

PETITIONER:
SURENDRA KIJMAR

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT 09/11/1984

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 87 1985 SCR (2) 19
1984 SCC (4) 609 1984 SCALE (2) 723

ACT:

Constitution of India 1950-Articles 14, 16 and 32-
admission to Medical Colleges-Selection to be made on basis
of merit-Nomination of candidates by Chief Minister-Invalid
Educational Institution-Admission to Medical Colleges-
Nomination of candidates by Chief Minister-Invalid and abuse
of power-Selection to be strictly on basis of merit.

HEADNOTE:

Nine seats were reserved in the medical colleges of Jammu and Kashmir for candidates from the State of Bihar. Thirty five students applied for these nine seats. A list of seven candidates was prepared by the Controller of Examinations-cum-Additional Director of Health Services for being recommended to the Government of Jammu and Kashmir. The name of the petitioner figured as No. 3. Another tentative list of seven candidates had also been prepared on the basis of merit from the candidates in the waiting list. This list received nobody's consideration.

From time to time applications along with recommendations of V. I. Ps. were received by the Chief Minister's Secretariat and the names of ten persons other than the seven persons from the tentative list were recommended by the Chief Minister from time to time for admission to medical colleges in Jammu and Kashmir.

Allowing the Writ Petition,

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HELD: 1. Even after thirty-four years of the Constitution proclaiming equality before the law and equality of opportunity, the Chief Ministers of some States continue to regard admissions to Professional Colleges and appointment to Government posts as their little private empires. (20F)

2 (i) There can be no doubt that there was blatant abuse of power by the Chief Minister of Bihar. The list of names recommended by the Chief Minister is quashed. [22D-E]

(ii) The Government of Bihar shall forthwith prepare a list according to merit and offer successively to candidates according to merit the opportunity of

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pursuing medical education in the medical colleges of Jammu

and Kashmir The merit list shall be prepared of all candidates who sought admission into the local medical colleges and should not be confined to the 35 candidates who applied for admission to the colleges in Jammu and Kashmir. This is because the Government never invited applications separately for the seats reserved in the colleges of Jammu and Kashmir. [22F-G]

3. Until a policy is formulated and adopted and concrete criteria are embodied in the procedure to be selected nominations should be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those in order of merit immediately next below the candidates selected for admission to the medical colleges of the home State. 121E-F]

Suman Gupta v. State of Jammu and Kashmir, AIR 1983 SC 1235, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 15329 of 1984.

(Under article 32 of the Constitution)

R.K Garg and L.R. Singh for the petitioner.

Lal Narain Sinha, D. Goburdhan and Jay Narayan for the Respondents.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Even after thirty four years of the Constitution proclaiming equality before the law and equality of opportunity, the Chief Ministers of some States continue to regard admission to Professional Colleges and appointments to Government posts as their little private empires. So recently as on September 19, 1983, this Court had to disabuse this impression in Suman Gupta v. State of Jammu and Kashmir(1). The question in that case arose this way: A Certain number of seats in the medical colleges of one State were reserved for candidates from other States to be nominated by the Governments of the other States. Was an absolute power vested in the State Governments in the choice of candidates for nomination or was it incumbent - on the State Governments to adopt definitive criteria and follow pre-defined norms ? Pathak, J. speaking for himself, Chandrachud C-J. and Sabyasachi Mukherji J. said:

"After considering the matter carefully, we confess,

(1) AIR 1983 SC 1235.

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we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government

..... To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidate for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criteria or restrict its power by reference to norms which, while designed to achieve its objective nevertheless confine the flow of that power within constitutional limits. We are not convinced that an

adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid.. ..

.....
Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nominations be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the Medical Colleges of the home State."

The pronouncement of this court has apparently not yet been heard in the distant corridors of the Bihar Secretariat. It appears nine seats are reserved in the medical colleges of Jammu and Kashmir for candidates from Bihar. Thirty five students applied for the nine seats. A list of seven candidates was prepared by the Controller of Examinations-cum-Additional Director of Health Services for being recommended to the Government of Jammu and Kashmir. He has not disclosed on what basis he prepared

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the list but the name of the petitioner, Surendra Kumar, figured as No. 3 in the list. It appears that another tentative list of seven candidates has also been prepared on the basis of merit from the candidates in the waiting list. This list received nobody's consideration. We have it from the counter-affidavit filed by P.K. Khare, Officer on Special duty-cum-Under Secretary in the Chief Minister's Secretariat, Patna that 'applications along with recommendations of V.I.Ps. were received from time to time by the Chief Minister' and from the counter-affidavit filed by M. Dass, Controller of Examinations-cum-Additional Director of Health Services that 'the names of ten persons other than 7 persons of the tentative list had been recommended by the Chief Minister from time to time for admission to Medical Colleges in Jammu and Kashmir.' Neither the counter-affidavit filed by M. Das nor that by P.K. Khare given the least indication for the basis of the selection made by the Chief Minister. There can thus be no doubt that there was blatant abuse of power by the Chief Minister of Bihar. Whatever excuse there might have been in the past, there can be no such excuse after the judgment of this court in Suman Gupta's case to which, we find, Deference was made in the file now produced before us. Shri Lal Narain Sinha, who appeared for the respondent frankly told us that he was unable to support the action of the Government. The list of names recommended by the Chief Minister is quashed. As already directed by us at the conclusion of the hearing, the Government of Bihar shall forthwith prepare a list according to merit and offer successively to candidates according to merit the opportunity of pursuing medical education in the Medical Colleges of Jammu and Kashmir. Lest there be any misunderstanding the merit list shall be prepared of all candidates who sought admission into the local medical colleges, as was done in Suman Gupta's case and should not be confined to the 35 candidates who applied for admission to colleges in Jammu and Kashmir. We give this direction because admittedly the Government never invited applications separately for the seats reserved in the colleges in Jammu and Kashmir. The respondents will pay the costs of the petitioner which we quantify at Rs. 1000.

We desire to add by way of expression of our concern

and

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regret that this is not the first occasion that such interference and abuse of power at such high level has come to the notice of this A court from the State of Bihar. In Chandrika Jha v. State of Bihar(1) it related to the constitution of Board of Directors of Cooperative Society; here it relates to nomination of candidates for admission to Medical Colleges. But in both there is clear misuse of power. The less said the better.

N.V.K.

Petition allowed.

(1) [1984] 2 S.C.C. .41;

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JUDIS