2023 INSC 695

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
[ARISING OUT OF SLP (CIVIL) NO(S). 15774 OF 2023]

DEV GUPTA …APPELLANT(S)

VERSUS

PEC UNIVERSITY OF TECHNOLOGY & ORS. …RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Special leave granted. This appeal challenges an order of the Punjab & Haryana High Court.[1] The High Court rejected the appellant's Writ Petition which had questioned the imposition of a minimum 75% aggregate marks as an eligibility condition (in the qualifying examination) for enabling a candidate to claim admission in engineering courses under the 2% sports quota. The appellant had contended that the sudden imposition of such an eligibility condition defeated the purpose of the quota itself and was consequently arbitrary. The High Court, however, rejected the petition requiring the authorities to consider an issue.

2. The Secretary Technical Education, Chandigarh Administration (hereafter "UTC") by letter dated 07.01.2016 accorded approval to the respondent university (hereafter "the University") to admit students through the Central Counselling System at the National level from 2016-2017 (hereafter referred to

[1] Dated 14.07.2023 in CWP No. 14594 of 2023

as "JOSSA"). The UT had consistently followed the process, and admission to institutions within Chandigarh were regulated by its rules. The rules for the current academic year 2023-24 for JOSSA were issued through a *brochure* on 07.06.2023. Those rules apply to UT institutions, including the respondent-whose name finds mention at Serial No. 25.

3. The eligibility criterion provided for admission to engineering courses and the same reads as under:

> *"1. Must have secured at least 75% aggregate marks in the Class XII (or equivalent) Board Examination. The aggregate marks for SC, ST and PwD candidates should be at least 65%. "*

The respondent issued the admission brochure for academic year 2023-24 for four reserved categories. The eligibility criterion applicable, *inter alia*, to sports candidates was mentioned in clause 1(b) which is extracted below:

> *"b. The candidate has secured minimum 75% marks in the Class XII (or equivalent) examination of respective stream and Board."*

4. Seventeen (17) seats were earmarked for the sports category (under the 2% quota). The university received a total of 34 applications -of which 28 applicants fulfilled the eligibility criterion -of securing 75% marks and above. The remaining six applications included that of the appellant who did not secure the basic 75% marks. Further, 16 out of the total 17 seats in the Sports Category have already been allocated to eligible candidates and only 1 seat has fallen vacant as on date in Materials and Metallurgical Engineering branch for which the counselling is scheduled to be held on 10.08.2023. It is acknowledged that the applicable Sports Policy for the UT had been published earlier.

5. The brochure listed out several categories, to indicate how the candidates were to be classified for the purposes of admission. This did not include the sports quota candidates. As a matter of fact, the Union Territory of Chandigarh followed

JoSAA for purposes of admission; however, the sports quota category was kept out of the JoSAA programme. Likewise the quota set apart for three other categories i.e. Kashmiri Migrants, Sons/Daughters/Spouses of Military/Para Military Personnel and children and grand children of freedom fighters were treated and dealt with separately.

6. After publication of the brochure on 24.06.2023, the respondent issued an advertisement calling upon eligible candidates to apply. The appellant represented to the authorities complaining that the eligibility condition was unrealistically high, on 27.06.2023. Upon receiving no response, he filed a Writ Petition, which was rejected by the impugned order.

7. It is contended by Mr. P.S. Patwalia, learned Senior Counsel that the threshold minimum eligible condition of having acquired 75% marks, defeats the objective of providing a sports quota because it assumes that sports persons -like other general candidates would also have the degree of academic excellence which is required of all candidates. It was submitted that those participating in sports have to be treated differently and the 2% quota was specifically carved out for this purpose. In this context, it is pointed out that as far as sports quota candidates are concerned, the brochure itself makes a distinction so far as candidates who are eligible to apply for vertical reservations; Scheduled Castes and Scheduled Tribes (SC/ST) have to possess 65% marks to be considered eligible. It was submitted that in the past too, the UT had not imposed high criterion for candidates to be admitted in the sports quota for qualifying in the examination.

8. Learned counsel also pointed out that in the past, sports quota guidelines had prescribed what specified sports would be graded for the purpose of determining *inter se* rankings and furthermore, the *types* of events, and the conditions guiding the eligibility and assessment criterion (such as for instance, the minimum number of participants in the concerned sports, the level of

participation, i.e. the district, state, national and international event(s) organized by the concerned regulating board or organization/federation, etc). These guide and regulate both the determination of *inter se* ranking of sports candidates, to ensure that those who achieve higher proficiency in the *concerned sports,* rather than academic qualification, are duly accommodated.

9. Mr. Sanchar Anand, appearing on behalf of the respondent, urged this court not to intervene, and submitted that admissions have almost concluded. He points out that earlier too, the UT had insisted upon the relevant criterion of 75% minimum cut-off in the qualifying examination and points to a note submitted to the High Court, justifying the 75% minimum criterion for the sports quota. It was argued that whilst for 2017-18, the minimum qualifying marks required for sports category candidates was 60%, it was increased for the years 2018-19 and 2019-20 to 75%. Learned counsel, therefore, urged that there is nothing inherently arbitrary or discriminatory in the insistence of such criterion. He reiterated that in the present case too, out of the 34 applications received, 28 fulfilled the 75% threshold and all but one (out of 17) seats had been filled by them.

10. Learned counsel further stated that evolving a minimum threshold educational qualification for the purposes of allocation in the sports quota was essentially a policy matter which the UT exercised legitimately in the present case. He submitted that this Court's intervention would result in large scale disruption of the allocations made till date and that it would be futile to intervene since several other candidates who might not have applied and who might be better off than the appellant would be kept out of consideration.

Analysis & Conclusions

11. Besides the brochure the relevant extracts of which were set out before discussing the relevant submissions, it is necessary to briefly describe the relevant

provisions of the prevailing sports quota (embodied in a Policy[2]). Para 2 of the policy stated that the benefit of this sports category would be available to those who *"pass their qualifying examination from schools/colleges recognised by the Chandigarh administration and those who studied in Chandigarh schools or colleges for at least two years before applying for graduation certificates"*. The policy further stipulated that merit of the certificates, i.e. sports certificates would be graded appropriately as A, B, C and D, and in descending order. Grade A contains sports persons of international standing, -who represented the country or who donned the India colour in Olympic Games, World Cups, tournaments and championships organised by international federations at the highest levels, and Commonwealth Games. Grade B comprised of sports persons, who participated in World University/international tournaments and games other than those in Grade A in which at least 10 teams participated, including Asian Federation Cup; Schools Games or obtained first three positions in recognised National Championships, International championships, State Federations, All India Combined Universities team etc. Grade C listed participation in senior nationals/inter-University tournaments/federation cup; Junior National Federation i.e. National School Games, KVS teams participating in the national school games; first three positions in recognised Chandigarh schools game (provided at least 7 teams participated) and several such other sports competitions and events. Grade D listed participation in senior national championship/national games participation in recognised junior championship; participation in national school games etc.

12. The Policy further provided that the state rankings would be considered by the concerned institution and listed the criteria in the following order: record holders in any event; winners; runners-up; third position holders; number of times participated; number of disciplines participated). Other criteria too were spelt out.

[2] Dated 05.05.2003 issued by the UT Chandigarh.

According to the policy, sports gradation excluded those participating in the sub-junior ranking tournaments and, that events the positions achieved would be only if they were achieved with seven or more participants in State/Senior/Junior/inter-college competition or international tournaments etc or in at least ten state universities in national, i.e. senior, junior and all university competitions. Besides this, the policy stipulated that the applicants would be interviewed and also would be given field tests in the discipline concerned, *"to assess the genuineness of the testimonials/certificates which they produce in support of their claims"*.

13. It would be also necessary to reproduce the note which was placed before the High Court approved by the Chandigarh administration, while justifying the 75% minimum qualifying criterion in the present case. Dealing with the respondent's admission policy based upon the UT Chandigarh's stipulations, the note *inter alia* stated as follows:

- *" PEC had been participating in, Joint Admission Committee (JAC) Chandigarh till year 2017. Eligibility criteria of JAC 2017 for general and sports category was same i.e., class 12th at least 60% marks. Copy attached for ready reference.*
- *The eligibility criteria followed by PEC for Kashmiri Migrants and Kashmiri Pandits/ Kashmiri Hindu Families (Non-Migrants) living in Kashmir Valley, Sportspersons, Sons/ Daughters/ Spouses of Military/ Paramilitary personnel, Children/ Grandchildren of Freedom Fighters is as follows: -*

Year of Admission	*Admission through*	*Relevant Criteria of 10+2 setup by Admission Agency*	*Relevant Criteria of 10+2 followed by PEC*	*Remarks*
2017-18	*JAC Chandigarh*	*≥ 60%*	*≥ 60%*	*Same as Admission Agency*
2018-19	*JoSAA/CSAB*	*≥ 75%*	*≥ 75%*	*Same as Admission Agency*
2019-20	*JoSAA/CSAB*	*≥ 75%*	*≥ 75%*	*Same as Admission Agency*
2020-21	*JoSAA/CSAB*	*10+2 Pass*	*10+2 Pass*	*Same as Admission Agency*
2021-22	*JoSAA/CSAB*	*10+2 Pass*	*10+2 Pass*	*Same as Admission*

				Agency
2022-23	*JoSAA/CSAB*	*10+2 Pass*	*10+2 Pass*	*Same as Admission Agency*
2023-24	*JoSAA/CSAB*	*≥ 75%*	*≥75%*	*Same as Admission Agency*

- *The admission process has started and the last date to apply for counselling of Kashmiri Migrants and Kashmiri Pandits/ Kashmiri Hindu Families (Non-Migrants) living in Kashmiri Valley, Sports persons, Sons/ Daughters/ Spouses of Military/ Paramilitary personnel Children/Grandchildren of Freedom Fighters was 10.07.2023 and the further process is in progress.*
- *That the instant writ petition is coming up for preliminary hearing only on 13.07.2023, when the admission process is already underway and thus, the petition in barred by latches.*
- *That the prospectus is sacrosanct and at this stage, in case, the criteria is changed, the entire admission process shall get delayed and derailed.*
- *The academic session is scheduled to start from 31.07.2023 and the candidates have to attend minimum 75% of lectures to become eligible for appearing in examination."*

14. It is now entrenched in our constitutional jurisprudence, that the doctrine of equality has varied- and layered dimensions, one of which is that under Article 14, *"Equals must be treated equally. Unequals must not be treated equally. What constitutes reasonable classification must depend upon the facts of each case, the context provided by the statute, the existence of intelligible differentia which has led to the grouping of the persons or things as a class and the leaving out of those who do not share the intelligible differentia. No doubt it must bear rational nexus to the objects sought to be achieved."* (Ref *Manish Kumar v Union of India (UOI) & Ors*[3]).

15. This court, in *Ashutosh Gupta v. State of Rajasthan*[4]explained how the reasonable classification is to be applied:

> *"6. The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should*

[3] 2021 (14) SCR 895
[4] 2002 (2) SCR 649

> *be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally, is rather a vexed question. A legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with. In order to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. In order that a law may be struck down under this article, the inequality must arise under the same piece of legislation or under the same set of laws which have to be treated together as one enactment. Inequality resulting from two different enactments made by two different authorities in relation to the same subject will not be liable to attack under Article 14"*

It has also been held, in *State of J&K v. Triloki Nath Khosa*[5] that **"***the object to be achieved"* should not be *"a mere pretence for an indiscriminate imposition of inequalities and the classification"* should not be *"characterized as arbitrary or absurd"*. The judgment in *Venkateshwara Theatre* v. *State of A.P.*[6] , is a decision where this court pointed out, to how discrimination arises, if persons who are un-equals are treated as equals, thus:

> *"Just as a difference in the treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons who are unequals, i.e., differently placed, are treated similarly. ... A law providing for equal treatment of unequal objects, transactions or persons would be condemned as*

[5] 1974 (1) SCR 771
[6] 1993 (3) SCR 616

discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

16. The observations in *Roop Chand Adlakha v Delhi Development Authority*[7] are very perceptive, and relevant in the present context; the court had said that the *"process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality"* and warned that overemphasis on the doctrine of classification *"or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing doctrine of equality by the doctrine of classification"* thus pushing classification rendering *"the precious guarantee of equality "a mere rope of sand"."* The application of the reasonable classification test, in *Deepak Sibal v Punjab University*[8], led to invalidation of a rule which disqualified and rendered ineligible employees of private establishments, and confining admission of candidates to government departments and institutions, in evening law college. Condemning the classification, this court said that the university had *"deviated from the objective for the starting of evening classes. The objective was to accommodate in the evening classes employees in general including private employees who were unable to attend morning classes because of their employment."* The justification given by the university, that government employees held permanent jobs or position was held to be irrelevant for the object of opening the evening law course.

17. In *Subramanian Swamy v Central Bureau of Investigation*[9] this court frowned upon, and declared void, a classification based on status in public

[7] 1988 Supp (3) SCR 353
[8] 1989 (1) SCR 689
[9] 2014 (9) SCR 283

employment, characterizing that it defeats the purpose of the underlying law, i.e combating corruption:

> *"59. It seems to us that classification which is made in Section 6-A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."*

On an objective application of the principles outlined above, this court is of the considered opinion that the objective of introducing the sports quota i.e. 2% of intake, was to promote and encourage those who excelled and gained a certain degree of prescribed proficiency and achievement in defined competitive sports. The introduction of this quota was to promote sports, and sportsmanship in educational institutions. No doubt, the state acts within its rights to prescribe a certain minimum eligibility standard or set of criteria as the threshold requirement for admission to any particular course, given its peculiar requirements. The Punjab and Haryana High Court, thus, upheld the prescription of a cut off eligibility standard of securing minimum 15% in the qualifying examination, in *Jagatpreet Kaur And Ors. vs Punjab University*[10]:

> *"The petitioner has himself stated that the prospectus for Punjab Engineering College had specifically provided that there would a minimum cut- off aggregate of 15 marks. The respondents-University have only introduced the criteria which ensures the bare minimum of academic excellence which would be required of a student who is ultimately to become an Engineer. In Amardeep Singh Sahota 's case (supra) the Full Bench has categorically held that these are students who will ultimately serve humanity. Excellence in Sports may be a relevant consideration, but a certain minimum academic standard is required to be maintained."*

The objective of introducing sports quota, however, is not to accommodate academic merit, but something altogether different: promotion of sports in the

[10] (2004) 138 PLR 896

institution, the university, and ultimately, in the country. Among others, universities are the nurseries or the catchment for sportspersons, who can represent in state, national, international level and Olympic sports. At the same time, the state or educational institution can insist upon a minimum eligibility condition. That is not to say that such condition would necessarily and mandatorily have to be what is applicable to general (or open category) candidates. The latter kind of criteria would *tend to exclude meritorious sportspersons,* and place the less (academically) meritorious sportspersons, at a disadvantageous position, because they satisfy the *open category* candidates' criterion of higher *academic* merit. For instance, it is quite possible that a sportsperson, who has and continues to represent the country in international Olympic sports, and gained such excellence as to have bagged a medal or two, in say, wrestling, would be altogether excluded in the eventuality of a wrestler, of the same category (but who has never reached the national level) securing 80% marks in the qualifying examination. It exactly this consequence which this court had warned would be the "unequal application" of a uniform criteria, a *wooden equality* without regard to the inherent differences, which Article 14 frowns upon, and forbids.

18. The conclusion drawn by the court is also supported by the fact that the sports policy of 2023 governing admissions, was evolved with a careful eye to detail, to ensure that *performance in sport,* rather than academic merit, was the chosen criterion to be applied for filling the 2% sports quota. Another reason which leads this court to conclude that discrimination has resulted, is because in respect of sports too, the state has lowered the criterion for those enjoying vertical classification, under Article 15 (4). In such event, it was open to the state to lower the eligibility criterion, for sports quota, to other candidates too; the dissimilarity in treatment is therefore, egregious. Moreover, the record indicates that except for the academic years 2018-19, 2019-20 and 2023-24, for all the previous years, the eligibility prescribed was lower; indeed, for 2020-21, 2021-22 and 2022-23,

the criterion was *"10+2 Pass"*. Lastly, the sports policy, itself underlines that the quota would be available to students who *"pass their qualifying examination from schools/colleges recognised by the Chandigarh administration"* or had studied in Chandigarh for two preceding years. Requiring all candidates to possess a fulfil a certain eligibility standard- such as the one, prescribed in the sports policy, of 2023 (alluded to) or the qualifying marks prescribed by the concerned Board, or university, to pass in the concerned subjects is entirely different from the prescription of a *uniform standard,* far higher than the such a minimum threshold. The imposition of the minimum 75% eligibility condition, therefore, does not subserve the *object* of introducing the sports quota, *but is, rather destructive of it;* the criterion, in that sense *subverted* the object and is discriminatory; it therefore, falls afoul of the equality clause, in Article 14 of the Constitution.

19. For the above reasons, it is held that exclusion of the petitioner and other like candidates, on the ground of their securing less than 75% in the qualifying examination, was unwarranted and discriminatory. The reference to, and incorporation of clauses giving effect to such criterion is held unenforceable and void. This court is alive to the fact that allocation for admission to all but one seat has been completed. By this court's interim order, dated 08.08.2023, the respondent was restrained from filling the left-over seat(s) which had to be filled after the last round (of admission process) scheduled on 10.08.2023. In view of the findings, it is hereby directed that the remaining seat or seats shall be filled by application of the standards spelt out in the sports policy of the UT of Chandigarh, as applied by the respondent university to determine *inter se* sports merit of the candidates who had applied, but whose candidature was rejected on the ground of ineligibility due to their securing less than 75% marks in the qualifying examination. These candidates however should have qualified in terms of the immediately preceding academic year's criterion, applicable for the balance sports quota seat(s). At the same time, candidates who have been selected and given admission are concerned, shall not be disturbed. The process of filling

the remaining vacant seat(s)- in the sports quota shall be completed within two weeks. Nothing said in this judgment shall result in invalidation of admission of candidates in other (non-sports) categories.

20. The impugned order is, resultantly, set aside. The appeal is allowed in the above terms. In the circumstances, there shall be no order on costs.

……..……...……J.
[S. RAVINDRA BHAT]

…….....J.
[ARAVIND KUMAR]

NEW DELHI
AUGUST 9, 2023.