C. B. Muthamma v. Union of India and others (AIR 1868)

1) Reference Details

Jurisdiction: Supreme Court of India
Date of Decision: 17 September 1979
Link to full case
The full text of the case is available at:
http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=4724

2) Facts

The petitioner was a senior member of the Indian Foreign Service. She brought this petition against the Government on the grounds that she has been overlooked for promotion because she was a woman and because some rules governing the employment of women in the Service are discriminatory in nature and therefore contrary to Articles 14 and 16 of the Constitution.

3) Law

Constitution of India

- Article 14 (equality before the law)
- Article 16 (equality of opportunity in matters of public employment)

4) Legal Arguments

The Petitioner

The petitioner argued that she had been denied promotion to Grade I of the Indian Foreign Service on the grounds that:

1. there was a long standing practice of hostile discrimination against women
2. she had to undertake on joining the foreign service that if she got married she would resign from her post
3. she had to face the consequences of being a woman and thus suffered discrimination
4. the members of the appointment committee were basically prejudiced as a group

She also submitted that the rules that no married woman has the automatic right to be appointed to the Service and that a woman employee must get written permission to marry and may be forced to resign if the Government decides that her marital commitments will hamper her work were unconstitutional. Furthermore she set out that during the period between her first and second evaluations, some officers junior to her had been promoted over her, adversely affecting her career.

5) Decision

The three appeal judges presented unanimous findings. JK Iyer Krishna delivered the

decision, first commenting that:

"… sex prejudice against the Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess."

The Court then analysed the individual rules, finding that:

"If a woman member shall obtain the permission of Government before the marriage, the same risk is run by Government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member … If a married man has a right, a married woman, other things being equal, stands on no worse footing. Freedom is indivisible, so is justice."

The Court found that, since of the rules in question had been or where in the process of deletion, there was no need to address or attack them. In addition, the petitioner had been promoted subsequent to her complaint, so further examination of it was pointless.

The Court also noted that:

"The Central Government states that although the petitioner was not found meritorious enough for promotion some months ago, she has been found to be good now, has been upgraded and appointed as Ambassador of India to The Hague, for what that is worth."

The Court dismissed the petition but directed the Government to review the petitioner's case in light of the only remaining element of her complaint – that relating to the promotion of people junior to her. The Court emphasised the need to overhaul all service rules to remove discrimination.