

(1981) 02 KAR CK 0045
In the Karnataka High Court
Case No : WP. 19315 of 1980

Dr. C.P. Dayananda

APPELLANT

Vs

Chairman Selection Committee and Another

RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

Constitution of India, 1950 — Article 15

Karnataka Medical Colleges Selection for Post Graduate Course Rules, 1980 — Rule 5(I)

Citation : (1981) 2 KarLJ 119

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. In accordance with the Karnataka Medical Colleges Selection for Post Graduate Course Rules, 1980, (hereinafter referred to as the Rules), the. selection committee constituted under the said Rules, called for applications to select candidates to 184 seats of 20 post graduate degree courses and 146 seats of 15 post graduate diploma courses in the four Government Medical Colleges of the State. The aforesaid total number of seals in the post graduate degree courses in the different subjects and the colleges to which they are distributed are detailed hereunder:

Sl. No. Name of the P.G. Course B'lore Med. College M.M.C. Mysore K.M.C. Hubli M.C. Bellary Total

1 2 3 4 5 6 7

Post Graduate

Degree:

1 M.D. (Genl. Medicine) 11 7 5 5 28

2 M.S. (Genl. Surgery) 13 7 5 5 30

3 M.D. (Obst. & Gyna.) 6 4 4 3 17

4 M.S. (ENT) 5 2 3 - 10

5 M.D. (Paediatrics) 5 2 3 - 10
 6 M.D. (Anaesthe) 4 3 3 - 10
 7 M.D. (Radio Therapy) 2 - - - 2
 8 M.D. (Radio Diagnosis) 3 - - - 3
 9 M.D. (Ophthalmology) 6 2 2 - 10
 10 M.S. (Ortho) 5 2 2 - 9
 11 M.D. (Skin & VD) 2 1 - - 3
 12 M.S. (Anatomy) 4 2 3 - 9
 13 M.D. (Physiology) 3 3 2 - 8
 14 M.D. (Pharmacology) 4 2 2 - 8
 15 M.D. (Pathology) 5 3 3 - 11
 16 M.D. (P&SM) 3 - 2 - 5
 17 M.D. (Microbiology) 4 1 - - 5
 18 M.S. (Forensic Med.) 2 - - - 2
 19 M.Ch. (Urology) 2 - - - 2
 20 M.D. (TB Chest & Diases) - 2 - - 2
 89 43 39 13 184

From the above, it is clear that the number of seats available to different subjects or disciplines is limited.

2. In response to the relevant notification calling for applications, the petitioner who is a member of scheduled tribe called "Meda" and is working as a Medical Officer in the Defence Department of the Government of India, applied for selection to the post graduate degree course in General Medicine. Against column No. 5 of the application the petitioner stated as hereunder:

"5 (a) Subject applied for (a) M.D. (General Medicine)

(b) In case you are not selected for the subject for which you have applied are you willing to be considered for any other subject allotted by the selection committee.

Indicate (b) Yes.

Yes or No.

On a consideration of the applications made by the petitioner and others that had applied to General Medicine, the selection committee found that the merit of the petitioner did not justify his selection to the subject of general medicine and has,

therefore, not selected him for that subject. Aggrieved by the same, the petitioner has presented this petition on 7-10-1980 under Art. 226 of the Constitution challenging his non-selection.

3. From the particulars made available by the learned II Additional Government Advocate, it is seen that in all 18 members belonging to scheduled tribes had applied for selection to degree and (diploma courses and that from amongst them 6 persons have been selected in the subjects of general medicine, OBG, DGO, Physiology, DA and D.O.M.S. and for the subject of general medicine as against 4 persons that had applied for selection, one Sri V. Shivarama Naik, a member of a scheduled tribe with superior merit over the petitioner has been selected. On the above facts that are not in dispute and are borne out from the records, the case of the petitioner is that as a member of a scheduled tribe, he should have been selected if need be by selecting all the eligible scheduled tribe applicants to "General Medicine" to the extent of reservation available to the members of scheduled tribes to the total number of seats of the post graduate degree course. While challenging his non-selection, the petitioner has not impleaded any person that has been selected either to the subject of general medicine or to any other subjects.

4. Sri B. Vedantalengar, learned counsel for the petitioner, has contended that for the subject of general medicine, there being only 4 applicants from members of scheduled tribes, including that of the petitioner regard being had to the 3 per centage reservation available to scheduled tribes and the number of seats in the Government colleges viz., 184, the selection committee was bound to select the petitioner to the subject of "General Medicine" and by its failure, has contravened Art. 15 of the Constitution and the orders providing for reservations. In support of his contention Sri Iyengar, strongly relied on a ruling of this Court in S.S. Annegowda v. Karnataka PSC, (1980) 2 Kar. L.J. 217.

5. Sri V.C. Brahmarayappa learned II Additional Government Advocate appearing for the respondents, contended that on the language of Rule 5 (ii) of the Rules, the action of the selection committee in selecting only one member of the scheduled tribe and not selecting the petitioner and two others of scheduled tribe, was legal and valid and the ratio in Annegowda's case had no application

6. Under the various Government Orders made from time to time reflected in subrule(i) of R. 5 itself, that Government of Karnataka has reserved 3 per cent of seats in post graduate degree and in diploma courses in Medical Colleges to members of scheduled tribes is not in dispute. Sub rule (ii) of Rule 5 of the Rules, effectuating the objects of reservations made in sub-rule (i), reads thus:

"(ii) Reservation shall be subject-wise as far as possible When there are no persons or less number of persons available in the categories mentioned above, as far as possible over-all percentage of reservations in the total number of seats shall be maintained.

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Firstly, sub-rule (ii) directs that reservations to the category mentioned in clauses (a) to (f) of sub-rule (i) shall be made subject-wise as far as possible. If reservations in each subject to the extent for which reservations made under sub-rule (i) of the Rules, nothing more is required to be done by the selection committee. But, if that does not happen, then the next provision of sub-rule (ii) directs that reservations to the various categories referred to in sub-rule (i) to the total number of seats available in the four Government Colleges is required to be maintained. The second contingency contemplated by sub-rule (ii) arises only when the first contingency is not achieved. By the two alternatives the Government has sought to achieve the object of reservations in the most rational manner that could possibly be achieved in the circumstances. On the other hand, acceptance of the contention and construction suggested for the petitioner would as well may mean that a particular subject or discipline has to be filled only by members of scheduled tribes only. What is true of scheduled tribes would be true of backward classes to whom also reservations are made by Government. A construction that would result in such incongruous and absurd results and does not achieve the object of constitutional provisions and the orders made thereto, has necessarily to be avoided by Courts.

7. As noticed earlier, one Sri V. Shivarama Naik, a member of a scheduled tribe with superior merit over the petitioner has been selected to general medicine and that selection being in conformity with the first part of sub-rule (ii), the grievance of the petitioner that the selection committee in not selecting him has violated the constitutional mandate of Art 15 or the orders of reservations, is wholly misconceived.

8. I have found that the action of the selection committee is in conformity with Rule 5 (ii) of the Rules. In this writ petition, the petitioner has not challenged the validity of Rule 5 (ii) of the Rules. When I have found that the action of the selection committee is in conformity with the Rules and the petitioner has not challenged the validity of the rule, the action in pursuance of that rule would not arise for my consideration. But, assuming that the petitioner had challenged the validity of the rule, in such an event also, I am of the opinion that sub-rule (ii) of Rule 5 of the Rules which fully achieves the object of reservations in a rational and legitimate manner is not violative of the Constitution and cannot be invalidated on any ground.

9. In Annegowda's case on which Sri Iengar placed strong reliance and went so far as to contend that his contention is concluded by the ratio of that ruling, the facts were these:

(i) On the consideration of the Havanur Commission's report, Government by its order dated 22-2-1977 had determined the backward classes in the State of Karnataka. In its order No. DPAR 1 SBC 77 dated 4th March, 1977 (published in Karnataka Gazette dated 10th March, 1977), Government directed that in addition to reservations of 15 per cent to scheduled castes and 3 per cent to scheduled tribes, there should be reservations in the appointment of posts in the

State Civil Services to the different members of Backward classes to the extent indicated therein. By that order the Government directed that 10 per cent of posts should be reserved to members of backward castes as recognised in the said order.

(ii) Sri S.S. Annegowda, a member of backward caste had applied for selection to the post of a lecturer in Economics. In making selection to 35 posts of lecturers in various subjects, the Karnataka Public Service Commission did not select the petitioner to whom reservation was available which was assailed by him on the ground that the KPSC had contravened the order dated 4-3-1977. Clause 2 of that order providing for reservations reads thus:

"2, Accordingly, Government are pleased to direct that reservations in appointments and posts in the State Civil Services shall be made for the following classes of citizens to the extent indicated against them:

I. (1) Scheduled Castes as defined in the Constitution of India. 15 per cent

(2) Scheduled Tribes, as defined in the Constitution of India 3 per cent

II. Other Backward Classes viz.,

(1) Backward Communities 20 per cent

(2) Backward Castes. 10 per cent

(3) Backward Tribes. 5 per cent

(4) Special Group. 5 per cent On the construction of the aforesaid paragraph and in the absence of reservations to each subject, Rama Jois, J, held that the action of the KPSC was in contravention of the order dated 4-3-1977. In upholding the claim of Annegowda, the Court considered a situation where there was total reservation and not subject wise reservation as in the present case. A situation providing for subject-wise reservation did not at all arise for consideration in Annegowda's case. In that view, the enunciation made by Rama Jois, J. on the language of the order dated 4-3-1977 can have no application to the language of R. 5(ii) of the Rules, which in clear and unambiguous terms provides for reservations to be made subject-wise. In this view, the ratio in Annegowda's case does not really bear on the point and the same does not assist the petitioner.

10. The Rules require an applicant to make an application for one subject of his choice. But clause (b) of column No. 5 of the prescribed application form provides for a contingency of the candidate's case being considered for other subjects if he expresses his desire for the same. In his application the petitioner has expressed his desire to be considered for other subjects also. At the hearing of the case Sri Brahmarayappa stated that the selection committee is willing to consider the case of the petitioner for selection to any other subject and provide him a seat, if there is a vacancy in that subject. Sri Iengar stated that the petitioner is willing to join paediatrics and not to any other subject. Sri Brahmarayappa stated that in the subject of paediatrics selections to the

required number have been made and the petitioner cannot be accommodated for that subject.

11. When the selection committee has selected the required number of candidates to the subject of paediatrics and those candidates that have joined that subject, if any, or at least the least meritorious candidate among them is not impleaded, it is not open to this Court to examine the validity of the selections made to that subject or the superior claims of the petitioner, if any, and adjudicate the same. Sri Iyengar's reliance on the rulings of the Supreme Court in *A. Periakaruppan Chettiar v. The State of Tamil Nadu*, AIR 1971 SC. 2085 and *Charles K. Skaria v. Dr. C. Mathew*, AIR 1980 SC. 1230 to displace the candidates that are not impleaded or to issue a writ in the nature of mandamus to admit the petitioner to the subject of paediatrics over and above the number of candidates earmarked for that subject, does not bear on the point and this Court cannot, therefore issue a writ to the respondents to admit the petitioner to the subject of paediatrics. For these reasons, I cannot accede to the request made by Sri Iyengar at the hearing of the case and I, therefore, reject the same.

12. In the light of my above discussion, I hold that there is no merit in any of the contentions urged for the petitioner and the rule issued is liable to be discharged. I, therefore, discharge the rule issued in the case.

13. In the circumstances of the case, I direct the parties to bear their own costs.