
(1996) 01 KAR CK 0012
In the Karnataka High Court
Case No : WP. 33456 of 1994

Miss. Sumana Arora

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993 — Rule 12, 12 (1), 14

Citation : (1997) ILR (Kar) 1334

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K. Lakshminarayana Rao, for the Appellant; N.B. Vishwanath, HCGP, for the Respondent

Judgement

M.F. Saldanha, J.—The petitioner, Ms. Suman Arora is a Medical student and is also a national level tennis player of some proficiency. She had applied for admission to the Medical College in the year 1994 for the M.B.B.S. Course and had subsequently sought admission under the free seats that are available to sports persons of outstanding merit. In the meanwhile, since she is also a merited student she was granted admission to the M.S. Ramaiah Medical College at Bangalore on payment of the prescribed fees which admission was accepted. On that very day she received an intimation that she had been selected for one of the free seats under the Sports Category and was therefore asked to complete the requisite formalities. Pursuant to this, the authorities allotted her a free seat at the Medical College at Gulbarga. The petitioner represented against this allotment by pointing out that she is a tennis player who has taken part in tournaments at the national level that the coaching facilities required for her are available only in Bangalore and she also brought to the notice of the authorities two other aspects of the matter namely that the tournaments in which she is required to take part are one of the standard of proficiency that she has achieved which are held in Bangalore and that players of the requisite high skills at those levels would not be available at Gulbarga and that therefore, the authorities

should allot her a seat in any of the colleges at Bangalore. This application was rejected on the ground that after doing the evaluation of the various students who are eligible for the free seats, that there were six others who were higher in the merit list than the petitioner and that the three available seats at Bangalore had already been allotted to the first three and that consequently, it was not possible to accommodate the petitioner at Bangalore. The petitioner continued to pursue her studies at the Ramaiah College at Bangalore as a paid student and has challenged the decision of the authorities principally on the ground that the relevant rules under which the selection process has been done are arbitrary and unreasonable and that the same are required to be struck down and furthermore, that these rules completely ignore certain relevant aspects that are material for the selection process. The relief asked for is that the petitioner must be allotted one of the three seats at Bangalore by following the correct procedure.

2. The petition has been resisted by the respondents who contend that the selection process is in accordance with the rules and that the rules as framed are rational and reasonable. The order sheet indicates that this petition has been pending in this Court since November 1994 which is approximately 15 months and that during this long period that respondent were afforded a number of opportunities to file their reply which they have not availed of. However, in order to avoid any injustice to the respondents. I have taken note of the case made out by them in the para-wise replies and I have also heard the learned Government Advocate in the matter.

3. The petitioner's learned advocate has contended that these are professional causes and that the mode of selection prescribes that merit shall be the predominant consideration at all levels. He has relied on the definition which prescribes the manner in which the merit criteria is to be assessed as it appears in Rule 6. He submits that as far as Rule 12 is concerned, though sub-category(c) provides for the reservation of seats for sports persons of outstanding merits, that when it comes to the subsequent provisions contained in Note 2(1) to Rule 12(1) of the Karnataka Selection of Candidates of Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules 1993, that the merit requirement has been bypassed. I need to mention here that on 29th July 1994 certain amendments were brought about and Rule 10 was amended introducing Sub-rule (2) which reads as follows:-

"(2) Notwithstanding anything contained in Rule 6 and subject to provisions of Rule 3, for selection against the seats under Clauses (i) of Sub-rule (1) of Rule 12 the Committee constituted under Rule 14 shall interview the candidates and prepare a rank list based on the attainment in Sports, Games, N.C.C. and Scouts or Guides as the case may be. The Committee may also interview the candidates seeking seats reserved under Clause (iv) of Sub-rule (1) of Rule 12:

"Provided that where merit of two or more candidates is the same, the inters merit shall be determined with reference to marks obtained in the Entrance Test."

In sum and substance, by virtue of this amendment what emerges is that for purposes of selection of candidates in the category with which we are concerned namely sports persons, that the inters merit as far as their marks attained in relation to sports proficiency alone are to be taken into consideration for purposes of giving them their inters placements in the merit list. This is of some significance because the choice of colleges invariable proceeds on the basis of the inters placements and the petitioners learned advocate submits that it is essential that the Court examine the utter irrationality of this process and strike down, that part of the rule which offends the canons of reasonableness and fairness. The basic submission that is canvassed proceeds on the footing that under normal circumstances the selection for admission to the M.B.B.S. Course is done on the basis of academic merit and the contention is that when it comes even to any reserved categories, that this criteria cannot be altered. Learned Advocate submits that in the case of persons possessing special skills such as sports persons, that the only correct way to assess inters rankings would be to draw up one list indicating their sports proficiency and thereafter add on the marks on the basis of their academic performance at the entrance test and if the aggregate of these two figures is taken, that it will be a more correct and rational method of evaluating the inters merit. In sum and substance, the grievance is limited to pointing out that the academic merit criterion cannot be totally ignored. The second submission advanced by the learned advocate is that if one looks at the guidelines that have been framed that a large number of items have been categorised such as individual events, games, group items etc. and that the seats must be allotted on the basis of separate items as otherwise there is a possibility that all the seats may go to persons belonging to only one category. As far as this submission is concerned, though there is considerable rationality in the argument, one needs to take into cognizance of the fact that the available seats under the special category are extremely restricted, that they are allotted only to persons who have achieved outstanding proficiency at national or international levels and under these circumstances it would not be possible to make provision for a large number of seats to cater to the entire head of items.

4. The last submission canvassed by the learned advocate is that the selection process totally and completely ignores one crucial aspect of the matter namely that having achieved a certain level of proficiency to qualify for the seat, the intention of granting a free seat is not only in recognition of what has already been achieved but the added instruction is that the student concerned should aim at going higher. For this purpose, the student is required to execute a bond that the training, coaching etc. will be kept up and the student will aim at doing even better in the subsequent year. The learned advocate submits that if this is the objective, then the Selection Committee ought to be directed by a proper provision in the rules to ensure that the aspect of suitability of the environment towards achieving this objective is taken into consideration. He contends that if the special facilities and the high levels that are required for a particular game or event are available at a particular place and are not available elsewhere, then as

of necessity while making the allotment of seat the selection committee should place the student where the facilities are best available and not where they are nonexistent. As far as his criteria is concerned, I need to record that on behalf of the respondent the contention was advanced that facilities are available at all places where these colleges are located and an attempt was made to demonstrate that the facility to play tennis is available to the petitioner at Gulbarga. To my mind, that is hardly the correct assessment of the requirement in so far as the petitioners learned advocate is fully justified in his submission that where the skills and proficiency are of an abnormally high level and where they are required to be not only kept up but improved upon, that the primary effort has got to be to ensure that the student is given admission to a college at a place where these are possible, as otherwise the entire exercise would be counter-productive. Since the rules and guidelines are silent in this regard, the respondents are directed, in order to avoid injustice occurring in future instances, to make suitable provision in the guidelines and give effect to them as far as the selections are concerned from the next academic year onwards.

5. The respondents learned advocate has placed reliance on an earlier decision of this Court in WP. 42010/93 dated 10.1.93 wherein my Brother Raveendran J. had occasion to uphold the contention that as far as the special categories are concerned, that it is only the merit in relation to that category such as sports which is required to be taken into consideration while allotting the seats and that the academic marks which would be otherwise taken into consideration for the general merit seats will not come into play as far as these selections are concerned. I need to record here that in that proceeding it was only an interpretation of the rules as they then existed which had arisen for consideration and undoubtedly, this Court gave effect to the amendment in the manner in which they existed. The position today is materially different in so far as the rules in question are under challenge and in sum and substance, if the petitioner succeeds, it would be necessary for this Court to issue a direction to the State Government to carry out necessary amendments in the concerned rules.

6. The Learned Government Advocate has submitted that as far as the special categories of seats are concerned that they have been set apart for the reason that they are reserved for allotment to the best of the students who qualify in those particular areas. He therefore submits that the marks consideration which alone applies in respect of other seats is not relevant in so far as the only aspect which the Selection Committee required to go into this choosing these candidates for the free seats is with regard to how good they are in their fields of specialisation. He therefore defends the rules in their present form and he submits that there is a rational basis behind formulating these rules, that they are perfectly valid and intra vires and do not deserve to be interfered with.

7. As far as this aspect of the matter is concerned, one needs to take into account the fact that even though some seats are set aside for special purposes, that this is done only as an added incentive to students who have attained

outstanding merit in these fields over the years. The authorities have recognised the fact that when it comes to high level proficiency in fields such as sports etc. that the student is required to work much harder and has also to sacrifice a certain amount of time and energy that would have been available for academic pursuits alone, it is for this reason that the authorities recognise that a special incentive is required to be given to persons in this category and further more that as far as outstanding merit is concerned, that they need to be rewarded by allotting free seats. This reasoning does hold good upto a point but it would be unreasonable and irrational to uphold a contention that the academic merit criterion is wholly and totally irrelevant. As indicated by me, making some allowance and granting some incentive is acceptable but one cannot lose sight of the fact that these are professional courses and the idea is not to straightaway allot a seat to lopsided individual totally dehors academic merit. The correct formula therefore is to balance the two aspects by allotting the prescribed marks for the sports proficiency adding on the marks in the entrance test, thereafter drawing up a composite merit but and thereafter allotting the seats on that basis. To this extent therefore, the provisions that are contained in Note 2(i) to Rule 12(1) as also the amended Rule 10(2) to the extent that they ignore the merit criterion will have to be struck down. It is clarified that since this is a situation where requisite provisions in the rules are non-existent, in actual fact the only relief that the petitioner is entitled to claim would be by way of a direction to the respondents to carry out the requisite amendments in the rules before the next academic year incorporating the requirement that merit shall also be taken into consideration while allotting these special seats.

8. The next question is as to whether the petitioner is entitled to any relief in the peculiar facts and circumstances of this case and if so, to what relief. The respondents learned advocate has submitted that the petitioner herself opted for the general merit category, that she obtained a seat in that category and has continued with that seat and consequently, it must be held that she has waived her right to the free sports seat. He therefore submitted that the petitioner at this point of time would not be entitled to any relief. Petitioners learned advocate submits that his client was left with no chance in so far as if she accepted a seat at Gulbarga as was offered to her, that it would have completely frustrated her career and that consequently, the entire exercise would have been counterproductive. He submits that she has continued in the general merit but without prejudice to her contention that she was always eligible for the sports seat and that in the facts and circumstances of this case, that she ought to have been allotted the seat at Bangalore. As far as this last aspect of the matter is concerned, sufficient material is placed before the Court to justify the petitioners claim for a free seat at Bangalore under the sports quota and there is nothing brought on record that would support the view taken by the authorities that this seat could not be made available to her. If the aspect of suitability of place was taken into consideration, as it ought to have been, and I do not see why this was not done because the aspect is quite elementary and a direction to that effect

would have followed. Had the suitability factor which is paramount, been upheld, the petitioner would certainly have been allotted one of the free seats at Bangalore in view of the fact that the special facilities for tournament tennis at her level of proficiency were not available at Gulbarga. The position however remains that this was not done and she has continued in the general merit category. Since she has succeeded in the petition, I see no reason why the petitioner should be denied the relief which she would have been normally entitled to had her petition been disposed of at an earlier point of time. Under these circumstances it appears just and proper that the respondents be directed with effect from the next academic year until the petitioner completes her M.B.B.S. degree course to treat the payment seat which she has now occupied as a free sports seats. It is necessary to issue this special direction in view of the fact that if this is not done, the success of the petitioner in this proceeding would be only a paper victory. In the facts and circumstances of the case on a strict consideration the petitioner would have even been entitled to claim that the fees paid by her hitherto be refunded but I am not inclined to grant that relief in so far as the petition has only been disposed of at this point of time and a direction to that effect would create too many complications.

9. The petition accordingly succeeds. Rule is made absolute to the extent as indicated in this judgment. In this circumstances of the case, there shall be no order as to costs.