PETITIONER:
THE STATE OF MADRAS

Vs.

RESPONDENT:
SRIMATHI CHAMPAKAM DORAIRAJANandTHE STATE OF MADRASv.C.R. SR

DATE OF JUDGMENT:
09/04/1951

BENCH:
DAS, SUDHI RANJAN
BENCH:
DAS, SUDHI RANJAN
KANIA, HIRALAL J. (CJ)
FAZAL ALI, SAIYID
SASTRI, M. PATANJALI
MAHAJAN, MEHR CHAND
BOSE, VIVIAN
MUKHERJEA, B.K.

CITATION:
1951 AIR 226 1951 SCR 525
CITATOR INFO :

F	1954 SC 561	(14,16)
F	1958 SC 731	(12)
R	1958 SC 956	(8)
R	1959 SC 648	(26)
R	1962 SC1621	(73,108)
R	1963 SC 649	(17)
RF	1967 SC1643	(22,164,227)
E	1968 SC1379	(2)
R	1970 SC2079	(16)
RF	1972 SC1375	(81)
RF	1973 SC1461	(506,648,1704,1714,1901,1918)
RF	1975 SC 563	(13)
O	1976 SC 490	(67,69,71,159)
R	1979 SC 83	(5)
RF	1980 SC1789	(115)
RF	1985 SC1495	(8)
RF	1988 SC 305	(7)

ACT:
Constitution of India, Arts. 13. 16 (4), 29 (2), 46--Admission to educational institutions--Executive Order fixing number of seats for particular communities--Invalidity--Fundamental right against discrimination on the ground of religion only--Directive principles of State policy--Value of.

HEADNOTE:
With regard to admission of students to the Engineering and Medical Colleges of the State, the Province of Madras had issued an order (known as the Communal G. O.) that seats should be filled in by the selection committee strictly on the following basis, i.e., out of every 14 seats, 6 were to be allotted to Non-Brahmin (Hindus), 2 to Backward Hindus, 2 to Brahmins, 2 to Harijans. 1 to Anglo-Indians and Indian Christians and 1 to Muslims:
Held by the Full Court (Kania C.J., Fazl Ali, PatanJali Sastri, Mehr Chand Mahajan, Mukherjea, S.R. Das and

Vivian Bose JJ.).--that the Communal G.O. constituted a violation of the fundamental right guaranteed to the citizens of India by Art. 29 (2) of the Constitution, namely, that "no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them and was therefore void under Art. 13.

The directive principles of State policy laid down in Part IV the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III. On the other hand they have to conform to and run as subsidiary to the fundamental rights laid down in Part III.

Judgment of the Madras High Court affirmed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION.--Cases Nos. 270 an d 27 1 of 1951,

526

Appeals under Art. 132 (1) of the Constitution of India from the Judgment and Order dated 27th July, 1950, of the Madras High Court in certain applications under Art. 226 of the Constitution for protection of the fundamental rights of the petitioners under Art. 15 (1) and Art. 29 (2) of the Constitution and praying for the issue of a writ of mandamus or other suitable prerogative writ restraining the State of Madras and all officers and subordinates thereof from enforcing, observing, maintaining or following the order of the Government known as the Communal G.O. which laid down rules to be observed by the selection committee in the matter of admission of students to the Medical and Engineering Colleges of the State.

V.K.T. Chari, Advocate-General, Madras (R. Ganapathy Iyer, with him) for the appellant.

Aliadi Krishnaswami Aiyar (Alladi Kuppuswami Aiyar, with him) for the respondents.

1951, April 9. The Judgment of the Court was delivered by

DAS J. --This judgment covers both Case No. 9.70 of 1951 (State of Madras v. Srimathi Champakam Dorairajan) and Case No. 271 of 1951 (State of Madras v. C.R. Srinivasan) which are appeals from the judgment passed by the High Court of Judicature at Madras on July 27, 1950, on two separate applications under article 226 of the Constitution complaining of breach of the petitioners' fundamental right to get admission into educational institutions maintained by the State.

The State of Madras maintains four Medical Colleges and only 330 seats are available for students in those four Colleges. Out of these 330 seats, 17 seats are reserved for students coming from outside the State and 12 seats are reserved for discretionary allotment by the State and the balance of the seats available are apportioned between four distinct groups of districts in the State.

527

Likewise, the State of Madras maintains four Engineering Colleges and the total number of seats available for students in those Colleges are only 395. Out of these, 21 seats are reserved for students coming from outside the State, 12 seats are reserved for discretionary allotment by the State and the balance of the seats available are apportioned between the same four distinct groups of districts.

For many years before the commencement of the Constitu-

tion, the seats in both the Medical Colleges and the Engineering Colleges so apportioned between the four distinct groups of districts used to be filled up according to certain proportions set forth in what used to be called the Communal G. O. Thus, for every 14 seats to be filled by the selection committee, candidates used to be selected strictly on the following basis:--

Non-Brahmin (Hindus)	...	6
Backward Hindus	...	2
Brahmins	...	2
Harijans	...	2
Anglo-Indians and Indian Christians	....	1
Muslims	...	1

Subject to the aforesaid regional and what have been claimed to be protective provisions selection from among the applicants from a particular community from one of the groups of districts used to be made on certain principles based on academic qualifications and marks obtained by the candidates. In the case of the Medical Colleges, not less than 20 per cent. of the total number of seats available for students of the State were filled by women candidates separately for each region, it being open to the selection committee to admit a larger number of woman candidates in any region if qualified candidates were available in that region and if they were eligible for selection on merits visa vis the men candidates in accordance with the general principles governing such
528
admissions as laid down in those rules. It appears that the proportion fixed in the old Communal G.O. has been adhered to even after the commencement of the Constitution on January 26, 1950. Indeed, G.O. No. 2208, dated June 16, 1950, laying down rules for the selection of candidates for admission into the Medical Colleges substantially reproduces the communal proportion fixed in the old Communal G.O.

On June 7, 1950, Srimathi Champakam Doratrajan made an application to the High Court of Judicature at Madras under article 226 of the Constitution for protection of her fundamental rights under article 15 (1) and article 29 (2) of the Constitution and prayed for the issue of a writ of mandamus or other suitable prerogative writ restraining the State of Madras and all officers and subordinates thereof from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following by the authorities concerned of the notification or order generally referred to as the Communal G.O. in and by which admissions into the Madras Medical Colleges were sought or purported to be regulated in such manner as to infringe and involve the violation of her fundamental rights. From the affidavit filed in support of her petition, it does not appear that the petitioner had actually applied for admission in the Medical College. She states that on inquiry she came to know that she would not be admitted to the College as she belonged to the Brahmin community. No objection, however, was taken to the maintainability of her petition on the ground of absence of any actual application for admission made by her. On the contrary, we have been told that the State had agreed to reserve a seat for her, should her application before the High Court succeed. In the peculiar circumstances, we do not consider it necessary to pursue this matter any further. But we desire to guard ourselves against being understood as holding that we approve of a person who has not actually applied for admission into an educational institution coming to Court complaining of

infringement of any fundamental right
529
under article 29 (2). The High Court by its judgment delivered on July 27, 1950, allowed this application of Srimathi Champakam Dorairajan. The State of Madras has now come up before us on appeal which has been numbered Case No. 270 of 1951.

Sri Srinivasan who had actually applied for admission into the Government Engineering College at Guindy, filed a petition praying for a writ of mandamus or any other writ restraining the State of Madras and all officers thereof from enforcing, observing, maintaining or following the Communal G.O. in and by which admission into the Engineering College was sought to be regulated in such manner as to infringe and involve the violation of the fundamental right of the petitioner under article 15 (1) and article 29 (2) of the Constitution. In the affidavit filed in support of his petition, the petitioner has stated that he had passed the Intermediate Examination held in March, 1950, in Group 1, passing the said examination in the first class and obtaining marks set out in paragraph 1 of his affidavit. It will appear that in the optionals which are taken into consideration in determining the academic test for admission in the Engineering College the petitioner Srinivasan secured 369 marks out of a maximum of 450 marks. The High Court has by the same judgment allowed this application also and the State has filed an appeal which has been numbered 271 of 1951. The learned counsel appearing for the State of Madras conceded that these two applicants would have been admitted to the educational institutions they intended to join and they would not have been denied admission if selections had been made on merits alone.

Article 29 which occurs in Part III of the Constitution under the head "Cultural and Educational Rights" runs as follows:

"(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
530
(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizen on grounds only of religion, race, caste, language or any of them. If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to ,complain of an infraction of his fundamental right under this article. But, on the other hand, if he has the academic qualifications but is refused admission only on grounds of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right.

The learned Advocate-General appearing for the State contends that the provisions of this article have to be read along with other articles in the Constitution. He urges that article 46 charges the State with promoting with special

care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and with protecting them from social injustice and all forms of exploitation. It is pointed out that although this article finds a place in Part IV of the Constitution which lays down certain directive principles of State policy and though the provisions contained in that Part are not enforceable by any Court, the principles therein laid down are nevertheless fundamental for the governance of the country and article 37 makes it obligatory on the part of the State to apply those principles in making laws. The argument is that having regard to the provisions of article 46, the State is entitled t0 maintain the Communal
531
G.O. fixing proportionate seats for different communities and if because of that Order, which is thus contended to be valid in law and not in violation of the Constitution, the petitioners are unable to get admissions into the educational institutions, there is no infringement of their fundamental rights. Indeed, the learned Advocate-General of Madras even contends that the provisions of article 46 override the provisions of article 29 (2). We reject the above noted contentions completely. The directive principles of the State policy, which by article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate Writs, Orders or directions under article 32. The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts III and IV have to be understood. However, so long as there is no infringement of any Fundamental. Right, to the extent conferred by the provisions in Part 1II, there can be no objection to the State acting in accordance with the directive principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution.

In the next place, it will be noticed that article 16 which guarantees the fundamental right of equality of opportunity in matters of public employment and provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State also includes a specific clause in the following terms:-

" (4) Nothing in this article shall prevent the State from making, any provision for the reservation of appointments of posts in favour of any backward class
532
of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

If the arguments founded on article 46 were sound then clause (4)of article 16 would have been wholly unnecessary and redundant. Seeing, however, that clause (4) was inserted in article 16, the omission of such an express provision from article 29 cannot but be regarded as significant. It may well be that the intention of the Constitution was not to introduce at all communal considerations in matters of admission into any educational institution maintained by the

State or receiving aid out of State funds. The protection of backward classes of citizens may require appointment of members of backward classes in State services and the reason why power has been given to the State to provide for reservation of such appointments for backward classes may under those circumstances be understood. That consideration, however, was not obviously considered necessary in the case of admission into an educational institution and that may well be the reason for the omission from article 29 of a clause similar to clause (4) of article 16.

Take the case of the petitioner Srinivasan. It is not disputed that he secured a much larger number of marks than the marks secured by many of the Non-Brahmin candidates and yet the Non-Brahmin candidates who secured less number of marks will be admitted into six out of every 14 seats but the petitioner Srinivasan will not be admitted into any ,of them. What is the reason for this denial of admission except that he is a Brahmin and not a Non-Brahmin. He may have secured higher marks than the Anglo-Indian and Indian Christians or Muslim candidates but, nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid communities. Such denial of admission cannot but be regarded as made on ground only of his caste.

It is argued that the petitioners are not denied admission only because they are Brahmins but for a
533
variety of reasons, e.g., (a) they are Brahmins, (b) Brahmins have an allotment of only two seats out of 14 and (c) the two seats have already been filled up by more meritorious Brahmin candidates. This may be true so far as these two seats reserved for the Brahmins are concerned but this line of argument can have no force when we come to consider the seats reserved for candidates of other communities, for, so far as those seats are concerned, the petitioners are denied admission into any of them not on any ground other than the sole ground of their being Brahmins and not being members of the community lot whom those reservations have been made. The classification in the Communal G.O. proceeds on the basis of religion, race and caste. In our view, the classification made in the Communal G.O. is opposed to the Constitution and constitutes a clear violation of the fundamental rights guaranteed to the citizen under article 29(2). In this view of the matter, we do not find it necessary to consider the effect of articles 14 or 15 on the specific articles discussed above.

For the reasons stated above, we are of opinion that the Communal G.O. being inconsistent with the provisions of article 29 (2) in Part III of the Constitution is void under article 13. The result, therefore, is that these appeals stand dismissed with costs.

Appeals dismissed.

Agent for the appellant: P.A. Mehta.

Agent for the respondents: M.S.K. Sastri,
534