

CASE NO.:
Writ Petition (civil) 29 of 2003

PETITIONER:
Saurabh Chaudri & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 04/11/2003

BENCH:
Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
WITH

WRIT PETITION(CIVIL)NOS.54,57,68,69,84,85,89,91,
95, 98, 99 & 100 OF 2003

AND
CIVIL APPEAL NO.8581 OF 2003
(Arising out of S.L.P. (Civil) No. 1347 of 2002)

Dr. AR. Lakshmanan, J.
While concurring with the conclusion arrived at by Hon'ble the Chief Justice, I would like to add the following few lines for streamlining the policies and processes for admission to Medical Courses and other Professional Courses. The issues and options are discussed below:

Every year during the admission season several lakhs of students undergo immense suffering and harassment in seeking admission to Professional Courses caused by uncertain policies, ambiguous procedures and inadequate information. The miseries of students and parents are escalating year after year due to boundless expansion in the number of professional institutions and their intake capacity, emergence of a large variety of newer disciplines and mobility of students seeking admissions beyond the boundaries of States. The students who are about to complete their high school education go through a period of acute anxiety caused by the uncertain situation about their chances for further education. The number of qualified students wanting to go for higher studies has been swelling largely motivated by hopes of better economic security and partly by a desire to attain greater upward social mobility. Then begins their trauma due to many prevailing unfair practices in admissions and devious ways of fee collections exploiting the anxiety of students and uncertainty of procedures. Most of the efforts to deal with these problems are ad-hoc in nature often decided under judicial orders. Different State and Central authorities take many different actions often leading to severe inconsistencies. There is substantial scope for streamlining the admission process, even within the regulatory powers of the authorities, provided these issues are not dealt with on an emergency basis during the admission season but done in a co-ordinated and comprehensive manner ahead of time.

ISSUE NUMBER ONE:

ENTRY QUALIFICATION:

For admissions to under-graduate programmes, there are several different eligibility norms among the different categories of institutions and among the various States. Some are based on Twelfth Standard marks or grades only, some are based on the Entrance Examination only, and some are determined by a combination of these with different weightages. There is endless number of justifications for each of the above, confusing the students from different parts of the country.

The preferred option, in my view, should be for a designated agency or the University concerned to conduct the entrance examination for professional as

well as non-professional institutions in the specified subjects, (an option suggested by this Court). The marks awarded in those subjects should be the basis for determining the merits of the students for admission to the institutions to which they apply.

ISSUE NUMBER TWO:

UNPLANNED GROWTH OF INSTITUTIONS

The growth of the Professional Institutions has been at an geometrical rate during the last five years. During recent years the expansion of educational facilities for higher education has been nearly exclusively in the private unaided sector due to the financial incapacity of Governments.

Those who have ventured to start the new institutions are motivated by commercial interests and not by educational and social interests. Political considerations have become paramount in sanctioning of colleges. There has been a high level of exploitation of students in certain disciplines through unethical and illegal collection of unauthorized payments. The discontent among the meritorious students is simmering also because only those, even with poor competence, but who could pay high illegal amounts can get into many institutions.

OPTIONS:

1. The country needs to evolve urgently a predictable pattern of growth the Higher Education system in Technical, Managerial, and other Professional disciplines as well in Science and Humanities at least for the next five years. The present level of ad-hoc approach and stampede should be eliminated.

2. The national blue print and the road map for the development of professional education should be based on maintaining credible level of quality standards and anticipated demand structure in economic and social sectors.

for

ISSUE NUMBER THREE:

FEE STRUCTURE:

This Court states: "A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or University to ensure that no capitation fee is charged and that there is no profiteering."

OPTIONS:

One possible remedy is to make a rule under the Prevention of the Capitation Fee Act that collecting any fee that was not previously announced in the college publications and any fee collected without a formal receipt should be punishable offences. This rule should be strictly enforced.

ISSUE NUMBER FOUR:

CERTIFICATES HASSLES:

When we consider the size of our country and the large number of institutions and huge volume of applicants, the man hour and money lost in running around for getting the certificates during the admission season must run into equivalent of several crores of rupees. A more hassle-free system for authenticating the required information from students should be evolved.

OPTIONS:

Every student be provided with a basic identity certificate while he/she is in the higher secondary stage (10th to 12th std). This should provide all essential information such as date of birth, community, domicile, photo identity etc., authenticated by a designated official. This should be acceptable for admission requirements in any institution and in any State in India.

Superspeciality Institutions and Institutions where highly skilled Training/Education is imparted:

On the issue whether there can be Article 15(4) reservations in super-speciality courses, this Court was categorical when it declared that there could not be any reservation at the level of super-specialisation in medicine because any dilution of merit at the level would adversely affect the national interest in having the best possible at the highest level of professional and educational

training."

Similar view was already taken by this Court in Pradeep Jain V. Union of India, AIR 1984 SC 1420.

In similar vein, in Jagdish Saran vs. Union of India, AIR 1980 SC 820, this Court observed that Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education for postgraduate courses. This Court further observed that the host of variables influence the qualification of the reservation as one factor deserves great emphasis, the higher the level of the speciality the lesser the role of reservation.

In the case of Article 15(4) reservations, this Court has made it clear that the claims of national interest demands that these reservations can never exceed 50% of the available seats in the concerned educational institutions.

The view was approved by this Court in the case of Indra Sawhney V. Union of India. If one looks at this issue in the light of the spirit of the ratios laid down in Preeti Srivatsava v. State of M.P., AIR 1999 SC 2894 and in AIIMS Students Union v. A.I.I.M.S., AIR 2001 SC 3262, one would come to the inevitable conclusions that the constitutional reservations contemplated under Article 15(4) should be kept at the minimal level so that national interest in the achievement of the goal of excellence in all fields is not unduly affected.

Of course, as between the reserved category candidates, there should be inter-se merit observed. This has been emphasised by this court in several cases.

As regards the constitutional validity of institutional/regional/university wise reservation/preference, in view of this court's emphasis on the need to strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the concerned educational institutions.

Conclusions:

1) In the case of Central educational institutions and other institutions of excellence in the country the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope for reservations is minimal.

2) As regards the feasibility of constitutional reservations at the level of super-specialities, the position is that the judiciary has adopted the dominant norm, i.e., "the higher the level of the speciality the lesser the role of reservation". At the level of super-specialities the rule of "equal chance for equal marks" dominates. This view equally applies to all super-speciality institutions.

3) As regards the scope of reservation of seats in educational institutions affiliated and recognised by State Universities, the constitutional prescription of reservation of 50% of the available seats has to be respected and enforced.

4) The institutional preference should be limited to 50% and the rest being left for open competition based purely on merits on an All India basis.

5) As regards private non-minority educational institutions distinction between government aided and unaided institutions. While government/State can prescribe guidelines as to the process of selection and admission of students, the government/State while issuing guidelines has to take into consideration the constitutional mandate of the requirement of protective discrimination in matters of reservation of seats as ordained by the decisional law in the country. Accordingly, the extent of reservation in no case can exceed 50% of the seats. The inter-se merit may be assessed on the basis of a common All India Entrance Test or on the basis of marks at the level of qualifying examination.

6) The position with respect to minority aided institutions is that they are

bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a reasonable extent, not necessarily 50% as laid down in Stephens College case. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of Constitutional reservation.

7) As regards the unaided institutions, they have large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2). Nor are they bound by the constraints of the obligatory requirements of Constitutional reservation.

Before parting with this case, I am of the opinion that the younger generation in our society nurturing fond hopes and aspiration for their future professional careers should feel it as a pleasurable experience to explore the available options in higher education. They should be spared from the mental torture due hassles and unsavoury experiences in getting to the first base. To the extent possible they should be made to feel that they are part of one nation. Tensions and frustrations at their impressionable age will surely result in a society with distorted and negative values damaging the foundations of a healthy society. The policies and procedures for admissions should be viewed from the larger impact on the future of India.

Appeal (civil)#Appeal (civil) 4051 of 1996#1996#M/s Pepsi Foods Limited

#Collector of Central Excise, Chandigarh

#2003-11-25#25622# 4051#P. VENKATARAMA REDDI # Dr. AR. LAKSHMANAN.

###

Appeal (crl.)#Appeal (crl.) 104-106 of 2003#2003#Bikau Pandey and Ors.

#State of Bihar

#2003-11-25#25623# 104-106#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (civil)#Appeal (civil) 10906 of 1996#1996#Shanti Kumar Panda

#Shakutala Devi

#2003-11-03#25624# 10906#R.C. LAHOTI # ASHOK BHAN.

###

Appeal (civil)#Appeal (civil) 11483 of 1996#1996#Amrendra Pratap Singh

#Tej Bahadur Prajapati & Ors.

#2003-11-21#25625# 11483#R.C. LAHOTI # ASHOK BHAN.

###

Appeal (civil)#Appeal (civil) 9130 of 2003#2003#Ameer Trading Corporation Ltd.

#Shapoorji Data Processing Ltd.

#2003-11-18#25626# 9130#CJI# S.B. Sinha # AR. Lakshmanan.

##

Appeal (civil)#Appeal (civil) 14178-14184 of 1996#1996#Brij Behari Sahai (Dead) through L.R s., etc. etc.

#State of Uttar Pradesh
raiswamy Raju # Arijit Pasayat.

#2003-11-28#25627# 14178-14184#Do

###

Appeal (crl.)#Appeal (crl.) 1968 of 1996#1996#Goa Plast (P) Ltd.

#Chico Ursula D'Souza

#2003-11-20#25628# 1968#B.P. Singh # Dr. AR. Lakshmanan

###

Writ Petition (crl.)#Writ Petition (crl.) 199 of 2003#2003#Ashok Kumar Pandey

#The State of West Bengal

#2003-11-18#25629# 199#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (crl.)#Appeal (crl.) 20 of 2003#2003#Surendra Paswan

#State of Jharkhand

#2003-11-28#25630# 20#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (crl.)#Appeal (crl.) 278 of 1997#1997#Vidyadharan

#State of Kerala

#2003-11-14#25631# 278#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (crl.)#Appeal (crl.) 292 of 1997#1997#State of Madhya Pradesh.

#Awadh Kishore Gupta and Ors.

#2003-11-18#25632# 292#DORAISWAMY RAJU # ARIJIT PASAYAT.

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###State of Punjab & Anr.

#M/s Devans Modern Breweries Ltd. & Anr.

#2003-11-20#25633##CJI.# R.C. Lahoti # Dr. AR. Lakshmanan.

##

Appeal (crl.)#Appeal (crl.) 331 of 1997#1997#Shriram

#State of Madhya Pradesh

#2003-11-24#25634# 331#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (civil)#Appeal (civil) 3630-3631 of 2003#2003#The Prohibition & Excise Supdt., A.P. & Ors.

#Toddy Tappers Coop. Society, Marredpally & Ors.

#2003-11-17#25635# 3630-3631#CJI.

#Dr. AR. Lakshmanan

###

Appeal (crl.)#Appeal (crl.) 371-372 of 2003#2003#Ram Dular Rai & Ors.

#State of Bihar

#2003-11-27#25636# 371-372#S.B. Sinha.

####

Appeal (civil)#Appeal (civil) 4075-4081 of 1998#1998#Nair Service Society

#Dist. Officer, Kerala Public Service Commission & Ors.

#2003-11-17#25637# 4075-4081#CJI. # Dr. AR. Lakshmanan.

###

Appeal (civil)#Appeal (civil) 4698-4700 of 1994#1994#State of U.P. & Ors.

#Lalji Tandon (Dead)

#2003-11-03#25638# 4698-4700#R.C. LAHOTI # ASHOK BHAN

###

Appeal (crl.)#Appeal (crl.) 506 of 1997#1997#State of Karnataka

#Puttaraja

#2003-11-27#25639# 506#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (crl.)#Appeal (crl.) 519-521 of 2003#2003#Goura Venkata Reddy
Vs.

#State of Andhra Pradesh

#2003-11-19#25640# 519-521#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (crl.)#Appeal (crl.) 530-531 of 2003#2003#Bhargavan & Ors.

#State of Kerala

#2003-11-17#25641# 530-531#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Appeal (civil)#Appeal (civil) 7371 of 2002#2002#N.D. Thandani (Dead) By Lrs.

#Arnavaz Rustom Printer & Anr.

#2003-11-24#25642# 7371#R.C. LAHOTI # ASHOK BHAN.

###

Appeal (civil)#Appeal (civil) 9205-07 of 2003#2003#The Land Acquisition Officer, Nizamabad,
District, Andhra Pradesh

#Nookala Rajamallu and Ors.

#2003-11-21#25643# 9205-07#DORAISWAMY RAJU # ARIJIT PASAYAT.

###

Transfer Petition (crl.)#Transfer Petition (crl.) 77-78 of 2003#2003#K. Anbazhagan

#The Superintendent of Police & ors.

#2003-11-18#25644# 77-78#S.N. VARIAVA # H.K. SEMA.

###

Appeal (civil)#Appeal (civil) 7868 of 1995#1995#ITW Signode India Ltd.

#Collector of Central Excise

#2003-11-19#25645# 7868#CJI# S.B. Sinha # Dr. AR. Lakshmanan.

##

Appeal (civil)#Appeal (civil) 857 of 1998#1998#Shyam Singh

#Daryao Singh (dead) by Lrs. & Ors

#2003-11-19#25646# 857#Shivraj V. Patil # D.M. Dharmadhikari.

###

Appeal (civil)#Appeal (civil) 3630-3631 of 2003#2003#Prohibition & Excise Supdt. A.P. & Ors

#Toddy Tappers Coop. Society, Marredpally & Ors.

#2003-11-17#25647# 3630-3631#S.B. Sinha

####

Appeal (civil)#Appeal (civil) 62-65 of 1999#1999#Pramod K. Pankaj

#State of Bihar and Ors.

#2003-11-20#25648# 62-65#CJI# # S.B. Sinha.

##

Appeal (civil)#Appeal (civil) 8232 of 1996#1996#Hindustan Lever & Anr.

#State of Maharashtra & Anr.

#2003-11-18#25649# 8232#R.C. Lahoti # Ashok Bhan.

###

Appeal (civil)#Appeal (civil) 5337-5339 of 1999#1999#Manager, Nirmala Senior, Secondary Sch
ool, Port Blair

#N.I. Khan & Ors.

#2003-11-21#25650# 5337-5339#SHIVARAJ V. PATIL # ARIJIT PASAYAT.

###

Appeal (civil)#Appeal (civil) 9131 of 2003#2003#Rekha Mukherjee

#Ashish Kumar Das & Anr.

#2003-11-18#25651# 9131#CJI# S.B. Sinha # Dr. AR. Lakshmanan.

##

Appeal (civil)#Appeal (civil) 3130 of 2002#2002#Ashan Devi & Anr.

#Phulwasi Devi & Ors.

#2003-11-19#25652# 3130#Shivaraj V. Patil # D.M. Dharmadhikari.

###

Appeal (civil)#Appeal (civil) 7096 of 2000#2000#Smt. Lila Ghosh (Dead) through LR, Shri Tapas Chandra Roy

#The State of West Bengal

#2003-11-18#25653# 7096#S. N. Variava # H. K. Sema.

###

###Harinagar Sugar Mills Ltd.

#State of Bihar & Ors.

#2003-11-19#25654##Brijesh Kumar # Arun Kumar.

###

Appeal (crl.)#Appeal (crl.) 115-120 of 2002#2002#R. Sai Bharathi

#J. Jayalalitha & Ors.

#2003-11-24#25655# 115-120#S. RAJENDRA BABU # P. VENKATARAMA REDDI

###

Appeal (civil)#Appeal (civil) 9136-9137 of 2003#2003#M/s.Sathyanarayana Brothers (P) Ltd.

#Tamil Nadu Water Supply & Drainage Board

#2003-11-18#25656# 9136-9137#Brijesh Kumar # (Arun Kumar.

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