

(2017) 03 KAR CK 0197
In the Karnataka High Court
Case No : 5818 of 2017 (Edn-Med-Adm)

Aishwarya M

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 13-03-2017

Acts Referred:

Citation : (2017) 03 KAR CK 0197

Hon'ble Judges : Jayant Patel, N.K. Sudhindrarao

Bench : DIVISION BENCH

Advocate : Ajoy Kumar Patil, Niloufer Akbar, K. Shashi Kiran Shetty, Farah Fathima, N.K. Ramesh, Abhishek Malipatil

Judgement

1. The short facts of the case appears to be that the petitioner was allotted BDS seat by Comed-K in the 4th respondent-College for the academic year of 2016-17 on the basis of Neet result declared by CBSE. After the admission, when the papers of the petitioner were sent to the University, the University did not approve the admission on the ground that the Neet score of the petitioner was not qualified and a communication to that effect was also made by the University. Under the circumstances, the petitioner has approached to this Court.

2. We have heard Mr. Ajoy Kumar Patil, learned Counsel for the petitioner, Ms. Niloufer Akbar, learned Additional Government Advocate for R1, Mr. K. Shashikiran Shetty, learned Senior Counsel with Ms. Farah Fathima for respondent No. 2, Sri N.K. Ramesh, learned Counsel for respondent No. 3-University and Sri Abhishek Malipatil, learned Counsel for respondent No.4.

3. The only aspect to be considered in the present petition is whether, the petitioner can be said as meeting with the minimum eligibility criteria for admission to BDS Course or not?

4. We may at the outset record that, as per the requirement of regulation and for which there is no dispute that in the general category student, one should have minimum 50 percentile in the Neet examination and for reserved category of

student which includes SC/ST, Other Backward Classes, the requirement is that the candidate should have secured minimum 40 percentile at the Neet examination.

5. Further, for admission to BDS Course, there are mainly two modes, one is, "All India quota" and another is "State quota" for allotment of the seats. Neet result is being declared by CBSE on the basis of percentile in "All India quota". However, when the seats of "State Quota" is to be filled, though minimum eligibility criteria will be common, the category on the basis of which the student is making application are to be considered for the purpose of admission will have a role to play. To put it in other words, if the candidate is to apply in the "All India quota" or in the "State quota", the eligibility criteria of minimum percentile for general category or of reserved category will be common inasmuch as, 50 percentile or 40 percentile as the case may be. But, for consideration of the eligibility to apply for the seat, may be "All India quota" seat or "State quota" seat, respective category namely, whether general category or reserved category will be required to be separately considered for the simple reason that, only certain caste or the class will be considered as falling in the reserved category so far as "All India quota" is concerned, whereas, the same requirement may not be common for "State quota" to claim the benefit of reservation, but, it may vary from State to State as per the declaration made for reserved category in that respective State.

6. We may at the outset also record that, when this Court considered the matter for admission on 6-3-2017, following order was passed: "We have heard Sri Ajoy Kumar Patil, learned Counsel for the petitioner; Smt. Niloufer Akbar, AGA for respondent No. 1; Ms. Farah Fathima, learned Counsel for respondent No. 2; Sri N.K. Ramesh, learned Counsel for respondent 3 and Sri Abhishek Malipatil, learned Counsel for respondent No. 4.

2. It is an undisputed position that the Regulation of Dental Council provides that for General Category the eligibility should be 50 percentile whereas for reservation category it is 40 percentile. However, in our prima facie view the eligibility is to be tested vis-a-vis the category namely, if the candidate is to apply as General Category, he or she must meet with 50 percentile in All India Quota or State Quota, as the case may be. But, if the candidate is to apply for Reserve Category, he or she in the All India Quota or State Quota must meet with minimum 40 percentile in the NEET result. It is an undisputed position that in All India Quota as General Category student, petitioner did not meet with the criteria of 50 percentile, but, in the State Quota she has fallen as Reserve Category and therefore should meet with 40 percentile minimum. Since she has already secured above 40 percentile namely 40.409287, declining the eligibility by the University appears to be ex facie illegal.

3. Hence by an interim order the operation and implementation of the decision by the University at Annexure-"S" insofar as the petitioner is concerned to decline the eligibility to the petitioner is stayed and the petitioner shall be treated

as eligible on the reserve category for the admission already granted to her.

4. Accordingly I.A. No. 1 of 2017 is disposed of.

Put up on 9-3-2017."

7. It is undisputed position that the petitioner is not entitled to claim reserved category so far as "All India quota" is concerned. Therefore, if the petitioner is to apply for admission to Dental Course in "All India quota", the petitioner has to meet with the minimum eligibility of 50 percentile which the petitioner does not possess. However, so far as the State Quota seats are concerned, the petitioner is falling in the reserved category and the petitioner is also treated for admission in the reserved category on account of the fact that the petitioner is falling in the reserved category so far as State quota seats are concerned. The eligibility which otherwise been 50% of the general J category would no more be applicable and the eligibility for reserved category of 40 percentile would apply for the purpose of meeting with the eligibility criteria for reserved category seats for State quota.

8. The result of NEET is produced on page 28 and as per the result declared, the petitioner possesses 40.409287 percentile in the NEET result whereas, tire requirement is, 40 percentile for the reserved category. Hence, petitioner has secured above 40 percentile to meet with the eligibility criteria in the reserved category.

9. It appears that the University-respondent no. 3 was wrongly guided by result of the CBSE examination wherein, it has been mentioned as "not qualified" in Neet-2016. Had the case of the petitioner was to be considered on All India quota" and since in "all India quota", the petitioner is entitled to apply in the general category and not in the reserved category, one can say the petitioner is not qualified in NEET 2016 but, such would be for the seats of All India quota". However, as observed earlier, when one is to consider the eligibility for the reserved category candidate, requirement is minimum 40 percentile. It is undisputed position that the petitioner is falling in the reserved category so far as "State quota" seats are concerned and therefore, the requirement to meet with eligibility criteria of general category candidate would no more apply but, the requirement for reserved category candidate would be applicable which is 40 percentile and the petitioner in any case has scored above 40% percentile.

10. Under the circumstances, the decision of the University for denial of approval by the University dated 8.2.2017 cannot be sustained for the petitioner. As such, the University can apply the similar standards for other students also but since the same is not the subject-matter in the present petition, we need not express any further view on the said aspects. In any case, the decision of the University for denial of approval to the admission of the petitioner cannot be sustained. Hence, the same is set aside. Resultantly, the approval shall be granted for admission to the petitioner by the University. The petition is allowed accordingly. No order as to cost.