

(1988) 07 KAR CK 0016
In the Karnataka High Court
Case No : W.A. No. 2525 of 1987

B.V. Veena

APPELLANT

Vs

Director, NCC Directorate

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS)
Rules, 1987 — Rule 9 (2)

Citation : (1988) ILR (Kar) 2660 : (1988) 3 KarLJ 409

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : Ravivarma Kumar, for the Appellant; C. Shivappa, Central Govt. Standing Counsel for R-1 and S.V. Jagannath, Government Advocate for R-3, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—Appellant was the petitioner in W.P.No. 12096/87. Her prayer for a Writ of Mandamus to respondents 1 to 3 to select and admit her to I Year MBBS degree course in any Government Medical College or against Government seats in any private Medical College, under the quota reserved for NCC candidates was rejected by the learned single Judge. Hence this appeal:

2. During the academic year 1987-88, petitioner was one of the candidates who applied for a seat in I Year MBBS degree course. In the PUC examination she had secured 84.66% marks in the relevant subjects. She appeared for the Entrance Examination called "Entrance Test". She secured the rank No. 1974 in the Merit List prepared as provided by the relevant Rules.

3. According to the petitioner, she was an outstanding NCC cadet, and as such, was eligible to be considered for selection in the quota reserved for NCC candidates. The quota was 15 seats. It is her contention that out of those who fall within this category of candidates - called NCC category (for short), petitioner's rank was within fifteen, in case, the selection has to be done with

reference to the ranking in the merit list; but, the selection was wrongly don? with reference to the NCC marks awarded by the NCC Officers. We have to examine the correctness of this contention.

4. All candidates who seek selection to Government Colleges and Government Seats in Private Medical Colleges have to appear (apart from their passing PUC) for a common Entrance Test conducted as per "Entrance Test for Admission to Engineering, Medical and Dental Degree Course Rules, 1986." The selection of the candidates is as per the Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS) Rules, 1987 -hereinafter referred as the "Rules".

5. Rule 2(8) of the Rules says that, "merit" shall have the same meaning as defined under clause (1) of Rule 2 of Entrance Test Rules. There is no dispute that this Merit is reflected in the ranking assigned after the Entrance Test, depending on the academic excellence of the candidate as measured by the marks obtained at various examinations.

6. Some of the relevant Rules are extracted below:

RULE-4 : "Distribution of Seats : The Seats shall be reserved in favour of the following categories of candidates in Government and Private Medical Colleges to the extent as may be notified by the Government from time to time :

- (a) The students nominated by the Government of India;
- (b) The children of Defence and Ex-Service Personnel ;
- (c) The children of Political sufferers/Freedom Fighters ;
- (d) the persons who have participated in any National or International level sports or games events ;
- (e) The NCC "B" certificate holders with outstanding service in NCC.
- (f) The children of Horanadu Kannadigas ;
- (g) The Children of Gadinadu Kannadigas ;
- (h) Persons who have studied for not less than ten full academic years at any time between first standard and the qualifying examination in educational institutions in rural areas ;
- (i) Students who have studied for not less than five full academic years in any educational institutions in Gulbarga Revenue Division between first standard and second year PUC examination and have passed the qualifying examination from institutions affiliated to the Gulbarga University.
- (j) Students belonging to Anglo-Indian Community of Karnataka State."

(Note -omitted)

RULE-8 :-

"Selection Committee :- (1) There shall be a Selection Committee constituted by the Government consisting of the following members :-

(a) Director of Medical Education, Bangalore (or in his absence his nominee not below the rank of Joint Director)

CHAIRMAN.

(b) Director of Backward Classes and Minorities, Government of Karnataka (or his nominee not below the rank of a Joint Director)

... Member

(c) Director of SC/ST Government of Karnataka (or his nominee not below the rank of a Joint Director)

... Member

(d) The Deputy Director (Medical Education)

.... Member-Secretary

(2) While finalising the selection of candidates for seats reserved under clauses(e) and (f) of Sub-rule (1) of the Rule 4 the Director of Youth Services or the Director of NCC as the case may be, shall also be included as members. There shall be common interview for both Medical and Engineering seats at which the Director of Technical Education shall also be a member.

(3) The presence of three members of the aforesaid Committee inclusive of the Chairman will constitute a quorum of the meeting of the Committee."

Rule 9. PROCEDURE FOR SELECTION :-

"(1) The marks secured in the second Year P.U.C. or equivalent examination and the Entrance Test in Physics, Chemistry and Biology subjects by the applicants to whom such test is applicable shall be taken into consideration for the purpose of determining the merit of the applicants and their merit and ranking shall be based, on the merit as defined in the Entrance Test Rules and the selection for admission on the basis of merit and reservation shall be only on the basis of such merit list.

(2) The selection in respect of category (a) under Sub-rule (1) of Rule 4 shall be notified by the State Government. The selections in respect of categories (h) to (i) of Sub-rule (1) of Rule 4 shall be made by the Selection Committee on the basis of merit and inter se ranking as assessed in the merit list prepared under the Entrance Test Rules for the respective category."

(Underlining by us)

[Rest-omitted]

Rule 13 :-

"Admission of applicants :- The candidates selected shall get themselves admitted to the College to which they are allotted within the date and time notified failing which their claims for admission shall stand automatically cancelled.

The applicants shall produce the following certificates and documents at the time of interview and admission, --

(a) to (j) (omitted)

(k) Persons applying for seats under category (e) of Sub-rule (1) of Rule 4 should produce the proof for having passed NCC "B" Certificate examination issued by NCC authorities. They should also produce the necessary certificates in support of their outstanding service in NCC."

(Rest-omitted as unnecessary)

7. The main contest was by the first respondent. According to him, the Selection Committee to select the candidates for NCC quota includes himself as member and the selection has to be on the basis of the comparative out-standing performance in NCC. It is pointed out to us, that, a committee of the NCC Officers awarded marks to the cadets for their performance/participation in various activities and those marks govern the rankings inter se of those who are to be selected out of the NCC cadets and whose names are found in the Merit List. In the statement of objections filed on behalf of 1 st respondent, at para-7, it is stated :

"At the time of selection, the basis for working out the allotment of marks was done by adding NCC activities to the academic marks based on the PUC marks. The contention of the petitioner that her name had been pushed down to No. 5 in the waiting list in spite of the fact she had secured merit No. 1974 at the Entrance Examination is incorrect for the fact that the working system for placing candidates on merit priorities is as described above."

8. Whereas, those who were selected under the NCC quota had secured marks between 140 and 65, for their respective NCC activities, petitioner had secured only 55 marks. The mark list and the mode of its preparation by the department of NCC was placed before us by Sri C. Shivappa, the learned Senior Central Government Standing Counsel. This list, discloses that the petitioner's name is found in the "List of Reserve Cadets for Allotment of Medical Seats", at Sl. No. 5 and those who were above her in this reserved list had been awarded 95, 70, 60 and 55 marks. Above all these persons is found the "Merit List" as prepared by the NCC Department, which contains 15 names, whose marks for NCC, as already stated varies from 140 to 65.

9. One fact that emerges from this list placed before us by Sri Shivappa is that, petitioner was never considered as ineligible to be included in the NCC quota. In other words, her claim that she is a NCC. "B" certificate holder with outstanding service in NCC" was not disputed, atleast at the time this list was prepared by

the NCC Officers. That is why, she was placed in the "Reserved List" by them. Petitioner has produced a copy of the list of selected NCC candidates in which also, her name is shown at Sl. No. 5 in the "Waiting List" of NCC candidates.

10. If petitioner was ineligible to fall under the NCC category, at the threshold her name would have been rejected and there was no question of her name being kept in the waiting list of NCC candidates. This observation of ours is necessitated because of the contention of Sri Shivappa, that, unless a cadet secured 65 marks for NCC activities, the cadet will not fall under the category described as "the NCC "B" certificate holders with out-standing service in NCC" as stated in Rule 4(e). That was not at all the stand put forth in the statement of objection of 1st respondent. Such an argument was not advanced before the learned Single Judge. It is obvious that the 1st respondent has tried to become wiser, at this stage of appeal, in order to sustain the selection made at his behest.

11. Hence, we proceed on the assumption that the petitioner belonged to the NCC category falling under Rule 4(e) and was eligible to claim a seat from the NCC quota.

12. The question remains as to whether, the selection has to be made according to the rankings with reference to NCC marks or the rankings as per the Merit List prepared after the Entrance Test.

13. The reasoning of the learned single Judge, while rejecting the petitioner's claim, is found in para-10 of the order, --

"The Selection Committee constituted under Sub-rule (1) of Rule 8 is required to take into consideration the merit as asserted by the Selection Committee under Sub-rule (2) of Rule 8 and also their performance at entrance test. The second part of Rule 9(2) states that the Selection in respect of categories (b) to (j) (inclusive of (e) of Sub-rule (1) of Rule 4) shall be made by the Selection Committee "on the basis of merit and inters ranking as assessed in the merit list prepared under the entrance test rules, for the respective category." The merit of an NCC cadet is his outstanding service or ability. The Committee constituted under Rule 8(2) of the Rules taking into consideration allocation of weightage for various activities, details of which are mentioned in Annexure-E and also their performance at the entrance examination has assessed their merit. The Selection Committee constituted for making selection under Rule 8(1) of Rules after interviewing candidates and on being satisfied about their merit has made the selection."

14. The function of the Selection Committee, obviously is to verify and find out the acceptability of several certificates to be produced by the candidates and examine the claim of a candidate as belonging to a particular category. No power is given to the said Committee to award any marks at the interview. To make the selection out of the NCC category, the 1st respondent is taken as a Member of the Selection Committee because of his competence to verify the claim of any candidate that he or she belongs to the NCC category. He can also contribute his

expertise to examine the certificates produced by the NCC candidates. There is no provision empowering the Selection Committee to find out the suitability of a candidate to come within the NCC category, by interviewing the candidate.

15. Under Rule 4, seats are distributed amongst several categories - (a) to (j). Each category has a distinct feature of its own and serves a specified purpose. Under Rule 4(d), persons who have participated in any "National or International level sports or games events" form one category. Amongst these sportsmen, inter se merit is not judged by any reference to the number of participations in any of the relevant sports events; success or failure in these events also is irrelevant. If a dozen candidates claim, to be selected under this category, the inter se merit for selection has to be done, with reference to their academic performance, as revealed from the "Merit List". This is clear from Rule 9(2). The second sentence of Rule 9(2) is emphatic in its mandate when it says that the selections in respect of categories (b) to (j) of Rule 4 shall be made by the Selection Committee. The basis of the selection is the merit and inter se ranking as assessed in the merit list prepared under the Entrance Test Rules for the respective category. The words "for the respective category", in Rule 4(2) has no meaning if it governs the Entrance Test Rules, because, there is no separate Entrance Test Rules for any particular category. These words govern the Selection Committee. That is to say, the sentence should read, as "the selection in respect of categories.....shall be made by the Selection Committee for the respective category on the basis of merit and inter se ranking as assessed in the merit list prepared under the Entrance Test Rules." This reading harmonises the provision for the constitution of the Selection Committee under Rule 8(2) which provides for an additional member, to select from each of the two categories.

16. Therefore, when there is a group of candidates, who fall under a particular category, their inter se ranking for selection has to be done by reference to their respective ranks in the Merit List.

17. The Rules do not contemplate any priority for a person within a category, depending upon his extra qualities pertaining to that category. For example, amongst the political sufferers, under Rule 4(c) it cannot be said that the candidate whose father suffered greater, than the father of another candidate, should get priority. Each category forms a class of its own. Everyone, within that category, is equal, de hors the Merit List.

18. We find our view in consonance with the reasoning of the Supreme Court in *Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors, Khalid v. Commissioner*. The question involved before the Supreme Court was whether the proper criterion to be adopted for selection of candidates belonging to the category "eminent sportsmen" is pre-eminence in sports and not academic excellence, Three seats were reserved for the category of "eminent sportsmen". There were several applicants coming under this category. The petitioner's contention was that, he was more eminent than others

in sports, though, he secured less marks academically. This contention was rejected by the Supreme Court. At page 2077, Supreme Court held, --

".....The real difficulty arises when there are more than one candidates who have excelled in their respective fields of sports eg. cricket, football, hockey etc. and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits."

Again at para-6, it was held :

"In the absence of any guidelines for purposes of selection, the adjudging of comparative merits among the eligible candidates falling under the category "eminent sportsmen" would necessarily introduce, as the learned Chief Justice observed, "an element of subjectivity which would introduce arbitrariness" in the selection of candidates because it would be left to the discretion of the Executive in making the choice. In the absence of any guidelines, there is nothing for the Selection Committee to fall back upon except the marks obtained by the candidates at the qualifying examination."

19. A similar Rule as involved herein, came up for consideration before Rama Jois, J. in D. SARAVANAN v. STATE OF KARNATAKA & ORS., W.P.No. 15936 of 1984 DD 19-10-1984. There also, the reservation was in favour of persons "holding NCC "B" certificate with outstanding service in NCC." At para-8, it was held, --

".....in so far it related to the claim for selection against the reserved seats, and, among the candidates who are identified as outstanding cadets, the Selection Committee was required to make selection strictly according to the marks secured in the entrance test in view of Sub-rule (3) of Rule 9 of the Selection Rules."

20. Thus, there has been, already, a clear enunciation of the principle, governing the fact situation, which, unfortunately was not placed before the learned single Judge in this case. The decision of the Supreme Court, referred by us above, was also not available to the learned single Judge.

21. The inclusion of the name in the "Merit List" as defined under the Rules, is not to create mere eligibility for selection. The Merit List assigns the rank of a candidate based on his academic excellence. This academic excellence is to be the primary consideration for selection. Reservation of seats to particular categories is an exception. The inter se claim for priority for selection, amongst those who form a particular category, is possible only if academic excellence of each candidate is to be the basis. Otherwise, there will be scope for subjective assessment of special qualities, for selection, that is to say, the Selection Committee or the concerned Officer will be vested with the power to award higher marks for a sportsman, on the basis of his alleged performance in sports-

activities and in case of a NCC candidate, on the basis of the alleged performance in NCC activities. The purpose of the Rules, is to give prominence to objective assessment and avoid: subjective assessment of the qualities of a candidate.

22. Sri. S.V. Jagannath, learned Government Advocate, stated before us that (to repeat his own words), "Based on the marks awarded by the said Directorate (i.e., NCC) first 15 candidates are selected for admission to the I Year MBBS course." If this reflects as to what happened (and we have no doubt that, this was what happened, as is made clear by the list prepared by the NCC Officers and produced before us by Sri Shivappa), the Selection Committee has to be held as having abandoned its functions, by acting in servility to the NCC Directorate, and in so doing both these bodies disregarded the law enunciated by this Court earlier in Saravanan's case, W.P.No. 15936 of 1984.

23. The selection out of those who fall under one category has to be made only on the basis of the ranking in the Merit List. The petitioner was wrongly deprived of a seat during 1987-88. If the correct principle had been applied, there is no dispute, that the petitioner would have been selected and admitted to I Year MBBS course during 1987-88. The said academic year has already come to an end and a new academic year 1988-89 is about to commence. Therefore, following the practice of the Supreme Court as applied in *State of Punjab Vs. Bhagwant Singh and Others*, the petitioner has to be provided with a seat for I Year MBBS course during 1988-89 academic year, by respondents 1 to 3.

24. Petitioner has been deprived of the seat on a patently erroneous ground by ignoring the principle enunciated in an earlier decision. Respondents 1 to 3, though parties to the earlier decision, failed to place it before the learned single Judge. Petitioner has lost an year of her academic life. In the circumstances, both sets of respondents have to bear the burden of the petitioner's costs.

25. Consequently the appeal is allowed with costs. We direct respondents 1 to 3 to admit the petitioner to the I Year MBBS course during the current 1988-89 academic year, in any one of the Medical Colleges having Government Seats, in the State of Karnataka.

Respondents 1 to 3 shall pay the petitioner a sum of Rs. 2,000/- (Rupees two thousand only) towards her costs.