

(1996) 03 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 1481 of 1996-B

Miss. Vandana L.R.

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Ker 364 : (1996) 3 ILR (Ker) 281

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : T.L. Anathasivan, for the Appellant; M. Hemalatha, Govt. Pleader and K. Ramakumar, for the Respondent

Judgement

P. Shanmugam, J.—The petitioner is a candidate for admission to the 1st year MBBS Course in the Academy of Medical Sciences, Pariyaram, Kannur. She has filed the above Original Petition to set aside the selection to MBBS. Course held on 22-1-1996 by the 2nd respondent and to declare that the petitioner is eligible for admission to the said course pursuant to Ext. P1 notification issued by the 2nd respondent on 4-1-1996 and the subsequent selection.

2. Brief Facts: The 2nd respondent is running a Private Medical College at Pariyaram. A notification dated 4-1-1996 was issued by the said administration for selection to the unfilled seats. The Supreme Court in T.M.A. Pai Foundation v. State of Karnataka AIR 1995 SC 243 issued directions for admission in reference to NRI/foreign students quota. As per this direction NRI quota is fixed at 15%. But in case if the management are not able to get the NRI or foreign students up to the said percentage, it shall be open to them to admit students on their own, in the order of merit, within the said quota. This was directed to be considered as a general direction and it shall operate in the case of all the States where admissions have not been finalised. It is an admitted fact that as the 2nd respondent did not fill up all the 15 seats earmarked for NRI quota, a notification was issued by the 2nd respondent dated 4-1-1996 inviting applications from

eligible Indian resident candidates. According to the said notification the last date for receipt of the application was on 18-1-1996 and the applicants were to appear for an interview on 22-1-1996. It is also an admitted fact that the petitioner applied within the time and appeared for the interview on 22-1-1996, On that day the 2nd respondent decided to conduct a written test along with the interview. The petitioner undertook the written test as well as the interview. But the petitioner was not selected.

3. Petitioner's case: According to the petitioner the test, conducted without any prior intimation to the candidate at the time of interview which was contrary to the notification, was only a method by which the 2nd respondent wanted to admit their own candidates and to eliminate the persons like the petitioner who have obtained very high marks in the qualifying examination. The petitioner has specifically averred that the petitioner would have scored the highest mark in the written examination compared to other candidates who were selected under the pretext of NRI candidates. The petitioner further stated that the selected candidates have obtained lesser marks than the petitioner and that it is a clear mala fide action on the part of the 2nd respondent. The selection of 10 candidates alleged to have belonged to NRI category after having opened if for all is discriminatory under Article 14 of the Constitution of India since Ext. P1 notification intended only to Indian residents. No evaluation was done for those 10 alleged NRI students with the petitioner. Hence the whole selection is illegal.

4. The 2nd respondent's case : Curiously the stand taken by the 2nd respondent in the counter affidavit is that they have reserved 1/3rd of the total NRI seats for the Districts of Kannur and Wayanad considering the educational backwardness of these District. Learned counsel for the respondent, who argued the matter, is unable to produce any rule or regulation which enabled the 2nd respondent to reserve 1/3rd of the seats on the ground of backwardness of the Districts. In any event no such rule is quoted in the counter or intimated to the candidates. The counter did not deny the allegation that the petitioner would have secured the highest mark in the qualifying examination except stating that the contention that the test was vitiated by mala fide action, is absolutely incorrect. In paragraph 6 of the counter it is stated that they have given 65% to the qualifying examination, 15% for the interview and 20% for the test. The notification calling for the application did not set out the said scheme. Paragraph 6 of the counter further states that in the remaining seats 10 NRI students and two resident Indian students were admitted. From this it is not clear whether these 10 NRI students also participated in the test and interview. There is no answer for the discrimination and for the question whether the 10 candidates were evaluated on the test and interview marks with the petitioner. On the contrary the counter admits that the petitioner was not treated on par with the NRIs.

5. Stand of the 2nd respondent: In the course of the argued learned counsel submits that out of the 15 seats earmarked by NRI, three have been given on the basis of reservation of Districts and 10 have been given on the basis of NRI

and two seats have been given to Indian students. It is not clear from the counter whether reservation was made before the announcement of allotment of seats. There seems to be a contradictory stand of the 2nd respondent about the reservation. But it is admitted that on the date of Ext. P1 notification 12 seats were vacant and out of which 10 NRI and 2 Indian residents including one Shri Abhilash were admitted. Assuming everything in favour of the 2nd respondent when one of the NRI student out of the last 10 did not join it should go to the petitioner. The petitioner being rank No. 2 in the waiting list should have been admitted among those two Indian residents. Therefore, going by any standard the non-selection of the petitioner is clearly illegal.

6. Learned counsel for the 2nd respondent ultimately submitted that without impleading the selected candidates, the Original Petition is not maintainable. He further submitted that he should be given an opportunity to furnish the name of 15 candidates who had been admitted in the NRI quota. The furnishing of 15 names is not in any way going to alter the situation.

7. It is axiomatic that while considering a case of selection to a course of study the norms and procedure adopted and announced is of paramount importance. The said rule contained in the form of prospectus or notification is equally binding on the authorities of selection and the candidates. In *Miss. Romini Susan Kurian Vs. State of A.P. and others*, a Division Bench of the Andhra Pradesh High Court held that (at p. 384 of AIR):

"..... the prospectus issued by the University binds the candidate who seeks admission and unless any portion of the prospectus is held to be illegal, Court cannot direct either amendment of the prospectus or consideration of the claim of a student in a manner otherwise than provided in the prospectus".

In *Dr. A. Rathnaswamy v. Director of Medical Education 1986 WLT 207* a Division Bench of the Madras High Court while dealing with the prospectus has held as follows:

"The principle has been uniform that violation of the norms of admission laid down and rules and regulations governing the same with impunity have been frowned upon and many times have been struck down. These rules and norms are there to be strictly and solemnly adhered to. They alone should be the guidelines for such admissions. In fact, the very decision of the Supreme Court in *Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others*, relied on by the learned counsel for the petitioner, countenances these principles. The word "prospectus" is derivative from the word "prospect". One of the dictionary meanings for the word "prospect" is "to look around", "to make a search", "to explore". A prospectus issued with regard to admission to educational courses is a declaration to the candidates that a field for development of educational potentialities is available for exploration and that there could be a chance of success. It is a piece of information. But, at the same time, we shall not belittle the significance of the need to set out in the

prospectus itself a summary or an essence of the norms and rules which would guide and which will be adopted for selection of the competitors in the field of exploration in educational development or at least indicate in the prospectus that there are norms and rules which shall govern. It is highly desirable that a summary or an essence of the relevant norms and rules governing such admissions are set out in the prospectus themselves or their existence at least is indicated therein. But an omission to do so shall not be taken advantage of by any one to negate and ignore the very norms and rules. The very rules and norms have come to be laid down only to govern and to be adhered to and not to be ignored and breached."

The Supreme Court in *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, held that the requirements set out in the advertisement should provide the basis for selection and eligibility for admission of the petitioner has to be judged on the same basis otherwise he can complaint of discrimination, as others have been admitted on the basis of advertisement.

8. In *Sainulabdin v. State of Kerala* (1995) 2 KARLJ 489 a Division Bench in which I was a party followed and upheld the said view. Therefore the procedure adopted by the 2nd respondent in holding written test at the last minute without intimation and reserving seats for backward District is irregular. Similarly the selection of 10 NRI candidates and the stand that they stand differently while evaluating them is illegal and clear violation of the principles of equality in selection guaranteed under Article 14 of the Constitution of India besides being contrary to their own notification dated 4-1-1996.

9. In *T.R. Ramesh Kumar v. State* (1995) 1 KLJ 71 the Division Bench held that:

21. A question may arise as to what would be the fate of students who have already been admitted to the various courses of study. From the facts now placed before Court, it is proved beyond doubt that candidates were admitted to the various courses of study ignoring the specific directions given by the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others* etc. etc., . Their admission is therefore illegal. The persons who got admission illegally are not to get the admission protected or regularised. If this Court is not to interfere with their admission, it will encourage indiscipline. At this juncture, we feel that it is appropriate to quote the following observation made by the Supreme Court in *State of Maharashtra and others Vs. Admane Anita Moti and others*, at p. 354).

"Such misplaced equities encourage indiscipline and the managements of those educational institutions which are gradually degenerating and converting such institution into commercial houses, flout the orders of educational authorities and the Government, fleece the students and their parents and then leave the students to invoke sympathy of the Court to protect them from the exploitation suffered by them and save their career from being ruined".

Students, who have just got the admission in the colleges run by I.M.R.D.E. and

L.B.S. Centre cannot plead for any equity because their admission to the course was against the law laid down by the Supreme Court".

10. The Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, was dealing with the one similar -- spot admission in violation of rules held:

"Cases in which admissions granted to students in educational institutions are quashed raise 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 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 of moral values on the part of the administrations and teaches alike. Where irregularities are committed in admitting students it is not until the 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 have 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 of educational institutions of various State 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 day, 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 if 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".

Reservation of seats on the basis of residence requirement within the State was held to be bad. In any event an institution cannot adopt its own reservation. The said reservation can only be by the State under Article 16 of the Constitution of India. The Supreme Court in *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, has held that attribution of eligibility long after the selection process was over, is illegal. After NRI quota was over once again allotment to NRI's is bad and is illegal.

11. Therefore, it is clear that holding of written test at the last moment on the vague allegation that there are a large number of applicants, reservation for backward Districts not having been provided in the prospectus or rules, allowing 10 NRI in the non-NRI open seats without written test or evaluation with the petitioner, all these would amount to arbitrary and illegal exercise of power. In the light of these clear pronouncements on the points that persons who got admission illegally are not to get their admissions protected. This is a fit case where direction has to be given to remove those wrongly admitted. Therefore, the wrongly admitted candidates need not necessarily be parties in the Original Petition. It is the 2nd respondent who has to rectify the error and pay for their lapse. The academic year 1995-96 is coming to a close. The respondents have taken unusually long time to complete the selection for 1995-96. The petitioner had moved this court swiftly within two days and therefore no equities would arise in the case of those admitted wrongly.

12. Hence for all these reasons I have no hesitation in holding that the selection made by the 2nd respondent after 4-1-1996 is illegal. However, the said declaration has to be confined in so far as the case of the petitioner is concerned viz. one seat and a direction is issued to the 2nd respondent to admit the petitioner forthwith to the 1st year MBBS Course for the year 1995-96 by quashing the selection to the 15th seat in the NRI Quota.

With the above directions the Original Petition is disposed of.