

(2013) 10 KL CK 0058

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 17381 of 2012

Anitha George

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 792

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : M.P. Ashok Kumar, Sri P.C. Gopinath and Sri S.A. Abdul Saleem, for the Appellant; S. Radhakrishnan, S.C., Lakshadweep Administration for Respondents 1 and 2, Sri Noushad Thottathil, Government Pleader for Respondent 4, Sri K.R.B. Kaimal and Sri B. Unnikrisna Kaimal for Respondents 6 and 7, for the Respondent

Judgement

A.M. Shaffique, J.—This writ petition is filed to direct respondents 1 and 3 to give admission to the petitioner for the MBBS course in Calicut Medical College to the seat reserved against the Kerala Government reserved seat for the candidates of Kerala origin settled in Lakshadweep, for a further direction to the 1st respondent to conduct entrance examination for sponsoring the candidates for MBBS in the Calicut Medical College in the seat reserved to the wards of Malayalees living in Lakshadweep, for a direction to the 2nd respondent to give admission to the petitioner for MBBS course in the Calicut Medical College as she is the second rank holder in the entrance examination conducted by the Union Territory of Lakshadweep and to declare that the selection of candidates for MBBS without conducting any entrance examination by the Lakshadweep administration is unconstitutional and against the principles laid down by the Supreme Court, to select a candidate for MBBS during the academic year 2012-13 from the eligibility list already prepared in the entrance examination conducted by the Lakshadweep administration, to declare that Ext. P-8 circular is null and void and is against the Medical Council Regulations and that no admissions can be given for MBBS on the basis of Ext. P-8 and for a declaration that admission given to

any candidate for MBBS course in Calicut Medical College on the basis of Ext. P-8 circular during 2012 is null and void. The facts as disclosed in the above writ petition would show that the Government of India has allocated certain seats for MBBS course from candidates coming from Lakshadeep. According to the petitioner, Ext. P-4 Rule would clearly show that the basic criteria for selection of candidates shall be through a competitive selection examination and after preparation of a merit list. These seats are distributed among the candidates according to the rank list prepared on the basis of the marks obtained in the entrance examination except in the case of one seat reserved for wards of non-islanders. According to the petitioner, two seats are allotted for MBBS for giving admission to the wards of non-islanders. It is stated that in the test so conducted all eligible wards of the whole main land can participate. No reservation is given for any special category of persons like Malayalees, Tamilians etc. in order to give admission to such seats.

2. The Lakshadeep administration conducted an entrance examination for the allocation of MBBS/BDS and Engineering seats allotted to the Union Territory of Lakshadeep Islands by the State/Central Government of India on 30th May 2012 and 31st May 2012. Ext. P-5 is the said notification wherein it is stated that appearance in Lakshadeep Medical and Engineering entrance test is compulsory for candidates aspiring for medical and engineering, seats from Lakshadeep quota. The test was conducted by Cochin University of Science and Technology and the petitioner was ranked No. 2. Ext. P-6 is the rank list. Further Lakshadeep administration has framed rules during 1979 for selection of candidates for MBBS course against the Kerala Government reserved seats for the wards of Malayalees living in Lakshadeep. Ext. P-7 is the said rules. According to the petitioner, Ext. P-7 rule is silent about the conduct of any qualifying examination for selecting the candidate eligible for getting MBBS against the Kerala Government reserved seats. As per Clause No. 2.2.1 one seat is reserved for the wards of non-islanders. But no entrance examination is conducted to select the eligible student under this category even though merit shall be the only criteria for the selection of the most eligible and qualified candidates to fill up the seat earmarked for non-islanders. The student who has passed Plus Two examination of the Board of Higher Secondary Education, Kerala or examination equivalent thereto with 50% marks in Biology, separately 50% marks in Physics, Chemistry and Biology put together are eligible for getting the benefit of reservation. The Lakshadeep administration has framed rules as per Ext. P-8, circular dated 22-6-2012.

3. The main contention raised by the petitioner is that following the direction of the Supreme Court, competitive entrance tests are being conducted all over India for selection of candidates for MBBS but the Lakshadeep administration has allotted the aforesaid one seat based on the marks in the Plus Two examination. It is inter alia contended that in the prospectus published by the Commissioner of Entrance Examination, it is clearly stated that reservation of seats for MBBS shall be in different methods and clause 4.1.11 (IV) deals with the reservation of seats for nominees from Lakshadeep. Ext. P-9 is the relevant page of the prospectus.

Ext. P-10 would show that one seat is reserved for MBBS in the Government Medical College, Kozhikode.

4. Petitioner submits that she had already submitted an application for allotment of MBBS seat reserved for candidates of Kerala origin before the Director of Education through proper channel. It is stated that one Smt. Gayathri is admitted for MBBS in the seat reserved by the Union of India. The second seat apparently should go to the petitioner who is the second rank holder. But on enquiry the petitioner had come to know that the Lakshadweep administration is sponsoring candidates without conducting any entrance examination. In that view of the matter, the petitioner has approached this Court for the reliefs as prayed for.

5. The petitioner relies upon various judgments of the Supreme Court and inter alia contends that the Lakshadweep administration is not entitled to sponsor any candidate for admission to any MBBS course and all candidates, will have to undergo the entrance examination. Ext. P-8 circular to the extent of permitting sponsoring of candidates is therefore null and void and against the judgments of the Supreme Court.

6. Counter-affidavit is filed by respondents 1 to 3 inter alia contending that during 1979 on the request of Malayalees staying in Lakshadeep the Government of Kerala allotted one seat in the Calicut Medical College for the wards of Kerala origin settled in Lakshadeep. The seat was allotted in consideration of the social and educational backwardness of the Island and the conditions of the students undergoing education in the Island. A candidate undergoing studies in the Island will not be in a position to successfully compete with the students undergoing studies in the main land. Therefore the Government of Kerala permitted the administration to make their own rules for allotment of seats to confer this benefit on the most meritorious candidate who had undergone maximum number of years of education in the Island. It is stated that the intention is to confer such benefit to the candidate who had merit and undergone studies in the most disadvantageous position. It is contended that introducing a common competitive examination between the Island educated children and mainland educated children of Malayalees would defeat the intention of allotment of one seat for MBBS for the wards of Malayalees settled in the Island. In fact, wards of Malayalees settled in the Island could undertake studies in the Island or in the mainland. The benefit of reservation was intended to confer on a student who had undergone studies in the Island for maximum number of years. It is to secure the said object that Ext. P-7 rules was framed on 18-7-1979 and it was being followed effectively for the last more than 32 years. It is contended that the selection by Ext. P-8 rules is definitely a rationale method of assessing comparative method which has an intelligible nexus to the object sought to be achieved. Lakshadeep administration notified the seat as per Ext. P-8 circular dated 22-6-2012 specifically stipulating that the seat allotment rules framed by Lakshadeep administration will be the basis for allotment. It is accepting this condition that the petitioner applied for the allotment of the seat. She had also

applied in tune with Ext. P-5 notification for the allotment of one seat available under the Central pool quota for the non-islanders. After submitting the application in terms of Exts. P-5 and P-7 notification the candidate is estopped from contending that the seats under Ext. P-7 notification also will have to be allotted in accordance with Ext. P-5 notification.

7. Counter-affidavit is filed by the 4th respondent inter alia contending that Clause 4.1.11 of the prospectus for admission to professional college courses of 2012 contains general information and rules relating to reservation of seats for MBBS and BDS courses. The reservation of seats for nominees is detailed in Annexure-III (2) and it is contended that the admission to the seats under Clause 4.1.11 should be completed by admitting authorities by 17-9-2012. The Director of Medical Education has to inform the un-availed seats in these categories on 18-9-2012 itself and such seats will be reverted to the mandatory quota. It is contended that as per the existing provisions in the prospectus, the State Government has very limited role of allotting candidates who are in State rank list based on the ranks and option submitted by them. As far as nominees of Lakshadweep are concerned, seats are reserved for candidates of Kerala origin settled in Lakshadweep. As per Annexure 111(2) of the prospectus, one MBBS seat in Government Medical College, Kozhikode for the candidates of Kerala origin settled in Lakshadweep is reserved. It is stated that such candidates who possess the requisite qualifications as per Clause 6 of the prospectus should be sponsored by the administration of that Union Territory. Additional respondents 6 and 7 have filed counter-affidavits. The 7th respondent is the candidate who had been admitted to the one seat reserved for MBBS course in the Kozhikode Medical College by the Government of Kerala in favour of candidates of Kerala origin settled in Lakshadweep. The 6th respondent is her father. It is stated that the petitioner has also applied for admission against the very same seat. One seat is reserved by the Government of Kerala as early as in 1979. The seat is intended for candidates of Kerala origin (Wards of Malayalees living in Lakshadweep) based on nomination by the Administrator of Union Territory of Lakshadweep. It is contended that Rules were framed in the year 1979. Selection is based on the norms laid down in Ext. P-7 Rules. It is further contended that the 6th respondent is employed in service of Lakshadweep administration from 5-5-1986 and is residing in Lakshadweep with his family. The 7th respondent has been living with him and she has undergone studies from Standards I to X at the Schools at Kavaratti. She had passed Senior Secondary Examination 2012 from the Senior Secondary School, Kavaratti. She secured marks much above the minimum prescribed for eligibility for admission to MBBS course and then she submitted application pursuant to Ext. P-7 notification issued by the 1st respondent. The petitioner is the daughter of one Sri C.M. George, Junior Engineer in Andaman and Lakshadweep Harbour Works. She had studied in all classes from Std. III to X in the schools in the main land. She passed senior secondary school examination from Navodaya Vidyalaya, Minicoy in the year 2011. She also applied for admission in one seat reserved for Kozhikode Medical College in response to Ext.

P-8 notification. In Ext. P-8 it is stated that seat allotment will be as per rules framed by the administration and Ext. P-7 is the said rules. It is stated that there is a separate allotment of seats for medical and engineering courses to Lakshadeep by Government of India. Selection to the said reserved seats is made in accordance with Ext. P-4 rules. The said reserved seats include one seat for MBBS. The first respondent issued Ext. P-5 notification in May 2012 inviting applications for appearance in the entrance examination. Examination was conducted by Cochin University, Science and Technology which is the agency nominated by the Administration. The petitioner applied for appearing in the said examination and Ext. P-6 is the rank list prepared by the Cochin University on 2-6-2012. The petitioner is rank No. 2 in that list. As only one seat is available in the said quota, the candidate at Rank No. 1 got selection and admission. It is after issuance of Ext. P-6, the 1st respondent has issued Ext. P-7 notification on 22-6-2012 and the petitioner applied in pursuant to the said notification as well. As per Ext. P-8 rules, candidates are eligible for weightage marks specified therein for the periods of their studies upto Standard X in Lakshadeep Islands. As the petitioner had studied in Lakshadeep from Standards I and II, she become eligible only for 30 marks whereas the 7th respondent gets 195 marks because she studied Standards I to X in the schools in Lakshadeep. In view of the fact that the petitioner had realized that she has no chance for getting a selection in preference to the 7th respondent, this writ petition is filed.

8. It is further stated that admission to the one seat reserved for Government of Kerala in MBBS course for candidates of Kerala Origin settled in Lakshadeep is being done on the basis of nomination as per Ext. P-8 rules since 1979. The administration has nominated the 7th respondent against the reserved seat of MBBS course 2012 based on a merit as per the norms laid down in Ext. P-8. She has remitted the necessary fees and she is undergoing her studies in the Medical College since 22-9-2012. The respondents also rely upon Ext. R-6(e) which is the relevant portion of the prospectus of 2012. It is stated that in Clause 4.1.2 of the prospectus, specific mention is made stating that the nominees of Central Government Union Territory or other States need not write the entrance examination. The respondents have a case that the petitioner has not challenged the above provision in the above prospectus. It is therefore the respondents sought for dismissal of the writ petition.

9. Learned counsel for the petitioner placed reliance on the judgment in *Parmender Kumar and Others Vs. State of Haryana and Others*, wherein the Supreme Court held that once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counseling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission. In *Sadanand Mishra Vs. Forest Research Institute and Others*, the Supreme Court held that if the admission to the appellant could not have been denied the petition should have been allowed by the High Court as the writ petition was filed by the appellant promptly and there has been no delay on his part. That was a

case in which the question was whether on account of lapse of time, the petitioner who had a genuine case should not be given the relief as prayed for. Medical Council of India Vs. State of Karnataka and Others, is relied upon to contend that if a regulation falls within the purposes referred u/s 33 of the Medical Council Act, it will have mandatory force. Paragraph 24 is relevant which reads as under:

24. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entry 25 or 26 of List III (Concurrent List). Regulations framed u/s 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred u/s 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. 27-8-1992) and clauses (j), (k) and (l) of Section 33.

10. The learned counsel for the petitioner also relies upon the Constitution Bench judgment in Islamic Academy of Education and Another Vs. State of Karnataka and Others, are relied upon which reads as under:

196. Technical profession in general and medical profession in particular in all countries and in all ages has been considered to be a noble profession. To acquire excellence, these professions demand a very high calibre, which criterion can be satisfied only by the meritorious students. If we want to achieve a very high standard which would be comparable to the standard of the developed countries, then merit and merit alone should be the basis of selection for the candidates.

197. Secondly, not only to maintain high standard of education, but also to maintain uniformity of standard, the right of selection of candidates for any professional course cannot be left to the discretion of any individual management. Efforts must be made to find out one single standard for all the institutions.

11. Another judgment relied upon is The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, wherein Supreme Court was considering whether minimum qualifying marks can be reduced. It is held that the prescription made by the State reducing the minimum marks in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses below the minimum prescribed by the Regulations framed by the Medical Council of India has to be ignored. It is further held that the entrance test or the pre-PG test, is conducted with dual purposes.

Firstly, it is held with the object of assessing the knowledge and intelligence

quotient of a candidate whether he would be able to prosecute postgraduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India. * * * *.

Weightage for service in rural/tribal areas.

33. In Pradip Tandon's case reservation in favour of people in "hill areas" and Uttarakhand was held to be constitutionally valid as they were socially and educationally backward classes of citizens. Reservation in favour of "rural areas" was found difficult to accept as it was sought to be justified on the test of poverty as the determining factor of social backwardness. The Court observed that rural element does not make a class by itself because it could not be accepted that the rural people are necessarily poor or socially and educationally backward just as the urban people are not necessarily rich. We may hasten to observe that what was being dealt with in Pradip Tandon's case was a reservation and not a weightage. The case at hand presents an entirely different scenario. Firstly, it is a case of post-graduation within the State and not an all-India quota. Secondly, it is not a case of reservation, but one of only assigning weightage for service rendered in rural/tribal areas. Thirdly, on the view of the law we have taken hereinabove, the assigning of weightage for service rendered in rural/tribal areas does not at all affect in any manner the candidates in open category. The weightage would have the effect of altering the order of merit only as amongst the candidates entering through the exclusive channel of admissions meant for in-service candidates within the overall service quota. The statistics set out in the earlier part of the judgment provide ample justification for such weightage being assigned. We find merit and much substance in the submission of the learned Advocate General for the State of Madhya Pradesh that Assistant Surgeons (i.e. medical graduates entering the State services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as a motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the set-up of health services in the State of Madhya Pradesh and the geographical distribution of population, no fault can be found with the principle of

assigning weightage to the service rendered in rural/tribal areas while finalizing the merit list of successful in-service candidates for admission to PG courses of studies. Had it been a reservation, considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis.

12. Learned counsel for the petitioner also places reliance on the larger Bench judgment in P.A. Inamdar and Others Vs. State of Maharashtra and Others, Specific reference is made to paragraph 146 of the said judgment which reads as under.

146. * * * Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure.

13. Further reference is made to the judgment in Chowdhury Navin Hemabhai and Others Vs. The State of Gujarat and Others, and reliance is placed on paragraph 18 which reads as under:

18. On a comparison of the minimum criteria for admission to the MBBS course laid down in the MCI Regulations and the State Rules, 2008, we find that both the MCI Regulations and the State Rules, 2008 insist that a candidate must have obtained 40% marks in Physics, Chemistry and Biology in the qualifying examination. The only difference between the MCI Regulations and the State Rules, 2008 is that while the MCI Regulations require the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes to secure in the competitive entrance examination for admission 40% marks in Physics, Chemistry and Biology taken together, the State Rules, 2008 do not contain such a requirement. But as the State Rules, 2008 had prescribed a qualification standard which was less than that of the MCI, the seven appellants, who took the Gujarat Common Entrance Test for academic year 2008-2009, got selected on the basis of their merit for the seats in the MBBS course reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes and got admitted in the College even though they had not secured 40% marks in Physics, Chemistry and Biology in the Gujarat Common Entrance Test. The qualification requirements prescribed by the State cannot be lower than those prescribed by the MCI. Therefore, in law, the order of the High Court is right.

14. These judgments are relied upon to contend that conducting of an entrance examination is mandatory especially in the light of the regulations framed by Medical Council of India which has statutory force. That apart, it is contended that even if the time for admissions are over, petitioner is entitled to be selected as against the selection given to the party respondents herein in view of the judgment in *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, is relevant which reads as under:

32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer *Arti Sapru v. State of J & K*, *Chhavi Mehrotra v. DG, Health Services and Arvind Kumar Kankane v. State of U.P.*).

15. Further reference is also made to the judgment of a Division Bench of this Court in *Shamin Sainudheen Vs. Medical Council of India*, and another Division Bench of this Court in *Vinod v. State of Kerala* 2012 (2) KLT 683 which highlight the purpose of conducting entrance test.

16. Having regard to the nature of contentions urged, the short question that arises for consideration is the validity of Ext. P-8 circular, on account of the changed circumstances and in the light of the judgments of the Supreme Court in the cases referred above. There is no dispute about the fact that admissions to M.B.B.S. course are to be conducted as per the regulations framed by Medical Council of India and after conducting necessary entrance examination in this regard. It is also not in dispute that reservation had been provided for candidates who come from Union Territory of Lakshadweep and other similarly situated areas where the facility for appearing and studying for the entrance examination is not available. Therefore, special procedure had been prescribed for candidates who are residing in the Islands and studying in those Islands or Union Territories as the case may be. Certain seats are also reserved for such candidates and the procedure for selecting such candidates are to be done by the respective Union Territories. It is also not in dispute that since 1979 one seat had been reserved for candidates who are wards of Malayalees residing in the Island of Lakshadweep. The selection of that one seat is made on the basis of the minimum eligibility marks the candidate has obtained in their qualifying examination that is Plus Two examination and on the basis of the number of years they have studied in the Island. This process had been followed for the last several years and Ext. P-8 circular had not been challenged so far. The question is whether the process of selecting candidates by way of an entrance

examination is required for the purpose of allotting or nominating a student for this one seat which is reserved for wards of non-Islanders (Malayalees) studying in the Island of Lakshadweep.

17. Let me now consider the effect of Ext. P-8 circular. As per the prospectus for admission to professional degree courses approved by the State Government for the year 2012, clause 4.1.11 provides for reservation of seats for M.B.B.S. and BDS courses. It is stated that the seats reserved under All India quota for M.B.B.S. and BDS courses in Government Medical/Dental colleges will be allotted by the Director-General of Health Services, New Delhi on the basis of the rank obtained in the All India Pre-medical/Pre-dental Entrance Examination conducted by the CBSE, New Delhi as per the directions contained in the Supreme Court judgment dated 21-7-1986. The details of the seats are given in Annexure III(2). The reservation categories includes nominees of Government of India, nominees from the Government of Puducherry, nominees from Union Territory of Andaman and Nicobar Islands, nominees from Lakshadweep and nominees from Jammu and Kashmir. Annexure III(2) forming part of the prospectus prescribes the number of seats under All India quota, nominees and special reservation categories. In respect of Government of India nominees, the total seats in different Government Medical Colleges in the State is 24. One seat is allotted for Kerala origin settled in Union Territory of Lakshadweep at Kozhikode Medical College.

18. Ext. P-7 is the circular issued by the Administration of the Union Territory of Lakshadweep on 22-6-2012. It is stated that one seat for M.B.B.S. course is reserved by the Government of Kerala for the candidate of Kerala origin settled in Lakshadweep. Candidates who passed Plus Two examination of the Board of Higher Secondary Education, Kerala or examination equivalent thereto with 50% marks in Biology separately and 50% marks in Physics, Chemistry and Biology put together are eligible. It is also indicated that the seat allotment rules framed by the Lakshadweep administration will be the basis for the allotment. The rules for selection of candidates for the M.B.B.S. course against the Kerala Government reserved seat for the wards of Malayalees living in Lakshadweep other than local inhabitants is Ext. P-8. The rules inter alia provides that only those candidates who have secured at least 50% of the aggregate marks in Pre-Degree examination or equivalent examination in the three compulsory subjects namely Physics, Chemistry and Biology are eligible. It further indicates that along with the total marks obtained in the three subjects namely Physics, Chemistry and Biology in the qualifying examination, weightage will be given for the duration of the candidate's schooling or study in the Island schools/college. For Classes I to IV the weightage is 15 marks per year and for Classes V to VII, 20 marks per year and for Classes VIII to X, 25 marks per year.

19. As far as selection to the other seat allocated by Government of India to the Union Territory of Lakshadweep is concerned, Ext. P-4 is the rules for selection of candidates for M.B.B.S. seats. Clause 1 provides that the basic criteria for

selection of candidates shall be a competitive selection examination and the merit list prepared thereupon. Ext. P-5 is the notification for conducting entrance examination for allocation of M.B.B.S./BDS and Engineering seats allotted to Lakshadweep by the State/Central Government of India. Clause (f) of Ext. P-5 provides that appearing in the entrance test is compulsory for candidates aspiring for the medical and engineering seats from Lakshadweep. Ext. P-6 is the rank list. Petitioner was rank No. 2 and the additional seventh respondent is rank No. 4. The contention is that allotment in respect of the seat allotted to Lakshadweep in Kozhikode Medical College has to be given from the aforesaid rank list and if so the petitioner will be entitled to get the said admission.

20. It is not in dispute that the separate allotment of seats is made for medical and engineering courses from Lakshadweep. It is not disputed that selection to the said reserved seats is made in accordance with Ext. P-4 rules. Ext. P-5 notification is issued inviting application for appearance in the entrance examination for the said one seat to which Ext. P-6 rank list came to be prepared. As far as Ext. P-7 notification is concerned it is the rules for selecting candidates for M.B.B.S. course for the wards of Malayalees or Keralites living in Lakshadweep. Certain weightage has been given to such students who studies in Island schools. Clause 4.1.2 of the prospectus indicates that in respect of seats set apart for the nominees of Government of India or Union territories, such candidates need not write the entrance examination. Therefore admittedly the entrance examination conducted by the Controller of Entrance Examination in the State of Kerala does not apply to the seats allotted to nominees of Government of India, Lakshadweep etc.

21. Therefore if one looks at the factual position as available when the selection process was conducted, there was nothing wrong in the Lakshadweep Administration to have given the weightage marks to the 7th respondent for giving her the allotment of seat reserved for wards of Malayalee living in the Island.

22. The question therefore would be regarding the validity of Ext P-8 circular. Going by the judgments relied upon, it cannot be disputed that the minimum qualification for the one seat available in Kozhikode Medical College under the head Kerala origin settled in Lakshadweep is given certain weightage for the number of years he or she have studied in the Island.

23. Whether such weightage could be granted or not and whether an entrance examination could be dispensed is the question.

24. Regulations on Graduate Medical Education, 1997 (hereinafter referred to as the MCI regulations) as amended upto February 2012 provides for selection of students. It is indicated that the selection of students to Medical College shall be based only on merit of the candidate and for determination of the merit following criteria has to be adopted uniformly throughout the country which reads as under:.

1. In States, having only one Medical College and one university board/ examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

2. In States, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

3. Where there are more than one college in a state and only one university/ board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

4. A competitive entrance examination is absolutely necessary in the cases of Institution of All India character.

25. Clause 5 further provides the procedure for selection to MBBS course which reads as under:

(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in the Clause (2) of Regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes. The marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% of marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology competitive examination. In respect of candidates belonging to Scheduled Caste, Scheduled Tribes or Other Backward Class the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

26. The short question is whether Clause 5 applies in respect of a candidate from the Union Territory of Lakshadweep. The selection procedure prescribed under Clause 4 stated above inter alia requires that a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of

standards at qualifying examinations conducted by different agencies. This applies to States where there is more than one Medical College under the administrative control of one authority. Clause 5(i) provides the minimum marks to be obtained for the qualifying examination, which is apparently 50%. It is not in dispute that Exts. P-7 and P-8 also insist for 50% marks for the qualifying examination. The only question is whether a candidate who is a nominee for the one seat at Kozhikode Medical College has to undergo the competitive entrance examination. In terms of Clause 5(ii), the procedure for selection includes the candidate who come in the merit list prepared as a result of the competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology in the said competitive examination, relaxation is only made to Scheduled Caste, Scheduled Tribes or Other Backward Classes. Going by the above Regulation, one cannot visualise a situation that when a seat is reserved for the Union Territory of Lakshadweep, an entrance test in terms of the regulations framed by MCI is mandatory. However, as far as Union Territory of Lakshadweep is concerned, whether such a procedure is to be followed is the question. The MCI Regulations does not specifically indicate any exclusion of persons coming from the Union Territory of Lakshadweep. Therefore, when they seek admission to a Medical College within the State of Kerala they have to undergo a competitive entrance examination. But the fact remains that those students are entitled for certain weightage. As stated in the counter-affidavit filed by the administration, one cannot compare the students who studied in the Island or Islanders with that of students studying or belonging to the main land. Therefore, students who undergo studies in the Island has to be treated as a separate class by itself. That is why reservation is provided for such students. Apparently, the MCI Regulations does not anywhere provide for any reservation to the persons coming from Union Territory of Lakshadweep. In other words, the reservation provided by the Lakshadweep administration and the procedure adopted by them in nominating their candidate for admission to MBBS course in the main land is not covered by the Regulations of MCI. Therefore, the Rules framed by Lakshadweep administration has much force in so far as admission of students from the Island is concerned. In respect of students coming under the All India Quota, a separate entrance test is conducted by the Lakshadweep administration. But, in respect of the admission to one seat reserved in the Kozhikode Medical College for the ward of a Malayalee who resides in the Island, no separate test is provided whereas, they are only giving weightage for the marks they have obtained for the qualifying examination depending upon the number of years they have studied in the Island. Such a procedure cannot be termed as unreasonable as persons who have studied more years in the Island should have more benefit or more weightage than those students who have studied in the Island for a lesser period. Such being the situation, I am of the view that the procedure now adopted is not at all bad in law and therefore, it is not open for the petitioner to challenge the admission given in favour of the 7th respondent. However taking into consideration the change in law, it shall be open for the Lakshadweep administration to stipulate necessary changes to Ext. P-7

rules, especially having regard to the judgments aforesaid.

In the result, the writ petition is dismissed.