

(1988) 05 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No"s. 3898, 3909, 3935, 3947 and 3952 of 1988

Dr. Jacob C.V. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-05-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1989 Ker 136 : (1989) 1 ILR (Ker) 187

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : G. Prabhakaran C. Ayyappan and John K. Joseph, for the Appellant;
Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Petitioners in all these original petitions are medical graduates. They applied for admission in Post Graduate Courses of medical education and they appeared in the entrance examination conducted by the Commissioner of Entrance Examination (for short" the Commissioner") who is an officer of the Government of Kerala. 10 per cent seats in each subject of the post graduate course have been earmarked for candidates belonging to Scheduled Caste/ Scheduled Tribe as per the prospectus issued by the Directorate of Medical Education. Reservations were made for certain other categories of medical graduates, but those reservations are not relevant for the purpose of these cases. Standards have been laid down in the prospectus for the eligibility to be included in the list to be prepared by the Commissioner. It had been specified in the prospectus that candidates securing less than 40% marks in the case of Scheduled Caste/Scheduled Tribe in the Entrance Examination shall not be included, in the merit list. However, it is provided that in the absence of eligible candidates in the reservations quota, those seats would be made available to candidates based on general merit. For such candidates, 50% is the minimum marks fixed.

2. When the results of the entrance test examination were known, only a very few candidates belonging to Scheduled Caste/Scheduled Tribe had secured marks sufficient for admission and such number was far below the quota of 10 per cent reserved for them. So the Government issued a Government Order (G.O.Rt. 1255/88 H and FWD dated 10-5-88) modifying the prospectus by reducing the cut off marks as for the Scheduled Caste/Scheduled Tribe candidates to 30%. The Commissioner has been directed by the Government to prepare a revised select list on the basis of the modified prospectus.

3. Before the issuance of the aforesaid Government Order, the Commissioner had prepared a provisional select list of candidates adhering to the conditions prescribed in the prospectus as it stood earlier. Some candidates who secured the advantage of being included in the said provisional list in the place of Scheduled Caste/Scheduled Tribe candidates due to the deficiency of eligible candidates in that quota were subsequently dropped out from the final list as more number of Scheduled Caste/Scheduled Tribe candidates were available when the cut off marks were reduced. Petitioners are some of those persons who were included in the provisional list first and later got dropped out from the list. Thus, petitioners have now approached this court for appropriate directions including quashing of the final list prepared by the Commissioner pursuant to the Government Order referred to above.

4. When some of the original petitions came up for admission, learned Advocate General appeared and opposed the application for interim orders. Then I heard counsel for the petitioners in all the original petitions and also the Advocate General on the merits of the case set out in the original petitions. The main contentions are these :

(a) The Commissioner has become functus officio when once he prepared a select list as well as wait list of candidates and forwarded the same to the Government and he cannot subsequently prepare another list in a different manner.

(b) Inasmuch as the unmodified prospectus laid down that candidates belonging to Scheduled Caste/Scheduled Tribe securing less than 40% marks, are not eligible to be included in the select list, and that the deficiency in the reservation quota shall be utilised for accommodating candidates from the general merit list, there is promissory estoppel against making any change in the list.

(c) The minimum of 40% marks fixed for candidates belonging to Scheduled Caste/Scheduled Tribe is based on the regulation framed by the Medical Council of India and hence the same has statutory force.

(d) The modification of the prospectus was made at the cost of the efficiency to be maintained in medical profession and is hence unreasonable and unfair.

5. Learned Advocate General argued that none of those contentions would stand in view of the latest decision of the Supreme Court reported in Aarti Gupta and

Others Vs. State of Punjab and Others, Learned counsel for the petitioner in O. P. No. 3952/88 advanced a further contention that the State of Kerala has no power to reduce the minimum marks of the Scheduled Caste/Scheduled Tribe candidates from 40% to 30% inasmuch as the standard has been fixed by the Indian Medical Council governed by the Indian Medical Council Act which was passed by the Parliament. The fixation of the standards of medical education is a subject falling within Entry No. 66 of list No. I of the Seventh Schedule to the Constitution of India.

6. The contention that the Commissioner has become functus officio after preparing a select list and the wait list of candidates has no force in these original petitions since the Commissioner has to finalise the list in accordance with the prospectus before forwarding the same to the Government. If the Government have the power to modify the prospectus, the Commissioner has the legal duty to prepare the list in conformity with the modified prospectus. The Commissioner cannot abdicate his functions merely on the ground that he had prepared a provisional list in accordance with the unmodified prospectus once. Hence, I am not impressed by the first contention raised by the counsel for the petitioners.

7. In dealing with some of the remaining contentions, a reference to Aarti Gupta and Others Vs. State of Punjab and Others, is inevitable, as the learned Advocate General has heavily banked on the ratio laid down therein. The position in the said case was more or less similar, the only difference being that the admissions in the present original petitions relate to post graduate course in medical education whereas Aarthi's case relates to the admissions to M.B.B.S./B.D.S. course. The Government of Punjab issued a notification regarding admission to those courses. One of the criteria laid down in the notification was that the candidates must have a minimum of 50% marks to qualify for admission; but candidates belonging to Scheduled Caste/Scheduled Tribe (and certain other categories also) need secure only 35%. But those who secured 35% marks and above, belonging to Scheduled Caste/Scheduled Tribe, were very few. So the Government of Punjab issued another order reducing the minimum marks to 25% to Scheduled Caste/Scheduled Tribe candidates. As a corollary, some persons who were included in the first list were dropped later in order to give place to the Scheduled Caste/Scheduled Tribe candidates. When the list and the Government Order were challenged, the Punjab and Haryana High Court refused to interfere. Aggrieved candidates filed appeal before the Supreme Court and that resulted in the decision in Aarti's case. One of the contentions raised in the said case was that the State Government cannot reduce the minimum marks from what is prescribed by the Medical Council of India since the Medical Council had discharged the statutory duty. Their Lordships referred to an earlier decision, State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, and held that the regulation passed by the Medical Council is merely in the nature of recommendation. The following passage in Nivedita Jain's case, profitably quoted by the Supreme Court in Aarti's case reads thus:

"The authority of the Council extends to the sphere of maintaining proper medical standards in Medical Colleges or institutions necessary for obtaining recognised medical qualifications. By virtue of this authority it may be open to the Council to lay down the minimum educational qualifications required of a student who may seek admission into a Medical College. In other words, the eligibility of a candidate who may sit to get admitted into a medical college for obtaining recognised medical qualifications may be prescribed by the Council. All the candidates who are eligible for admission into medical colleges or institutions for getting themselves qualified as medical practitioners are entitled to seek admission into a medical college or institution. As to how the selection has to be made out of the eligible candidates for admission into the medical college is a matter which has necessarily to depend on circumstances and conditions prevailing in particular State. Though the question of eligibility for admission into the medical curriculum may come within the power and jurisdiction of the Council, the question of selection of candidates out of the candidates eligible to the medical course does not appear to come within the purview of the Council"

The Supreme Court has rejected the contention based on promissory estoppel. It must be remembered that in the said case and in the present case, Government had already announced that 10% of the seats would be reserved for Scheduled Caste/Scheduled Tribe candidates. So, anyone applying must know that 10% of the seats would normally go to Scheduled Caste/Scheduled Tribe candidates. In such circumstances, there is no question of promissory estoppel. In Aarti's case also, Government of Punjab was found to have acted fairly and justly in reducing the cut off marks for the purpose of securing more number of Scheduled Caste/Scheduled Tribe candidates.

8. The plea for maintaining good academic standard in medical education cannot be intertwined with the policy of reservation given to Scheduled Caste/Scheduled Tribe candidates. One of the strong appeals of the Indian Constitution is that the State should show special concern for the promotion of standards of Scheduled Caste/Scheduled Tribe so as to bring them on par with others. The concept of equality enshrined in the Constitution will elude like a mirage as far as the members of the Scheduled Caste and Scheduled Tribe are concerned if we are to apply common standard to all people irrespective of the fact that they belong to Scheduled Caste/Scheduled Tribe communities. If the Government found that fixation of 40% marks (as the minimum qualifying marks necessary for candidates belonging to Scheduled Caste/Scheduled Tribe) did not fetch sufficient number of hands from those communities, there is nothing wrong or unfair in evolving a scheme to secure more candidates from those communities. For generations in the past members relating to Scheduled Caste/Scheduled Tribe were unfortunately kept under man-made restrictions which blunted or stunted their intellectual faculties and muffled their academic aptitudes. If children belonging to those communities are to be measured with the same scale or yardstick used for measuring persons belonging to other communities, the casualty would be the concept of equality enshrined in the Constitution. So, there

would be justification in using different scale or standard as far as the candidates belonging to Scheduled Caste/Scheduled Tribe are concerned. The standard as for them must be realistic and meaningful. The Government Order cited above only recognises this fact as revealed in the following words:

"as it is found that a rigorous application of this rule will adversely affect a vast majority of Scheduled Caste/Scheduled Tribe students who appeared for the entrance examination and that only very few students will become eligible for admission to the post-graduate courses, Government consider that it will be only just to relax the condition regarding minimum marks in the prospectus so that many Scheduled Caste/Scheduled Tribe candidates may become eligible for higher studies."

9. The relaxation was made pursuant to representations made before the Government by the members of Scheduled Caste/Scheduled Tribe that the stipulation of 40% of minimum marks prescribed in the qualifying examination curtails the existing benefits of Scheduled Caste/Scheduled Tribe candidates and that this restriction will render the 10% reservation meaningless and will defeat the very purpose of reservation.

10. The anxiety expressed by the learned counsel for the petitioners that the standards in medical education will plummet down on account of the reduction of the cut off marks for Scheduled Caste/Scheduled Tribe candidates, is misplaced to a great extent. Admission to post-graduate course is different from conferring post-graduate degrees. It is unusual that all those who secure admission will secure pass in the course at the final stage. Every candidate, whether he gets admission on his own merit or in the reservation quota, must face the examination along with other candidates of the same course. It is admitted that there is no reservation policy in the setting of questions for examination, in valuation of answer papers and in assessment of worth of each student at the final stage. If he is found fit, he gets qualified irrespective of the community to which he belongs. That apart, petitioners cannot complain of fall in standards as a consequence of their non-admission because petitioners did not come even near the top position. They would have had no chance of being selected on their merit since there are many others far superior to them. It was only due to fortuitous circumstances that they found a place in the provisional list.

11. The argument based on want of competence of the State to provide cut off marks is also unsustainable. What is sauce for the goose is sauce for the gander. If the State Government is incompetent to issue the Government Order quoted above modifying the prospectus, State Government cannot, as well, issue the original prospectus in the unmodified form. If the original prospectus was not published, petitioners would not have been included in the first list published by the Commissioner. If the petitioners had not been included in the first list, they would have had no case at all. That apart, Item 66 in List No. I only deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Item No. 25 in List No. III

deals with medical education also. It is only subject to the provisions of entries 63 to 66 of List No. I. In other words, the power of the State Government is only subject to the Parliament's power of co-ordination and determination of standards. When the medical council fixed 40% of marks to Scheduled Caste/Scheduled Tribe candidates, the same cannot be held to be an exercise of co-ordination of standards.

As the petitioners cannot succeed on any of the grounds urged, original petitions are only to be dismissed. Accordingly, I dismiss these original petitions in limine.