

PETITIONER:
A. PEERIAKARUPPAN, ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT:
23/09/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.
GROVER, A.N.

CITATION:
1971 AIR 2303 1971 SCR (2) 430
1971 SCC (1) 38

ACT:

Constitution of India, 1950, Arts. 14 and 15-Selection of candidates to medical colleges--Colleges constituted into different units-Ratio of seats to candidates different in each unit-Candidates interviewed by ,different selection committees-Propriety.
Interview system-Utility of
Classification of backward classes on basis of caste-Validity of reservation of seats to backward classes-Proper proportion.

HEADNOTE:

In 1970-71, selection of candidates to various medical colleges in the State of Tamil Nadu was done on the 'unit wise' basis. Under that scheme the medical colleges in the city of Madras were constituted as ,one unit and each of the other medical colleges in the mofussil was constituted as a unit. In respect of each one of the units, a separate selection committee was constituted. The intending applicants were asked to apply to any one of the committees but were advised to apply to the committee nearest to their place of residence and, if they applied to more than one committee, their applications were to be forwarded by the Government to only one of the committees. A few seats were reserved to certain special categories of students and out of the remaining seats, 41 per cent were reserved for students coming from socially and educationally backward classes, scheduled castes and scheduled tribes, and the rest were placed in the general pool.

All the applicants in the general pool who secured 110 or more marks ,out of 200, calculated according to a certain formula, were called for interview and selection committees were authorised to give in addition, a maximum of 75 marks at the interview. The award of these marks was on the basis of the following five criteria, namely, (a) Sports or NCC activities ' (b) extra-curricular special services, (c) general physical condition and endurance; (d) general ability, and (e) aptitude. The gradation list prepared by the selection committee was to be submitted to the Government.

The petitioners, who unsuccessfully sought admission to the medical colleges in the State, challenged the validity of the selections made. They contended that : (1) The unitwise selection contravened Arts. 14 and 15 of the Constitution because, (a) the applicants of 'some of the units were in a better position than those who applied to other units, since the ratio between the applicants and the number of seats in each unit varied, and several applicants who secured lesser marks than the petitioners were selected merely because their applications came to be considered in other units, and (b) the scheme was merely intended as a device to get over the decision of this Court in *Rajendran v. State of Madras*, [1968] 2 S.C.R. 786; (2) the interview was a farce because it was held for only three minutes and no guidelines were provided for the award of marks at the interview and earmarking for interview marks 75 out of the total of 275 was excessive; (3) the interview marks were manipulated both by the selection committee and the Government in order to pull up undeserving applicants; (4) the list of backward classes was solely made on the basis

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of caste and therefore did not conform to Art. 15(4) of the Constitution; (5) the reservation made for backward classes was disproportionately high; and (6) the division of backward classes into backward classes and more backward classes was impermissible under law.

HELD : (1) (a) The object intended to be achieved in the present case, is to select the best candidates for being admitted to medical colleges. This object cannot be satisfactorily achieved by the method adopted. It is admitted that the minimum marks required for being selected in some units is less than in other units. Hence prima facie the scheme in question results in discrimination. The plea of delay in selection on State-wise basis is neither real nor substantial. [436 F-G; 437 C-D]

(b) The unitwise distribution of seats appears to be a different manifestation of the district-wise distribution which was struck down by this Court in *Rajendran's case*, [437 D-E]

(2) In the course of three minutes interview, it is hardly possible to the capability of a candidate since, the first impression need not necessarily be the best impression. But it cannot be held that the system of interview is so defective as to make it useless, or that the Government has no power to provide such high marks for interview or that there was an arbitrary exercise of the power. [437 G-H; 438

H; 439 A]

It is true that the rule did not prescribe separate marks for the separate heads, but it must be presumed that the Government considered that each of the heads mentioned as being of equal importance and that the intention was that each of those heads 'should carry 115 of the interview marks. [440 B-G]

Since the marks list, as prepared in the present case, shows that the marks were given in a lump it was clearly illegal. [440 F-G]

Chitralekha v. State of Mysore [1964] 6 S.C.R. 368, followed.

Viswasnath v. Chief Secretary, Mysore, A.I.R., 1964 Mys. 132, approved.

The tests relating to the various matters for allotting interview marks. are objective tests. The aptitude referred to in the rule is aptitude for the medical profession; but in this case certain irrelevant matters were taken into consideration and relevant matters were omitted.

[439 H; 440 A, 441 A-B, C-D]

(3) There is no material for concluding that there was any manipulation of marks. Numerous students whose performance in the university examination was none too satisfactory nor their past records creditable have secured very high marks at the interview, and a large number of students whose performance in the University examination was very good, secured very low marks at the interview. This circumstance is undoubtedly disturbing but the courts cannot uphold the plea of mala fides on the basis of mere probabilities [439 C-F]

(4) The list of backward classes appears to include castes and not classes. But caste is a relevant circumstance in ascertaining backwardness of a class and a classification of backward classes on the basis of caste is within the purview of Art. 15(4) of the Constitution, if those castes are shown to be socially and educationally backward. But the Government could not proceed on the basis once a class is considered as a backward class it should continue to be a backward class for all time, because, once a class reaches a certain stage of progress competi-

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tion is necessary for its future progress. The Government should, therefore, always keep under review the question of 'reservation of seats and only those classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest, and the fact that, in the present case, the candidate of backward classes had secured 50 per cent of the seats in the general pool does show that the time has come for a de novo comprehensive examination of the question. The Government's decision in this regard is open to judicial review. [442 B-C, 444 E-H]

Balaji v. State of Mysore, [1963] Supp. 1 S.C.R. 438, Chitralekha v. State of Mysore [1964] 6 S.C.R. 368, State of Andhra Pradesh v. Sagar, [1963] 3 S.C.R. 595, Minor P. Rajendran v. State of Madras, [1968] 2 S.C.R. 786, Narayan Vasudev v. Emperor, A.I.R. 1940 Bom. 379 and Backward Classes Commission's Report, referred to.

(5) There is no basis for, the contention that reservation made for backward classes is excessive. While it is against the immediate interest of the Nation to exclude from the portals of our medical colleges qualified and competent students, immediate advantages of the Nation have to be harmonised with the Nation's long range interest. The best way of serving the Nation's interest would to help the backward classes to march forward and take their place in line with the advanced sections of the people. In Balaji's case it was held that the total, reservation for backward classes, scheduled castes and scheduled tribes should not ordinarily exceed 50 per cent of the available seats. Since in the present case it was only 41 per cent, it could not be held that the reservation was excessive. [441 E-H; 442 A-B]

(6) For the purpose of selection there is no classification of backward classes as backward and more backward. The list sent to the selection committee was that prepared for the purpose of fee concession. [441 F]

In the present case, however, the impugned selections already made could not be set aside because the selected candidates had already joined the course and are undergoing training and they had not been made parties to the petitions. Since there are 24 seats yet to be filled up, the State shall immediately constitute a separate expert committee consisting of eminent medical practitioners

(excluding all those who were members of previous committees) for selection to these unfilled seats. The selection should be made on State-wise basis. The committee should interview only those candidates who are shown in the waiting list and persons who unsuccessfully moved the High Court and the petitioners before this Court. In preparing the gradation list, the committee should allot separate marks under the five heads mentioned in the rule and the committee should take into consideration only matters laid down in the rule excluding from consideration all irrelevant matters. [445 B-H]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 285 and 314 of 1970.

Under Article 32 of the Constitution of India for enforcement of the Fundamental Rights.

K.K. Venugopal, and R. Gopalakrishnan, for the petitioner (in W.P. No. 285 of 1970).

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M.Natesan, R. Gopalakrishnan, for the petitioner (in W.P. No. 314 of 1970).

S.Govind Swaminathan, Advocate-General for the State of Tamil Nadu, A. V. Rangam and S. Mohan, for respondents Nos. 1 to 5 (in W.P. No. 285 of 1970) and the respondents (in W.P. No. 314 of 1970).

M. K. Ramamurthi and Vineet Kumar, for the interveners.

The Judgment of the Court was delivered by Hegde, J. In these two petitions under Art. 32 of the Constitution the petitioners who unsuccessfully sought admission to certain Medical Colleges in the State of Tamil Nadu have asked for a writ of mandamus to direct the State of Tamil Nadu to allot to each, one of them a seat in one of the Government Medical Colleges in that State and for consequential orders.

In the State of Tamil Nadu, there are eight Medical Colleges out of which three are situated in the city of Madras, one in Madurai, one in Chingleput, one in Coimbatore, one in Thanjavur and one in Tirunelveli. The total seats available in Madras Colleges are 500. The sanctioned strength of seats in Madurai, Chingleput, Coimbatore, Thanjavur and Tirunelveli are 200, 50, 100, 200 and 75 respectively. Thus the total number of medical seats available in the Government Colleges for 1st year of M.B.B.S., course in the State of Tamil Nadu are 1125. We understand that for these seats nearly 7,000 students applied for admission.

In the previous years except in the year 1967-68, selection of candidates for admission to the 1st year M.B.B.S. course was done on State-wise basis. In the year 1967-68, the seats were distributed on district-wise basis but that scheme was held to be invalid by this Court in *Minor P. Rajendran v. State of Madras and Ors.*(1) Thereafter the selection was again made on State-wise basis in the years 1968-69 and 1969-70 but in the current year that system was given up and selection was directed to be made on the basis of what is known as unitwise basis. Under the present scheme the Medical Colleges in the city of Madras were constituted as one unit and each one of the other Medical Colleges in the mofussil was constituted as a unit. Thus six units were created in the State. In respect of each one of the units a separate selection committee was constituted. The intending applicants were asked to apply to any one of the committees but they were advised to apply to the

committee nearest to their place of residence as far as possible.. They were told that if they applied to more than one committee their applications will be forwarded by the Government to only one of the committees.

(1)[1968] 2 S. C. R. 786.

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A few seats out of the 1125 seats were reserved for certain special categories of students. As there is no dispute about those seats we shall not refer to them hereafter. Out of the remaining seats 41 per cent seats were reserved for students coming from socially and educationally backward classes Scheduled Castes & Scheduled Tribes. The rest of them were placed in the general pool.

In the State of Tamil Nadu actual marks are not being given in the Pre-University examination. The papers were valued on the basis of grades. There are all together four grades i.e. Grades A to D. For the purpose of selection to first year M.B.B.S., course only marks obtained in the optional subjects were taken into consideration. Selection to the seats with which we are concerned in these petitions is confined to students who have taken in their Pre-University examination Physics, Chemistry and Biology as their optional subjects though each of these subjects carried a maximum of 100 marks thus a total of 300 marks, for the purpose of selection to the first year M.B.B.S. course the procedure prescribed was to take the minimum marks provided for the grade secured by the applicant in Chemistry and. Physics and add them together and thereafter divide the 'total by two and to that add the minimum marks provided for the grade secured by the applicant in Biology. Thus the total marks in the optional subjects was reduced from 300 to 200. All the applicants in the general pool who secured 110 or more marks calculated on the basis of the formulae referred to earlier were called for interview by the selection committees. Selection committees were authorised to give a maximum of 75 marks at the interview. The selection committees were asked to award these marks on the basis of following tests.

- (1) Sports or National Cadet Corps activities;
- (2) Extra Curricular special services;
- (3) General physical condition and endurance-,
- (4) General ability, and
- (5) Aptitude.

The selection committees were directed to prepare a gradation list on the basis of the total marks obtained by each applicant and submit the same to the Government.

The petitioners before us appear to have had brilliant academic career. The facts mentioned by the petitioners in this regard were not controverted by the respondents. The petitioner in Petition No. 285 of 1970 came out within first three ranks in the 10th and 11 th standards and in the final examination he secured 451 marks out of the total, of 700. He stood third in his school.

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During his school career he had taken keen interest in extracurricular activities. He was a N.C.C. Cadet and passed creditably the 'A' certificate examination. He had also obtained certificate in boxing. He had joined the correspondence course conducted by the Voice Prophecy Institute, New Delhi and obtained a certificate in Health and Hygiene. After having passed his Anglo Indian High School examination creditably he joined Madurai college, in the Pre-University course taking Physics, Chemistry and Biology as his science subjects. In that course he secured first class with Grade D plus in Physics and Chemistry and A

plus in Biology. He stood fourth in his college. The grade D plus represents 85 to 99 per cent marks and A plus 65 to 75 per cent marks.

The petitioner in Petition No. 314 of 1970 passed her Pre-University examination in March, 1970 from the Scott Christian College, Nagercoil which college stands affiliated to Madurai University. She secured first class with grade 'D' (75 to 85 per cent marks) in Physics; grade D plus (85 to 99 per cent) in Chemistry and D (75 to 85) per cent in Biology. The petitioner also had a brilliant career throughout in, the High School classes as well as in the college class. She secured a merit card for the highest distinction consecutively for the years 1965-66, 1966-67 and 1967-68 in Standards 8 to 10 of St. Joseph's Convent, Nagercoil. In the S.S.L.C. examination held in March, 1969 she secured 456 marks out of 600. She obtained distinction in extracurricular activities both in school and college. She had been a girl guide. She took keen interest in games and sports particularly in net-ball, throw ball and tenniquoit. She was a member of the Representative team. She also passed with merit the pianoforte playing Grade 1 examination conducted by the Trinity College of Music, London.

The petitioners before this Court challenged the validity of the selections made on various grounds. They contended that the unitwise selection contravenes Arts. 14 and 15 of the Constitution inasmuch as the same places the applicants of some of the units in a better position than those who applied to other units. It was alleged that the ratio between applicants and number of seats in the Coimbatore unit was 1 : 13; in Tirunelveli 1 : 10; in Chingleput 1 : 6; in the Madras 1 : 5 1/2 ; in Thanjavur 1 : 6 and in Madurai 1 : 71. It was further alleged that several applicants who secured lesser marks than the petitioners before this Court were selected merely because their applications came to be considered in other units. It was also alleged that this unitwise scheme was merely intended as a device to get over the decision of this Court in Rajendran's case(). It was next contended on behalf of the petitioners that the interview held was a farce.

(1)[1968] 2 S. C. R. 786.

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Each applicant was interviewed hardly for three minutes. During that interview irrelevant questions were put to them. The interview marks were manipulated so as to pull up under serving applicants and downgrade those who had secured excellent marks in their Pre-University examination. It was said that a perusal of the marks list would show that the whole selection was a manipulation. The applicants who had failed more than once and ultimately secured bare second class were selected while the first rate applicants who had secured first class with high marks were rejected. It was urged on their behalf that even the students who get the minimum marks could be pulled up by the selection committee by plumping 70 or more out of 75 interview marks whereas the students who have secured 170 marks the highest marks that could have been secured under the admission rules in Pre-University examination could be pulled down by giving less than 10 marks out of 75 marks. The petitioners' complaint is that after the interview the selection committee carried the marks given by them to Madras and there the Government has manipulated the marks in such a way as to 'select their favourites and reject such of them in whom the Government was not interested.

It was also urged that no guidelines were provided for awarding marks at the interview and therefore the power

conferred on the selection committee is an arbitrary power which is capable of being misused and in fact has been misused. It was contended that the list of backward classes provided to the committee was solely made on the basis of caste and as such that list did not conform to the requirements of Art. 15(4) of the Constitution. The petitioners also urged that the reservation made for backward classes is disproportionately high and further the division of backward classes into backward classes and more backward classes was impermissible under law.

We shall first take up the plea regarding the division of medical seats on unitwise basis. It is admitted that the minimum marks required for being selected in some unit is less than in the other units. Hence prima facie the scheme in question results in discrimination against some of the applicants. In Rajendran's case(1) this Court ruled that the district-wise distribution of available seats is violative of Art. 15 of the Constitution'. But it was Contended on behalf of the State that the unitwise distribution of seats was adopted for administrative convenience. It was said that it was not possible for one selection committee to interview all the applicants. Therefore several committees had to be constituted. In the past when applicants were interviewed by several committees there were complaints that the standard adopted by one committee differed from that adopted by others and therefore the applicants' ability was not tested by a uniform standard. Further

(1) [1968] 2 S. C. R. 786.

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it was said that when selections were made by several committees there was delay in preparing a consolidated list. We are unable to accept these grounds as being real grounds for classification. The grievance when selections were made by several committees in a State-wise selection the standard adopted by various committees differed, would continue even when selections are made by several committees in a unitwise selection. Whether the selection is made by selection committees on State-wise basis or unitwise basis, the standard adopted by various committees is bound to vary. Hence in principle it makes no difference.

Now coming to the question of delay, we see no reason why there should be any delay in preparing a consolidated list. At any rate the delay caused is not likely to be such as to justify departure from the principle of selection on the basis of merit on a Statewise basis. Before a classification can be justified, it must be based on an objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted. The complaint of the petitioners is that unitwise distribution of seats is but a different manifestation of the districtwise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral purposes. Suffice it to say that the unitwise distribution of seats is violative of Arts. 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Arts. 14 and 15. It may be remembered that the students were advised as far as possible to apply to the unit nearest to their place of residence.

Earmarking 75 marks out of 275 marks for interview as inter-

view marks prima facie appears to be excessive. It is not denied that the interview lasted hardly, for three minutes for each candidate. In the course of three minutes interview it is hardly possible to assess the capability of a candidate. In most cases the first impression need not necessarily be the best impression. But under the existing conditions in this country we are unable to accede to the contention of the petitioners that the system of interview, as in vogue in this country is so defective as to make it useless. It is true that various researches conducted in other countries particularly in U.S.A. show that there is possibility of serious errors creeping in interviews made on haphazard basis. C. W. Valentine on "Psychology and its Bearing on Education" refers to the marks given to the same set of persons interviewed

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by two different competent Boards and this is what is stated in his book :

"The members of each board awarded a mark to each candidate and then he was discussed and an average mark agreed on.

When the orders of merit for the two boards were compared it was found that the man placed first by Board A was put 13th by Board B when the man placed 1st by Board B was 11th with Board A."

Even when the interviews are conducted by impartial and competent persons on scientific lines very many uncertain factors like the initial nervousness on the part of some candidates, the mood in which the interviewer happens to be and the odd questions that may be put to the persons interviewed may all go to affect the result of the interview. But as observed by this Court in R. Chitralekha and Anr. v. State of Mysore and Ors(1).

"In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extracurricular activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examination. In the ultimate analysis, whatever method is adopted its success depends on th

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standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme, of selection, however, perfect it may be, on paper, may be abused in practice. 'Mat it is capable of abused is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

While we do feel that the marks allotted for interview' are on the high side and it may be appropriate for the Government to

(1) [1964] 6 S.C.R. 368.

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re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power. It was urged on behalf of the petitioners that the interview marks were, allotted on collateral considerations. We are told that the selection committees were tools in the hands of the Government and the Government manipulated the marks in such a way as to facilitate the selection of those students in whom the members of the party in power were interested. These allegations were denied by the respondents. While, elaborating their arguments on their plea of mala fides the learned Counsel for the petitioners invited our attention to the marks lists which according to them clearly showed that the marks given at the interview are-by and large-in inverse proportion to the marks obtained by the candidates at the University examination. We were also told that the marks lists on their face show that the interview marks were manipulated. It was said that marks were so given as to see that certain candidates got at least the minimum required for selection. While there is some basis for these criticisms there is not sufficient material before us from which we could conclude that there was any manipulation in preparing the gradation list. It is true that numerous students whose performance in the University examination was none too satisfactory nor their past records creditable had secured very high marks at the interview. It is also true that a large number of students who had secured very high marks in the University examination and whose performance in the earlier classes was very good had secured very low marks at the interview. This circumstance is undoubtedly disturbing but the courts cannot uphold the plea of mala fides on the basis of mere probabilities. We cannot believe that any responsible Government would stoop to manipulating marks. The selection committees consisted of eminent persons. Most of them are medical practitioners occupying responsible positions' in life. It would be a bad day for this country if such persons take to manipulation of marks. Hence we cannot accept the contention that the interview marks were manipulated either by the Government or by the selection committees.

It was next urged that no objective criterion was fixed for interview. We are unable to accept this contention as well. I The selectors were asked to interview candidates on the basis of the five criteria prescribed to which we have made reference earlier. Those tests are sufficiently objective in character. Similar tests were held to be objective by this Court in Chitralekha's case(1). It cannot be denied that extra curricular activities like sports, N.C.C., special services, general physical condition and endurance and general ability are objective tests. The aptitude

(1) (1964)6 S.C.R 368.

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referred to in the rule, in our opinion, is aptitude for medical profession.

It was next contended that separate marks had not been allotted for each one of the tests enumerated in the rule. A total of 75 interview marks were placed at the disposal of the selection committee and from out of those the committee could award marks according to its sweet will and pleasure.

Such a power it was said is an arbitrary power. We were told that the entire 75 marks could have been given to a candidate even if he satisfied only one out of the five criterion prescribed. It is true that the rule did not prescribe separate marks for separate heads. But that in our opinion did not permit the selection committee to allot marks as it pleased. Each one of the tests prescribed had its own importance. As observed at footnote 20 at p. 485 of American Jurisprudence Vol. 15 that the interviewers need not record precise questions and answers when oral tests are used to appraise personality traits; it is sufficient if the examiner's findings are recorded on the appraisal sheet according to the personal qualifications itemised for measure. A contention similar to those advanced by the petitioners came up for consideration before the Mysore High Court in D. G. Viswanath v. Chief Secretary of Mysore and Ors. Therein the court observed thus :

"It is true that Annexure IV does not specifically mention the marks allotted for each head. But from that circumstance it cannot be held that the Government had conferred an unguided power on the Committees. In the absence of specific allocation of marks for each head, it must be presumed that the Government considered that each of the heads mentioned in Annexure IV as being equal in importance to any other. In other words, we have to infer that the intention of the Government was that each one of those heads should carry 1/5th of the "Interview" marks."

We may note that the committee had not divided the interview marks under various heads nor were the marks given on itemised basis. The marks list produced before us shows that the marks were given in a lump. This is clearly illegal.

The interview held was also vitiated for the reason that the selection committee took into consideration irrelevant matters and at the same time failed to take into consideration matters required to be taken into consideration. In the counter-affidavit filed by the Chairman of the selection committee it was averred that in allotting interview marks the committee took into consideration

A.I.R. 1964 Mys.132.

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qualities such as pleasant personality, quick thinking etc. One of the extra-curricular activities that the committee was required to take into consideration was N.C.C. training. That was clearly an objective test but from the counter-affidavit filed, it appears that the committee did not think that it was sufficient if an applicant had good record as a cadet, but according to it, he must also know why he joined the N.C.C. and what role N.C.C. plays in the National life. These, in our opinion, are irrelevant considerations. Again the test like the physical condition and endurance can be best judged by a competent medical practitioner after a careful medical examination. It was in the very nature of things not possible for the selection committee though composed of eminent doctors to find out the physical condition and endurance by a mere look at the candidate. It is clear from the affidavit filed on behalf of the selection committees that at the time of interview much attention had not been given to the general ability which test include past performance of the applicants and the varied interest taken by them.

From the facts placed before us it is clear that the candidates were not interviewed in accordance with the rules governing the interview.

It was next urged that the classification of backward classes by the Government into backward classes and more backward classes was illegal and in support of that contention our attention was invited to the decision of this Court in *M. R. Balaji and Ors. v. State of Mysore()*. It is unnecessary to go into that question because for the purpose of the present selection the backward classes were not subdivided into backward classes and more backward classes. What had happened is that the list of backward classes supplied to the selection committee showed that some of the communities are more backward than others but that list was prepared for the purpose of fee concession. For the purpose of the present selection all the classes shown therein were treated as backward classes.

There is no basis for the contention that the reservation made for backward classes is excessive. We were not told why it is, excessive. Undoubtedly we should not forget that it is against the immediate interest of the Nation to exclude from the portals of our medical colleges qualified and competent students but then the immediate advantages of the Nation have to be harmonised with, its long range interests. It cannot be denied that unaided many sections of the people in this country cannot compete with the advanced sections of the Nation. Advantages secured due to, historical reasons should not be considered as fundamental rights. Nation's interest will be best served-taking a long range view-if the backward classes are helped to march forward and take their-

(1)(1963) Supp. 1 S. C. R. 438.

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place in line with the advanced sections of the people. That is, why in *Balaji's* case (1) this Court held that the total of reservations for backward classes, scheduled castes and scheduled tribes should not ordinarily exceed 50% of the available seats. In the present case it is 41 %. On the material before us we are unable to hold that the said reservation is excessive.

Considerable arguments were advanced assailing the enumeration of backward classes. It was said that the concerned list included only castes and not classes. The petitioners' case is that every one of the classes mentioned therein is in reality a caste. Hence that list cannot be sustained. In *Balaji's* case (1) this Court held that though caste is a relevant factor in ascertaining a class for the purpose of Art. 15(4), a class cannot be constituted solely on the basis of caste. *Gajendragadkar J.* (as he then was) speaking for the Court observed :

"That though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens it cannot be made the sole or the dominant test in that behalf. 'Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may

belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens."

In Chiterlekha's case(2), this Court reiterated that the caste is a relevant circumstance in ascertaining the backwardness of a class. Further it was observed therein :

"While this Court has not excluded caste from ascertaining the backwardness of 'a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of a class. To put it differently the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but, if it does not, its order will not be had on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria."

The same view was, expressed by this court in State of Andhra Pradesh and anr. v. P. Sagar(3). There in it was observed

(1) (1963) Supp. 1 S. C. R. 438.

(2) (1964) 6 S. C. R. 368.

(3) (1968) 3 S. C. R. 595.

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"In the context in which it occurs the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. In determining whether a particular section forms a class, caste cannot be excluded altogether. But in the determination of a class a test solely based upon the caste or community cannot also be accepted."

A caste has always been recognised as a class. In construing the expression "classes of His Majesty's subjects" found in s. 153-A of the Indian Penal Code) Wassoodew J. observed in Narayan Vasudev v. Emperor(1).

"In my opinion, the expression 'classes of His-Majesty's subjects' in Section 153-A of the Code is used in restrictive sense as denoting a collection of individuals or groups bearing a common and exclusive designation and also possessing common and exclusive characteristics which may be associated with their original race or religion, and that the term 'class' within that section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous community.,,

In Paragraph 10, Chapter V of the Backward Classes Commission's Report, it is observed :

"We tried to avoid caste but we find it difficult to ignore caste in the present prevailing conditions. We wish it were easy to dissociate caste from social backwardness at the present juncture. In modern times anybody can take to any profession. The Brahman taking to tailoring, does not become a tailor by caste, (nor is his social status lowered as a Brahman. A Brahman may be a seller of boots and shoes, and yet his social status is not

lowered thereby. Social backwardness, therefore, is not today due to the 'particular profession of a person, but we cannot escape caste in considering the social backwardness in India."

In Paragraph II of that Report it is stated:

"It is not wrong to assume that social backwardness has largely contributed to the educational backwardness of a large number of social groups."

Finally in Paragraph 13, the committee concludes with following observations :

"All this goes to Prove that social backwardness is mainly based on racial, tribal, caste and denominational differences."

(1) A. I. R.1940 Bom. 39.

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The validity of the impugned list of backward classes came up for consideration before this Court in Rajendran's case(1) and this is what this Court observed therein

"The contention is that the list of socially and educationally backward classes for whom reservation is made under r. 5 is nothing but a list of certain castes. Therefore, reservation in favour of certain castes based only on caste considerations violates Art. 15 (1), which prohibits discrimination on the ground of caste only. Now if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Art. 15(1). But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is, a socially and educationally backward class of citizens within the meaning of Art. 15 (4) "

Rajendran's case(1) is an authority for the proposition that the classification of backward classes on the basis of castes is within the purview of Art. 15(4) if those castes are shown to be socially and educationally backward. No further material has been placed before us to show that the reservation for backward classes with which we are herein concerned is not in accordance with Art. 15(4). There is no gain saying the fact the there are numerous castes in this country which are socially and educationally backward.' To ignore their existence is to ignore the facts of life. Hence we are unable to uphold the contention that impugned reservation is not in accordance with Art. 15 (4). But all the same the Government should not proceed on the basis that once a class is considered as a backward class it should continue to be back-ward class for all times. Such an approach would defeat the very purpose of the reservation because once a class reaches a stage of progress which some modem writers call as take off stage then ,competition is necessary for their future progress. The Government should always keep under review the question of reservation ,of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest. The fact that candidate,, of backward classes have secured about 50% of the seats in the general pool does show that the time has come for a de novo

comprehensive examination of the question. It must be remembered that the Government's decision in this regard is open to judicial review.

(1) (1968) 2 S. C. R. 786.

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For the reasons mentioned above we are of opinion that the selections impugned in these petitions cannot be held to have been made validly inasmuch as the seats were distributed on unitwise basis and further that the interviews were not held in accordance with the rules. But despite coming to that conclusion we are unable to set aside the selections already made. The selected candidates have not been made parties to these petitions. They have already joined the course and are undergoing training. Their selection cannot be set aside without giving them an opportunity to put forward their case. It is true that the petitioners had filed applications to permit them to have recourse to O. 1, r. 8. C.P.C. for the representation of the persons interested in opposing these applications but no order has been passed on those applications and it is now too late to have recourse to that procedure even if that procedure is, permissible under law. We are told by the learned Advocate General of Tamil Nadu that 24 seats still remain to be filled up. He has assured us on behalf of the State that those seats will be filled up in accordance with the orders of this Court. There are about 80 persons, who we are told are in the waiting list. Some of the unsuccessful applicants had moved the High Court of Madras for relief similar to that sought by the petitioners herein. But it appears their writ petitions have been dismissed. Some out of them have intervened in these petitions. Other non-selected candidates have evinced no interest in challenging the selections made. Under the circumstances, it is reasonable to assume that they have abandoned their claim and it is too late for them to press their claim. Under these circumstances, after discussion with the Counsel for the parties we have come to the conclusion that these petitions should be allowed subject to the following conditions :

The State of Tamil Nadu shall immediately constitute a separate expert committee consisting of eminent medical practitioners (excluding all those who were members of the previous committees) for selection to the 24 unfilled seats. The selection shall be made on Statewise basis. The committee shall interview only the candidates who are show in the waiting list, the persons who unsuccessfully moved the High Court of Madras and the two petitioners before this Court. They shall allot separate marks under the five heads mentioned in the rule. The committee shall take into consideration only matters laid down in the rule, exclude from consideration all irrelevant matters and thereafter prepare a gradation list to fill up the 24 seats mentioned earlier. It is ordered accordingly. We think this is a fit case where the petitioners should get their costs from the State of Tamil Nadu.

V.P.S.

Petition allowed and directions given..

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