
(1982) 07 KAR CK 0026
In the Karnataka High Court
Case No : W.P. 11005/82

Badriprasad B.R.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1983) 1 KarLJ 567

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

1. This petition is disposed of at the stage of preliminary hearing after notice to the respondents.

2. The petitioner Dr. B.R. Badriprasad is a graduate in Dental Surgery of the Bangalore University having completed House Surgeonship from 3.10.1979 to 2.4.1980 in the Government Dental College at Bangalore. Thereafter he has been practising privately in a Dental Clinic at Bangalore. He applied for a seat for the post graduate course in Dental College preferably P.G. Course in Orthodontia for the academic year 1981-82. The petitioner was not called for interview by the Selection Committee, constituted under the Rules framed by an executive order of the Government for selection and admission to the Post Graduate dental course offered by the University of Bangalore. The said rules are called the Karnataka Dental College (Selection for Post Graduate Course) Rules, 1981. The petitioner has himself produced a true copy of the Rules at Annexure-B, to the petition. The petitioner has alleged that respondent No. 3 has been selected by respondent No. 2 which is contrary to the Rules and thereby discriminated against him though respondent No. 3 has obtained lesser marks in his degree course than the petitioner. He has further alleged that the selection of the 3rd respondent was contrary to clause 4 of the Rules in as much as respondents has not completed the House manship prescribed for a period exceeding 12 months in any Government Hospital. This allegation is supported by Annexure-C, which is a true copy of the endorsement issued by the Director of Medical Education in Karnataka dt. 19.5.1981. It is in that circumstance, the petitioner has

approached this Court under Art. 226 of the Constitution praying for a writ of mandamus directing respondents 1 and 2 to provide admission to the petitioner in the Dental College for Post Graduate Course in Orthodontia and to give other consequential relief like costs etc.

3. Respondents have entered appearance. On behalf of respondents 1 and 2, it was contended that the 3rd respondent has been admitted to the Course as a nominee of the Government of India, under Rule 4(2) of the Rules which provides for two seats being reserved for candidates nominated by the Government of India. Similarly sub-rules (1) and (3) of Rule 4 also provide for reservation. Rule 5 provides for reservation of seats in favour of candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Tribes, etc. The procedure of selection is under Rule, 8 of the Rules. The selection is subject to reservation made under Rules 4 and 5.

4. The petitioner does not fall into any one of the reserved category. He is an applicant for the seat available in the general pool on the basis of merit, not being a nominee of the Central Government, not being a member of the Scheduled Castes, Scheduled Tribes and other backward classes, and not being deputationis being and in service candidate of the Government of India or the State Government.

5. The learned Government Advocate from the records made available to the Court, has drawn my attention to the last candidate selected in the merit or general Pool who has secured 60.76 in the subject Orthodontia in the Post Graduate Diploma Course, whereas the petitioner has secured 56.23. Thus, it is seen that the contentions advanced by the petitioner that he has been discriminated is liable to be rejected for two reasons. Firstly, he cannot claim his right under Art. 14 of the Constitution because the petitioner does not belong to the class of candidates admitted to which the 3rd respondent belongs. If he is not in the same class of persons as the 3rd respondent, then he has no locus standi to challenge the selection of the 3rd respondent assuming that the selection was improper for reasons of violating sub-rule (4) of Rule 20. Time and again, this Court and the Supreme. Court in *Chitrakala v. State of Mysore*, AIR 1964 SC 1823, has held that Government can frame rules for selecting students to its own colleges run and financed by it notwithstanding the regulations made by the University so long as such rules are not contrary to the University regulations. Selection is based on a reasonable classification of candidates and a few seats are reserved for Central Government nominees as it is possible that post graduate education in Dentistry may not be available in some States in which event the Central Government which ultimately under Entries 64 to 67 of list of the 7th Schedule of the Constitution has control over scientific and technological education can make a request to the State Government to reserve some number of seats for post graduate seats in the State Government colleges.

6. The 3rd respondent as a result of such request and nomination by the Government as is clear from the letter of the Central Government addressed to

the State Government is provided with a seat. It cannot be said that the petitioner is discriminated.

7. My attention was drawn to the case of State of Mysore v. Padmanabha Charya, AIR 1966 SC 602, wherein the Supreme Court held in regard to bringing about the validity of an appointment on the date of appointment which could not have been valid as the Rule when it existed, by a subsequent amendment. But in that case, the Supreme Court was dealing with rules made by the Governor in exercise of his power under proviso to Art. 309 of the Constitution. The Supreme Court has held that such rules had statutory force within the meaning of the expression "law" in Art. 13 of the Constitution. On the other hand the 1981 Rules are rules made by the State Government in exercise of its power under Art. 162 and as held by a five Judges Bench of this Court in Gokul Education Foundation, Bangalore & Others v. State of Karnataka, ILR. 1977 Kar. 1217, is not "law" within the meaning of that expression in Art. 12 of the Constitution.

8. I do not therefore think that there is any force in the submission made by the petitioner's counsel that the nomination of the 3rd respondent after issuing the endorsement he was not eligible has any force, because his appointment was made after the promulgation of 1981 Rules in August 1981. His admission is said to have been made in November of that year.

9. There are certain vague allegations of malafide in amending the Rule itself. I do not think I should notice them not only because it is vague but because there is no specific person named who can deny the act of malafide and he is not made a party to these proceedings.

10. For the reasons given above, there is no merit in this petition and therefore the same is rejected.

11. Government Advocate is permitted to file his memo of appearance within two weeks from this day.

12. The petition is rejected.