
(2007) 02 KL CK 0074

In the High Court Of Kerala

Case No : W.A. No's. 2190 and 2191 of 2006

Govind Jayan

APPELLANT

Vs

Arya Sanjeev and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : (2008) 1 KLJ 633

Hon'ble Judges : K.S. Radhakrishnan, Acting C.J.; M.N. Krishnan, J

Bench : Division Bench

Advocate : Pirappancode V.S. Sudhir, for the Appellant; N. Neelakantan Elayath, CGC, T.B. Hood, GP, Ajith Krishnan, Asst. C.G.S.C. and P.V. Jyothi Prasad, for the Respondent

Judgement

K.S. Radhakrishnan, Acting C.J.

1. Petitioners in all these cases are aspiring for admission to the MBBS Course conducted at the Trivandrum Medical College. Except Govind Jayan, appellant in WA Nos. 2190, 2191, 2340 and 2341 of 2006, rest of them are rank holders in All India Pre-Medical/Pre-Dental Rank List. Govind Jayan is rank holder in the State rank list. One Swarup Sasidharan holding rank No. 2292 in the All India Rank List filed WP(C) 24602 of 2006 seeking a writ of mandamus directing the respondents to accommodate him to one of the vacancies at Trivandrum Medical College in the All India Quota. He has also sought for a direction to respondents not to fill up one vacancy of 1st year MBBS admission at Government Medical College, Trivandrum from the State merit list. When the writ petition came up for hearing before learned single Judge on 4th October 2006 it was reported by learned Government Pleader that Swarup Sasidharan was already accommodated at Trivandrum Medical College. Recording the same writ petition was closed by the learned single Judge. Aggrieved by the judgment Govind Jayan has preferred WA No. 2191 of 2006 after obtaining leave.

2. One Arya Sanjeev holding rank No. 868 in the All India Rank List who was allotted to T.D. Medical College, Alleppey, filed WP (C) No. 23432 of 2006 seeking

a direction to respondents not to surrender seat from the All India Quota available at Government Medical College, Trivandrum to the State Quota and also for a direction to accommodate her at the Trivandrum Medical College. When the writ petition came up for hearing before the learned single Judge on 20th October, 2006 it was represented that petitioner had already got the relief prayed for in the writ petition and consequently the writ petition was closed recording the submission. Aggrieved by the said judgment Govind Jayan has filed WA No. 2190 of 2006 after obtaining leave of this Court.

3. One Heera Hassan holding rank No. 1431 in the All India Rank List preferred WP(C) 25737 of 2006 seeking direction to respondents not to surrender one vacancy of 1st year MBBS Admission at Government Medical College, Trivandrum to be filled by State merit list. She was allotted to the Govt. Medical College, Madurai. Writ petition was disposed of by the learned single Judge on 6th October, 2006 directing the respondents to accommodate her in the vacancy available at Medical College, Trivandrum. Aggrieved by the said judgment Govind Jayan has filed WA 2340 of 2006 after obtaining leave of this court. State of Kerala and others then filed RP No. 1088 of 2006 in WP(C) No.25737 of 2006 stating that out of three seats which were available and reverted to the State quota one vacancy was filled up on 28-09-06 and the other two vacancies were filled up as per direction of this Court and therefore Heera Hassan could not be accommodated at Trivandrum Medical College. Review petition was entertained by the learned single Judge and the same was allowed on 20-12-2006. WP(C) 25737 of 2006 filed by Heera Hassan was therefore dismissed. Aggrieved by the same Heera Hassan has filed WA No. 271 of 2007.

4. Govind Jayan, a candidate included in the State list has filed WP (C) No. 28390 of 2006 with Heera Hassan and Swarup Sasidharan in the party array seeking a writ of mandamus directing the respondents not to admit or reallocate Heera Hassan and Swarup Sasidharan in the Medical College, Trivandrum in the seats available at the Trivandrum Medical College on surrender of All India quota. He has also sought for a writ of mandamus directing the respondents to fill up one vacant seat which stood surrendered from All India Quota to the State Quota in the Medical College, Trivandrum. WP(C) 28390 of 2006 was dismissed by the learned single Judge on 22nd November, 2006 along with RP No. 944 of 2006 stating that the admission process was already over and the cut of date fixed by the Supreme Court of India as extended till 31-10-2006 was also over and consequently no relief was granted. Aggrieved by the judgment in WP(C) No. 28390 of 2006 Govind Jayan filed WA No. 2341 of 2006. Heera Hassan has filed WP(C) No.4333 of 2007 seeking a writ of certiorari to quash the order accommodating Swarup Sasidharan in the Trivandrum Medical College and also for a direction to accommodate Heera Hassan in that vacancy since she is holding higher rank compared to Swarup Sasidharan.

5. We are of the view the entire confusion arose in these cases due to the indifferent attitude of the respondents 4 to 7 in WA No. 2190 of 2006 in not

following the direction of the apex Court. If the judgment of the Supreme Court reported in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, was properly followed this confusion would not have been created. Apex court in paragraph 7 of the above mentioned judgment has specifically stated that the observance of the time schedule is paramount for effective utilisation to all India quota of medical and dental seats. It was pointed out by the apex court that the denial of a seat in the college of choice on the basis of one's merit position leads to frustration and results in injustice to the young students. The admission to a professional course based on merit position is paramount for the career of a student. In paragraph 11 of the judgment the apex court has specifically referred to the time schedule for completion of the admission process for medical and dental courses. So also the time schedule for completion of admission process for first year MBBS course. It has been specifically stated that the last date for joining for candidates allotted seats in second round of counselling or from the waiting list is 22nd August. It is pointed out that seats vacant after this date will be surrendered back to the State/colleges. This direction of the Supreme Court has not been complied with in these cases which has created the entire confusion.

6. A detailed statement has been filed by the Central Government on behalf of respondents 2,4 and 8 in RP. No. 944 of 2006 in WP(C) No. 25737 of 2006 which would clearly reveal the stand of the Central Government. Referring to the claim of Heera Hassan who appeared for All India Pre-Medical/Pre-Dental Entrance Examination-2006 it was pointed out that she was placed at rank No. 1431 in the merit list and she appeared for 1st round of counselling as per notified schedule on 1-7-2006 and chose MBBS Course seats at her rank at Madurai Medical College, Madurai. She appeared for 2nd round of counselling as per notified schedule also on 4-8-2006 and chose T.D. Medical College, Alappuzha. It is stated that the allotment of MBBS/BDS seats in various participating Government Medical/Dental Colleges to the candidates is made through personal appearance in the order of merit by the Directorate General of Health services/Ministry of Health & Family Welfare in pursuance of the "Scheme" approved and devised by the Hon'ble Supreme Court of India by order dated 30-4-1993 in WP(C) No. 443 of 1992. For the year 2006, the Directorate General of Health Services had called for the vacancy position under 15% All India Quota from all the participating Government Medical/Dental Colleges. According to the vacancy information received from Medical/Dental Colleges, a total number of 1654 seats (1500 MBBS seats and 154 BDS seats) were available for allotment to the candidates at the start of 1st round of counselling. The Dte. GHS conducted the first round of All India Quota counselling as per the notified schedule from 26-6-2006 to 3-7-2006. Immediately, on the completion of 1 st round of counselling, all the participating Govt. Medical/Dental Colleges were instructed as per directions of Hon'ble Supreme Court to send the information by 24-7-2006 about the seats falling vacant due to non-joining/resignation etc. by the candidates who were allotted seats during 1 st round of counselling. It is stated that 483 seats (395 of MBBS Course and 88 of BDS Course) arisen due to non-joining/

resignation by the candidates allotted in the first round of counselling and also due to increase in capacity were intimated by the various participating Medical/Dental College and same were displayed for the 2nd round of counselling for re-allotment to the merit/wait list candidates. Further it is also stated that counselling for the allotment of MBBS/BDS Course seats of 15% All India Quota - 2006 was conducted from 26-6-2006 to 3-7-2006 (1st round) and 18-7-2006 to 8-8-2006 (2nd round) and all the seats got exhausted at rank No. 3106. Candidates were required to join the allotted college within 15 days from the date of allotment and this year the last day of joining was up to 22-8-2006 and as per the "scheme" any seat remaining vacant after the last date of joining would be deemed to have been surrendered back to State/College. It was pointed out that the letter intimating two more seats was received in the Directorate by post on 10-08-2006 and at that time 2nd round of counselling was already concluded on 8-8-2006 and hence those seats could not be reckoned for All India Quota and hence those seats stood surrendered to the State quota.

7. We may indicate that the date mentioned in the Supreme Court judgment is 22-8-2006 and the vacancy arose on 29-7-06 and 31-7-06 and those vacancies were not filled up. Hence those vacancies stood surrendered to the State quota. If that be the position neither Swarup Sasidharan, Arya Sanjeev nor Heera Hassan can stake any claim for those seats and only those candidates who are included in the State Rank list alone can claim depending upon their choice and their position in the rank list. Facts of this case would clearly show that the seats remaining in the All India Quota in the Trivandrum Medical College were not filled up from the All India list as on 22nd August 2006 and hence those seats stood surrendered to the State/Colleges and hence those persons who were included in the State list can alone stake a claim not from the All India list.

8. Under the above mentioned circumstance we are inclined to allow WP(C) No. 28390 of 2006 filed by Govind Jayan and give a direction to respondents 1 to 7 to fill up the seats surrendered from the All India Quota to the (sic) College, Trivandrum from the State merit list strictly in accordance with the rank list. The admission given to Swarup Sasidharan and also to Arya Sanjeev is not in order, would stand cancelled since the seats occupied by them stood surrendered to the State Quota as on 22nd August, 2006. Respondents 1 to 7 in WP(C) No. 28390 of 2006 is therefore directed to cancel the admission given to Swarup Sasidharan And Arya Sanjeev and to allot those seats to the persons in the State rank list strictly on the basis of the rank held by the candidates and according to their choice. Further it has also be noted that Heera Hassan is having a higher rank than Swarup Sasidharan. Swarup Sasidharan and Arya Sanjeev can however be accommodated in the seats which would arise while accommodating the legitimate persons from the State rank list in the Medical College, Trivandrum. In view of our direction WP(C) No. 4333 of 2007 would stand dismissed.