
(2014) 09 KL CK 0180

In the High Court Of Kerala

Case No : WA. No. 1343 of 2014 IN WP(C). 15991/2014

Mubashir Shamsudheen

APPELLANT

Vs

Neha Narendran

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0180

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : K. Shibili Naha and P.E. Sajal, Advocate for the Appellant; G. Sudheer (No Memo), Adv., Roshan D. Alexander, Sr. Government Pleader and Latha Krishnan, SC, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—This is an appeal filed by the 4th respondent in W.P. (C) No. 15991 of 2014 challenging the judgment dated 26.09.2014 of the learned Single Judge. The writ petition is filed by the 1st respondent herein, who is hereinafter referred to as the petitioner, seeking for a direction to quash the portion of Ext. P6 by which the 4th respondent is included as 4th rank holder and for a direction to the 2nd respondent to rectify the defect as pointed out in Ext. P8 letter of 3rd respondent and to place the petitioner as the 4th rank holder in Ext. P6 list under the Sports Quota in "team event".

2. The facts involved in the above writ petition would disclose that the petitioner had appeared for the Kerala Engineering, Agricultural, Medical Entrance Examinations 2014. She had qualified in the examination and she being a person, who had participated in the Women Inter-district (Shuttle) Championship, 2012 conducted by the Kerala State Badminton (Shuttle) Association and placed in third position, was eligible for reservation under the Sports Quota. She applied for the same.

3. The complaint of the petitioner is that when the provisional list was published as Ext. P6, it was noticed that the 4th respondent who secured only 478.7190 marks, has been placed in the 4th position in team event whereas the petitioner

is having 488.5328 marks is placed in 5th position in individual event. It was seen that she was wrongly placed in the "individual event" whereas she was entitled for reservation under "team event" under the sports quota. If her name was included in the "team event", she would have obtained 4th rank and the 4th respondent would be having only 5th rank. According to the petitioner, Ext. P6 was published only on 17.06.2014 and on 18.06.2014 she had given a complaint to the Sports Council. Ext. P8 letter has been issued by the Sports Council on 18.06.2014 to the Commissioner for Entrance Examinations informing the said authority that the petitioner was awarded with 31 marks in the final rank list in the sports quota admission in the "individual event", whereas actually the Championship was a "team event" and therefore, the said mistake requires to be rectified and her ranking should be done in the "team event". Since Ext. P8 request was not adhered to by 2nd respondent, this Writ Petition is filed.

4. Counter affidavits have been filed by respondents. In the counter affidavit filed by 2nd respondent it was inter alia stated that admission through sports quota is only on the basis of special reservation permitted under the prospectus and by virtue of Clause 5.2.17 the candidates, who were included provisionally in the rank list published on 10.06.2014, were requested to verify the list and complaints were to be filed before 5 p.m. on 14.06.2014 before the Commissioner for Entrance Examinations. It was indicated that those complaints which were intimated after 14.06.2014 will not be considered. It was further indicated that the category/community list were finalised and published on 17.06.2014. Since Ext. P8 is dated 18.06.2014, as per the prospectus, same need not be considered by the Commissioner and therefore, the petitioner is not entitled for any relief. Reference is also made to the fact that since the Sports Quota reservation is a special type of reservation in which only limited seats are available, the petitioner could not obtain allotment to the other options exercised by her.

5. Counter affidavit is filed by 4th respondent inter alia stating that the first option exercised by him is for MBBS and second option for BDS. Therefore, as per the second option he was allotted BDS and thereafter MBBS. He opted MBBS seat and got admission. At this stage if any rectification is made in the rank list published, the same would virtually affect the entire list of candidates. It is also contended that Ext. P5 has been published by the Sports Council much earlier and no objection was raised. Ext. P5 clearly indicates that the petitioner's application was considered only under the "individual event" wherein she had got 31 marks. Since the petitioner had not raised any objection regarding the same, it is not open for the petitioner to file any complaint regarding the rank list after publication of Ext. P10. According to 4th respondent, Ext. P10 is the final rank list published as evident from Exts. P11 and P12.

6. Reference is also made to Ext. P5(a) which is a provisional list showing the category and special reservation of candidates who applied for reservation in the aforesaid examination in which the name of the petitioner is also included under

the Sports Quota. It is therefore contended that the learned Single Judge had failed to consider the fact that the Sports Council had published the list of candidates under the "individual event" as well as "team event" much earlier and hence there was no reason to adjudicate the issue at a later stage when the final list was published.

7. An affidavit has been filed by the Sports Council as per the directions issued by learned Single Judge on 04.08.2014. It is stated that the Kerala Sports Council had enquired with the petitioner on production of the certificate whether the candidate is in the team event on the date of certificate verification and the Council prepared the merit list and published the same in the Website from 27.05.2014 to 02.06.2014 and no complaints were received regarding the same. A complaint was received from the petitioner on 18.06.2014 complaining that the petitioner's name was wrongly included in the "individual event", which was duly answered and a communication was given to the Commissioner for Entrance Examinations.

8. The learned Single Judge after considering the entire matter, observed that since there is no dispute about the fact that if the mistake pointed out by the petitioner is corrected, the petitioner would have been included in the "team event" in which case the petitioner would have been rank No. 4 and the 4th respondent would have been rank No. 5. The 4th respondent was allotted BDS seat in the first allotment and in the second phase of allotment 4th respondent was allotted MBBS seat which was subject to final orders of the Court and therefore, nobody including the 4th respondent would be affected in rectifying the defect shown in Ext. P8. In so far as the 4th respondent, he has to be included as 5th rank holder in Ext. P6, the learned Single Judge directed for necessary correction and the Writ Petition was allowed. It is held that Ext. P6 in so far as it makes 4th respondent eligible for MBBS seat is quashed and 2nd respondent has to rectify the defect as pointed out in Ext. P8 letter and place the petitioner in the 4th rank in Ext. P6 under the reservation quota of sports in "team event" by which petitioner is eligible for MBBS seat.

9. Heard learned counsel for the appellant-Sri. Shibli Naha, learned counsel for 1st respondent-Sri. G. Sudheer, learned Standing Counsel for 4th respondent-Sri. K. Anand(Sr.) and learned Senior Government Pleader-Sri. Roshen D. Alexander.

10. The crux of the argument of learned counsel for appellant is with regard to the delay on the part of the petitioner in submitting complaint of non-inclusion of her name in the "team event". When Ext. P5 was published much earlier and as stated by Sports Council it was published in Website from 27.05.2014 to 02.06.2014, it is inter alia contended that the petitioner had got sufficient opportunity after the publication of provisional category list on 10.06.2014 and complaints could have be filed up to 14.06.2014. It is also contended that only after verification, final list was published on 17.06.2014. Ext. P5(a) is the provisional list which is relied upon by the Commissioner for Entrance Examination and Ext. P6 is the final list. Ext. P6 contains the name of the

petitioner and the category of reservation. It does not contain any indication that reservation is either in the "individual event" or in the "team event".

11. It is contended that there was delay on the part of the petitioner in getting the matter adjudicated by the Court and by the Commissioner for Entrance Examinations. The prospectus does not contain any stipulation that objection has to be filed by candidates with reference to sports quota on the basis of the rank list published by the Sports Council. At any rate, Ext. P5 is a rank list of persons coming under "individual event" and Ext. P9 is the rank list of persons coming under the "team event". It is not in dispute that the petitioner did not submit any objection regarding Exts. P5 and P9. However, petitioner has a case that she was not aware of any such list being published. Whatever that may be, Ext. P12 is the Notification issued by Commissioner of Entrance Examinations by which category/community-wise lists of candidates were published. Ext. P12 reads as follows:

"The category/Community-wise lists of candidates who are included in the Medical/Engineering/Architecture/Ayurveda Rank lists 2014 are published herewith. The Category Lists will be available for reference in the office of the Commissioner for Entrance Examinations and on the website www.cee-kerala.org. The category Claims allowed to the candidates and the Annual Family Income submitted by the candidates had been published for verification on 10.06.2014 and complaints, if any, in this regard were invited up to 5 pm on 14.06.2014. The complaints received within the stipulated time were scrutinized and accordingly the category lists have been finalized.

These lists indicate the candidate's position in the respective category or community. The category lists have been prepared based on the rank lists for Medical, Engineering and Architecture Courses and as per the claims allowed to the candidates based on documents submitted along with the application form.

Candidates are advised to verify the category lists and satisfy themselves regarding their position in the lists such as inclusion under different categories, eligibility for Communal/Special reservation etc. The inclusion of a candidate in these lists does not entitle him/her for admission unless he/she satisfies all the conditions of eligibility stipulated as per Clause 6.2 of the Prospectus for admission to Professional Degree Courses, Kerala-2014, at the time of admission."

12. Learned Government Pleader submits that Ext. P10 is the final list corresponding to Ext. P6 but it does not give any advantage to the petitioner to make a complaint against the said rank list. Prima facie Ext. P10 shows that it is a provisional list. But by virtue of notification dated 17.06.2014, it is stated to be the final rank list. Paragraph 4 of Ext. P12 clearly indicates that the candidates have to verify the category list and satisfy themselves their position in the lists such as inclusion under different categories, eligibility for Communal/Special reservation etc. In that event, if there is any mistake in the said rank list or if it

is found incorrect, it was always open for the candidates to make a complaint about the same to the Commissioner for Entrance Examinations. This is an instance where apparently a mistake has been committed by the Sports Council by including the name of the petitioner in "individual event", whereas she is entitled to be included in the "team event". This mistake was corrected by the Sports Council by issuing Ext. P8 letter. Even going by Ext. P12 the Commissioner for Entrance Examinations ought to have made necessary corrections especially when the complaint had been given on 18.06.2014 even before the allotments were made.

13. Under such circumstances when the learned Single Judge had exercised the discretion to allow the writ petition, we do not find any good ground to interfere with the said judgment by exercising the appellate jurisdiction.

14. Learned counsel for the appellant points out that since he had already joined in the MBBS course, he may not be able to get allotment in any other course. We are of the opinion, since the appellant had already joined the MBBS course during the first allotment, definitely the Commissioner for Entrance Examinations will have to pass appropriate consequential orders. Learned counsel for the appellant also points out that if he does not opt to join the BDS course, he will be under an obligation to pay liquidated damages in terms of Clause 12.2.4. In the even of allotment being made by the Commissioner for Entrance Examination, the option is clearly within the discretion of the appellant either to join or not. However, we make it clear that he should not be mulcted with the liability to pay liquidated damages in terms of Clause 12.2.4 and he will be entitled to get refund of the proportionate fee remitted by him.

The appeal is hence dismissed with the above observation.