

(1993) 10 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 37717 of 1992

J. Dayanand

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS)
Rules, 1987 — Rule 11, 9, 9 (5)

Citation : (1993) ILR (Kar) 3093 : (1994) 2 KarLJ 641

Hon'ble Judges : C. Shivappa, J

Bench : Single Bench

Advocate : A.B. Patil, for the Appellant; H.H. Kaladgi, HCGP for R-1 to 3 and 12 to 14, D.S. Joshi, for R-4, A. Keshava Bhat, for R-5, Kesvy and Co. for R-7, H. Kantha Raju, for R-8 and B.B. Mandappa, for R-10, for the Respondent

Judgement

C. Shivappa, J.—The petitioner passed Second P.U.C. examination held by the Pre-University Board of the State of Karnataka in the month of March/April, 1992 securing 87% of marks in his optional subjects (P.C.B). He appeared for common entrance examination held by the Government of Karnataka in April, 1992 and secured marks as under:

a)

Physics

--

57.50% out of 60%

b)

Chemistry

--

58.75% out of 60%

c)

Biology

--

58.75% out of 60%

Total

:

175 out of 180

He secured 91.90% average marks in the P.U.C. and Entrance Examination. His ranking is No. 545 in the rank list. The petitioner sought admission to the t year M.B.B.S. course for the year 1992-93 in the General Merit category. It is submitted that admissions to the I year M.B.B.S. Course in Karnataka are governed by the provisions contained in the rules called "The Karnataka Medical Colleges (Selection of Candidates for Admission to I year M.B.B.S. Course) Rules, 1988 (in short "THE RULES"). Respondents 1 to 3 are required to follow these Rules strictly in selecting the candidates.

2. Total number of seats allotted for admission to I year MBBS in the Government quota is 997. The first selection list was published on 13.7.1992 and the rank numbers 1 to 252 were allotted to I year M.B.B.S. in the General Merit category in the Government quota. Thereafter on 31-7-1992, second list was published and persons holding ranks upto rank Number 335 were given admission in that list. Third list was published on 25-8-1992 and the persons holding ranks upto rank number 364 were given admission in General Merit category in the Government quota. The true copies of those lists are produced at Annexures C, D and E. It is the contention of the petitioner that the authorities have given admission to I year M.B.B.S. course to the students who have secured lesser percentage of marks than the petitioner and have been given admission in the General Merit category in the Government quota. It is further submitted that atleast 25 students have been given admission, but the petitioner could ascertain the particulars of only in respect of 8 students who he has impleaded as respondents 4 to 11. The following list shows the ranking, category and the Colleges to which they are allotted:

SI No

Name of the Candidate

At No.

Rank No.

Category

College allotted

1.

P.M. Girish (R-5)

JK 1045

1170

GM

Siddartha MC, Tumkur

2.

M.V. Venkatesh (R-6)

SC 0939

4226

C(U)

JJMC, Davangere

3.

B.H. Shyamsunder (R-8)

TC 0948

5466

B(R)

-do-

4.

Aruna Vekatesh (R-9)

SN 0498

1173

GM

Med. College Bellary

5.

Jayashree Ayyappa Gouder (R-10)

SH 0864

825

GM

-do-

6.

Suresh Chandra (R-11)

JE 01444

674

GM

JN. Med, College, Belgaum

7.

Rajeshwari (R-7)

HG 0152

4626

"D"

JJM M.C., Davangere

8.

M.V. Darshan (R-4)

SK 1048

9212

"C"

Siddartha M.C. Tumkur

The petitioner further contended that Respondent-6 M.V. Venkatesh has secured 63% marks in the P.U.C. and he was admitted on 29-9-1992. Respondent-7 Rajeswari secured 82.6% and she was admitted on 29-9-1992. So also Respondent-8 Shyamsunder secured 64% and his rank number is 5466 in the rank list and he was admitted on 28-9-1992. True copies of the intimation of selection of some of the respondents are produced at Annexures F, G & H.

3. It is the case of the petitioner that Respondents 12 to 14 have been given admission without following the procedure and the Rules. The selection of respondents 4 to 11 is arbitrary and illegal and opposed to Rules. It is his case that he had secured 91.90% marks and holds the rank number 545 in the rank list and he was denied admission in high-handed and arbitrary manner.

4. Respondents 1 and 2 filed a rejoinder. In para-2 they have admitted that the petitioner in W.P. 37717/92 has secured rank No. 545, It is stated that respondents 4 to 11 have secured lesser marks and though they are lower in ranks than that of the petitioner, selected for I year MBBS. It is contended that their selection is made on 29th and 30th September, 1992 inasmuch as they

approached the Selection Committee to consider the case for selection in respect of the available seats. The Selection Committee had no time to communicate the petitioner or others who were in the waiting list so as to select them and to enable them to join the course before the last date for admission i.e., 30-9-1992, the Selection Committee Chairman considered and selected all those candidates who appeared before the Chairman on the last minute so that available seats could be utilised by all those who are eligible. Thus, there is no arbitrariness in the selection of the respondents and the Selection Committee has not discriminated in the matter of selection. The Selection Committee would have selected even the petitioner, if he had approached the Chairman of the Selection Committee and as such the selection of respondents in question cannot be called as unjust or unfair.

5. At the time of arguments, learned Counsel for petitioner submitted that the statement in the Statement of Objection that the selection was made on 29th and 30th September, 1992 and that the Selection Committee had no time to communicate the petitioner and others are false. He submitted that the dates mentioned in the Annexures F, G and H are 25-9-1992 and 28-9-1992. These are the correspondences intimating the selection of some of the respondents. It means, the selection was made much earlier to 29th and 30th September, 1992. The respondents have sworn to a false affidavit. To cover up this lapse an amendment was filed by the respondents stating that their selection was made on 25th, 28th and 29th. If that was so, it is not made clear when they approached the Selection Committee, if so why the merit list was not considered and the petitioner was not notified? The Statement of Objection filed by respondents is nothing but conceding the case of the petitioner to the extent that the Selection Committee did not adhere to the merit list and without calling for interview all those who are more merited than respondents 4 to 11, arbitrarily exercised their power and selected less meritorious unjustly excluding the petitioner.

6. The Point for Consideration is :

"Whether admission of respondents 4 to 11 to I year MBBS course is in accordance with the "Rules" governing admissions to Medical Colleges in the State and denial of admission to the petitioner amounts to arbitrary exercise of power by the Selection Committee?"

7. The Procedure for selection is governed by Rule-9 which reads thus:

"9. PROCEDURE FOR SELECTION:

(1) The marks secured in the Second Year PUC or equivalent examination and the Entrance Test in Physics, Chemistry and Biology subjects by the applicants to whom such test is applicable shall be taken into consideration for the purpose of determining the merit of the applicants and their merit and ranking shall be based on the merit as defined in the Entrance Test Rules and the selection for admission on the basis of merit and reservation shall be only on the basis of such

merit list.

(2) The Selection in respect of categories (a) to (f) of Sub-rule (1) of Rule-1, shall be made by the Selection Committee on the basis of merit and Entrance ranking as assessed in the merit list prepared under the Entrance Test Rules for the respective category."

(3) & (4) xxx xxx xxx

(5) For filling up of any seats remained unfilled under publication of the main list due to non-reporting of candidates, rejection of candidates at the time of scrutiny or any additional seats that may be available for Government in Private Medical Colleges, the Selection Committee shall select the candidates from out of the remaining candidates from the merit list and from same categories. However, the filling of seats in recognised Medical Colleges the candidates already allotted and admitted to the unrecognised Medical Colleges shall be considered first on the basis of their preferences given earlier, and the seats vacated by such candidates shall be filled by candidates selected by the Selection Committee from the remaining candidates in the merit list."

Rule 11 deals with Rectification of Wrong Selections, which reads thus:

"11. RECTIFICATION OF WRONG SELECTIONS:

(1) Where an ineligible applicant has been admitted to a College inadvertently or by mistake or otherwise, such applicant shall have no claim to continue his studies in the college. The Selection Committee shall not be held responsible in such event for any loss or prejudice which may cause to the applicant.

(2) Where a seat is allotted by mistake to an ineligible candidate possessing lower merit than another candidate seeking admission, it shall be open to the Selection Committee to review and cancel the earlier allotment."

8. The petitioner has secured 91.90% marks in the P.U.C. and Entrance examination. His rank is No. 545 in the rank list, whereas the ranking of respondents 5, 9, 10 and 11 herein are at Nos. 1170, 1173, 825 and 674 respectively (details at page 5 of this order).

9. As reflected in the rank list, petitioner has secured higher marks in the qualifying examination and Entrance Test and respondents are far below him in the rank list. The petitioner demanded for a certified copy of the rank list of the General Merit Pool as per Annexure J & k and brought to the notice of the Director of Medical Services, Government of Karnataka, who is respondent-2 herein. The petitioner also demanded a seat on the ground that respondents 4 and 5 and some others who have secured lesser marks have been allotted seats. It is the case of the petitioner that he was not provided with the rank list inspite of persistent demand.

10. The eligibility criteria for admission to the I year MBBS course is percentage of marks in the II PUC examination and Entrance Test. The admissions to MBBS

course is governed by the "Rules". The main object or policy behind these Rules is to provide admissions on the basis of merit to have sound Doctors with academic excellence. Unfortunately these Rules are observed more in breach than in compliance by those who are in charge of admissions to Medical Education. If the authorities had considered the marks secured by the candidates, there was no justification to refuse admission to the petitioner and prefer respondents 4 to 11 who have secured lesser marks. Having laid down the criteria i.e. percentage of marks, the academic body could not deviate and prefer candidates who have secured lesser marks than the petitioner. To evolve methodology for admission to professional colleges is the function of "the State" and has to be decided by the State. It is the function of Executive to lay down procedure. Having evolved a procedure, non-observing it in letter and spirit amounts to arbitrary exercise of power. Wherever they have applied the Rules in a bona fide manner there is no justification whatsoever to interfere with the working of the Committee, but where the authorities unjustly refused admission arbitrarily without regard to the Rules governing selection Judicial Review requires such action should be deprecated.

11. Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, has held thus:

"Cases in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense or moral values on the part of the administrator and teachers alike. Where irregularities are committed in admitting students it is not until a period of six months or a year elapses after the admissions are made that the intervention of the court comes into play. The time consumed in disposal of such cases by the High Court and Supreme Court creates difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul; once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions. It is found that this situation has emboldened the erring authorities or educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to

be obeyed, not flouted. Some days, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. The authorities who made admissions by ignoring the rules of admission cannot be allowed to contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students or that in regard to Medical Colleges the Indian Medical Council will not sanction additional seats."

12. In the instant case the Selection Committee had made a very arbitrary and casual approach in selecting less merited candidates ignoring the petitioner. It is appropriate to describe the act of the Selection Committee in not selecting the petitioner to I year MBBS course as an act done in haste and unjust and also unreasonable for lack of due care. The respondents who are not entitled for selection in the merit category, by an indiscriminate and arbitrary action of the Selection Committee, got admission. In other words, they could not have secured admission as they were on the bottom of the list in view of the percentage of marks secured by them. By the non-observance of the Regulation, ignoring the merit, the students who have secured lesser marks have been studying in higher classes and a merit student is subjected to unnecessary ordeal. Cases like this in which admissions are granted to students in educational institutions who are less merited if quashed raises sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. Sub-clause (5) of Rule 9 provides for filling up any seats remained unfilled and it should be from the remaining candidates in the merit list. The authorities in selecting respondents 4 to 11 have violated the norms set down by the Rules and denied admission to the petitioner amounts to arbitrary exercise of power and also unjust. Even by wrong admission respondents are already put in one or two semesters. Striking down their admissions amount to interfering with their career. Therefore, I direct the authorities empowered with the selection not to breach the Rules, but in the instant case without interfering with the admissions of respondents 4 to 11, I direct respondents 1 to 3 to provide a seat to the petitioner in the academic year beginning in September 1993.

13. For reasons stated above, I make the following:

ORDER

1) A Writ of mandamus shall issue to respondents 1 to 3 to admit the petitioner to I year MBBS course in any one of the Government Medical Colleges in the State of Karnataka in the academic session beginning in September, 1993.

2) Parties to bear their own costs.