(2013) 07 SC CK 0172

Supreme Court of India

Case No: Civil Appeal No''s. 4500 and 5119 of 2002

Faculty Association of AIIMS	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision: July 18, 2013

Acts Referred:

- Constitution of India, 1950 - Article 141, 15, 15(4), 16, 16(4)
- Indian Medical Council Act, 1933 - Section 13, 14, 5
- Post-Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 - Regulation

Citation: (2013) 5 ALLMR 952 : (2013) 6 AWC 5640 : (2013) 10 JT 526 : (2013) 5 MLJ 833 : (2013) 3 RLW 2484 : (2013) 9 SCALE 198 : (2013) 11 SCC 246 : (2013) 3 SCT 812 : (2013) 3 SLJ 437

Hon'ble Judges: Altamas Kabir, C.J.; Vikramajit Sen, J; Surinder Singh Nijjar, J; Ranjan Gogoi, J; M. Yusuf Eqbal, J

Bench: Full Bench

Advocate: Mohan Prasaran, SG, Sidharth Luthra, ASG, P.P. Rao, Rajiv Dhawan, Mukul Gupta and A. Mariaputham, R.K. Gupta, S.K. Gupta, M.K. Singh, Shekhar Kumar, A. Subba Rao, D.L. Chidanand, N. Meyyappan, Supriya Juneja, Anjali Chauhan, Rishab Kaushik, Sushma Suri, M.P. Raju, Mary Scaria, James P. Thomas, Satya Prakash Sharma, Mehmood Pracha, Gaurav Yadav, Sumit Babbar and Naresh Kumar, for the Appellant;

Final Decision: dismissed

Judgement

Altamas Kabir, C.J.I.

1. When SLP (Civil) No. 2106 of 2002, filed by the Faculty Association of AIIMS, was taken up for consideration, notice thereupon was issued by a Bench of Two-Judges and it was stipulated that any appointment to be made, after the order was passed in accordance with the reservation policy, would only be tentative in nature until further orders. When the Appeal was taken up for hearing on 20th February, 2003,

along with Civil Appeal No. 5119 of 2002, considering the important nature of the issues involved for determination in the said cases, as also the recurring nature of the problem, it was thought appropriate that the matters be heard by a larger Bench. Thereafter, on 12th February, 2004, a Bench of Three-Judges headed by the Chief Justice was of the view that the matters involved substantial questions of law as to the interpretation of the Constitution and were required to be heard by a Bench of Five-Judges. It is pursuant to such direction that the matter appeared before the Bench of Five-Judges on several occasions and ultimately they were listed before a Bench of Five-Judges on 2nd July, 2013.

2. Although the matter is now before a Bench of five Judges, the terms of reference are not very clear. From what we have been able to gather from the pleadings and the judgment of the Division Bench of the High Court, the question to be considered is whether reservation was inapplicable to specialty and super-specialty faculty posts in the All India Institute of Medical Sciences, hereinafter referred to as "AIIMS". Faced with the decisions of this Court in the case of Indra Sawhney v. Union of India and Ors. (1992) Supp. (3) SCC 215; 283399 and 278964 , wherein reservation in admission to specialty and super-specialty courses was disallowed, the Division Bench of the High Court confined itself to the limited issue, namely, whether reservation policy was inapplicable for making appointments to the entry level faculty post of Assistant Professor and to super specialty posts and also whether the resolutions adopted by AIIMS on 11.1.1983 and 27.5.1994 were liable to be struck down.

3. Appearing for the Petitioner, Mr. P.P. Rao, learned Senior Advocate, firstly referred to the statement of objects and reasons of the All India Institute of Medical Sciences Act, 1956, which provides as follows:

For improving professional competence among medical practitioners, it is necessary to place a high standard of medical education, both post-graduate and under-graduate, before all medical colleges and other allied institutions in the country. Similarly, for the promotion of medical research it is necessary that the country should attain self-sufficiency in post-graduate medical education. These objectives are hardly capable of realisation unless facilities of a very high order for both undergraduate and post-graduate medical education and research are provided by a central authority in one place. The Bill seeks to achieve these ends by the establishment in New Delhi of an institution under the name of the All-India Institute of Medical Sciences. The Institute will develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions, will provide facilities of a high order for training of personnel in all important branches of health activities and also for medical research in its various aspects. The Institute will have the power to grant medical degrees, diplomas and other academic distinctions which would be recognised medical degrees for the

purpose of the Indian Medical Council Act, 1933.

4. Mr. Rao also referred to Section 5 of the Act which declared the institute to be an institution of national importance. As pointed out by Mr. Rao, Section 13 of the Act is in line with the objects for which the institute was created and Section 14 deals with the functions of the institute relating to the academic aspects of the institute''s functions as a teaching institute.

5. Mr. Rao submitted that the question had earlier been gone into and considered in Indra Sawhney''s case (supra), wherein while considering the question of reservation the Bench also took into consideration the provisions of Article 335 of the Constitution regarding the claims of Scheduled Castes and Scheduled Tribes to services and posts. Referring to the concurring judgment of Jeevan Reddy, J., Learned Counsel referred to Paragraphs 838 and 839 in particular and the observations made therein. Since Paragraph 838 places in focus the view of the Nine-Judge Bench, the same is extracted hereinbelow:

838. While on Article 335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

6. In fact, both in Paragraphs 838 and 839, while specifying areas, where it may not be advisable to put reservation, the learned Judge has included posts in research and development organisations/departments/institutions, in specialties and super-specialties in medicine. The same observation is repeated in Paragraph 839, wherein, categorically it was held that the Bench was of the opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable and once again included as the fourth item - posts in super-specialties in medicine, engineering and other scientific and technical subjects. Mr. Rao submitted that as far as medicine is concerned "super-specialty" means "post doctoral courses".

7. Mr. Rao submitted that in the instant case, reservation was being provided for up to the doctoral stage, but at the stage of recruitment for a post doctoral courses and research at the initial stage of candidates were required to sit for a written examination and those who are successful, were, thereafter, recruited in the different disciplines of teaching. Mr. Rao submitted that the problem begins at that

stage when posts are thereafter, reserved in respect of different courses. Mr. Rao submitted that once a candidate qualified for recruitment in the different posts of faculty beginning from the post of Assistant Professor onward, there was no further logic in thereafter reserving posts for candidates from the Scheduled Castes and Scheduled Tribes and OBC communities. Mr. Rao submitted that at that level of super-specialty, the question of reservation ought not to arise as was observed by the Nine-Judge Bench in Indra Sawhney''s case (supra).

8. Mr. Rao submitted that while Article 16(4) empowers the State in making provisions for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, was not adequately represented in the services under the State, the same would have to be read and understood in the manner indicated in Indra Sawhney''s case (supra). The learned Senior counsel submitted that although definite directions have not been given in Paragraphs 838 and 839 of the judgment in Indra Sawhney''s case (supra), the observations made therein were guidelines for the Government and institutions, such as AIIMS, to follow, in order to provide the best candidates available with the opportunity of going in for super-specialties which entail higher degree of skill and where no compromise in quality and expertise could be entertained.

9. In support of his aforesaid submissions, Mr. Rao also referred to the decision of a Three-Judge Bench in 283399 wherein in Paragraphs 21, 22 and 23, Krishna Iyer, J., writing the judgment, spoke about reservation and what he referred as wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalisation - when the Constitution mandates for every one equality before and equal protection of the law - may be fatal folly, self-defeating educational technology and antinational if made a routine rule of State Policy. His Lordship further observed that a fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit - such is the dynamics of social justice with animates the three egalitarian articles of the Constitution. The learned Judge goes on to observe in Paragraph 23 that flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of specialty where the best skill or talent, must be handpicked by selecting according to capability. The learned Judge went on to restrict the Indian Medical Council''s recommendations which indicated that students of post-graduate courses therein should be selected strictly on merit, judged on the basis of academic record in the undergraduate course.

10. The next decision referred to by Mr. Rao is a short judgment in the case of 294395 , which was a decision by two Judges, wherein, reliance was placed on the decision of this Court in the case of 278964 wherein, a Three-Judge Bench of this Court, while considering the question of reservation in the light of the aspirations of

the citizens of India, as contained in the Preamble to the Constitution, observed that while reservation was acceptable with regard to the undergraduate course, different considerations will have to prevail when it came to the question of reservation based on residents'' requirement within the State or on institutional preference for admission to the post-graduate courses, such as MD, MS and the like. Following the decision in Dr. Jagdish Saran''s case (supra), Their Lordship observed that "there we cannot allow excellence to be compromised by any other consideration because that would be detrimental to the interest of the nation. Their Lordships also observed that if equality of opportunity for every other person in the country is the constitutional guarantee, merit must be the test when choosing the best.

11. Mr. Rao lastly referred to the Constitution Bench decision of this Court in 264949 which was a writ petition heard along with several other writ petitions on various aspects of reservation. Mr. Rao pointed out that the Constitution Bench also referred to the decision in Dr. Pradeep Jain''s case (supra) and also Dr. Jagdish Saran''s case (supra), referred to hereinbefore, in expressing its concurrence with the views expressed therein. In Paragraph 25 of the judgment, Sujata V. Manohar, J., speaking for the Constitution Bench, observed that the specialty and super-specialty courses in medicine also entailed on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335, therefore, colour the selection of candidates for these course and the rules framed for this purpose. Consequently, in Paragraph 26, it was further observed that in the premises the special provisions for SC/ST candidates - whether reservations or lower qualifying marks - at the specialty level have to be minimal. There cannot, however, be any such special provisions at the level of super-specialties. In keeping with its findings the Constitution Bench ultimately held that since no relaxation is permissible at the highest levels in the medical institutions, the Petitioners therein were right when they contended that the reservations made for the Scheduled Castes and Scheduled Tribes candidates for admission to DM and MCH courses, which are super-specialty courses, in not consistent with the constitutional mandate under Articles 15(4) and 16(4), and that Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, would not apply at the levels of admissions to DM and MCH courses.

12. Mr. Rao submitted that the Health Survey and Development Committee, popularly known as the Bhore Committee, in its report published in 1946 recommended the establishment of a national medical centre at Delhi, which would concentrate on training, well-qualified teachers and research workers in order that a steady stream of those could be maintained to meet the needs of the rapidly expanding health activities throughout the country. It seems that pursuant to the said report and after attainment of Independence, the Union Ministry of Health proceeded to implement the aforesaid idea resulting in the enactment of the All

India Institute of Medical Sciences Act, 1956, with the All India Institute of Medical Sciences as an autonomous institution of national importance and defined its objectives and functions. Various other decisions, including the decisions in 266048 and 294563 were referred to by Mr. Rao to urge that the observations made in Indra Sawhney''s case as well as in Preeti Srivastava''s case were binding, though in the nature of observations made in the judgments. Mr. Rao referred to the decision of this Court in 281872 wherein a Bench of Three-Judges examined the doctrine of "obiter dicta" and arrived at a finding that even obiter at times has the force of law declared by the Supreme Court under Article 141 of the Constitution. Mr. Rao ended on the note that the introduction of the concept of reservation in specialty and super-specialty subjects or for the appointment of faculty in AIIMS, would defeat the very purpose for which the institute was established. Mr. Rao also submitted that if excellence was to be achieved at the level of super-specialty disciplines, no compromise could be made in either imparting such education or recruiting persons who would impart such education at such level.

13. Dr. Rajiv Dhawan, learned Senior Advocate, who appeared in Civil Appeal No. 5119 of 2002, submitted that the AIIMS Act did not empower the Governing Body to impose reservation at any stage, much less at the stage of super-specialty. Referring to the affidavit filed by the Director of AIIMS, Dr. Dhawan submitted that the decision of the High Court was contrary to the decision of this Court in Indra Sawhney''s case and also in 301756 where it was held that there should be no reservation at the super-specialty stage, and, in any event, the same would have to be based on quantifiable data. Mr. Rao submitted that proportional representation and not adequacy, as understood in Indra Sawhney''s case or even in M. Nagaraj''s case, has been resorted to in the instant case in the teeth of the said two cases. While making reference to the concept of creamy layer, Dr. Dhawan urged that "equality" does not mean that reservation had to be applied in each and every case to maintain such equality, for example, the creamy layer concept as was considered by this Court in 265515

14. Appearing for the Institute, Mr. Mehmood Pracha, learned Advocate contended that people from Backward classes and the Scheduled Castes and the Scheduled Tribes were often discriminated against and even in spite of having excellent qualities, they were not provided with sufficient opportunities to come up to the standards, as contemplated by the various medical colleges and, in particular, the All India Institute of Medical Sciences, which is an institution of national importance. Mr. Pracha urged that although reservation at all different levels of the Institute had been introduced, for quite some time, there is no available data to indicate that there has been any deterioration in the quality of medical services being provided in AIIMS. On the other hand, AIIMS was one of the most sought after medical institute, not only for promotion and research work, but also for the purpose of medical education. Taking a leaf out of Hindu mythology, Mr. Pracha drew an analogy from the story of Eklavya and Arjun in the Mahabharta. While Arjun belonged to the

princely class, Eklavya was a tribal boy, who without actual training or guidance from any teacher, by his own efforts, excelled in the art of archery. The famous Dronacharya was Arjun''s teacher in archery and Eklavya had acquired the skills that he had by merely watching Dronacharya guiding Arjun. However, when it came to an archery competition, Dronacharya, who was more or less certain that, if allowed an opportunity, Eklavya would possibly beat Arjun, requested Eklavya that if he really loved and respected him, he should give his right thumb as gurudakshina to his master. Eklavya dutifully obeyed the person he had chosen as his master and was thus prevented from competing in the competition which Arjun won. Mr. Pracha submitted that simply because Eklavya was a tribal boy he was denied the opportunity of competing with Arjun, despite his brilliance and excellence. Mr. Pracha submitted that there are many more Eklavya''s in today''s society, who, if not suppressed and given a chance, would possibly even outshine those belonging to the higher echelons of Society.

15. Mr. Pracha strongly supported the concept of reservation at all stages, including at the super-specialty stage. He urged that at the entry level for recruitment to the faculty posts, which were all treated as super-specialty disciplines after the Post Graduate course, a member of the Backward Classes had to sit for an examination with others without any separate weightage given for reservation. It is only after having passed the written examination along with other candidates, was a member of the Backward Classes appointed in a teaching post on the basis of reservation. Mr. Pracha submitted that this was done only with the intention of giving such a candidate an opportunity of reaching the level of his other fellow faculty members. Mr. Pracha submitted that a little support was intended to help people from the Backward communities to make their presence felt in academia, so as to encourage others similarly situated. Mr. Pracha also relied on the decision of this Court in Indra Sawhney''s case, in support of his contention that members of the Scheduled Castes and Scheduled Tribes and Other Backward Classes were not adequately represented and for the said purpose a certain amount of reservation was necessary so that they could compete with others and excel in academics. Strongly supporting the policy adopted by the Institute, Mr. Pracha submitted that the Civil Appeal filed by the Faculty of Association of AIIMS was liable to be dismissed.

16. Appearing for the Union of India, the learned Solicitor General repeated the submissions made by Mr. Pracha and added that the State had a constitutional duty to empower certain sections of society who needed help to uplift themselves from their particular situations. The learned Solicitor General submitted that Article 46 of the Constitution, though a Directive Principle, was in the nature of a guideline for good governance to the Government of the day. The said Article was intended to help the depressed classes, who otherwise had little opportunity of raising their standards. Faced with the question as to when initially the Central Government had opposed the doctrine of reservation on the ground of excellence in education, why was it necessary in 1972 to take a different stand and come out in support of

reservation, even in super-specialty courses, the learned Solicitor General urged that the policy was based not on the question of adequacy, but as a measure of empowerment for the Backward Classes. While referring to the decision in M. Nagaraj''s case, which has been referred to by the other Learned Counsel, the learned Solicitor General contended that with the introduction of Article 16(4A) in the Constitution, the decision arrived at in M. Nagaraj''s case, would have to be read differently. He, however, also urged that there was no constitutional prohibition to impose reservation, if it was felt necessary to benefit the Backward Classes, who had little or no support to help them improve their lot. Referring to the decisions of this Court in Dr. Jagdish Saran''s case and Dr. Pradeep Jain''s case, which have been referred to hereinabove, the learned Solicitor General urged that the direction given in Dr. Pradeep Jain''s case that reservation should not exceed 70%, did not take into consideration Article 16(4A) of the Constitution, while giving such directions.

17. Although, the matter has been argued at some length, the main issue raised regarding reservation at the super-specialty level has already been considered in Indra Sawhney''s case (supra) by a Nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the Nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in Dr. Jagdish Saran''s case (supra) and Dr. Pradeep Jain''s case (supra), the issue also fell for considerate in Preeti Srivastava''s case (supra) which was also decided by a Bench of Five Judges. While in Dr. Jagdish Saran''s case (supra) and in Dr. Pradeep Jain''s case (supra) it was categorically held that there could be no compromise with merit at the super specialty stage, the same sentiments were also expressed in Preeti Srivastava''s case (supra) as well. In Preeti Srivastava''s case (supra), the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, whereby 20% of seats in every course of study in the Institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons, in accordance with the general rules of the Central Government promulgated from time to time. The Constitution Bench came to the conclusion that Regulation 27 could not have any application at the highest level of super specialty as this would defeat the very object of imparting the best possible training to selected meritorious candidates, who could contribute to the advancement of knowledge in the field of medical research and its applications. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the super specialty level.

18. In paragraph 836 of the judgment in Indra Sawhney''s case (supra), it was observed that while the relevance and significance of merit at the stage of initial recruitment cannot be ignored, it cannot also be ignored that the same idea of reservation implies selection of a less meritorious person. It was also observed that at the same time such a price would have to be paid if the constitutional promise of social justice was to be redeemed. However, after making such suggestions, a note

of caution was introduced in the very next paragraph in the light of Article 15 of the Constitution. A distinction was, however, made with regard to the provisions of Article 16 and it was held that Article 335 would be relevant and it would not be permissible not to prescribe any minimum standard at all. Of course, the said observation was made in the context of admission to medical colleges and reference was also made to the decision in 284363 , where admission to medical courses was regulated by an entrance test. It was held that in the matter of appointment of medical officers, the Government or the Public Service Commission would not be entitled to say that there would not be minimum qualifying marks for Scheduled Castes/Scheduled Tribes candidates while prescribing a minimum for others. In the very next paragraph, the Nine-Judge Bench while discussing the provisions of Article 335 also observed that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in super specialty in medicine, engineering and other scientific and technical posts.

19. We cannot take a different view, even though it has been suggested that such an observation was not binding, being obiter in nature. We cannot ascribe to such a view since the very concept of reservation implies mediocrity and we will have to take note of the caution indicated in Indra Sawhney''s case. While reiterating the views expressed by the Nine-Judge Bench in Indra Sawhney''s case, we dispose of the two Civil Appeals in the light of the said views, which were also expressed in Dr. Jagdish Saran''s case, Dr. Pradeep Jain''s case, Dr. Preeti Srivastava''s case. We impress upon the Central and State Governments to take appropriate steps in accordance with the views expressed in Indra Sawhney''s case and in this case, as also the other decisions referred to above, keeping in mind the provisions of Article 335 of the Constitution.

20. There will be no order as to costs.