
(1986) 11 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 7282 of 1986-P

D. Jayakumari

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 10-11-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : AIR 1987 Ker 181

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—The chief question that has to be decided in this Original Petition concerns the interpretation of a clause in the Prospectus issued by the Government of Kerala, Department of Technical Education for admissions to Engineering Colleges. Clause 9 of the Prospectus prescribes a method of selection of candidates. It provides that selection of candidates to all the seats for admission to Engineering Course in Government Institutions and 85% of the seats in Private Institutions will be made, based on an Entrance Examination in Mathematics, Physics and Chemistry. Further, it is provided that in the case of Private Institutions 15% of the seats will be filled up by the Management concerned from among the eligible applicants who have applied in time to the Commissioner for Entrance Examination in response to the notification calling for applications.

2. Sub-clause (ii) of Clause 9 makes provision for reservation for certain categories. It reads thus :--

"The following seats are reserved in the Engineering Colleges in the various branches of study for the categories specified below :

No. of seats

1. Nominees of Government of India 67
2. Repatriates from Burmah 21 Civil, 1 Electrical and Electronics.
- 3, Repatriates from Ceylon 2 1 Mechanical. 1 Electrical and Electronics.
4. Children of Ex-Service-men of Kerala 6 2 Civil, 2 Mechanical and 2 Electrical and Electronics.
5. Children/dependants of serving defence personnel from Kerala (G.O.Ms. 65/62 of 3-6-1982) 10 3 Civil, 2 Mechanical, 3 Electrical and Electronics and 1 Electronics and Communication.
6. Sports quota (Sports Council Nominees)** 10 2 Civil, 2 Mechanical, 2 Electrical and Electronics 2 Chemical, 2 Electronics and Communication."

The asterisk decoded reads thus :--

"Of the ten seats, five seats will be set apart for athletics and the remaining seats will be set apart for those proficient in games."

3. The petitioner claims a seat reserved for Sports Quota. She submits that she has been recommended by the Kerala Sports Council for admission to the Engineering Course by its letter dt. 20-9-1986. Copy of the letter, the petitioner has produced along with the O.P. marked as Ext. P-2. From Ext. P-2, it can be seen that the petitioner has been recommended by the Sports Council under Sports Quota earmarked for other sports and games as Number six.

4. The case of the respondents is : five seats will be set apart for Athletics and the remaining five seats will be set apart for those proficient in games, and since the petitioner's ranking is No. 6 among the candidates listed as those proficient in games, she has no entitlement to be selected for admission. The petitioner meets this point by saying that out of the five seats allotted to Athletics only two candidates are found eligible and therefore three seats are available in the general quota for sports though earmarked for Athletics and for those seats, candidates who are found qualified under other sports and games have got a better legitimacy and claim than those candidates in the general merit pool.

5. The question is whether the petitioner can be considered for filling up the vacancy of seats available to Athletics. This question has to be resolved on the construction of the relevant clauses in the Prospectus, which I have quoted above. If I hold that there is no separate earmarking for candidates recommended by the Sports Council for Athletics and other sports and games, the petitioner may have an entitlement to claim an available unfilled seat denominated to Athletics in the absence of eligible candidates in that category. I feel that I have to read Clause 9(ii)(6) along with the note provided by the asterisk. So it has to be read thus :--

9(ii) 6. "Sports quota (Sports Council nominees)**

Of the ten seats, five seats will be set apart for athletics and the remaining seats

will be set apart for those proficient in games."

Along with this provision, I have to consider the provision in Clause 9(iii) which reads thus : --

"Admissions against the abovementioned reserved seats will also be strictly in accordance with the eligibility requirements specified in para 2(i), (ii) and (iii)

Unavailed reserved seats will be added to seats under merit on Statewide basis."

I feel that Clause 9(c) notes 5 and 6 also will indicate the texture of the law which I should interpret for resolving the controversy in this case. It reads thus : --

"5. The seats unavailed of by the Scheduled Castes candidates will go to Scheduled Tribe candidates and vice versa.

6. if any seat in the reservation quota is left unavailed of by candidates belonging to the respective castes and communities, such seat will go to the open merit pool (State-wide)."

6. The note 5 referred above, expressly makes it clear that seats reserved specifically and separately for Scheduled Castes and Scheduled Tribes which are left unavailed of by candidates belonging to the respective castes will go to Scheduled Caste or Scheduled Tribe candidates only. This indicates a deviation from the general rule in Sub-clause (iii) of Clause 9, which expressly provided for a provision for unavailed seats to be added on to seats under merit on Statewide basis. I feel that the general pattern accepted and approved by the prospectus is that when there is a vacancy in the reserved seats, it should be given to an eligible and deserving candidate in the merit pool. But it was thought that in regard to Scheduled Castes and Scheduled Tribes, a deviation from this rule is necessary; I feel that this deviation has been made only in regard to Scheduled Castes and Scheduled Tribes. Of course, they form one group just like Athletes and candidates proficient in games and sports forming one group. In the case of candidates forming one group as Athletes and candidates proficient in games, as it has been done in the case of Scheduled Castes and Scheduled Tribes, the Prospectus is not making any deviation from the general rule, namely, that unavailed seats should be given to candidates in the merit pool.

7. No one can dispute that academic and scholastic merit is the test to select the best for admission to educational institutions and in that context, it is not unreasonable to think but only fair and proper that unavailed seats in the reserved category should, in the normal course, legitimately go to the merit candidates. This is so because the reservation itself is an exemption from the general principle for selecting the best for admission to educational institutions. This principle has been given effect to in sub-clause (iii) of Clause 9. In the matter of interpretation of a piece of legislation, I prefer to be an intention seeker and not a strict constructionist". I hasten to add that the result of my interpretation in this case as an intention seeker cannot be different from an

interpretation given, if conform to the interpretation of a strict constructionist.

8. In my judgment, in all cases of interpretation of law, we should adopt such a construction which will promote the general legislative purpose underlying the provision. I am of the opinion that unavailed seats in the reservation quota for sports earmarked for Athletics should go to candidates in the merit pool. This is the decision taken by the respondents. This decision is not erroneous. It should be upheld.

In the result, the Original Petition has to be dismissed. I do so.