
(1991) 08 KAR CK 0040
In the Karnataka High Court
Case No : W.P. No. 5986/1991

Dr. M. Rajeshwari

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 27-08-1991

Acts Referred:

Karnataka Medical Colleges and Dental Colleges (Selection for Admission to Post-Graduate Courses) Rules, 1987 — Rule 7(1a)

Citation : (1991) 3 KarLJ 193

Hon'ble Judges : P. K. Shyamsundar, J

Judgement

This is a case in which the Government in exercise of its Rule making power for regulating selection to post graduate courses in the medical and dental colleges in the State of Karnataka has on its statute book two Rules which not merely conflict with one another but are wholly inconsistent with one another. The result being, that is with respect to the facts of this case the petitioner who had applied for admission to D.G.O. course and had secured 684th rank in the entrance test finds herself left out in the cold because a person who had secured 738th rank having been provided a bearth in the M.D. (Pathology) course had chosen to exercise her option subsequently to join the D.G.O. course when a place became vacant because somebody higher up in the merit list did not join the course. The curious position reached is the petitioner having a higher ranking in the merit list does not get a seat at all whereas a person with a lower rank gets actually not one but two places and that is made possible with the amendment made to the Karnataka Medical Colleges and Dental Colleges (Selection for Admission to Post-Graduates Courses) Rules, 1987 with effect from 12th September, 1989. Rule 7 of the Rules prior to the amendment reads as follows:

"7. Procedure for selection.-(1) Subject to reservation for persons specified in Rule 6, the selection for the seats specified under Rule 5(3) shall be made to the following courses on the basis of merit determined by the rank obtained by the candidates in merit list of the entrance test:

Sl.No. Post-Graduate Course Subject-Head

1. M.D. (General Medicine) Medicine
2. M.D. (OBG/DGO) O.B.G.
3. M.D. (Paediatrics/DCH) Medicine
4. M.D. (Radio Diagnosis/DMR) Medicine
5. M.D. (Radio Therapy/DMRT) Surgery
6. M.D. (Dermatology/DVD) Medicine
7. M.D. (Anaesthesiology/DA) Surgery
8. M.D. (Pharmacology) Pharmacology
9. M.D. (Pathology/DCP) Pathology
10. M.D. (Microbiology/B. Bact.) Microbiology
11. M.D. (Forensic Medicine/DFM) Forensic Medicine
12. M.D. (Preventive and Social Medicine/DPH/DIH/DCM Preventive and Social Medicine
13. M.D. (Physiology) Physiology
14. M.D. (Tuberculosis DTCT) Medicine
15. M.S. (General Surgery) Surgery
16. M.S. (ENT/DLO) ENT or Surgery
17. M.S. (Ophthalmology/BOMS) Ophthalmology/or/Surgery

Sl.No. Post-Graduate Course Subject-Head

18. M.S. (Anatomy) Anatomy
19. M.S. (Orthopaedics/D"Ortho) Surgery
20. D.P.M. Medicine
21. M.D. (Bio-Chemistry) Bio-Chemistry/Physiology

(2) Selection of candidates and their allotment to different courses and colleges shall be done by the use of computer.

(3) Where any seats reserved under sub-rule (1) of Rule 6 cannot be filled for want of candidates, such seats shall be filled according to the Government Order No. DPAR/28/SBC/86, dated 12th December, 1986."

Subsequently, after its amendment, Rule 7(1a) was introduced. The amended Rule reads thus:

"7. Procedure for selection: Subject to the reservation provided under Rule 6, in respect of seats specified under sub-rule (3) or Rule 5, the selection shall be on the basis of merit determined in the merit list prepared under the entrance test rules and such list shall be the first merit list.

(1a) after publication of the first merit list, the seats falling vacant on account of non-reporting of candidates or rejection of candidates or any increase in seats be filled as specified below:

(a) the candidates who have been selected in the first merit list and got admitted to the colleges allotted by the selection committee shall be given an option to change their course or college or both. Provided that such option shall be limited to the college and course specified in the application for admission.

(b) after obtaining the option as per clause (a), the selection committee shall prepare a modified list, which shall be in accordance with these Rules;

(c) the vacancy, if any, arises after the preparation of the modified list shall be filled up in the manner specified in sub-rule (1) and such list shall be the second merit list. The selection committee shall publish the modified list and the second merit list simultaneously on the same day;

(d) the selection committee shall prepare such number of merit lists and modified lists as may be necessary to complete admission in the manner specified in clauses (a) and (b):

Provided that no admission shall be made after the last date specified for admission by the Universities without the prior sanction of the Government, (e) the option exercisable for change of course or college or both shall be exercised only once and within the time specified by the selection committee.

(f) where a candidate is given a change of course or college or both as per his option by the selection committee, fails to accept such a change within the period specified by the committee, the seat allotted to such candidate under these rules shall stand cancelled:

Provided that no seat shall be cancelled in case a candidate is not given a change of the course or college of his choice as per preference specified in his application for admission;

(g) the candidates who exercise an option for change of course or college shall before their admission to the colleges allotted by the selection committee, pay a non-refundable fee of rupees fifty. The same shall be adjusted against the tuition fee, if the candidates does not get the change as per option."

2) Every candidate except in service candidate at the time of admission, shall furnish a bond in the form specified by the committee on a stamp paper of the value of rupees thirty binding himself to pay a sum of rupees Five thousand along with stipendiary amount received by him in the event of his leaving the course before its completion."

The defence now is, that action was taken to fill up the vacancy in the D.G.O. course by permitting a student with the lower ranking to occupy that slot because that was permitted under amended Rule 7(1a), of the Rules, under which a person selected in the first mark list and in consequence who gets admitted to the college allotted by the selection committee being given the option to change the course or college or both, has resulted in the candidate securing 738th rank who was already doing M.D. Pathology course having exercised the option under Rule 7(1a) of the Rules to join the D.G.O. course in conformity with the amended provision the seat was made available to her. In consequence the petitioner although with a higher ranking than the other person had necessarily to be left out.

2. Sri Ravivarma Kumar, learned counsel for the petitioner submitted that sub-rule (1a) of Rule 7 of the Rules apart from violating the fundamental rights of the petitioner guaranteed under Article 15 of the Constitution is a clever subterfuge resorted to and ventured upon by a disingenuous rule making authority to shepherd candidates with lesser merit to a course through the back door. He points out very pertinently, so long as Rule 11 of the Rules contained in the format of the Rules as they now stand, it makes the position of the State somewhat debilitated in that it looks as if by resorting to Rule 11 candidates from the waiting list can be picked up when a seat in a particular course becomes available for filling up, but the Controller of Selection by resorting to Rule 7(1a) of the Rules can fit others into vacancies which really had to go to people in the waiting list who had certainly a higher ranking vis-a-vis those who were low down in the ranking the other way. Rule 7(1a) enables a student with lesser merit to get a place of his choice by the accidental availability of seat in that particular discipline because such option now vests with him under Rule 7(1a).

3. The fact that whether it is by design or otherwise, power is available to the selection committee to avail of either Rule 11 or Rule 7(1a) of the Rules in its hands, thus makes a selection made in that manner plumping for this or that depending on the vacancy makes such an exercise wholly invidious. That type of three-wheeling furnishes the high water mark of arbitrariness. Even otherwise Rule 7(1a) which enables exercise of an option by a person with lesser merit to claim a seat which could not have gone to that candidate at all in virtue of individual merit but later becomes eligible for the same, transcending the claims of more meritorious candidates by the mere accident of a candidate with inferior merit having secured admission in some other discipline in some other college makes the position totally indefensible.

4. Learned counsel for the petitioner submits that the action of the respondents vitiates Article 15 of the Constitution and seeks support from the case of Dr. Jagadish Saran and Others v Union of India, AIR 1980 SC 820. In para 39 of the said decision, Their Lordships observed thus:

"39. If equality of opportunity for every person in the Country is the constitutional guarantee, a candidate who gets more marks than another is

entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the Country's development in the vital areas of professional expertise. In science and technology and other specialized fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

5. It does occur to me, to secure higher knowledge and the chance of acquiring post-graduate education should not be left to a mere chance or accident. No student should be moved from place to place like pawns on a chess board as otherwise the fundamental right accorded by the Constitution guaranteeing equality of opportunity to everyone similarly placed will have no meaning at all. In the instant case, a person having secured 684th rank was unable to get admission in any discipline at all but to his dismay a person who secured 738th rank gets admission in one discipline in the first instance and thereafter gets into the very discipline in which the petitioner was denied a seat because of Rule 7(1a) of the Rules by filling the accidental vacancy arising in the discipline having put into her hands the chance of riding rough shod over a more meritorious candidate. This being the whimsical result reached by the application of Rule 7(1a) of the Rules in question, it stands clearly vitiated for the reasons mentioned hereinbefore.

6. The emphasis laid on merit in deserving preferential treatment in the matter of admission subject of course to reservation made in accordance with the constitutional mandate is certainly not without consequence. The ratio of the decision in Dr. Jagadish Saran's case (supra) if applied to this case it becomes clear the duty of the Court is to ensure that a more merited candidate is preferred and in this case there being no block against giving full-flow to merit, the selection of a less meritorious candidate lower in the merit list than the petitioner, to the course to which the petitioner has sought admission, purely on the basis of an adventitious circumstances of the latter having got into a college for study in a discipline to which the petitioner had not aspired for, would lead

clearly to a travesty of justice.

7. Therefore, it is, I strike down Rule 7(1a) of the Rules as amended and referred to supra, direct the selection committee to make selections to the D.G.O. course in accordance with Rule 7 of the Rules. The selection committee will now make a selection in accordance with Rule 7 taking into consideration the fact that the candidate bearing Register No. AO 542 with ranking 738 had been selected, whereas the petitioner securing 684th rank has been denied the seat. Bearing this in mind the selection committee shall make a fresh selection in relation to the petitioner.

8. Learned Government Pleader shall communicate this order to the selection committee so that test may be taken to proceed further in the matter of selection immediately.

9. The selection committee is given two weeks time to comply with this order. Rule issued and affirmed. Writ petition stands disposed of accordingly. No costs.