarding admission procedures directing that in case of candidates from other States, all of them except SC/ST will be considered as open competition categories only would amount to giving preference to the candidates on residence basis. In this regard, it is relevant to notice that the reservation patterns that is adopted for admission to M.B.A. course is as follows:-

First or Second Class in Bachelor's Degree with not less than 50% marks in main or ancillary subjects (under 10 + 2 + 3 or 11 + 1 + 3 pattern of study). Candidates who are appearing for April, 1993 examinations may also apply.

Paragraph 3 further states: "Candidates possessing other University Degree seeking admission for the M.B.A. (full-time and part-time) should obtain immediately the eligibility certificates by applying in the prescribed form available from the Registrar's Office". Paragraph 4 further states: "An entrance test will be held on 13.6.1993 at Meenakshi College for Women, Madras 600 024. Selection will be made based on the performance of the candidates in the entrance test subject to community-wise reservation. In case of candidates from other States, all of them except SC/ST will be considered as O.C. category only. O.C. category means open competition category. Thus, it is clear from the criteria fixed for eligibility and also the test fixed for admission to the course that is applicable to one and all without reference to residence.

6. As far as community-wise reservation of the candidates belonging to Tamil Nadu State are concerned, the same is permissible and that it is permissible is not also disputed before us. It is held by the Supreme Court in [Dr. Pradeep Jain and Others Vs. Union of India \(UOI\) and Others](#), thus:

Thus, a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on

the broader basis to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or Pre-medical examination of the same University or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should not be distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education. However, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made.

Therefore, the reservation made for backward and most backward classes, i.e., 30% and 20% respectively cannot be held to be violative of any of the provisions of the Constitution. Even clause (4) of Article 15 of the Constitution itself specifically provides that "Nothing in this 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." It is under this provision only, the State makes reservations for backward class, most backward class and scheduled caste and scheduled tribe. Hence, we are of the view that this contention cannot be accepted.

7. The contention of the learned counsel is that 15% of the seats ought to have been set apart for All India competition and failure to set apart 15% of the seats for All India competition makes the Instruction in question violative of the judgments of the Supreme Court in [Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others](#), and *Dinesh Kumar v. Motilal Nehru Medical College, Allahabad* (AIR 1986 S.C.1877). No doubt 15% of the total seats are to be set apart for All India competition as per the aforesaid two decisions of the Supreme Court. But in the instant case, as contended by the learned counsel for the University, reservation of 31% of the seats for open competition category of which not only the candidates belonging to open competition category of Tamil Nadu State and candidates of other States, irrespective of the category to which they belong, can compete. The 31% of the 40 seats would make 12 seats available for open competition category, whereas, 15% of the 40 seats would come to only six seats. We may point out here that reservation of 12 seats for open competition category which comes to 31% of the total number of seats, is more advantageous to the candidates belonging to All India category, as it is open to them to secure all the 12 seats because selection of candidates for admission belonging to open competition category is made on the basis of their performance in the entrance test examination. Hence, we are of the view that though the Instructions to the candidates", as issued by the Madras University for admission to M.B.A. course do not specifically reserve 15% of the total number of seats for All India competition, but nevertheless reservation of 31% of the total seats for open competition category results in making available more number of seats for All India competition than by

reservation of 15% out of 40 seats. Hence, we are of the view that this contention should not be accepted.

8. There is no material produced before us that during the last year admission, the Madras University recognised the backward class belonging to other States and granted admission to them on that basis. We do not find any reference to this in the pleadings nor any material is placed before us. Therefore, we consider it hazardous to consider this objection in the absence of proper pleadings and the evidence, more so, when it is the case of the University that no such procedure was adopted during last year.

9. The contention of the learned counsel for the appellant is that backward class certificate issued by one State must hold good in the other State having regard to the provisions contained in Article 261 of the Constitution and refusing to give effect to it would amount to violating or acting contrary to the provisions contained in Article 261 of the Constitution. Before referring to Article 261 of the Constitution, we may first point out that there is no determination made by the Presidential Notification regarding backward class on All India pattern. The Commission appointed under Article 240 of the Constitution, known as Mandal Commission, has submitted a report and on the basis of that report, no final determination has been made of the communities or classes as belonging to backward class. Therefore, it is not possible at this stage to hold that a person belonging to backward or most backward class in a particular State can be considered to be an belonging to backward or most backward class in another State because the criteria for determination as to whether a person belongs to backward or most backward, differs from State to State. Therefore, as on today, it is not possible to accede to the submission made by the learned counsel appearing for the appellants that backward class of one State should be recognised and the same benefit should be extended to him, in another State. In this background, the question that will arise for consideration is as to whether the backward class certificate issued by one State can validly be enforced in another State? We are of the view that it cannot be done because the very certificate is issued with reference to that State. Therefore, that certificate cannot be considered to hold good in the other State.

10. In this context, a contention is urged by the learned counsel for the appellant that as the certificates issued to scheduled castes and scheduled tribes are considered to be good in another state, the same status should be extended to the certificates issued to backward class communities also. Learned counsel placed reliance on a decision of the High Court of Gujarat in [Manju Singh Vs. The Dean, B.J. Medical College and Others](#), A learned single judge of the Gujarat High Court while interpreting the express words "in relation to that State" contained in Article 341(1), has held that it would mean the scheduled caste or scheduled tribe belonging not only in that State or part of the State in relation to which his caste is specified but for the purpose of the Constitution, it would be for the whole of India. The learned

judge has further held that a member belonging to scheduled caste would be scheduled caste member wherever he is in India and not only when he is in the State or area of the State in relation to which his caste is specified to be scheduled caste. A caste is specified to be scheduled caste on account of its social and educational backwardness and such backwardness would not cease or disappear outside the State. Therefore, once a person belongs to scheduled caste, he would be scheduled caste person, not only in the State or area of the State in relation to which his caste is specified as scheduled caste, but all over India. Therefore, he is entitled to the benefits available to scheduled caste persons not only in the State in which he is recognised as scheduled caste but also in other parts of India.

11. It may be pointed out that as far as scheduled castes and scheduled tribes are concerned, they stand on a different footing. There is a determination made by the President of India recognising certain castes and tribes as belonging to scheduled caste and scheduled tribe in each State. This has been done in exercise of the power by the President under Articles 341 and 342 of the Constitution. Such exercise has not so far been made in respect of backward class and most backward class communities which is also contemplated under the Constitution as per the provisions contained in Article 340 of the Constitution. Therefore, as at present, there is no list of backward class and most backward class which can be held to have operation throughout India or which can be held to have been issued not only in relation to the State or a part of the State, but in respect of the entire country. Hence, this contention cannot be accepted as at today. As such, the aforesaid decision of the Gujarat High Court cannot be applied to the case on hand. In this case, the question that arises for consideration is, whether the backward or most backward class of one State can be considered to be a backward class and most backward class in another State. In this background if we read Article 261 of the Constitution, there is no violation of that Article by the State of Tamil Nadu by not giving effect to the certificates issued by the other States in respect of the backward and most backward class. The very operation of the certificate is confined to those States only. Article 261 of the Constitution states that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. The Article does not say that even if particular or acts or records do not have their effect outside the particular State which has maintained those records or issued the certificates, they should be given effect to in another State. The Article, properly and reasonably read, means that in the case of public acts and records and judicial proceedings which have an operation throughout the country, they should be given full effect they anywhere in the country, but not those acts and records which by themselves do not operate outside the State can be given effect to outside the State. As far as judicial proceedings are concerned, they stand on a different footing and there is a separate provision in the Constitution and laws made under the Constitution for enforcement throughout the country about which we need not consider in this case. No other

contention is urged before us. Hence, we are of the view that the relief sought for by the appellant, in the facts and circumstances of the case, cannot at all be granted. Accordingly, the Writ Appeal fails and it is dismissed. In the facts and circumstances of the case, there will be no order as to costs.