

(1979) 12 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No's. 222, 241 and 242/79 and O.P. No's. 1586, 1648 and 1716 of 1979

Dr. C. Mathew

APPELLANT

Vs

The Principal, Medical College and Others

RESPONDENT

Date of Decision : 10-12-1979

Acts Referred:

Citation : (1979) 12 KL CK 0016

Hon'ble Judges : Gopalan Nambiyar, C.J;Viswanatha Iyer, J;Balakrishna Eradi, J

Bench : Full Bench

Advocate : T.P. Kelu Nambiyar and P. Rajagopal, in W.A. 222/79, N.N. Venkitachalam, in W.A. 241/79, R.D. Shenoi, in W.A. 245/79, S. Easwara Iyer and E. Subramoni, in O.P. 1586/79, K.S. Rajamony and A. Shahul Hameed, in O.P. 1640/79 and George Varghese Kannanthanam, P.C. Joseph and Abraham Vakkanal, in O.P. 1716/79, for the Appellant; C.K.S. Panicker, General, M.N. Sukumaran Nair, M.I. Joseph and M.B. Kurup, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—These writ appeals and writ petitions have been heard together as they all raise the validity of certain "Rules" or "Instructions" for admission to the Postgraduate Medical Course in the Medical Colleges in this State. In O.P. No. 2160 of 1979, the learned Judge upheld the validity of the selection and the "Rule" that was challenged. The writ-Petitioner's alternative case that he was entitled, on proper assessment to Rank No. 2 in the Rank-list, and that Respondents 3 to 5 are not entitled to be selected at all, as they are not entitled to 10 per cent weightage for having passed the Diploma Course, the results of which were not announced on the last day for receipt of applications, was rejected by the learned Judge on the ground that the validity of the selections would not be affected in view of a Government communication dated 31st March 1979 to be noticed more fully hereafter. W.A. No. 222 of 1979 is against the said Judgment.

2. W.A. No. 241 of 1979 is against O.P. No. 1601 of 1979. The writ petition was dismissed by the learned Judge upholding the validity of the selection and the reservations on the basis of which the rank-list was prepared. The learned Judge followed the Judgment in O.P. No. 2160 of 1979.

3. W.A. No. 245 of 1979, is against the judgment in O.P. No. 1808 of 1979, in which the learned Judge uphold the validity of the rank-list, following the judgment in O.P. No. 2160 of 1979.

4. In the writ petitions, either the one or both of the contentions raised in the writ appeals, have been repeated. The exhibits have to be collected as between all the cases, as they, or some of them have not been filed in all.

5. As the main arguments were advanced in W.A. No. 222 of 1979, and O.P. No. 1586 of 1979, we shall notice the facts and deal with the contentions raised in the said cases.

W.A. No. 222 of 1979.--

6. The Principal of the Medical College, Trivandrum, invited applications for admission to the Postgraduate Degree or Diploma Course in the Medical Colleges of Trivandrum, Calicut and Kottayam. The notification was published in the Gazette, dated 27th February 1979. The last date for receipt of applications was 31st March 1979. According to the prospectus, the eligibility for all the Postgraduate Courses is determined by the possession of a M.B.B.S. Degree of the Kerala/Calicut University or any other University recognised by these, as equivalent thereto. This was the basic requirement for admission. The mode of selection was indicated in the prospectus as on the basis of merit to be assessed by taking into account the total marks for all the subjects in the M.B.B.S. Course in the University Examination plus marks obtained for the particular subjects or parent subjects in the case of specialities converted into percentage of the total. A weightage of 5 per cent was to be added to the total in the case of persons who had military service to their credit; 10 per cent was to be added to Diploma holders in the selection to the M.S. and M.D. Courses in the respective subjects or subject specialities; and 5 per cent to the Health Services candidates, etc. Reservations in favour of Scheduled Castes and Scheduled Tribes and to the teaching staff of the Medical Colleges were also provided. Ext. P-1 in this case is a copy of the prospectus. The first paragraph of Ext. P-1 invites applications to Postgraduate Degree/Diploma Courses in the subjects specified. Item 11 is Ophthalmology; item 12 Orthopaedics and so on. Clause 3 of Ext. P-1 deals with eligibility for admission. Clauses 3, 4 and 5, may be re-produced:

3. Eligibility for admission.--This will be prescribed by the University from time to time. Candidates should have passed the M.B.B.S. Degree of Kerala/Calicut University or any other University recognised by the Kerala/Calicut Universities as equivalent thereto with eligibility for full registration in respect of all courses. For selection to the course preference will be given to candidates who have done one year Senior House Surgery or one year Tutorship/ Demonstrationship in the

concerned subject or who have been engaged in Medical practice for a minimum period of three years. The question of preference comes only when the assessed merit of two candidates is found equal.

4. Basis of selection.--The selection of candidates will be made according to G.O. MS. 280/76/HD., dated 14th July 1976 as modified from time to time which shall be deemed to have incorporated *ibid*. The selection will be on the basis of merit which will be assessed by taking into account the total marks obtained for all the subjects for M.B.B.S. Course in the University examinations plus the marks obtained for the particular subject or the parent subject in the case of specialities, converted into a percentage of the total. This shall be subject to the screening of the selection committee. The decision of the selection committee concerning the selection will be final.

A weightage of--

(a) 5 per cent marks will be added to the total percentage in the case of those who have undergone Military Service for a period not less than three years;

(b) 10 per cent to Diploma holders in the selection of candidates to M.S. and M.D. Courses in the respective subjects or sub-specialities;

(c) 5 per cent to Health Services candidates with not less than three years of rural service. An additional 2 per cent weightage for every additional completed years of Rural Services will be granted subject to a maximum of 10 per cent in all. This concession is available also to the Medical Officers working in the rural areas under the E.S.I.. Scheme provided their service in rural areas is certified to be so by the Administrative Medical Officer, E.S.I., and countersigned by the Director of Health Services.

* * * *

(Notes I to III omitted)

5. (a) 10 per cent of the seats in each subjects of the Postgraduate Course will be reserved for admission to Scheduled Castes and Scheduled Tribe candidates. They should produce certificate from the Tahsildar of the Taluk concerned to the effect that he/she belongs to the Scheduled Caste/Scheduled Tribe, in the form appended.

(b) 20 per cent of seats in Postgraduate Course in the Medical Colleges will be reserved for teaching staff in Medical Colleges. The selection to the reserved quota of seats for Tutors in Medical Colleges will be made strictly on the basis of seniority, Tutors in regular service in the particular speciality will be considered against those reserved seats, i.e., a Tutor in Surgery will be eligible for consideration against the reserved seats in M.S. and not in M.D. Tutor applicants, should send their service certificates clearly indicating the date from which their seniority commences in each cadre duly countersigned by their Department Head.

(note omitted)

(c) Instead of open competition, 2 per cent of the seats under General merit are set apart for candidates coming from outside Universities other than Kerala and Calicut.

Clause 12 states inter alia that late and/or defective applications shall not be considered. Clause 13 states:

13. Certificates to be produced.--In all cases true copies of the following documents have to be produced.

* * * * (k) Any other certificates required along with the application.

The provision in the notification regarding the weightage for Diploma holders in accordance with Clause 4 of the prospectus was amended by a letter dated 31st March 1979 a copy of which, has been filed in most of the cases, on the side of the writ Petitioners or the Government, and in some cases on behalf of both. For instance it is filed as Ext. R-1, along with the counter-affidavit in O.P. No. 1808 of 1979 against which W.A. No. 245 of 1979 is directed. That is as follows:

Copy of letter No. 14585/F2/79/HD., dated 31st March 1979 from the Health (F) Department, Trivandrum to the Principal, Medical College, Trivandrum.

Sub: Medical College admission to Postgraduates Course students undergoing Diploma Course--Extension of time, etc., request for.

Ref: Memorandum dated 28th February 1979 by the Postgraduate Students of the Diploma Course, Medical College, Trivandrum.

A copy of the memorandum cited is enclosed and I am to inform you that no further extension time need be allowed for the receipt of applications for the admission to postgraduate course this year.

It is noted that the results of the Diploma Course conducted in Medical College, Calicut, will be published before the last day for the receipt of application to the postgraduate course, while the results of the students of the Medical College, Trivandrum will not be available before the last date for the receipt of applications to postgraduate course. Thus, the students of the Medical College, Trivandrum are placed at a disadvantage.

I am therefore to inform you that it has been decided that applications from the students of Diploma Course in Medical College, Trivandrum may also be considered that 10 per cent weightage may be given to the postgraduate students of Diploma Courses in Medical College, Trivandrum subject to the condition that they will produce the Diploma Certificate before finalising the selection to the postgraduate course.

(Sd.) For Special Secretary to Government.

(Sd.) Principal.

Ext. P-2 filed in O.P. No. 1586 of 1979 is a copy of the form of application for

admission. Clause 13 therein deals with professional qualifications. Sub-clause (d) therein, i.e. "*other distinctions if any". There is an asterisk against this sub-clause. The explanation against this asterisk is at the bottom of the application, which is as follows:

N.B.--Attested copies of the statement of marks at each professional examination and those of other documents should be attached with every application.

*Here also specify whether a Diploma holder or having; military service or rural service and also whether certificate to this effect have been produced.

The learned Judge dismissed O.P. No. 2160 of 1979 holding that the weightage of 10 per cent for postgraduate diploma given to Respondents 3 to 5 cannot be challenged and that Ext. R-3 communication to the principal was in effect an announcement of results of the Calicut University Postgraduate Diploma Course. As the main contention regarding the validity of Clause 5(c) of the prospectus was upheld in O.P. No. 1586 of 1979, we may notice the facts of that writ petition before dealing with the contentions.

O.P. No. 1586 of 1979.

7. The writ Petitioner is the holder of a degree from the University of Mysore and a postgraduate diploma from the Calicut University of March 1978. According to the prospectus the Petitioner is eligible for admission under Clause 3 and is entitled to get the weightage of 10 per cent for postgraduate diploma holders under Clause 4. But strangely enough, his application was not entertained at all nor considered. Had it been done, the Petitioner, according to him, should have preference over Respondents 4 to 6. The authorities seem to have taken the view that candidates from "outside" Universities other than Kerala and Calicut, cannot compete in the general merit pool, but should take their chance and place only in the reservation of 2 per cent allowed for them under Clause 5(c) of the prospectus. This is objected to as discriminatory. That is the main ground of attack in the appeal.

There is a further ground of attack, that Respondents 4 to 6 were not Diploma holders on the last date for application, viz., 31st March 1979. But on the date of the interview for selection intimation was sent by Special Messenger by a letter dated 31st March 1979 from the Special Secretary to the Government, to the Principal Medical College, Trivandrum (Ext. P-3 in O.P. No. 2160 of 1979 and Ext. R-1 in W.A. 245 of 1979). It stated that requests for extension of time for submission of applications need not be allowed. It noticed the rather anomalous position that while the results of the Postgraduate Diploma Course in Calicut would be published before the last date for application, the results of the Trivandrum Medical College would not be available. The Principal was informed that the weightage of 10 per cent for Diploma Course may be given to the Kerala University students subject to their producing Diploma Certificates before selection. That has given rise to the second plank of attack against the selections. The argument was that eligibility for admission must be satisfied with

respect to the last date for application, and was not to be supplied or supplemented subsequently by a letter of the Special Secretary of the type referred to earlier. Counsel for the writ-Petitioner stated that the results of the Postgraduate Diploma Courses in Calicut and Trivandrum were published only on 11th April and 24th April respectively. The intrusion of the Special Secretary's letter into the region of an August selection is said to have enlarged the range of selection beyond the terms of the prospectus and the notification, and to have vitiated the selection. The infirmity was accentuated by the Special Secretary's letter dated 29th March 1979 to the Principal Medical College, Trivandrum (copy Ext. R-1) adding the words "and who are not in the service of the Government of Kerala", at the end of Clause 5(c) of the prospectus extracted earlier.

8. Dealing with the argument of discrimination, it will be seen that Clause 3 of the prospectus, which prescribed eligibility for admission required only an M.B.B.S. Degree of the Kerala/Calicut University or any other University recognised by these, as equivalent thereto. The "outside" graduates--if we may so call them--are thus undoubtedly eligible to apply. Under Clause 4 a weightage of 10 per cent is given to Diploma holders. While eligibility and weightage are thus expressly posited even in favour of the University Graduates, by Clause 5(c), they have been "outside" confined to a reservation of 2 per cent of seats under the general merit pool instead of being allowed seats under open competition. Besides amounting to taking away the express right to eligibility conferred upon them by Clause 3, Clause 5(c) of the prospectus has been attacked as illegal and discriminatory, as amounting to a prohibition against competing in the general merit pool and providing only a reservation which is so infinitesimal as to be illusory. It has also been attacked as creating a reservation of 98 per cent in favour of Calicut/Kerala University students, thus exceeding the optimum of 50 per cent reservation as indicated by the Supreme Court in *T. Devadasan Vs. The Union of India (UOI) and Another*, .

9. We have given careful consideration to these arguments. We can find no intelligible reason for lifting the "outside" University graduates from the general merit pool and confirming them to the illusory two per cent of reservations under Clause 5(c). We think this amounts to discrimination against these "outside" graduates. Having proclaimed their equivalence and eligibility under Clause 3, to deny their right to compete in the open merit pool is irrational.

10. The learned Advocate General stressed that there was a distinction between eligibility and entitlement, and that while the former had been provided for in Clause 4, the latter was covered by Clause 5 by indicating the source from which the candidates were to be drawn, viz., 10 per cent from Scheduled Castes and Scheduled Tribes 20 per cent from the Staff of the Medical Colleges, and 70 per cent by open competition. Out of this last, 2 per cent had been earmarked as reservation for "outside" graduates. The , learned Advocate General likened the provision to the University-wise distribution of seats dealt with by the Supreme Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, . The position

has been considered also by the recent Full Bench judgment of this Court in State of Kerala and Anr. v. Rafia Rahim 1978 KLT 369.

11. The offensiveness of provision has only been accentuated by Ext. R-1 memo dated 29th March 1979 by which the Special Secretary to Government wrote to Principals of all Colleges that "outside" graduates in the service of the Government of Kerala were exempted from the baneful effect of the prohibition in Clause 5(c). That has given rise to the argument that the disqualification visited on "outside" graduates to compete in the open merit pool, cannot on any rational grounds be regarded as having been removed by their being in Government Service. Despite our anxiety, we are afraid we cannot salvage the principle of selection introduced by the Government under Clause 5(c) as amounting to a rational classification based on intelligible differentia having a rational nexus with the object sought to be served. Whether intentionally or otherwise, it strikes us as a clever device to oust the "outside" University Graduates from the general merit pool and to confine them to an illusory scheme of reservations. They are thus directly denied the benefit granted by Clause 3. Parochialism on an allied principle, but on different lines, in attempting to favour Andhra Advocates for Munsiff's selection in the Andhra State, was discountenanced by the Supreme Court in J. Pandurangarao Vs. Andhra Pradesh Public Service Commission, . We are unable to see how this provision [Clause 5(c)] can be characterised as meant to preserve the excellence of education and standard, or as having a rational nexus with the object of getting the best talent for the postgraduate courses in medicines. It bears no resemblance on analogy to the principle of University-wise distribution of seats dealt with in D.N. Chanchala Ors. Vs. The State of Mysore and Others, relied on by the learned Advocate General. Clause 3 of the prospectus recognises that "outside" graduates whose equivalence with local graduates has been recognised, rank alike with the Kerala and Calicut University graduates in their eligibility for competition in the open merit pool. We fail to see any rational principle on the basis of which they can be segregated to an illusory reservation as in Clause 5(c). We are unable to see too, any principle on which an "outside" graduate, in service under the Kerala Government is a virtuoso, entitled to compete in the open merit pool. We see no rational principle on which service under the Kerala Government can be regarded as a panacea against the ban under Clause 5(c). We are constrained to hold Clause 5(c) of the prospectus as discriminatory and illegal. We do so.

12. In the face of our declaration of invalidity in regard to Clause 5(c) of the Prospectus it would be unnecessary to deal with the subsidiary contention. Still, for the sake of completeness, we shall deal with the same.

13. The argument was that the requirements for basic qualification or for weightage, had to be satisfied on or before the last date prescribed for applications, and that a subsequent acquisition of the basic qualification or of the degree or diploma needed for the weightage, cannot operate in favour of an

applicant who did not have these on the said last date, and whose application for that reason was liable to be summarily rejected under Clause 12 of the prospectus. We think the reasonable and proper way of understanding the prospectus is that the basic qualifications for eligibility for admission and the special degrees or diplomas for weightage, should alike be satisfied by an applicant on the last date for applications. Under Clause 13(k) of the application form, which we have extracted earlier, all certificates required had to be produced with the application. Clause 12 enjoins summary rejection for non-compliance. All of which, only seem to indicate that the diploma certificate for weightage must accompany the application. Where it did not, as in this case accompany the application, there was no (sic) the Government or Special Secretary to overlook the defect and direct the weightage to be given even to those who did not have the diploma, as was attempted to be done by Ext. P-3 letter referred to earlier. Assuming, without deciding that the "Prospectus" and the notification were a "law", we would remind ourselves of the caution administered by the Supreme Court that an unannounced law like Ext. P-3 cannot bind, and that it is against the principles of natural justice to penalize a citizen on such "law" Harla Vs. The State of Rajasthan, If acquisition of qualifications for eligibility or weightage were to be looked into subsequent to the last date, we should think that only an open and official or authentic declaration of result by the University, or perhaps an official intimation of declaration of result alone can serve the purpose. The direction in Ext. P-3 to give weightage to the Kerala University Graduates would certainly not serve the purpose, and was wrong and illegal and has vitiated the selection.

14. We wish to record that it was stated for Respondents 4 and 5 in W.A. No. 222 and 245 of 1979 that the marks of the Diploma Test were communicated to the Principals on/before the last date for receipt of applications and received by them on 31st March 1979. There was nothing to show whether the communication was an open or an authenticated one; and we are doubtful, to say no more, whether an acquisition of qualification for eligibility and weightage, subsequent to the last date for application can save an applicant who did not have these on the said date. We are clear that Ext. P-3, cannot have the effect of overriding the effect of Clauses 12 and 13(k) of the prospectus.

15. As a result of our above discussion and conclusions, we allow W.A. No. 222 of 1979 and set aside the judgment of the learned Judge and the rank list for admission to the Postgraduate Course in Ophthalmology, and quash the selections made on the basis of the said list.

16. We were rather distressed at having to quash the selections of budding youngsters to the specialised courses. Such thoughts prevailed with us in the Full Bench decision in State of Kerala and Anr. v. Rafia Rahim 1978 KLT 369. While the Petitioners in those cases won the battle, they were denied the fruits of victory. We see no ground for a repetition of the same treatment to the Petitioners before us. Particularly is it so, because some of them had filed the

writ petitions before the selections, and some had obtained interim orders that the selections shall be finalised only subject to the result of the writ petitions in this Court. We cannot lightly pass over these aspects. We would accordingly quash the selections made and direct a fresh selection to the courses, in accordance with law and in the light of the observations contained in this judgment.

17. Following the above judgment, W.A. Nos. 241 and 245 of 1979 will also stand allowed and the rank lists and selections will stand quashed. The authorities are directed to make fresh selections in accordance with law and in the light of the observations contained in this judgment.

O.P. No. 1586 of 1979

18. This writ petition will stand allowed and the rank list will stand quashed. The authorities are directed to make a fresh selection in accordance with law and in the light of the observations contained in this judgment.

O.P. No. 1716 of 1979--

18. The Petitioner is an M.B.B.S. of the Nagpur University. He has a Diploma in Tuberculosis and Chest diseases from the Delhi University. He secured 58.4 per cent in the M.B.B.S. Examination. 10 per cent weightage for his diploma would give him 684 marks. He was an applicant for the M.D. Course in General Medicine. There was a total of 21 seats; and if he were to be confined to the 2 per cent reserved for "outside" graduates under Clause 5(c), not even a single "outside" graduate would be entitled to be selected.

19. In the light of our preceding discussion and conclusion we allow the writ petition and quash the selections made and direct that fresh selections be made in accordance with law and in the light of the observations contained in this judgment.

O.P. No. 1648 of 1979.--

20. We allow the writ petition and grant the same relief as above, that is, a quashing of the selections made and a direction for reconsideration and fresh selections in accordance with law, There will be no order as to costs in these cases.