

(1991) 11 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 19089 of 1991

K. Radhika Rao

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-11-1991

Acts Referred:

Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS) Rules, 1987 — Rule 4, 4 (1) (a) (c), 4 (1) (c), 9

Citation : (1992) ILR (Kar) 1973 : (1991) 3 KarLJ 95

Hon'ble Judges : Shivaprakash, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, A.K. Patil and M.B. Prabhakar, for the Appellant; N.B.N. Swamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Shivaprakash, J.—This petition is taken up for final hearing at the preliminary hearing stage as it relates to the admission of a student to a professional course.

2. This petition is presented by a girl student, who unsuccessfully sought admission to the first year M.B.B.S., course for the academic year 1991-92, claiming a seat reserved for persons who have participated in "any national or international level sports or games/events in terms of Clause (c) of Sub-rule (1) of Rule 4 of the Karnataka Medical Colleges (Selection of Candidates for Admission to I M.B.B.S.) Rules, hereinafter referred to as the "the Rules".

3. In the Petition, it is stated thus: The petitioner appeared for the I! Pre-University Examination held in the month of March, 1991 with the subjects "Physics, Chemistry and Biology". She was successful at the examination having secured 67.3 per cent in the optional subjects. The petitioner has secured two National awards at the sports festival for women held at Hyderabad between 20.1.1991 and 24.1.1991. The petitioner is a shuttle badminton player. The petitioner has produced a certificate to that effect issued by the Department of Youth Affairs and Sports, a copy of which is marked as Annexure-A. She had also

participated in the year 1988-89 in certain other sports events conducted by the Badminton Association of India and by the West Bengal Badminton Association at Calcutta. It appears, the petitioner represented the State of Karnataka in the said National sports event. She has produced a copy of the certificate to that effect and the same is produced as Annexure-B. The petitioner avers that she has participated in several other events.

4. As stated above, the petitioner sought admission to the I Year M.B.B.S., course for the academic year 1991-92 and claimed a seat in terms of Clause (c), Sub-rule (f) of Rule (4) of the Rules.

5. It is necessary to reproduce the relevant rules which would bear on the issues raised by the petitioner in this petition. Rule 3 of the said rules provides for eligibility for admission to I Year of the Five Year M.B.B.S., course. The relevant part of Rule 4 which provides for distribution of seats, Rule 8 which provides for constitution of the selection committee and Rule 9 which prescribes the procedure for selection are reproduced below:

"4. DISTRIBUTION OF SEATS :

(1) Seats shall be reserved in favour of the following categories of candidates in Government and Private Medical College to the extent as may be notified by the Government from time to time:-

(c) The persons who have participated in any National or International level sports or games events;

8. SELECTION COMMITTEE:

(1) There shall be a Selection Committee constituted by the Government consisting of the following members, namely:-

(a) Director of Medical Education, Bangalore, or his nominee not below the rank of Joint Director.

Chairman

(b) Director of Backward Classes and Minorities, Government of Karnataka or his nominee not below the rank of a Joint Director.

Member

(c) Director of Schedule Caste and Schedule Tribes Welfare Department, Government or his nominee not below the rank of Joint Director.

Member

(d) The Deputy Director, Medical Education, Bangalore.

Member Secretary.

(2) While finalising the selection of candidates for seats reserved under Clauses

(c) and (d) of Sub-rule (1) of Rule 4 the Director of Youth Services or the Director of NCC, as the case may be, shall be included as members.

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 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 4, shall be made by the Selection Committee on the basis of merit and interest ranking as assessed in the merit list prepared under the Entrance Test Rules for the respective category."

According to the petitioner, even though in the merit list prepared under Rule-9, she is above the 3rd respondent and some other candidates who have been selected for admission to the I M.B.B.S., in the category of students who have participated in National and/or International sports events, her claim for admission has been wrongly rejected by the selection committee. From the list of candidates, who sought admission to medical colleges during the year 1991-91, which is furnished by Sri N.B.N. Swamy, learned High Court Government Pleader, it could be seen that the petitioner was assigned merit rank No. 4963, whereas the third respondent is assigned merit rank No. 6022. One Mamtha Bhatawan, who has also secured admission in the "sports quota" is given merit ranking 5301. Therefore, the grievance of the petitioner that even though she is above some of the candidates who have been selected against "sports quota" seats, her claim for admission has been wrongly rejected appears to be well founded.

7. In the statement of objections filed by respondents 1 and 2 while justifying the selection made for seats reserved for students who have participated in National and/or International sports events, it is stated thus:

"3. As required under the rules claiming reservation under the Sports Quota i.e., under Rule 4(1)(a)(c) of the Karnataka Medical Colleges (Selection of candidates for admission to first year MBBS course) Rules, 1989 is concerned 63 students attended interview on 31-7-1991 before the Selection Committee in which Sri Chikkanna, Director of Sports and Youth Services was also present to identify the candidates coming under sports quota. A list of 23 sports quota candidates on the ratio of 1:2 was prepared to fill up 11 sports quota seat to the first year MBBS course. The name, DTE, SI.No. Merit No. Registration No. name of the candidate and sport marks acquired by the said 23 candidates awarded by the Director of Sports and Youth Services are at Col.No. 6, respectively, and the proceedings of the Selection Committee held on 31.7.1991 consisting of the rank obtained by the candidates in the entrance Test as required under Rule 9(2). The

Selection Committee selected and prepared the list of 23 eligible sports students for admission to first year MBBS,, adopting from the identification made by the Director of Sports and Youth Services and taking into consideration the merit and interest ranking at the entrance test. The said final list of 23 students makes it amply clear that the Selection Committee has duly complied with Rule 9(2) of the said rules and accordingly the first 11 candidates have been declared to have been selected as per the list dated 12.8.1991.

6. As stated above these respondents submit with utmost respect that the selection list selected to the first year MBBS course under sports quota is a list prepared adopting the list identified by the Director of Sports and Youth Services at the time of assessing the certificates of the sports quota students and the same has been adopted by these respondents and the list is prepared in accordance with Rules 9(2). Thus these respondents being the competent authority to make a list of eligible candidates under sports quota has duly prepared the list in accordance with law and it is necessary to state that the 11 candidates selected by the respondents as stated in para-7 of the petition are entitled for admission.

*** ** 8. That is it well settled law by this Hon"ble Court that the only way of equality in the matter of selection as against 11 students reserved for sports quota or any other quota of such type with outstanding performance of candidates participated in national or international games or events is with the selection committee with the assistance of Director of Sports and Youth Services to identify as to how many candidates has outstanding record of service in sports. The application of such of the candidates who did not satisfy eligibility could be rejected straight away in so far as it related to the claim for selection to the reserved seats."

8. Sri U.L. Narayana Rao, learned Senior Counsel appearing for the petitioner, submitted that the method adopted by the selection committee for selecting candidates for seats reserved under "sports quota" is not in consonance with Rule 4(1)(c) and 9(2) of the Rules. He submitted that when once the candidate is considered as being eligible for the seat in the "sports quota", the only marks relevant for the purpose of determining the relative merit of candidates falling under that category, are the marks secured at the qualifying examination ant the entrance examination of terms of Rule 9 of the Rules. Therefore the awarding of marks for having participated at National and international level games in totally illogical. He submitted that the only marks which should be taken into account for determining the relative merit of the candidates belonging to the "sports pool" are the marks obtained by them in the II Pre-University Course or equivalent examination and entrance test in Physics, Chemistry, Biology subjects in terms of Rule 9 of the said Rules. In fact, that is what Rule 9 of the Rules enjoins.

9. The minutes of the proceedings of the selection committee meeting held on 25/31st July 1991 at Bangalore for the purpose of selection of the candidates

under "sports quota" for medical seats is produced by the learned High Court Government Pleader. It read thus:

"The following candidates who had applied for medical seats under "sports quota" were selected based on their performance in the field of sports and games, the details of their achievement and marks obtained etc., are given in Statement-1 enclosed."

The statement is entitled "List of candidates seeking admission to medical course during the year 1991-92 under sports quota arranged in the order of merit based on the marks obtained out of sports performance". The proceedings are signed by (i) the Director of Youth Services and Sports; (ii) the Director of Medical Education; and (iii) the Director of Technical Education. From the minutes of the said proceedings it looks as though a separate selection committee was constituted for the purpose of selecting the candidates seeking admission for seats from out of the "sports quota". This committee of three have awarded marks for "sports performance", but it is not known on what basis these marks were awarded by the said committee of three members.

10. The Rules do not provide for awarding any additional marks or points to the candidates who have participated in National/International sports or games. Therefore the awarding of marks for "sports performance" by the committee of three is totally unwarranted and cannot be justified.

11. Learned Senior Counsel appearing for the petitioner drew my attention to a Judgment in B.V. Veena Vs. Director, NCC Directorate, wherein this Court while considering the case of candidate who was denied a seat in N.C.C. category has observed thus:

"21. The inclusion of the name in the "Merit List" as defined under the Rules, is not to create mere eligibility for selection. The Merit List assigns the rank of a candidate based on his academic excellence.

This academic excellence is to be the primary consideration for selection. Reservation of seats to particular categories is an exception. The interest claim for priority for selection amongst those who form a particular category, is possible only if academic excellence of each candidate is to be the basis. Otherwise, there will be scope for subjective assessment of special qualities, for selection, that is to say, the Selection Committee or the concerned Officer will be vested with the power to award higher marks for a sportsman, on the basis of his alleged performance in sports-activities and in case of a NCC candidate, on the basis of the alleged performance in NCC activities. The purpose of the Rules, is to give prominence to objective assessment and avoid subjective assessment of the qualities of a candidate."

The facts of the case in the aforesaid Decision is almost similar to the instant case, except the candidate therein belonged to the N.C.C. category, whereas here the petitioner belongs to the sports category. In the said Decision, this

Court has held that when there is a group of candidates who fall under a particular category, their inter-se ranking for selection has to be done by reference to their respective rankings in merit list. The said Decision is based on the reasoning of the Supreme Court in *Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors*, . and also the Judgment in *D. SARA VANAM v. STATE OF KARNATAKA AND ORS.*, W.P.No. 15936 of 984 DW 19-10-1984

12. The fact that the petitioner is eligible to be considered for a seat reserved for candidates who have participated in National/International level sports and games is not in dispute. Therefore, the ranking secured by her in the qualifying examination and the entrance examination in terms of Rule 9 of the Rules alone should determine her ranking for admission to the I year M.B.B.S. course.

13. Learned High Court Government Pleader, however, contended that even if the merit ranking of the petitioner is alone taken into consideration in the category/group in which she belongs, she occupies the 18th position whereas the number of seats reserved for the "sports group" is only 11. He submitted that even if the marks awarded for "sports performance" by the committee were to be excluded, the petitioner cannot succeed in this Petition because she is not one among the 11 candidates belonging to the "sports category". Therefore, he submitted that the entire selection of candidates belonging to the "sports group" may be quashed and the selection committee be permitted to make a fresh selection strictly in accordance with the rules and the decision of the Division Bench in *B.V. VEENA* cited above.

14. It is more than 2 months now since the academic year commenced. It is not possible to accede to the submission made by Sri N.B.N. Swamy and set aside the entire selection of candidates belonging to the "sports group" at this stage. More so, when all those candidates who have been so selected are not before this Court. No doubt, as submitted by the learned High Court Government Pleader, there are others in the "sports group" who are above the petitioner in the merit list and who have been denied admission to the medical course, but those candidates have not come before this Court challenging the denial of the seat to them. Therefore, this Court has to proceed on the basis that those candidates despite the fact that they have not been given admission, even though in terms of the Rules they ought to have been preferred as against those who have been selected though they have secured lesser marks, they do not feel aggrieved by their non-selection. In this context, learned Senior Counsel appearing for the petitioner drew my attention to a Decision of the Supreme Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, . In the said case, the Supreme Court has observed thus:

"32. For the reasons mentioned above we are of opinion that the selections impugned in these petitions cannot be held to have been made validity inasmuch as the seats were distributed on unit wise basis and further that the interviews

were not held in accordance with the rules. But despite coming to that conclusion we are unable to set aside the selections already made. The selected candidates have not been made parties to these petitions. They have already joined the course and are undergoing training. Their selection cannot set aside without giving them an opportunity to put forward their case.

Other non-selected candidates have evinced no interest in challenging the selections made. Under the circumstances, it is reasonable to assume that they have abandoned their claim and it is too late for them to press their claim."

In view of the above, this Petition succeeds.

15. In the result, I make the following order -

(i) The Writ Petition is allowed.

(ii) The respondents are directed to select the petitioner and admit her to the I Year M.B.B.S., course for the academic year 1991-92 if she is found eligible in all other respects. Time for compliance ten days from the date of receipt of this order.