
(1981) 02 KAR CK 0032
In the Karnataka High Court
Case No : WP. 22082/80

Anitha Chandraiah

APPELLANT

Vs

Selection Committee for Mbbs and Others

RESPONDENT

Date of Decision : 17-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) 1 KarLJ 304

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. In response to the relevant notification calling for applications for admission to first year M.B.B.S. course in the Government and private Medical Colleges in the, State for the academic year 1980-81, issued by the Selection Committee constituted under the Karnataka Medical Colleges (Selection for Admission) Rules, 1980 (hereinafter referred to as the Rules), the petitioner and a large number of eligible applicants applied for selection. On a consideration of her merit, vis-a-vis the merit of other candidates, the selection committee on 20-11-80 (Annexure-A) selected seven candidates, one of whom was the petitioner and allotted three candidates to M.R. Medical College, Gulbarga, the petitioner and three other candidates to Kasturba Medical College, Manipal and Mangalore. The petitioner and others were directed to approach the respective colleges, get themselves admitted to the respective colleges on or before 29-11-1980. In pursuance of the said selection made by the selection committee, the petitioner approached the Kasturba Medical College, Manipal (hereinafter referred to as the College) respondent No. 2 on 28-11-80 and sought for her admission as directed by the selection committee. But, the College refused to admit the petitioner on the ground that the admission for academic year 1980-81 had already been closed (Annexure-B). In this view, the petitioner represented to the Selection committee and other authorities to compel the College to admit her to the college. But, as the College refused to comply with the requests and directions issued by the selection committee and Government, the petitioner has approached this Court on 4-12-1980 under Article 226 of the Constitution,

seeking for a mandamus to admit her to any one of the colleges for the academic year 1980-81 in the general pool.

2. The petitioner has asserted that on her selection and allotment, the College was bound to admit her and enable her to prosecute her studies and by its failure, it has failed to perform its legal duty.

3. Before noticing the case urged for the selection committee-respondent No. 1 and the State of Karnataka-respondent No. 3 who have made a common cause and the college, it is necessary to notice certain other facts that have a bearing on the questions that arise for decision in the case.

4. In addition to the Government Medical Colleges, there are five private Medical Colleges in the State established and run by private individuals, public or private educational trusts or societies registered under the Karnataka Societies Registration Act, 1960. The total number of seats that can be filled up by each College is fixed by the Government and the Indian Medical Council. So far as the College, it has two sections one at Manipal and the other at Mangalore; its intake has been fixed at 100 for each of the sections. The College is owned and run by a trust called "Kasturba Medical College Trust". Under the Rules, as amended by the Government in its order No. HFW 28 MSF 80 dated 23rd July, 1980, 65 seats at Mangalore section and 40 seats at Manipal section of the College are earmarked for selection by the selection committee under the heading "Number of free seats to be allotted by the selection committee constituted by Government to students of Karnataka". The selection of candidates to the quota of free seats is exclusively done by the selection committee subject of course to the various other rules and orders with which we are not concerned and the Colleges admit the candidates that are selected by the selection committee to the said Colleges. Admissions to Medical Colleges are generally completed well before 30-9-1980 and the College is expected to commence its course immediately thereafter and the first list of selected candidates had been published well before the course commenced in the College and the candidates selected have also been admitted to the College. But, in the case of the petitioner and three, others who could not get themselves selected in the very first select list or waiting list had to wait for their selection till 20-11-80 on which day the selection committee selected the petitioner and others and directed them to seek admission on or before 29-11-1980. With this background, it is now useful to notice the respective stands taken by the respondents in their returns.

5. In their joint return, respondents 1 and 3, while setting out all the circumstances that led to the selection of the petitioner and others and their allotment to the college have pointed out that the selection of the petitioner is against Government seats in private Medical Colleges and the college is bound to admit the candidate. While supporting the petitioner to that extent, respondents 1 and 3 have asserted that her merit being lower to six other candidates that have been selected on 20-11-80 against Government seats in private Medical Colleges and 19 candidates in Government medical Colleges, her claim to admit

either to a Government Medical College or to any private Medical College, cannot be granted by this Court. Lastly, they have claimed that the petitioner can be admitted to the course or batch, as it is called, that has opened in the month of January 1981.

6. In its return, the College while not disputing any of the facts stated by the petitioner and in conformity with its stand stated in its certificate issued to her (Annexure-B), has asserted that admissions to the course were completed before 30-9-80 and it does not propose to open a new batch or a course commencing from January 1981 and in the absence of any vacancy it cannot admit her to the College. On this aspect the relevant part of the reply sent by the College in its letter No. AGE/F/652/80 dated 6-12-80 to the Secretary of the selection committee is worth reproducing and the same reads thus:

"The College has never given an undertaking to admit candidates selected by the selection committee at their own convenience. It was obligatory for the committee to select candidates within the time limit prescribed by the Medical Council of India and the University. These norms have not been followed. It is wrong for you to say that a fresh term will commence in January. The practice of admitting students late and starting a new term in January has been discontinued at the dictates of the University. We are not starting any new term in January and it is not possible or viable to do so for the sake of 3 students selected by you now. The College is certainly not ready for this. The so called vacancies mentioned by you do not really exist as the vacancies that arose due to the failure of the selected candidates to join the course within the time limit have been filled by the candidates sent by the Ministers of Karnataka Government. The College, is not prepared to make any discrimination between the bureaucracy and the Ministers. For us, all these candidates are those selected by the Government and we have admitted them against Government seats in our College. Under the above circumstances, we regret our inability to admit any fresh candidates at this stage."

Apart from the above factual and legal stand, respondent No. 2 has urged that it is only a private college maintained by a trust and it is not an authority within the meaning of Art. 12 of the Constitution, against which this Court can issue any writ under Art. 226 of the Constitution. Lastly, it has contended that the petitioner has no legal right nor it has any legal duty to perform and, therefore, a writ in the nature of mandamus to admit her cannot be issued.

7. Sri Murlidhar Rao, learned counsel for the petitioner, has contended that the petitioner having been selected by the selection committee on the basis of her merit to Government seats in a private Medical College and having sought for admission before the stipulated time, was bound to be admitted by the College and by its failure, it has committed a manifest illegality, for which reason it is imperative for this Court to issue a writ in the nature of mandamus to respondent No. 2 to admit her to the College. In support of his contention that the College can be compelled to admit the petitioner, Sri Rao strongly relied on

ruling of the Supreme Court in *Ajay Hasia v. Khalid Mujib Sehravardi*, AIR 1981 SC 487.

8. Sri V.C. Brahmarayappa, learned II Additional Government Advocate, appearing for respondents 1 and 3 supported Sri Rao.

9. Sri Nettar Govinda Bhat, learned counsel for respondent No. 2, firstly contended that the College is not an authority against which this Court can issue a writ under Art. 226 of the Constitution. Secondly, he has urged that the petitioner has no legal right and respondent No. 2 has no legal duty to perform and, therefore, writ in the nature of mandamus cannot be issued compelling it to admit the petitioner to the College. Lastly Sri Bhat has urged that the admissions to the college having been completed before 30-9-80 and the College not having opened a course or a batch from January, 1981, it cannot be compelled to open a new course or batch for the sake of the petitioner only and, therefore, this is a fit case in which this Court should decline to exercise its extraordinary jurisdiction in favour of the petitioner. In support of his first two contentions, Sri Bhat has strongly relied on the ruling of Jagannatha Shetty, J., in *Dr. Cherian Varkey v. Dean, Kasturba Medical College*, (1975) 1 Kar. LJ 418 and the ruling of the Full Bench of this Court in *Gokula Education Foundation v. Siddaganga Education Society*, (1977) 2 Kar. LJ 293. Before examining the merits of the claim of the petitioner it is useful to examine the first two contentions urged for respondent No. 2 as those contentions go to the very root of the matter.

10. On all hands it is admitted that the College is a private college and is maintained by a trust and the same does not fall within the meaning of the State occurring in Art. 12 of the Constitution. In *Dr. Cherian Varkey's*, (1975) 1 Kar. LJ 418, case Jagannatha Shetty, J. in almost similar circumstances against the very College has held that the College was a private medical College and was not an authority against which a writ of mandamus under Art. 226 of the Constitution can be issued. If the principles stated therein had not been diluted by any subsequent ruling of the Supreme Court, there is no other alternative for me except to reject this writ petition, at any rate, against the College. But, the present position appears to be that on the principles enunciated by the Supreme Court in *Ajay Hasia's*, AIR 1981 SC 487 case, the principles stated in *Dr. Cherian Varkey's*, (1975) 1 Kar. LJ 418, case is either distinguishable or is no longer good law.

11. In *Ajay Hasia's*, AIR 1981 SC 487, case the facts, in brief, were these: At Srinagar there is a College called "Regional Engineering College, Srinagar" run by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898. The College is one of the 15 Engineering Colleges sponsored by the Government of India. Selection of candidates was challenged by a large number of unsuccessful applicants before the Supreme Court under Art. 32 of the Constitution. Before the Supreme Court the College, at the threshold urged that it was not a State or an authority and, therefore, no writ under Art. 32 of the Constitution can be issued against it. In examining that contention, the

Constitution Bench of the Supreme Court speaking through Bhagwati, J. reviewing all the earlier cases, negated the contention of the College that it was not an authority. On that finding, the Court examined the merits of the claim and granted various reliefs to the petitioners. After setting out certain guiding principles to determine whether a particular person, society or trust is an instrumentality or agency of a State, the Court summarised the position in these words:

"We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar Statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Art. 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of the instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12."

12. It is in the light of the above principles, this Court has to examine whether the College is an instrumentality or agency of the State, at least in so far as the Government seats for which an authority constituted by the Government has made selection and has directed it to admit the petitioner.

13. Under the arrangement entered into between the College and the Government and the Rules though they are executive and are not statutory Rules, the College has reserved a particular number of seats to be filled by Government only and admit those students against that number. When that is so, so far as the Government seats, the College in reality and in substance becomes an instrumentality or agency of the Government and in admitting candidates and imparting education to them against Government seats, it would not be acting as a private College or a trust. On a proper examination of all the circumstances or "proper assessment of the facts in the light of the relevant factors" to borrow the language of the Supreme Court in *Ajay Hasia's*, AIR 1981 SC 487, case, I am clearly of the view that the College is an instrumentality or agency of the State and, therefore, a writ under Art. 226 of the Constitution can issue if proper circumstances exist.

14. On the above conclusion, whether a mandamus should be issued or not against the College has necessarily to be examined on the facts of the case and

cannot be thrown out without examining the right claimed by the petitioner and the duty to be performed by the College. In this view, the second contention urged by Sri Bhat is closely interconnected with the merits of the case, for which reason, I now propose to examine the merits of the case.

15. That the petitioner has been selected by the appropriate selection committee, having regard to her merit and that she has been allotted against Government seats and that she sought for admission before the time and date stipulated by the selection committee are not in dispute. The detailed Rules regulating the selection of candidates and their admission to the Medical Colleges ensuring equality of opportunity and selection of the most meritorious candidates to the limited number of seats really carry out the intendment and object of Arts. 14 & 15 of the Constitution. For the late selection whatever may be the reason and whoever may be responsible with which we are not concerned, the petitioner cannot be blamed. At the hearing Sri Rao also stated that the petitioner would join the College at her own risk and the fact that a new batch or a new course has not been opened in the month of January or in future cannot be an impediment for this Court to direct the College to admit the petitioner. Sri Brahmarayappa also submitted that the Government and the selection committee have already taken and are also taking every steps to regularise the selection of the petitioner and others before the appropriate authorities like the Indian Medical Council and the University which have a say in the selection of the petitioner and others and therefore, the College cannot plead any possible action by either of those authorities as an impediment for the admission of the petitioner. On these facts it is crystal clear that the constitutional and legal right of the petitioner to secure admission to the College for which she has been selected and is entitled to be admitted has been illegally denied by the College and, therefore she is undoubtedly entitled for a writ in the nature of mandamus compelling the College to admit her.

16. In its letter dated 6-12-1980, relevant portion of which is extracted above, the College has stated that it has admitted some candidates recommended by some Ministers of Karnataka Government against Government seats. In her writ petition, the petitioner has not impleaded those candidates or any other candidate admitted to the College. In this view, the question of examining the relative merit of the petitioner with those that have already been admitted and displacing those candidates does not arise. In these circumstances, the petitioner is only entitled for a mandamus to the College to admit her to the first year MBBS Course of the College at her own risk and cost subject to such decision that may be taken by the University of Mangalore and the Indian Medical Council that have a say in her selection and admission.

17. In the light of my above discussion, I issue a writ in the nature of mandamus to respondent No. 2 to forthwith admit the petitioner to the first year MBBS Course on her paying such amounts that are payable to the College and producing such certificates as are required by the Rules which, however, is

subject to such decision that may be taken by the University of Mangalore and the Indian Medical Council.

18. Rule issued is made absolute.

19. In the circumstances of the case, I direct the parties to bear their own costs.

20. Let a copy of this order be communicated to the respondents within 3 days from this day. Let copies of this order also be furnished simultaneously to the learned counsel for the respondents within the same time.