
(2010) 12 KL CK 0153
In the High Court Of Kerala
Case No : W.A. No. 1723 of 2010

Jabeer M.P.

APPELLANT

Vs

Nilufer P.P. Pokkarappada House and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 239, 342(1), 342(2)

Citation : (2011) 1 ILR (Ker) 258 : (2011) 1 KLJ 561 : (2011) 1 KLT 407

Hon'ble Judges : J. Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : K.P. Satheesan, for the Appellant; S. Radhakrishnan, SC, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Menon J.

1. Interpretation of Clause 19 of Ext.P1 "Rules" for selecting candidates for nominations against seats reserved by the Administration of the Union Territory of Lakshadweep for Higher Studies including Degree Courses (excluding MBBS) is the issue involved.

2. The 5th Respondent in the Writ Petition is the Appellant, whose selection to the course of Bachelor in Veterinary Science and Animal Husbandry (B.V. Sc & A.H.) in respect of one of the two seats allotted by the Kerala Agricultural University to the Union Territory of Lakshadweep has been set aside and the rank list has been ordered to be reset, reckoning the claim of the writ Petitioner as well. The point to be considered is, whether the reservation for candidates from the Union Territory of Lakshadweep to the said course is to be confined solely to those who passed the "plus two" course in the academic year 2009-"10 or whether there is any prohibition in considering the candidates who have passed the said course earlier.

3. Both the Appellant as well as the writ Petitioner rely on Ext. P1 Rules

pertaining to the selection, which is seen as issued by the Collector-Cum-Development Commissioner of Union Territory of Lakshadweep, fixing the relevant norms. The sole dispute is with regard to the interpretation of the relevant Rule, particularly Rule 19, which according to the Appellant and the Administration excludes the writ Petitioner from the zone of consideration, having passed the qualifying examination, not in the immediate preceding year, but much before in the year 2007-'08.

4. Coming to the sequence of events, the Administration issued Ext. P2 notification dated 13.11.2009, inviting applications for admission for the reserved seats in respect of the various Degree / Diploma / Professional Training Courses etc. during the year 2010 -'11. Both the writ Petitioner as well as the Appellant applied for the course of B.V. Sc & A.H. and after processing the applications, Ext. P3 list was published by the Administration, wherein the writ Petitioner as well as the Appellant were enlisted. But, on finalizing the selection process and publishing Ext. P4 selection list, the writ Petitioner was excluded and the Appellant was selected, which hence was taken up before the Administrator, availing the statutory remedy by way of appeal. The matter was also brought to consideration of this Court by filing W.P.(C) No. 20392 of 2010, which was disposed of as per Ext. P5 judgment dated 30.06.2010, directing the Administrator to consider and pass final orders in the appeal. Pursuant to the said direction, the matter was considered by the Administrator, who passed Ext. P7 order dated 19.07.2010, dismissing the appeal, placing reliance on "Clause 19" of Ext. P1 Rules and holding that the writ Petitioner did not come within the zone of consideration, which in turn was subjected to challenge in W.P.(C) No. 23471 of 2010.

5. The learned Single Judge heard both the sides in detail. After considering the pleadings and materials on record, it was observed that, the interpretation sought to be given by the Administration to "Clause 19", restricting the zone of consideration of selection to the "immediate previous year", thereby excluding the candidates who passed the qualifying examination much earlier was not correct or sustainable. It was held that "Clause 19" of the relevant Rules did not provide for any such restriction, whereas the same only enabled the candidates who have passed the qualifying examination "in any year prior to the year of selection" to compete in the selection in contradistinction to the year in which the admissions are made. It was also observed that the finding and reasoning given by the Administrator in Ext. P7 were wrong and unfounded. The impugned proceedings, particularly, Ext. P4 select list and Ext.P7 were set aside and the list was directed to be recast, reckoning the claim of the writ Petitioner and to find out the eligible candidate, which forms the subject matter of challenge in this appeal.

6. When the matter came up for consideration before this Court on 08.10.2010, it was admitted, also granting interim stay as prayed for. The first Respondent, who was the writ Petitioner entered appearance and filed counter affidavit dated

12.10.2010 along with I.A. No. 813 of 2010 dated 11.10.2010 seeking to vacate the interim order. After hearing both the sides, on 14.10.10, the "status quo" as on date was ordered to be maintained. The Appellant filed I.A. No. 795 of 2010, producing some additional documents as Annexures I and II, seeking the same to be accepted. The Respondents 2 to 4 filed an affidavit, producing a full text of the relevant "Rules" for nominating candidates in respect of the reserved seats for higher studies and also in respect of such seats for MBBS as Exts. R2 (a) and (b) respectively. Thereafter, an additional counter affidavit dated 26.10.2010 was filed on behalf of the Respondents 2 to 4, producing copies of some documents marked as Annexures R2 (c) to R2 (l), in support of the stand taken by the Administration in Ext.P7.

7. By virtue of the particular nature, topography, socio economic peculiarities and other relevant aspects, as explained by the Administration in their counter affidavit, the inhabitants of the Union Territory of Lakshadweep have been declared as "Scheduled Tribes", by virtue of a "Presidential Order" issued under Article 342(1) of the Constitution of India, as amended, recently by an Act of the Parliament under Article 342(2). The Union Territory of Lakshadweep is being administrated by the President through an Administrator appointed under Article 239 of the Constitution of India. Despite the various developmental activities and up-liftment of the social and economic conditions of the inhabitants of the islands, there is no facility even today for "professional education" or any "higher education" in the islands and the students mainly depend on the institutions in the mainland. Due to the social, cultural, educational and financial backgrounds, the students from the islands are not in a position to compete with the students of the mainland to get admission to such educational institutions in the main land. On appraising the hard realities, the Central and State Governments have reserved seats for such students of the Union Territory of Lakshadweep in the academic and professional colleges in the mainland and the Administration meets all their educational expenses.

8. With regard to the admission for MBBS/BDS in respect of the reserved seats in the Union Territory of Lakshadweep, it is allotted through the central pool of Ministry of Health and Family Welfare. That apart, the Ministry of Human Resources and Development, New Delhi allots by an ongoing Scheme, reservation of seats in the Degree and Diploma Courses in Engineering and other courses for the States and Union Territories, which do not have Engineering / Technology / Architecture or lack of facilities for education in specific field of technical education, as approved by the All India Council for Technical Education (AICTE), which is extended to the Union Territory of Lakshadweep as well. The Government of Kerala has earmarked one seat for each course in all Government/affiliated colleges, by a marginal increase in the strength, for the students sponsored by the Union Territory of Lakshadweep, as borne Annexure R2 (g). The Kerala Agricultural University has recently allotted "two seats" of B.V. Sc & A.H. for the students of Union Territory of Lakshadweep, as borne by Annexures R2(h) and R2 (i) dated 26.08.2009 and 22.09.2009 respectively. It is pointed out

from the part of the Administration that the rules/guidelines were formulated in exercise of the powers conferred on the Administrator in this regard and also by virtue of the directions given by this Court on different occasions including the one rendered by a Division Bench of this Court in Raghava Panicker and Another Vs. The Administrator, Union Territory, Lakshdweep and Others,), giving liberty to the Administration to make rules for proper selection and nomination of students for MBBS and further, by Annexure R2 (k), judgment in O.P. 15726 of 1996, to have transparency and fairness in the process.

9. The scope, extent and applicability of the relevant Rules has to be examined, in the above background. Ext. P1 (the so-called "Rules") does not give any idea as to how the said "Rules" have been formulated. The said "Rules" have been issued by the Collector-Cum-Development Commissioner and not by the Administrator. Whether the "rule making power" vested on the Administrator has been properly or validly delegated to the Collector-Cum-Development Commissioner is not discernible from the materials on record. However, it is seen that some clauses of the above Rules were subsequently modified by the Administrator, particularly with reference to Rules 13, 15 and 16, as borne by Annexure R2 (a). It is also the common case of all concerned that the said "Rules" were being followed for nearly two decades and that there is no challenge against the "Rules", while the dispute stands confined only to interpretation of "Rule 19". It has been conceded by the Respondents 2 to 4 (Administration) in paragraph 10 of the counter affidavit dated 26.02.2010, that the "so-called" Rules, though are not Rules in real, strict and legal sense, they are "guide lines" in the form of self-imposed restrictions. We take it as it is.

10. The claim of the writ Petitioner to be considered for admission to the course of B.V. Sc & A.H. in respect of the reserved seats, is stated as rejected, with reference to Rule 19 of Ext. P1 Rules, which reads as follows:

19. Candidates who have passed qualifying examination in a year prior to the year of selection shall be eligible to apply to selection in the current year. However, such candidates are advised to keep in mind the scholarship Rules cl. 4 issued by Ministry of Education Order F No. 38-8/64 SE 2 dated 25.7.1964 applicable to candidates seeking admission to the professional courses or otherwise in original to such of the candidates who may be undergoing any other course at the time of applying now.

The Appellant as well as the Administration assert that the words " in a year prior to the year of selection" is descriptive of the point of time of the qualifying examination by a candidate to be the year immediately preceding the year of selection. It is pointed out that, by virtue of the said clause, the candidates who have passed the qualifying examination in the previous year of selection alone will be eligible to apply for selection to the current year. The learned Counsel for the first Respondent/writ Petitioner submits that no such inference can be made from the wordings given in Rule 19 and that, it enables all candidates who passed the qualifying examination in any year prior to the year of selection, to be

eligible in the selection for the current year. It is for this reason, that a separate provision has been incorporated under Rule 10 enabling the candidates who have submitted the application within time, to submit attested copy of the mark list to the Directorate of Education within 15 days of declaration of the result of the qualifying examination, submits the learned Counsel.

11. The Scheme of selection of candidates for nominations against the seats reserved by the Administration for Higher Studies including Degree Courses, but excluding MBBS, is obvious from Clauses/Rules 3 to 10 of Ext.P1. Rule 3 reads as follows;

3. The Director of Education shall invite applications for nomination of candidates for all categories of higher studies i.e. Degree/Professional courses by a notification as far as possible not later than last week of December of the year preceding the year of nomination. Explanation: For example, notification inviting applications for nomination for higher studies for the academic year 1988-89 will be published by the last week of December, 1987.

Rule 5 (1) stipulates that the duly filled up applications in Form A are to be submitted to the Registration Officer (defined under Rule 2 (1) as an officer so notified by the Administrator) on or before 31st March of the year and that, each application shall be registered giving a registration number to the Applicant. By virtue of Rule 7, all applications received within the due date are to be compiled by the Registration Officer in Form B and it is to be published on the Notice Board of the Registration Officer at least by 3rd of April of the year of selection. As per Rule 8, all applications in original are to be sent by the Registration Officer to the Director of Education so as to reach him on or before 10th of April. The Director of Education has to pursue the follow up actions as contemplated under Rule 9; conducting the scrutiny, getting the list signed by all the members of the Committee and by publishing one such list on the Notice Board of the Director and sending the remaining two copies to those concerned. This work has to be completed by 20th of April of the year, as far as possible. Rule 10 (i) says; all the Applicants who have applied within the due date and have received their acknowledgment from the Registration Officer shall submit an attested copy of the mark sheet to the Director of Education within 15 days of the declaration of the qualifying examination result.

12. Going by the very same example as given under "Rule 3", referring to the notification to be published by the last week of December, 1987 in respect of the selection for the next academic year of 1988-89, the various steps from the date of submission of the application as to the on going studies being pursued by the candidates during the academic year 1987-88; the qualifying examination being attended to by such candidates in respect of the academic year 1987-88; the follow - up actions to be pursued by the Registration Officer and the Director of Education, to be finalized by the 20th of the next April, i.e. by the beginning of the academic year 1988-89 (in respect of the selection year, for which the selection process is being pursued); the grace period of 15 days from the date of

declaration of result of the qualifying examination for the year 1987-88 for submitting the mark list to the Director (who has to pursue further steps for selection in respect of the academic year 1988-"89) etc. make it clear in unequivocal terms that the candidates who are undergoing the studies in the current academic year of notifying the selection are made eligible to compete in the selection process for the higher studies of the next academic year, subject to the condition that the mark list are made available within 15 days from the last date of receipt of application as stipulated in Rule 10. Then, why should there be Clause 19, if it is to be read and understood in the manner as sought to be made by the Administration as well as the Appellant, is the next question.

13. As mentioned hereinbefore, the entire effort to non suit the writ Petitioner is made with reference to Rule 19, contending that, the writ Petitioner having passed the qualifying examination in the year "2007-08", did not acquire the qualification in the immediate preceding year, so as to come within the zone of consideration. What "Rule 19" says is only that the candidates who have passed the qualifying examination "in a year prior to the year of selection" shall be eligible to apply for selection of the current year. In other words, it does not say that, only those candidates who passed the qualifying examination in the The year prior to the year of selection ONLY shall be eligible for the selection in respect of the year in question. In so far as the "Rule" does not suggest that the Rule making authority intended to exclude all others than those who have passed the qualifying examination in the immediately preceding year, something more cannot be added or read into the rule position, so as to tilt the balance in any manner. That apart, nothing is discernible from Ext. P1 Rules or from Ext. P7 order passed by the Administrator or even from the affidavits dated 19.10.10 and 26.10.10 filed from the part of the Respondents 2 to 4 explaining how and why the zone of consideration is allegedly restricted to the year immediately preceding the year of selection. In any view of the matter, since the stipulation under "Rule 19" enables all candidates who have passed the qualifying examination "in a year prior to the year of selection" (however, permitting the students who are appearing for the qualifying examination in the current year, to the extent as specified) to apply for the selection of the current year, it is not liable to be restricted to the immediate previous year alone and all the candidates who have passed the qualifying examination in the years prior to the year of selection are very much entitled to put forth their candidature.

14. Yet another aspect to be looked into is the context of the stipulation contained in "Rule 19". After providing in the opening sentence that the candidates who have passed the qualifying examination "in a year prior to the year of selection" shall be eligible to apply for selection of the current year, it is stated in the very next sentence as follows:

However, such candidates are advised to keep in mind the scholarship Rules cl. 4 issued by Ministry of Education Order F No. 38 - 8 /64 SE 2 dated 25.7.1964 applicable to candidates seeking admission to the professional courses or

otherwise in original to such of the candidates who may be undergoing any other course at the time of applying now.

This obviously means, the stipulation was made with reference to the eligibility norms in relation to some other circumstances, particularly as to the eligibility of the scholarship, with reference to rule (clause 4) issued by the Ministry of Education as referred to therein, alerting the candidates concerned of the relative rights and liberties with reference to the scholarships. (The words "in original" are missing in Ext.P1 produced by the writ Petitioner, though the same are clearly given in the very same W.A No. 1723 of 2010: 17: Rules marked as Ext. R2 (a) produced by the Respondents 2 to 4 along with their affidavit dated 19.4.2010). Though, a copy of the "Scholarship Rules" (clause 4) issued by the Ministry of Education bearing order No. F No 38/8/64 - SE2 dated 25.07.1964 is not made available to this Court, the reference made to such "Scholarship Rules" is in relation to the eligibility of the candidates who have passed the qualifying examination "in a year prior to the year of the selection", who cannot be ignored for the selection of the current year. To put it more clear, the eligibility contemplated in Clause 19 appears to be more in connection with the eligibility for the scholarship, with reference to the orders issued by the Ministry of Education and not to confine the zone consideration, to the year immediately preceding to the year of selection. Paragraph 5 of Ext. P2 notification dated 13.11.2009 inviting the application also clearly reveals this aspect, where it is categoric and makes it clear that the students who are appearing for their final examination during 2009 -"10 are also eligible to apply in respect of the course for the academic year 2010-"11, which hence is in conformity with the stipulation under Rule 10 of Ext. P1 Rules.

15. The scope of the above rule and the extent of its applicability become more clear, if the amendment made by the Administrator by adding "sub rule (iv)" after Rule 15 (iii) is referred to. The said sub rule, though is not available in Ext. P1 produced from the part of the Petitioner, is very much there in the full text produced from the part of the Respondents 2 to 4, as Ext. R2 (a). The said amendment brought in as per Notification (F) No. 4/31/85/Edn. dated 24.04.89 reads as follows:

(iv). "Current year seats should be first allotted only to those who are not undergoing any course at the Mainland based on the previous years selection. However, if enough number of S.T. candidates are not available, then such S.T. candidates who have already been undergoing professional course for a minimum of one academic session may be considered. Candidates who have undergone the course more than one academic session whether S.T. or otherwise shall not be eligible for consideration. The restriction however, will be applicable only when an application is made forgetting a seat to a graduate level professional course and candidate is undertaking another graduate level professional course. In case application was made by a candidate undergoing diploma level professional course to a degree level professional course or from a

academic course to a professional course then this restriction will not be applicable.

On a close scrutiny of the above sub rule, it is evident that the allotment of the seats for the current year has been put under a rider, which disentitles a candidate in getting a seat to a graduate level professional course, when the candidate is undertaking another graduate level professional course. As made clear therein, if the application is by a candidate undergoing Diploma level professional course, to join a degree level professional course or from an academic course, to join a professional course, then, the restriction is stated as not applicable. In the instant case, since the writ Petitioner is admittedly pursuing studies in the second year of B. Sc. Zoology (who did not avail the allotment to join B. Tech. course earlier) the said stipulation does not place a bar, with regard to the eligibility to be considered.

16. It is relevant to note that the writ Petitioner has got a specific case that the allotment/reservation of seat to the course B.V. Sc and A.H. is being provided as per Ext P2 Notification, after a span of nearly 17 years and as such, the writ Petitioner had no occasion (though passed the qualifying examination in the year 2007-08) to have competed in any selection process after getting qualified. The Appellant himself has produced Annexure 2 letter dated 22.09.2010 of the Kerala Agricultural University (which is the same as Annexure R2 (i) produced by the Respondents 2 to 4 along with their affidavit 26.10.10) and this reveals that the University decided to reserve "two seats" of B.V. Sc and A. H for the candidates from Union Territory of Lakshadweep from 2010 -"11 admission onwards. This admitted position substantiates that, the candidature of the writ Petitioner was never considered in respect of such allotment at any time before and that she had no opportunity to have contested for the same earlier. The Administration cannot extend any undue benefit to anybody, wrongly restricting the zone of consideration, as pursued in the instant case. This being the position, this Court finds that, no interference needs to be made with regard to the finding rendered by the learned Single Judge setting aside Ext. P7 and directing Ext. P4 select list, to be re-cast.

17. Still, the Appellant has got yet another case as well, in the writ appeal. It is stated that the Appellant secured 83 % marks in the "Plus two" examination; while the writ Petitioner got only 70% for her "Plus two" in the year 2007-"08. As per the norms stated as being followed by the Government from this year onwards, the "aggregate marks for "Plus 1" and "Plus 2" will be taken for selection; on which event, the total percentage of the Appellant will be brought down to 69.33 %; whereas in the case of the writ Petitioner, as per the rules then in existence, only the marks of "Plus two" (without counting the marks for "Plus one") alone will be reckoned; which in fact has extended undue favours to the writ Petitioner, but for which the Appellant will always stand in front of the writ Petitioner, if the norms are to be uniformly applied.

18. The writ Petitioner has got a case that, the marks obtained for the writ

Petitioner and the Appellant herein happened to be equal (69.33 %); under which circumstance, a candidate who has scored more for "English" has to be placed in front of the other. The writ Petitioner having scored more marks for "English" is stated as to be preferred, in the said circumstance.

19. This Court does not propose to go into the "norms" of fixation of marks in the selection as above; but would observe that whatever may be the norm, it has to be uniformly applied to all the candidates concerned, in respect of selection in dispute. In other words, there cannot be one set of norms for working out the marks position of the writ Petitioner and another set of norms in respect of the Appellant, referring to the different years of qualifying examination. On computing the marks applying the norms uniformly, if the marks are "equal", then such other appropriate course as provided under the norms can be pursued.

In the above circumstances, interference is declined and writ appeal is dismissed, making it clear that, further proceedings for selection to the contested seat in respect of B.V. Sc. & A.H. shall be finalised by the Administration within "two weeks" from the date of receipt of a copy of this judgment. On submitting the nomination as above, admission shall be given by the Respondent University to the concerned candidate in respect of the remaining "seat" reserved for the course of B.V. Sc & A.H. (first seat having already filled up) forthwith.