Before : I. S. Tiwana & A. P. Chowdhri, JJ.

ANILJIT SINGH TREHAN,—*Applicant.*

versus

M. D. UNIVERSITY AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 1804 *of* 1989.

22nd December, 1989.

Constitution of India, 1950—*Art.* 14—*Admission to Medical College—Reservation of Seats for Ex-servicemen—Sub-categorisation between children of officers and children of J.C.O.'s—Such sub-categorisation—Whether discriminatory.*

Held, that the sub-division is not arbitrary. It is eminently reasonable. The widening concept of fairness inherent in the guarantee of equality under Article 14 enjoins the State to take into account the *de facto* inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action, though apparently discriminatory, is calculated to produce equality on a broader basis by eliminating *de facto* inequalities and placing the weaker section of the community on a footing of equality with the more powerful section so that each member of the community may enjoy equal opportunity of using to the full his natural endowments.

(Para 6)

Held, that if the concept of fairness pervading Article 14 has any meaning, the impugned sub-categorisation must be held to be fair, reasonable and meant to achieve the object of affording equality of opportunity to the children of two classes. Both on principle as well as precedent, therefore, we have no doubt that the sub-categorisation between children of officers on the one hand and the JCOs and other ranks on the other hand in the category of Ex-servicemen, is reasonable, fair and valid, having a nexus with the object sought to be achieved by such classification.

(Paras 8 & 9)

L.P.A. under clause X of the Letters Patent of the High Court against the Judgment dated 20th September, 1989 *passed in C.W.P. No.* 9242 *of* 1980 *by the Hon'ble Mr. Justice J. V. Gupta.*

Hari Om Sharma, Advocate, *for the Appellant.*

J. L. Gupta, Sr. Advocate with Vikrant Sharma, Advocate, *for the Respondents.*

R. K. Malik, Advocate, *for Respondent No.* 1.

JUDGMENT

A. P. Chowdhri, J.

(1) This is an appeal against the judgment of a learned Single Judge dismissing the appellant's writ petition No. 9242 of 1989. The sole question raised is—whether sub-categorisation of reservation of seats in Medical College and Dental College under the Maharishi Dayanand University relating to Ex-servicemen's children between officers on the one hand and JCOs and other ranks on the other hand, is violative of Article 14 of the Constitution of India.

(2) The appellant's son appeared in a combined P.M.T. test for admission to MBBS/BDS courses in the Medical College/ Dental College under the M.D. University Rohtak, in June 1989. He applied for being considered against the sub-category of son of a disabled Army Officer. He did not figure in the merit list. He, therefore, challenged the constitutional validity of sub-categorisation of reservation between children of deceased or disabled JCOs and other ranks on the one hand and children of deceased/disabled officers on the other hand, in the prospectus, under the instructions of the Government.

(3) In the return filed by the Registrar of the M.D. University on behalf of respondents 1 and 2, it was stated that the appellant having competed with others on the basis of reservation notified in the prospectus and having failed to be selected was estopped from challenging the validity of the sub-categorisation of the category relating to Ex-Servicemen. The ratio of 2:1 between children of JCOs and other ranks and the officers was sought to be justified on the ground that the number of the former far exceeded the number of the latter. The reservation had been made by the competent bodies of the University after due deliberation of the relevant facts and circumstances. It was further stated that the rules and regulations in force in other government Institutions and other Universities were not relevant and the M.D. University was not bound to follow those other Universities or Institutions. It was also stated that the said sub-categorisation had been in existence since the academic session 1985-86 without any challenge.

(4) Respondent No. 9 was impleaded on his application under Order 1 Rule 10 of the Code of Civil Procedure. He adopted the pleas taken in the written statement filed by respondents 1 and 2

and also added in the written Statement filed by him that in the Prospectus for the year 1984-85 there was 100 per cent reservation for the children of JCOs and other ranks to the exclusion of the officer under the category of Ex-servicemen. This was challenged by the daughter of an officer, as being violative of Articles 14 and 16 of the Constitution, in Civil Writ Petition No. 4491 of 1984. The writ petition was dismissed by this Court on November 8, 1984. The unsuccessful petitioner thereafter filed SLP No. 1486 of 1984, which was also dismissed by the Supreme Court. In other words, 100 per cent reservation in the category relating to Ex-servicemen for the children of JCOs and other ranks to the exclusion of the children of the Officers, was affirmed by the Apex Court. The present reservation in favour of JCOs to the extent of 66 per cent as against 33 per cent in favour of children of officers in the category relating to Ex-servicemen was, therefore, stated to be altogether valid and justified. It was further stated that the number of JCOs and other ranks was almost 99 per cent as against Officers who accounted for only 1 per cent or even less. In an Infantry Battalion, it was pointed out the total strength is 1000 out of whom the number of officers is 10 and that of JCOs and other ranks the balance 990. The respondents mentioned figures relating to Ex-servicemen of District Karnal. According to these figures, as on March 31, 1988 the total number of Ex-servicemen in the district were 21,151 and the number of officers was only 107. It was, therefore, stated that reservation to the extent of 33 per cent for the children of 1 per cent officers was far in excess of the due share and there was no question of the same being unreasonable. It was also mentioned that the minimum basic pay of the officers was Rs. 2,300 while the minimum basic pay of other ranks was Rs. 870. For the officers, the minimum educational qualification was graduation. For JCOs and other ranks no minimum educational qualification had been prescribed. As a class, therefore, JCOs and other ranks were socially and educationally backward compared to the officers. It was also stated that for officers in the Army, accommodation was available to the extent of 100 per cent as against the other ranks for whom accommodation was available only to the extent of 14 per cent. Perforce, 86 per cent of the other ranks cannot, therefore, keep their families and thus the education of their children suffers for want of proper supervision and guidance of the father. It was also pointed out that if the sub-categorisation were not followed, in the present admission, 60 per cent of the seats reserved for the Ex-servicemen would go to the children of officers and 40 per cent to the children

of JCOs and Ex-servicemen on the basis of the marks secured by the two sets of children.

(5) The learned Judge took the view that the question whether such a distinction between officers and JCOs and other ranks was maintained by other Universities or Institutions, was not relevant, though such a distinction was observed by one Military School at Chail. The distinction had been in force since the academic session 1985-86, and the appellant had availed of the chance for being selected against the existing reservation and having failed to figure in the merit list, he cannot turn round and challenge the reservation itself.

(6) Learned counsel for the appellant repeated the same very arguments before us. Whether such a sub-categorisation is made in other Universities or Institutions or not, is a question of policy. Policy is required to be framed by the appropriate authority concerned and evidently the policy cannot be framed by the Court. Once such a policy is framed and the same is challenged, the Court has to examine its validity in the light of the provisions of Article 14 of the Constitution. In *Kumari Chitra Ghosh and another* v. *Union of India and others,* (1), a Constitution Bench laid down as under:—

> ".....If the sources are properly classified, whether on territorial, geographical or other reasonable basis, it is not for the Courts to interfere with the manner and method of making the classification."

What is required to be seen, therefore, is whether the sub-division of Ex-servicemen between officers and JCOs and other ranks is reasonable having regard to the object sought to be achieved. For the reasons briefly mentioned in the written statement filed by respondents 1 and 2 and detailed in the written statement by private respondent No. 9, to which reference has been made above, the sub-division is not arbitrary. It is eminently reasonable. The widening concept of fairness inherent in the guarantee of equality under Article 14 enjoins the State to take into account the *de facto* inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously

(1) A.I.R. 1970, S.C. 35.

placed, in order to bring about real equality. Such affirmative action, though apparently discriminatory, is calculated to produce equality on a broader basis by eliminating *de facto* inequalities and placing the weaker section of the community on a footing of equality with the more powerful section so that each member of the community may enjoy equal opportunity of using to the full his natural endowments. [See *Pardeep* v. *Union of India* (2), *and Jagdish* v. *Union* of *India* (3)].

(7) A substantially similar question came up for consideration in *Ram Rattan Lekh and others* v. *State of Punjab and others* (4). In the reservation for Scheduled Castes, the State Government issued instructions in May, 1975, according to which 50 per cent vacancies of the quota reserved for Scheduled Castes were ordered to be offered to Balmikis and Mazhbi Sikhs, if available, as first preference from amongst the Scheduled Caste candidates. These instructions were challenged being violative of Articles 14 and 16 of the Constitution as they tended to create a further classification amongst Scheduled Castes and Scheduled Tribes. A Division Bench of this Court repelled the challenge and in doing so, distinguished the decision of another Division Bench in *Sadhu Singh* vs. *State of Punjab and others* (5) and relied on *Miss Rita Kumari* v. *Union of India and others,* (6). The same instructions again came up for consideration. Noticing some divergence of view in the two Division Benches mentioned above, the matter was referred to a Full Bench in *Kanwaljit Singh Sidhu and others* v. *State of Punjab and others* (7). The learned Judges of the Full Bench reached the same conclusion, as the learned Judges of the Division Bench in *Ram Rattan Lekh's case* (supra). The challenge to the instructions of May, 1975 was negatived. Speaking for the Full Bench, D. S. Tewatia, J. (as his Lordship then was) quoted the following passages of Krishna Iyer, J. (as his Lordship then was) in *State of Kerala and another* v. *N. M. Thomas and others,* (8):

> "In the light of the experience here and elsewhere, the danger of 'reservation', it seems to me, is three-fold. Its benefits,

(2) A.I.R. 1984, S.C. 1420.
(3) A.I.R. 1980, S.C. 820.
(4) 1978, SLWR. 69.
(5) C.W.P. 2475 of 1976, decided on July 6, 1976.
(6) A.I.R. 1973, S.C. 1050.
(7) 1980 (3) S.L.R. 34.
(8) A.I.R. 1976, S.C. 490.

by and large are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake,———"

"In fact, research conducted by the A. N. Sinha, Institute of Social Studies, Patna, has revealed a dual society among Harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Arts. 46 and 335 remain a 'noble romance', the bonanza, going to the 'higher' Harijans."

(8) What has been so succinctly brought out in the above quoted observations, equally applies to the sub-categories of officers, and JCOs and other ranks. If the concept of fairness pervading Article 14 has any meaning, the impugned sub-categorisation must be held to be fair, reasonable and meant to achieve the object of affording equality of opportunity to the children of two classes.

(9) Both on principle as well as precedent, therefore, we have no doubt that the sub-categorisation between children of officers on the one hand and the JCOs and other ranks on the other hand in the category of Ex-servicemen, is reasonable, fair and valid, having a nexus with the object sought to be achieved by such classification.

(10) For the foregoing reasons, we find no merit in the appeal, which is accordingly dismissed.

P.C.G.

Before : Gokal Chand Mital & Amarjeet Chaudhary, JJ

SANJAY BATTA,—*Petitioner.*

versus

PUNJABI UNIVERSITY, PATIALA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 1735 of 1990.

9th April, 1990.

Punjabi University Calendar, Volume II, 1981, Chapter 65—Ordinance 26(B)(i) proviso—M.B.B.S. examination—Grant of grace marks—Rule requiring grant of not more than 5 grace marks in one subject to pass—Petitioner short of six marks—Proviso to Ordinance 26 is neither unreasonable nor arbitrary.

Held, that if in the M.B.B.S. Course, which is a professional Course, the University wants a higher degree of proficiency and