
(2014) 06 KL CK 0074
In the High Court Of Kerala
Case No : WP(C) No. 5704 of 2014 (K)

M.K. Radhika

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0074

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : V.A. Muhammed and Sri. V. Rajasekharan Nair, Advocate for the Appellant; Roshen D. Alexander, Sr. Government Pleader for R1 To R3, R5, Sri. P. Parameswaran Nair, ASG of India for R4 and Sri. Titus Mani Vettom, SC, Medical Council of India for R6, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—Petitioners in these cases are Doctors who are working in various departments of the State. They have all participated in the examination conducted by the National Board of Examinations (for short "NBE") in the All India Post Graduate Medical Entrance Examination - 2014. As far as service candidates are concerned, 40% seats are reserved for them, out of which 35% is allotted to Scheduled Caste, Scheduled Tribe and Socially and Economically Backward Community (SEBC). Leaving apart certain seats for SC/ST, 9% of the remaining seats under State quota is reserved for the candidates belonging to SEBC. The percentage break up of the seats between different communities are also specified in the Prospectus.

2. Petitioners in W.P.C. Nos.5704, 7501 and 8553 challenge Clause 6-5.3 of the Prospectus which reads as under:

6-5.3 Candidates belonging to Socially and Educationally Backward Classes as per G.O. (P) No.208/66/Edn.Dated 2.5.1966, whose annual family income [i.e., annual income for the financial year 2012-13 as per G.O.(Ms) No.03/2014/BCDD

dated 09/01/2014 of all members in the family inclusive of the income of applicant and spouse (in the case of married candidates) from all sources taken together] is up to Rs.6 lakhs (Rupees six lakhs only) are eligible for reservation under this category. Only the claims of the candidates of those communities that are included in the SEBC list as Annexure VII will be considered. Claims by candidates belonging to other communities, which are not included in the list, will be rejected even if certificates from the concerned Revenue Officers have been obtained and furnished along with the application form.

3. The main contention urged by the petitioners is with reference to the stipulation regarding the prescription of Rs.6 lakhs as the family income limit for admission under the Service Quota for SEBC candidates. According to them, they are all persons who had joined service on production of non-creamy layer certificates and therefore insisting for another certificate for admission in the service quota showing the income of the family is totally unreasonable. Hence the petitioner seeks for a declaration that the prescription of Rs.6 lakhs as the annual family income, to consider them as SEBC candidates under service quota is arbitrary and discriminatory and therefore they should be declared as eligible for getting the benefit of SEBC quota without reference to their family income. It is inter alia contended that when such a prescription for service candidates is totally unworkable, as and when they enter service, their salary will be almost nearing Rs.6 lakhs and if their spouse or any other member in the family is deriving income, then, such candidates may not get the benefit of SEBC.

4. In W.P.C. Nos.6564/2014 and 7806/2014, the candidates seek for a further declaration that the petitioners belonging to Araya/Dheevara community, which is a sub caste of traditional fisherman community, are entitled for the benefit of SEBC reservation without any income limit as stipulated in Clauses 6.5.3 and 6.5.4. In addition to the contentions urged by other petitioners, it is submitted that their community is included for reservation for identifying non-creamy layer. Exts.P6 and P7 Government orders are relied upon to contend that they have been included in the non-creamy layer community. In Ext.P6, it is inter alia stated that sub caste of fisherman community is excluded from the creamy layer mentioned in paragraph 4(2). It is further indicated at Clause 14 of Ext.P6 that "These orders will apply to all Government departments / Organisations / Institutions / Public Sector Undertakings/ Government Owned Companies / Co-operative societies/ Autonomous bodies, etc. to which the principles of reservation are applicable." Ext.P7 is a Government order relating to reservation of OBC candidates in appointments to Government services. It is inter alia stated that creamy layer status of a candidate is determined on the basis of the income of parents and not on the basis of income of the candidate or his spouse.

5. It is therefore contended that when the sub caste of fishermen community is excluded from creamy layer and they are treated as non-creamy layer, there is no reason for the respondents publishing a prospectus excluding the said community for the benefit of SEBC and that the income of the candidate and

spouse could not be taken into consideration.

6. Counter affidavit is filed by the 1st respondent in W.P.C. No.5704 of 2014 which is adopted in the other writ petitions as well, inter alia stating that as per the Prospectus for admission to PG Medical Degree/Degree course 2014, there is no special reservation for Other Backward Community (OBC). In the State, OBC list is not considered for reservation benefits to backward classes for educational purposes, whereas reservation benefits are given to SEBC in terms of Annexure VI to the Prospectus. The persons who claim relaxation applicable for SEBC has to produce community certificate as well as income certificate. Reference is made to judgment of the Supreme Court in *Indira Sawhney Vs. Union of India and Others*, wherein the Supreme Court held that fixing a ceiling on the annual income has to be made in order to claim reservation under SEBC quota and such decision falls within the realm of policy decision of the State which is not open to challenge in a writ petition, in the absence of arbitrariness. It is therefore contended that State Government has adopted Rs.6 lakhs as the prescription for income taking into consideration the income norms fixed by the Central Government.

7. In respect of the contentions raised by the petitioners in W.P.C. No.6564 of 2014, it is contended that in so far as the Government has the right to give reservation for certain category of SEBC, the petitioners cannot claim the said benefit merely for the reason that their community belongs to a backward community. Reference is also made to the scheme for selection to the Kerala Medical Officers' Admission to Post Graduate Courses under Service Quota Act, 2008 (hereinafter referred to as the "Service Quota Act"). It is stated that the Service Quota Act covers selection procedure for admission to various post graduate courses in respect of the service candidates. Section 5(3) enables the Government to prescribe details of eligibility for admission including reservation of seats by publication of Prospectus. In so far as the Prospectus clearly indicates the communities which are entitled to SEBC, petitioners cannot claim that their community also should be included in the said list. It is a policy decision of the Government and as far as the Government orders which prescribe grant of non-creamy layer certificates to such communities for appointment to service and posts are concerned, the same will not be applicable for admission to post graduate courses as the Government has taken a conscious decision to include only certain categories of OBC to get the benefit of SEBC.

8. Heard Sri. V. Rajendran, Sri. M. Sajad, Sri. M.R. Rajesh, the learned counsel for the petitioners and Sri. Roshen D. Alexander, the learned senior Government Pleader and Sri. Titus Mani, learned Standing Counsel appearing for Medical Council of India.

9. Having regard to these factual circumstances, it is not in dispute that the law laid down by the Supreme Court is very clear as held in *Indira Sawhney* (supra). Economic ceiling is considered to be a policy that could be adopted by the State Government in order to provide admission to post graduate courses as well.

When such policy had been upheld by the Supreme court and has conferred on the State Government the power to evolve such a policy, necessarily the Government can formulate its own policies to regulate admission to SEBC candidates. As far as the previous year was concerned, this Court in W.P.C. No.13330/2013, while permitting candidates who adheres to the Prospectus conditions and the candidates who produced non-creamy layer certificates to have admission, made it clear that the judgment will be applicable only for the year 2013 and it was made clear that the Government is free to fix an annual income ceiling limit to be at par with non-creamy layer segment in the reserved category for the years to come. Ext.R1(a) is the said judgment. Subsequently the Government issued office memorandum dated 27/05/2013 as Ext.R1(b) increasing the income limit for OBC candidates from Rs.4.5 lakhs to Rs.6 lakhs per annum. As held by the Supreme Court, this is a policy decision of the Government which cannot be questioned unless there is arbitrariness in the said decision of the Government.

10. It is pointed out by the learned counsel for the petitioners that they were all coming under the non-creamy layer category as they joined service with certificates issued as non-creamy layer persons. That, by itself, will not enable the petitioners to demand that the Government shall not fix an annual income criteria or a limit for annual income in order to give the benefit of SEBC for Post Graduate admission. The very concept of SEBC is to permit socially and economically backward communities to get a better advantage or relaxation from the usual norms from that of others. Therefore, fixing an income limit for the family is definitely one among the said criteria. It is pointed out that there was no reason to take the income of the family for arriving at Rs.6 lakhs as the maximum income. As already stated, this again is a policy matter of the Government and after considering the various parameters involved in providing certain benefits to SEBC, the Government thought it fit that the income of the members of the family has to be computed to arrive at the annual income. In so far as a uniform method is adopted for all candidates and the income limit was published as per Ext.R1(b) as early as on 27/05/2013, which is incorporated in the Prospectus, I do not find any arbitrariness in fixing such income limit for the family.

11. As far as the claim of the petitioners in W.P.C. Nos.6564 and 7806 of 2014 are concerned relating to non-inclusion of the said community in the SEBC quota, again the same is a policy decision of the Government. Exts.P6 and P7 apparently apply only for appointment in service of Government and other authorities. Those Government orders can have no application to Post Graduate Medical admission which is regulated by the Service Quota Act, the Rules framed thereunder and policy decisions of the Government. When the Government has decided not to include such communities as SEBC, in the absence of any material to indicate that the said decision is arbitrary in any form, I do not think that the petitioners can claim any legal right to be included in the category of SEBC.

Under these circumstances, these writ petitions fail and are dismissed.