
(1999) 10 MAD CK 0076

In the Madras High Court

Case No : W.A. No's. 929, 952, 953, 954, 955, 956 and 1439 of 1999

Dr. R. Murali

APPELLANT

Vs

Dr. R. Kamalakkannan and three others

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16(4), 226
Evidence Act, 1872 — Section 115

Citation : AIR 2000 Mad 174 : (1999) 3 CTC 675 : (1999) 3 LW 853 : (2000) 1 MLJ 1

Hon'ble Judges : S.S. Subramani, J;P. Thangavel, J;K. Sampath, J

Bench : Full Bench

Advocate : Mr. C. Selvaraj, Mr. D. Murugesan, Government Pleader, Mr. K. Sridhar, for the Appellant;

Judgement

Judgement pronounced by S.S. Subramani, J.—Parties herein will be referred according to their ranks in the writ petitions.

2. All these writ appeals are placed before this larger Bench under the following circumstances:

Writ Petitioners filed W.P.Nos. 6314 to 6317 and 6743 of 1999 for the issuance of order of direction declaring that the reservation of 50% of seats for non-service candidates in the selection for Higher speciality courses more particularly D.M. (Rhematology, Nephrology, Cardiology) for the year 1999-2000 course in Tamil Nadu Government Medical Colleges by respondents/appellants as illegal, unconstitutional null and void and consequently to set aside the selection of candidates made on that basis and select respective petitions for the above course and for consequential reliefs.

3. In W.P. Nos.6314 and 6315 of 1999, petitioners wanted to join DM (Cardiology). Writ petitioner in W.P. 6316 of 1999 applied for the course of DM (Nephrology) and writ petitioner in W.P. No 6317 of 1999 wanted to join higher

speciality course in DM (Rhomatology), writ petitioner in W.P. No.6743 of 1999 sought admission for the course M.Ch. (Surgical Gastro Enterology).

4. In the month of February, 1999, second respondent advertised for selection of candidates to the Higher Speciality Courses Tamil Nadu Government Medical Colleges. The eligibility criteria was that the candidates should be an Indian citizen and should have a post-graduate degree of Tamil Nadu Dr.M.G.R. Medical University or any other University equivalent thereof. All the writ petitioners are eligible to apply.

5. The Directorate of Medical Education notified for selection of candidates for the two years higher speciality courses in Tamil Nadu Government Medical Colleges. Clause X of the prospectus for the year 1999-2000 has set out the method of selection and admission. As per the said clause, 50% of the total seats are reserved exclusively for Service Candidates. The dispute in all the cases is regarding remaining 50% seats. According to writ petitioners, they are also eligible to be considered in the remaining 50% which is kept as "open quota". According to them, the in-service candidates are also eligible to be considered on the basis of merits, whereas respondents wanted remaining 50% seats as reserved for candidates other than who are selected by TNPC and appointed on Tamil Nadu Medical Services on regular basis and have put in minimum two years of continuous service as on 1.2.1999. According to respondents, those who are eligible to apply as in service candidates will be treated as service candidates only and they will not be considered in the remaining 50% titled as "open quota". According to respondents, remaining 50% seats have to be filled up from those who have not qualified or those who are not eligible to be considered as Medical Officers as service candidates.

6. As per Clause X(8) of the prospectus, following categories of Medical Officers will be treated as service candidates for selection under 50% quota reserved exclusively for service candidates;

(1) Medical officers selected by the TNPSC and appointed in Tamil Nadu Medical Services on regular basis, who have put in minimum of two years of continuous service as on 1.2.1999.

(2) Medical officers who are approved probationer and who have put in minimum of two years of continuous service as on 1.2.1999 and serving in (a) Local Bodies in Tamil Nadu, (b) Government of India Institutions in Tamil Nadu, (c) Public sector undertakings and organisations under the control of the Government of India in Tamil Nadu, (d) Undertakings and organisations of the Government of Tamil Nadu.

It further provided that applicant should execute a bond to service the Institution for a minimum period of five years after completion of the course and to that effect he should produce a certificate from the Head of the Institution along with application. Clause X(9) provides that all eligible Medical Officers except those specified in para 8 above are eligible to apply under 50% open quota only.

7. According to writ petitioners, there is no restriction for service candidates from being considered in open quota and merely because they are not getting admission in service quota, as in service candidates their applications are not liable to be rejected and their names are to be considered under open quota. According to them Selection will have to be made on the basis of merit.

8. As against the said contention raised by writ petitioners, it is urged on behalf of respondents that during the year 1999-2000, Government has taken a different policy decision. Till 1998-99, remaining 50% open quota was open to both non-service and in-service candidates and the rule specifically allowed it. But during the year 1999-2000, Government has changed its policy wherein the remaining 50% has to be earmarked only to those eligible Medical Officers, who do not come as in-service candidates under para (8) of Clause X. Petitioners are well aware about the policy of the Government wherein it declared that 50% seats will be earmarked for service candidates and the remaining 50% seats for non-service candidates. All these petitioners wanted to compete only as service candidates and having failed in their attempt to get admission under that quota, they are not eligible to be considered in open quota.

9. It is submitted by learned counsel for petitioners that many candidates have obtained lesser marks on merit have been selected as non-service candidates. Petitioners further allege that neither prospectus nor G.O.Ms.No. 55 prohibit in-service candidates being considered in the remaining 50% and it is only respondents on the basis of wrong interpretation to prospectus and G.O.Ms.No. 55 have varied the selection and have given admissions to candidates who are not eligible. It is also argued that in super speciality cases, merit alone should be the criteria and there shall not be any reservation in those cases.

10. As against the said contention of writ petitioners, respondents in their counter affidavit have said that Government has taken a policy whereby 50% of seats are earmarked for in-service candidates and remaining 50% to those who cannot be treated as service candidates. Being Government policy, the same is not liable to be interfered with by Court. It is also said that Government who is running all these institutions is entitled to identify the source of admission. It is not reservation under Article 15(4) or 16(4) of the Constitution of India, but really a source of admission to both service and non-service candidates. It is also argued that it is only a concession given by Government and therefore none of the writ petitioners can come to court challenging the policy of Government, which have rational basis for the objects to be achieved. It also argued that none of the writ petitioners have challenged the prospectus nor selection process or policy and all these petitioners have acquiesced to the proceedings already initiated. It is further submitted by learned Government Pleader and ably supported by advocate Mr.C. Selvaraj that all these writ petitioners filed the application and wanted themselves to be treated as service candidates and having failed in their attempt to get admission, the principle of estoppel bars them from questioning the selection.

11. Learned Judge disposed of all the writ petitions as per order dated 7.6.1999. Learned Judges declared that Clause X(9) which states that all eligible Medical Officers except those qualified to be in-service candidates are eligible to apply under 50% open quota does not make any difference. As a matter of fact, the same clause was available as Clause X of 1998-99 prospectus. It could only mean that candidates who are not qualified to be service candidates, but are Medical Officers, are eligible to apply in open quota only. In other words, other Medical Officers, who do not come within the criteria of Medical Officers cannot apply in the category of service quota, but they can apply only through open quota. The clause cannot be interpreted to prohibit Medical Officers for being considered under open quota. Learned Judge further found that the Medical Officer who is eligible to apply under service quota, but who also qualifies his eligibility to apply under Clause X(9) is eligible to be considered in both the cases. Learned Judge found that open quota cannot be a quota reserved for a particular group of candidates.

12. Some of the intervenors challenged the order of the learned single Judge in W.A.No. 905 and 918 of 1999. The First Bench of this Court, as per Judgment date 18.6.1999 confirmed the decision of learned single Judge. The Bench was of the following view:

"... In our opinion, the view taken by the learned single Judge is justified as exclusion of candidates falling in Clause 8 to compete in the open category as provided in Clause 9, sacrifices the test of merit in the selection of candidates for admission. If candidates who fall in category 8 are found to be more meritorious than the candidates who do not belong to the category of service candidates they are entitled to admission on the basis of merit. Denial of admission to such meritorious candidates by virtue of the phrase in clause 9 "except those specified in para 8 above" gives way to the merit and hence the same is liable to be set aside. ..."

13. Thereafter, the State preferred various writ appeals and the same came before another Division Bench. It is those appeals filed by the State that are now placed before us. Division Bench before which the matter came, did not agree with the findings of learned Single Judge nor with the conclusion reached by the co-ordinate First Bench. The latter Bench was of the view that the writ petitioners, who are aware of the selection process and who have written the examination accepting the conditions of prospectus are not eligible to question the policy of the Government, when in the writ petitions, prospectus was not questioned. The Bench was also of the view that the policy of the Government is not liable to be interfered with unless it is passed without jurisdiction and biased. So long as writ petitioners have not questioned the conditions of prospectus as unreasonable classification, it cannot be interpreted in the manner adopted by learned single Judge. The Bench was also of the view that for interpreting the prospectus of the year 1999-2000 along the prospectus of the year is to be considered and learned Judge should not have made comparative study of

prospectus of previous years with that of present year. After holding that single Judge's view cannot be accepted and differing from the view taken by the Co-ordinate Bench, it wanted the matter to be decided by larger Bench on the following questions:

1. Whether the interpretation given by the learned single Judge in the facts of the given case on the basis of last year's guidelines that too, without challenging the prospectus issued for the year 1999-2000, for any reason including not based on intelligible differentia at the earliest point of time, is right or not?

2. Whether the writ petitioners, without challenging the same and participating in the written examinations/interview, can take any relief in the facts of the given case? and,

3. Whether in the facts of the given case, the relief as prayed for can be granted?

14. Learned Government Pleader submitted that since Government is running all these professional colleges, it is for the Government to decide in what way admissions to various courses are to be made and it can determine the source of admissions. While deciding policy decision regarding source of admissions, it cannot be equated with the reservation under Article 15(4) or 16(4) of the Constitution of India. Under the Constitution of India, a reservation is only for socially and educationally backward class citizens or for Scheduled Caste and Scheduled Tribes and for women and children under Article 15 of Constitution of India. Admissions to the super speciality courses are very much limited. At the same time, there are large number of applicants both from service and in-service candidates. Both these categories of candidates will have to be provided with admission and if for that purpose Government takes a policy decision that 50% seats are earmarked for service candidates and remaining 50% seats are earmarked for non-service candidates, the said policy decision of the Government is not liable to be interfered with unless they are questioned as unreasonable and violative of Article 14 of Constitution of India. It is further argued that admission to Super Speciality courses is not a fundamental right and if Government feels that both service and non-service candidates must be accommodated, or fixes a quota, the same is not liable to be struck down. Policy decision cannot be declared as invalid.

15. Learned Government Pleader also submitted that 50% of the total seats are already reserved for service candidates and if they are also allowed to compete in open quota and not open competition, that will seriously affect the prospects of non-service candidates. It is further submitted that the wordings in the prospectus of 1998-1999 and 1999-2000 are different and learned Single Judge has not considered the same. It is also submitted by learned Government Pleader that the First Bench while dealing with the writ appeals filed by intervenors, considered the question of merit of both service and in-service candidates as single quota. It is argued that if merit alone is the criteria as is now decided by Honourable Supreme Court in *Dr. Preeti Srivastava v. State of*

Madhya Pradesh, 1999 (4) Scale 579, even writ petitioners will not be eligible to be considered.

16. Learned counsel Mr.C. Selvaraj supporting the arguments of learned Government Pleader submitted that all these writ petitioners after fully knowing the eligibility and having participated in the written test are not competent to question once they failed in their attempt to get admission. The principle of estoppel will apply in such cases. Learned counsel also submitted that reservation under the Constitution is not to be confused with the reservation when the Government takes a policy decision as a source of admission. A further argument was also taken that all those writ petitions are bad for non-joinder of necessary parties. It is argued that by the time writ petitions were filed, most of the selection process is over and the persons affected are not only candidates already joined, but also persons selected but could not join the course in view of the interim order of this court. It is argued that even though writ petitioners are only in various specialities, on a reading of entire petition, it is the policy of the Government with regard to admission to super speciality courses that is questioned and consequently all the candidates who are selected to various speciality courses are necessary parties.

17. As against the said contentions, learned counsel for writ petitioners submitted that respondents have only misread the prospectus and only for the purpose of appreciating the prospectus, learned single Judge has relied on prospectus of the year 1998-99 and that of the previous years. It is also argued by learned counsel that in regard to various subjects in Super Speciality courses, which are subject matter of the writ petitions, all are made parties or got themselves impleaded and therefore, it is not bad for non-joinder of necessary parties. It is also submitted by learned counsel that there is no difference between "open quota" and "open competition", and for Super Speciality courses, merit alone will have to be considered. Merely because petitioners are eligible to apply as in-service candidates, that will not preclude them from being considered as non-service candidates also. According to learned counsel, the restriction is only those Medical Officers except those referred to in para (8) of Clause X. There is restriction for they being considered in the reserved quota of service candidates and there is no restriction so far as Medical Officers are concerned, who fulfil the conditions of para (8) of Clause X for being considered in the remaining 50% quota.

18. Learned counsel further submitted that there is no much difference between the prospectus of the year 1998-99 and of the previous years and that of the present academic year 1999- 2000. Counsel also submitted that present year prospectus has been issued on the basis of G.O.Ms.No. 55 and in various portions of the said Government Order and prospectus of the year, G.O.Ms.No.186 has been referred to and consequently, the learned single Judge was justified in making comparative study of all the prospectus. Learned counsel also submitted that G.O.Ms.No. 55 was kept as a secret document by

respondents and what all disclosed in G.O.Ms.No. 55 are not part of the prospectus, though there was a direction in the Government Order itself to the contrary. Learned counsel prayed that there is no necessity for writ petitioners to question the prospectus and the principle of estoppel also will not apply. According to him, it is a wrong interpretation of prospectus that denied admission to them and what he wanted was only proper implementation of prospectus. Learned Single Judge has rightly come to the conclusion that there is no reservation for non-service candidates and wanted this larger Bench to confirm the view taken by learned single Judge.

19. Clause X of the prospectus of this year deals with method of selection and admission. Para (8) says that the following categories of Medical Officers will be treated as service candidates for selection under the 50% of seats reserved exclusively for service candidates:

1. Medical Officers selected by the TNPSC and appointed in Tamil Nadu Medical Services on regular basis, who have put in minimum of two years of continuous service as on 1.2.1999:

2. Medical Officers who are approved probationers and who have put in minimum of two years of continuous service as on 1.2.1999 and serving in (a) Local bodies in Tamil Nadu, (b) Government of India Institutions in Tamil Nadu, (c) Public Sector undertakings and organisations under the control of Government of India in Tamil Nadu, (d) Undertakings and Organisations of Government of Tamil Nadu. Para (9) further says that all eligible Medical Officers except those specified in para 8 above are eligible to apply under 50% open quota only. In the earlier portion of same clause in para (5), it is said that the reservation will be confined to and kept at 50% in favour of in-service candidates on the basis of merit. It is here, we have to consider the prospectus of the year 1998-1999 and whether Government has expressed change in the policy. In that prospectus, Clause X para (5) reads thus,

"From the total number of seats available in the Medical colleges Offering higher speciality courses, 50% of the seats available in each of the discipline shall be made available, as open competition seats for selection and admission of both service and non-service candidates on the basis of merit."

From this clause, it is clear that the remaining 50% of seats were retained as open competition seats where in-service and non-service candidates are eligible to compete and are to be considered even though 50% of seats are earmarked for service candidates alone. That paragraph of prospectus for the year 1998-1999 is conspicuously absent in this year's prospectus.

20. Along with the absence of that clause, if we read para (9), the intention of Government is made clear, that is, in regard to remaining 50% of seats, only those Medical Officers who do not come as Medical Officers in para (8) are eligible to be considered.

21. At this juncture, learned counsel for writ petitioners submitted that the prospectus is issued on the basis of G.O.Ms.No. 55 dated 9.2.1999 and counsel relied on para (6) of the G.O.M.S.No. 55, which reads thus,

"6. The Government direct that all procedures such as reservation of 25% of seats in Post Graduate Courses for all India Quota, conduct of Entrance Examination at Chennai only, eligibility criteria to apply allocation of seats between Open Quota and service candidates on 50:50 basis, the procedure for filling up of vacant seats allotted to service candidates in the event of non-availability of candidates, awarding of one mark to each answer with correct response, Negative Mark System for incorrect response, Determination of Inter-se-Merit of candidates obtaining equal marks, mentioning of number of seats in each Speciality College-wise and Course-wise in the Annexure to the Prospectus, Payment of stipend and other procedures relating to execution of security Bond and Surety Bond, obtaining written undertaking from all non-service candidates to serve within the country for a period of not less than 5 years, computerisation of Application/Coding sheet, evaluation of answer papers, taking of Anti-Hepatitis B Injection by selected candidates and incurring of expenditure for the conduct of entrance examination, scrutiny of applications, evaluation, the expenditure relating to introduction of optical Mark Reader System in admission to various courses from the Personal Deposit Account maintained by the Secretary Selection Committee followed during 1998-1999 shall be followed for the Academic year 1999-2000 also.

We do not think that the said paragraph is in any way helpful to writ petitioners since it only says about the procedural matters and Government has declared that the procedure followed in 1998-99 should be followed for the year 1999-2000 also. Counsel stressed that eligibility criteria to apply for allocation of seats between Open Quota and service candidates was on 50:50 basis and the procedure followed during 1998-1999 was also followed in this year also. It is only the procedural matters that is followed. When the method of selection has already been declared by the prospectus and that has been specific in this year's prospectus, we cannot read para (6) as learned counsel wants us to read.

22. A further argument was taken by learned counsel relying on para (1) clause (iii) (a) of G.O.Ms.No. 55, wherein it is said that thus,

"The reservation will be confined to and kept at 50% in favour of in-service candidates on merit basis."

An argument was taken by learned counsel that the word ""reservation"" mentioned in that paragraph only means that in that 50% only in-service candidates are eligible to apply and that para does not prohibit that in-service candidates should not apply in the quota not reserved. Clause (iii)(a) of Government Order is para (9) of Clause X of Prospectus. We have already explained the effect of this clause. In this connection, it may also be noted that during the year 1998-99, the relevant Government Order which prescribed

eligibility for admission to Super Speciality courses is G.O.Ms.No. 186 dated 24.3.1995. Clause (iii) of the order states thus,

"(iii)(a) 50% of seats available in each of the specialities shall be kept as open quota to which both service candidates shall be eligible for selection on the basis of merit. This open quota seats should first be filled up;

(b) 50% of the seats available in each of the specialities shall be allocated exclusively to service candidates."

It is this clause that has been found changed for this academic year. From a reading of the prospectus of previous year and that of this year, we are of the view that Government has expressed its policy in clear terms i.e., 50% seats are earmarked for in-service candidates, who are defined in para (8) of Clause X of the prospectus. All other Medical Officers, except those who do not come under para (8) have to apply as open quota candidate. During the year 1998-1999, both in-service and non-service candidates were permitted to participate in open competition in the remaining 50% quota and that clause has been deleted in this year's prospectus. G.O.Ms.No. 186 has also been substantially changed in G.O.Ms.No. 55.

23. Writ Petitioners have also understood the prospectus only in that way and that is why they wanted reservation of 50% for non-service candidates as illegal though the conditions of prospectus have not been challenged. Reliance was also placed on sub-para. (iv)(a) of para (3) of G.O.Ms.No. 55, which deals with rule of reservation, which reads thus,

(iv)(a) The rule of reservation i.e. 31% for Open competition, 30% for Backward Classes, 20% for Most Backward classes/De-Notified Communities, 18% for Scheduled Castes and 1% for Scheduled Tribes shall apply to 50% seats reserved for service candidates and to the 50% seats to be filled up on the basis of merit from service and non-service candidates separately under each speciality."

Relying on the above, it is argued that 50% seats are to be filled up on the basis of merit for service and non-service candidates. Learned single Judge has also incorporated the sentence in his order in Para 10. We find that the above sentence has been taken out of context when the entire sub-para deals with Rule of reservation and fixes percentage for open competition, backward classes, most backward classes and de-notified communities, etc. It only declares that the Rules of reservation as enjoined under Article 15 of Constitution of India is also made applicable wherever it could be applied and that rule is made applicable to both service and non-service candidates. Both service quota as well as non-service quota are to be filled up on the basis of merit and the Rule of reservation also could be applied, and we could not read sub-clause (iv)(a) as that 50% of the seats are to be filled up on the basis of merit from service and non-service candidates as urged by learned counsel for writ petitioners.

24. We also find that during previous year when both service and non-service

candidates were allowed to remain in the remaining 50% respondents treated as open competition, but when we come to this year's prospectus, the word "competition" was changed to "quota". The same is very relevant. Learned counsel for petitioners submitted that both in the Government Order as well as prospectus, the word used is "reserved" and therefore it wanted the principle enunciated under Article 15(4) also to be applied in so far as selection for Super Speciality courses is concerned. Counsel further wanted that the backward class candidates may get seat in general pool and such candidates cannot be prevented from their case being considered on merit. A service candidate who gets admission in the quota fixed for him must also be made eligible to apply in general pool, where also his merit could be considered. We do not find any merit in the said submission. A service candidate who compete for Super Speciality courses cannot be equated with backward class candidates, who have been given certain privileges under the Constitution. Quota fixed for service candidates is only a source of admission so that service candidates also may be benefited by getting higher qualification. It is not a legal right as is enjoined under Article 15(4) of the Constitution but a concession given by Government. Just like service candidates are given concession, non-service candidates are also given the same benefit so that both these groups of candidates may get seats in Super Speciality courses on the basis of their merits. The effect of such selection process is that merit is being considered from two sources and admissions are given from these two sources. In para 7 of the common counter affidavit it is said that Government wanted to give equal opportunity to both service and non-service candidates and it is for the said purposes, the conditions of admissions are changed this year. If 50% seats are earmarked for service candidates and in the remaining 50% seats also they are eligible to apply, to that extent, non-service candidates are affected. We must understand that service candidates are getting marks according to their number of years of experience also. A candidate who has no experience though eligible to apply has to stand only on his academic merits for getting admission for Super Speciality Courses, whereas, for service candidates, number of years of experience is also counted while considering his merits. Since it is possible for service candidates to get more marks because of their experience, there is every possibility of non- service candidates being eliminated if service candidates are mark eligible to apply in the remaining 50% quota also.

25. The Government thought that equal opportunity should be given to both the categories of candidates and to achieve that object, the rule was changed. We are of the view that the interpretation given by learned single Judge on the basis of prospectus of the year 1998-1999 and of previous years and the declaration that in the remaining 50% quota also service candidates are eligible to be considered is not correct. We are of the view that when Government declares policy every year, policy of that year alone will have to be considered and for the year 1999-2000, policy is that in the remaining 50% seats, service candidates are not eligible to be considered. Government has now declared policy that 50%

seats are earmarked for service candidates and 50% seats for non-service candidates. That policy of the Government is not challenged and the same is dear from the writ petitions.

26. It is at this juncture, learned Counsel for writ petitioners relied on a recent decision of Honourable Supreme Court reported in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, . Counsel relied on para 60 of the Judgment. We do not think that the method of selection in this case goes against the principles enunciated by Honourable Supreme Court. Their Lordships in that case declared that in Super Speciality cases merit alone is to be considered. In that case their Lordships have declared that in selection to Super Speciality Courses, no special provision as enjoined under Article 15(4) of the Constitution of India is permissible the same being contrary to rational interest. In the earlier portion of the judgment, their Lordships have declared that,

"... The general category candidates do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre will trained professionals for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the post-graduate level to 20% for the reserved category as against 45% for the general category candidates. It will be for the Medical Council of India to decide whether such lowering is permissible and if so what extent...."

27. In this case, we have been placed with merit list of candidates. It could be seen from the merit list that in both service and non-service candidates, the difference is very minor. In DM (Cardiology), service candidates who have been selected are one S.P. Palanichamy, V.R. Suresh Kumar and K.K. Kannan. Their marks are 67.13, 65.38 and 64.25 respectively. Whereas in open quota, the selected candidates are T.A. Madheswaran, K. Selvam and D. Kesavamoorthy. The marks they have obtained are 66.63 and 63.63 and 62.88 respectively. It could be seen therefrom that there is not that much difference in the marks obtained between service candidates and non-service candidates. Petitioner K. Duraisamy who has obtained 10 marks for his service could earn only 54.19 marks on his own merit, thus totalling 64.19. marks. Once it is found that they are all meritorious and when Government considers that they are not given equal opportunity with that of service candidates and a provision is made that the non-service candidates should be given equal opportunity to get them better qualified, we do not think that such a policy of the Government is liable to be attacked by petitioners. Similar is the case in Nephrology as well as Rhamatology.

28. At this juncture, learned Government Pleader brought to our notice the decision reported in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, decision reported *Kumari Chitra Ghosh and Another Vs. Union of*

India (UOI) and Others, of the judgment, their Lordships held thus,

"9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for when it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification." (Italics supplied)

29. The same principle was reiterated in D.N. Chanchala Ors. Vs. The State of Mysore and Others, of the judgment, their Lordships held thus,

42. On account of paucity of institutions imparting training in technical studies and the increasing number of candidates seeking admission therein, there is obviously the need for classification to enable fair and equitable distribution of available seats. The very decisions relied on by counsel for the petitioner implicitly recognise the need for classification and the power of those who run such institutions, to lay down classification.

In Rajendran's case, this Court impliedly accepted two sources of recruitment made under the rules there challenged, namely, (1) those competing for seats in the general pool, and (2) those from the socially and educationally backward classes for whom reservation permitted under Article 15(4) was made. What was struck down there was the districtwise distribution based on sheer residence as that would defeat the very object of the rules, namely, the selection of the best and the most meritorious from the two sources of recruitment. The power to lay down sources from which selection would be made was expressly conceded to the Government in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, this Court observing in that connection at pp 418 and 419 of the report that since it was the Government which bore the financial burden of running the medical college, it could lay down the criteria for eligibility and that from the very nature of things it was not possible to throw the admission open to students from all over the country. Consequently, the Government could not be denied the right to decide from what sources admissions would be made. The Court at the same time emphasised that if the sources were properly classified, whether on territorial, geographical or other reasonable basis, the Court would refuse to interfere with the manner and method of making the classification. The classifications there made were in relation to candidates from Union territories other than Delhi, children of Central Government servants posted in India missions abroad, candidates under the Colombo Plan and other international arrangements, scholars from Jammu and Kashmir, etc. These classifications were found justifiable on one ground or the other and as based on intelligible

differentia which distinguished candidates falling within from the rest. The Mysore High Court, in *Subhashini v. State of Mysore*, AIR 1966 Mys. 40 similarly recognised that there could be valid reservations, apart from those permissible under Article 15(4), that such reservations did not necessarily infringe the equality protection under Article 14 and held that classification based on a lawful State policy was not violative of that Article. It upheld on this principle the reservation for children of Defence Personnel/Ex-Defence Personnel as being clearly in national interest. See also *Anil Kumar v. Mysore State*, 1969(17) LR 110 (Mys.)

"43. Once the power to lay down classifications or categories of persons from when admission is to be given is granted, the only question which would remain for consideration would be whether such categorisation has an intelligible criteria and whether it has a reasonable relation with the object for which the rules for admission are made. Rules for admission are inevitable so long as the demand of every candidate seeking admission cannot be complied with in view of the paucity of institutions imparting training in such subjects as medicine. The definition of a "political sufferer" being a detailed one and in certain terms, it would be easily possible to distinguish children of such political sufferers from the rest as possessing the criteria laid down by the definition. The object of the rules for admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4). ..." (Italics supplied)

30. In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, , the same principle was reiterated but on distinguished facts.

31. The above principle was also followed in the decision reported in *Mohan Kumar Singhania v. Union of India*, : AIR1992SC1 .

32. A Full Bench of our High Court in the decision reported in *Bhupeshkar S.R. and others v. The Secretary, Selection Committee Sabarmathi Hostel and others*, 1995 WLR 639, followed the decision in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , and upheld the selection of candidates for M.B.B.S. under special categories.

33. From these decisions it is clear that the Government who runs the medical

colleges got the right to decide from what sources admissions will have to be made. Government thought that equal opportunity must be given to service and non-service candidates to get admitted in higher speciality courses. The earlier experience shows that non-service candidates are not getting that much opportunity even though they are equally meritorious. By change in policy a quota has been fixed as 50:50 for both these group of candidates and merits are being assessed from these two sources. For both these quota, merit alone was considered for admission. It must also be taken note of for both these groups, common entrance examination was conducted and it is thereafter merit is assessed for candidates. The selection process is not in any way affected by the decision in Dr. Preeti Srivatsava's case, 1999 (4) Scale 579 on which much reliance was placed by learned counsel for writ petitioners. None of the petitioners has established that by earmarking 50% to non-service candidates, merit is in any way affected.

34. While extracting the portions of prospectus, we have said that para (8) of Clause X, the Medical Officers coming under the paragraph are being treated as service candidates. Once they are treated as service candidates, under normal circumstances, they cannot be considered as non-service candidates or under the group of other Medical Officers. But there is enabling provision, which provided that they are eligible to be considered among the Medical Officers under para (9) of Clause X. The same was also provided under G.O.Ms.No. 186. In fact, in the earlier years, service candidates were enjoying larger concession and to certain extent the concession is now reduced.

35. We are of the view that the interpretation given by learned Judge to the prospectus of the year 1999-2000 on the basis of last year's guidelines or prospectus is not correct. Petitioners have also not challenged the fixation of quota for service and non-service candidates and the finding of the learned Judge declaring that the reservation of 50% seats for non-service candidates in the selection of higher speciality courses for the year 1999-2000 is illegal, is to be set aside. We hold that respondents 1 to 3 are entitled to take policy decision as to source of admission and fixing 50:50 quota for service and non-service candidates in the selection of Super Speciality courses is based on intelligible differentia.

36. Learned counsel Mr.C. Selvaraj submitted that fixation of quota is in the nature of concession and writ petitioners have with open eyes applied for admission on the basis of prospectus and also have written examination are incompetent to challenge that policy, once they were not selected. Counsel submitted that principle of estoppel bars writ petitioners from challenging the same.

37. We find force in the said submission of learned counsel.

38. In *Om Prakash Shukla v. Akhilesh Kumar Shukla*, 1986 SCC (Supp) 285 in paragraph 24 of the Judgment their Lordships held that when a candidate has

written examination without protest and after knowing the conditions of examination, he is not to be granted any relief once he comes to court after realising that he would not succeed in the examination.

39. Following the decision in *Om Prakash Shukla v. Akhilesh Kumar Shukla*, 1986 SCC (Supp) 285, in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , their Lordships held thus,

"9. Before dealing with this contention, we must keep in view that salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilash Kumar Shukla*, 1986 SCC (Supp) 285 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner." (Italics supplied)

40. Similar view was taken in *Union of India and Another Vs. N. Chandrasekharan and Another*, which reads thus,

"...It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report...." (Italics supplied)

41. *Tahuja v. Director of Medical Education, Madras*, 1985 WLR 354, it is held thus,

"The prescription and the procedure were there is the prospectus itself. Knowing fully well that there are such prescriptions and procedure the petitioner applied for admission. After having acquiesced in the prescriptions and the procedure and after having gone through the process of selection as per the same and now

not having come out successful, it is not permissible for the petitioner to challenge the constitutional vires of the said prescriptions and procedure."

42. The same learned Judge at page 357 of the same volume in the decision between *S. Muthumanickam v. State of Tamil Nadu Rep. by Commissioner and Secretary, Education Science and Technology Department*, considered the entire law in paragraph 2 to 6 of the Judgment, which read thus,

"2. There is one principle countenanced by the highest court in the land, which dissuades me from going into the contentions raised by the petitioner. Dealing with the allegations of bias against a member of Bar Council Tribunal, the Supreme Court in *Manak Lal v. Dr. Prem Chand*, observed as follows:

"Since we have no doubt that the appellant know the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a change to secure a favourable report from the tribunal which the constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

3. In *Dr.G. Sarana v. University of Lucknow*, the Supreme Court, dealing with a similar situation, and following the ratio in its earlier pronouncement, referred to above, observed as follows:

"We do not, however, consider it necessary in the present case to go into the question of reasonableness of bias or real likelihood of bias as despite the fact that the appellant knows all the relevant facts, he did not before appearing for the interview of at the time of the interview raise even his little finger against the constitution of the Selection committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee."

4. On the question of attack on the constitution of a committee in the matter of appointment in *A. Sesharajan v. The Collector, Kanyakumari District at Nagercoil* and another, it has been observed as follows:

"But one salient principle which this Court, exercising jurisdiction under Article 226 of the Constitution of India takes note of is that a party who complains of any violation of any rule with reference to the constitution of a committee in the matter of appointments should not be permitted to raise such a grievance after having participated and taken his chance before the said committee. This will come within the mischief of the rule that a party should not be allowed to approbate and reprobate. This will also come within the principle of waiver. It is not claimed by the petitioner that he did know about the constitution of the committee, which took in the District Educational Office, Thukkalay, instead of the Chief Educational Officer. Obviously, the petitioner know about this and his

right to take objection in any manner known to law. Hence, the petitioner must be deemed to have been conscious of his legal rights in the matter and therefore his deliberate failure to raise objection, to the constitution of the committee at the earliest point of time and before his participation in the selection process before the very same Committee creates an effective bar of waiver against him and he is precluded from raising it before this Court for the first time. It is patent that the petitioner wanted to try his chance before the committee without any reservation, voluntarily appeared before it and now, when he is confronted with an unfavourable decision, he has adopted the device of raising the present technical point. This rule is well settled and it does not require any citation."

5. The same ratio applies to a case of prescription of selections for appointments to posts and to admissions to educational courses in *I. L. Honnegouda v. State of Karnataka*, it has been observed as follows:

"The fact that the appellant acquiesced in the 1970 Rules by applying for the post of the village Accountant, appearing before the Recruitment Committee for interview in 1972 and 1974 and taking a chance of being selected, the present appeal which question the constitutionality of Rules 4 and 5 of the 1970 Rules cannot be allowed."

6. In *S. Mahendran v. The Secy. to Government Education Department, Madras*, W.P. No. 11505 of 1981 order dated 3.2.1982, there was, amongst other contentions, an attack on the prospectus on the ground of lack of guidelines for selection of Law College. Taking note of the ration of the Supreme Court in *T.L. Honnegouda v. State of Karnataka*, it was observed as follows:

"Secondly, the alleged infirmities which the petitioner is projecting with reference to the selections made, whether they be under Rules or otherwise, were there from the inception and they are not factors which have crept in after selections. The Constitution of the members of the selection committee, the lack of guidelines for selection in the prospectus, the treatment at the candidates irrespective of their obtaining first and second classes in their academic qualifications were all part of the system which worked out for selection. The petitioner having appeared for the selection with all these alleged infirmities starting in his face and taking a chance a being selected as the system stood worked out, cannot turn back and question the system. The Supreme Court in *I.L. Honnegouda v. State of Karnataka* discountenanced a party questioning the validity of the concerned rules after having acquiesced in the rule applying for the post and taking a chance of being selected. In view of this position, this writ petition cannot be entertained and the same is accordingly dismissed." (Italics supplied)

43. The said decision was followed by Justice M. Srinivasan (as he then was) in the decision reported in *Dr. Suryanarayan Raju v. The Government of Tamil Nadu*, 1992 WLR 579, and learned Judge held thus,

"Petitioner cannot challenge rules in the prospectus since he had appeared for

examination after applying under rules of Prospectus and since he being a candidate from Andhra Pradesh cannot claim admission in Tamil Nadu, as per the Presidential Order to that effect."

44. On the basis of these settled legal principles, none of the writ petitioners is entitled to challenge the selection process. Though counsel for petitioners submitted that respondents have violated prospectus is declaring 50% seats to non-service candidates, We have held that prospectus itself provide for the same and respondents have not violated prospectus. Interpretation given by learned counsel for petitioners that "open quota" amounts to "open competition" cannot be accepted and government has framed policy and explained reason for formation of policy and has issued the prospectus. Selection Committee is bound by the prospectus and even if there is any alleged omission as was argued by learned counsel for petitioners, that cannot be a ground to accept the contention of learned counsel for petitioners.

45. In the decision reported in Rathnaswamy, Dr.A. v. Director of Medical Education, 1986 WLR 207, their Lordships considered what is meant by "prospectus and how far Selection Committee is bound by it. In para 2 of the Judgment, their Lordships held thus,

"...The only aspect argued before us it that the norms of reservation not having been expressed in the prospectus should not be implemented. Then the question is what is the place and significance of a prospectus with regard to admission to educational courses. He shall not mix up and confuse the prospectus as understood is Company law Paralance with the prospectus for educational courses. Prospectus in Company law means any document described or issued as a prospectus and includes any prospectus, notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate. If there had been an omission to mention the relevant features and if on account of that a purchaser of what was offered for sale and sold was obliged to resile from the transaction the courts view the matter from an entirely different angle. There again courts have expressed their own reservation as to what type of omission should entitle the share holders to get rid of their shares. Forgetting the notion of the prospectus in the Company law, paralance, we must deal with the matter from the practical angle of selection of candidates for educational courses offered by Institutions run by the State. The principle has been uniform that violation of the norms of admission laid down and rules and regulations governing the same with impunity have been frowned upon and many times have been struck down. These rules and norms are there to be strictly and solemnly adhered to. They alone should be the guidelines for such admissions. In fact, the very decision of the Supreme Court in Punjab Engineering College, Chandigarh v. Sanjay Gulati, relied on by the learned counsel for the petitioner, countenances this principles. The word "prospectus" is derivative from the word "prospect". One of the dictionary meanings for the word "prospect is" to took around, "to make a search", "to

explored. A prospectus issued with regard to admission to educational courses is a declaration to the candidates that a field for development of educational potentialities is available for exploration and that there could be a chance of success. It is a piece of information. But, at the same time, we shall not belittle the significance of the need to set out in the prospectus itself a summary or an essence of the norms and rules which should guide and which will be adopted for selection of the competitors in the field of exploration in educational development or at least indicate in the prospectus that there are norms and rules" which shall govern. It is highly desirable that a summary or an essence of the relevant norms and rules governing such admissions are set out in the prospectus themselves or their existence at least is indicated therein. But an omission to do so shall not be taken advantage of by any one to negate and ignore the very norms and rules. The very rules and norms have come to be laid down only to govern and to be adhered to and not to be ignored and breached. It is true that if the relevant norms and rules are set out or referred to in the prospectus, a controversy of the present nature would have been very wisely avoided. But the omission in the prospectus is not an omission or erosion or deletion of the very norms and rules themselves. The norms and rules subsist and they have to hold the field. ..." (Italics supplied)

46. We hold that writ petitioners having participated in the written test after fully knowing the terms and conditions of the prospectus are estopped from questioning the selection process. Respondents have not deviated from the same.

47. Learned counsel for writ petitioners relied on the following decisions:

1. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; 2. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, ; 3. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad, AIR 1986 SC 1877; 4. Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , and 5. Dr Preeti Srivastava and Another Vs. State of M.P. and Others,

48. We do not think that any of these decisions is relevant to the case in hand when petitioners have not challenged the fixation of quota for service and non-service candidates. Most of the decisions relied on by learned counsel for petitioners are considered in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, which we have held as not going against the guidelines issued by respondents in the prospectus of this year.

49. The decision in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, , is also not much helpful to petitioners and we do not think that any argument could be put forward on the basis of that decision. Much reliance was placed on the words "Open seats". In fact, in that decision, the decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, was little more explained. Their Lordships held that admission must be based on evaluation of relative merits through an entrance examination which would be open to all the qualified candidates throughout the country. That view was taken

because the candidates came from different Universities holding different qualifying examinations held by different States, Universities or Governments where the standards of judging would necessarily vary and will not be the same. In this case, competitive examination was held and merit is also being considered. As we said earlier, merit was assessed from two different sources.

50. The decision reported in *Dinesh Kumar v. Motilal Nehru Medical College, Allahabad*, AIR 1986 SC 1877 also follows the same principle.

51. Reliance was also placed in *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, of the Judgment, their Lordships held thus,

"A student, who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted the seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate."

52. In the earlier portion of the judgment, we have held that principle cannot be invoked, when Government has fixed different source of admission.

53. Learned counsel for petitioners also relied on the decision of First Bench in *W.A.Nos. 905, 906 and 918 of 1999*, which is referred to in the reference order. The Division Bench held that the view taken by the learned single Judge is justified as exclusion of candidates falling in Clause 8 to compete in the open category as provided in Clause 9, sacrifices the test of merit in the selection of candidates for admission. If candidates who fall in category 8 are found to be more meritorious than the candidates who do not belong to the category of service candidates they are entitled to admission on the basis of merit. Denial of admission to such meritorious candidates by virtue of the phrase in Clause 9 "except those specified in para 8 above" gives way to the merit and hence the same is liable to be set aside. We do not think that the first Bench has considered various conditions of the prospectus and the quota fixed for service and non-service candidates. A candidate who is eligible to apply in service quota can successfully challenge if his merit has not been considered and another

candidate of less merit has been considered in that quota. Petitioners who are not eligible to apply in the non-service quota cannot question the selection made in that quota. That point was not considered by the Division Bench. In this case, taking into consideration the quota fixed for service and non- service candidates, challenge also will have to be confined to the respective quotas by the affected persons coming within the quota.

54. We are of the view that the finding of the learned single Judge, and confirmed by the Division Bench are liable to be set aside.

55. We answer the reference as follows:

Question No.1 The interpretation given by learned single Judge to the prospectus of 1999-2000 on the basis of last year's guideline is not correct, especially when the conditions of selection as stated in the prospectus are not challenged.

Question No.2: We hold that writ petitioners are not entitled to challenge the selection process after having participated in the written examination on the principle of estoppel.

Question No.3: We hold that the writ petitioners are not entitled to any relief and the writ petitions are liable to be dismissed.

56. Before we part with this reference we feel it is only proper on the part of respondents to clarify or be more clear while issuing prospectus. Some of the clauses are really confusing which has given room for these litigations. If we read para (10) general instructions alone without looking into the other clauses in the prospectus, one will have impression that candidates who are not to be treated as "service candidates" as stated in para (8) of Clause IX are not at all eligible to apply for higher speciality courses. In fact, para (10) of Clause I is intended only for those candidates, who have not completed two years and who are not eligible to apply as "service candidates". In fact, learned counsel for petitioner at the fag end of the argument has even taken such a contention but did not pursue later, likewise, in Clause X, para (5) and (9) could have been little more happily worded. In para (5), it would have been clearly stated that in-service candidates will be considered only within the quota fixed for them and in para (9) it would have been clarified that all eligible Medical Officers except specified in para (8) alone will be considered in the 50% open quota. Respondents have created this confusion only because they have taken some paragraphs from the prospectus and Government Orders of earlier year and incorporated in the present prospectus without considering their relevancy. We hope, at least from next year, respondents will not give room for such confusion and create further atmosphere for litigation.

57. In the result, all the writ appeals are allowed and the order of learned single Judge in W.P. Nos. 6314, 6315, 6316, 6317 and 6743 of 1999 is set aside. All the writ petitions are dismissed. There will be no order as to costs. Connected C.M.Ps are closed.