
(2014) 09 KL CK 0169
In the High Court Of Kerala
Case No : WP(C). No. 15991 of 2014 (Y)

Neha Narendran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 KL CK 0169

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : G. Sudheer, Advocate for the Appellant; P.K. Radhika, SC, K. Shibili Naha, Adv., Sajal P.E. and E.M. Abdul Khadir, Senior Government Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—In this writ petition, the petitioner is seeking a direction to the second respondent to award the petitioner, the 4th rank in Ext. P6 ranked list under reservation quota for sports "team event" and to allot the 7th reserved seat for MBBS.

2. The petitioner, who is an aspirant for MBBS course, appeared for Kerala Engineering, Agricultural, Medical Entrance Examination, 2014 (for short, the KEAM, 2014) and claimed reservation under sports quota on the strength of Ext. P2 certificate which makes her eligible to claim reservation under the sports quota, as she had won the 3rd price in the Inter-District Championship of Badminton (Shuttle) Tournament.

3. Ext. P3, which is the prospectus for the examination, provides reservation under the sports quota in two categories, viz., "individual events" and "team events". The petitioner alleges that Ext. P2 certificate enables her to claim reservation under "team event" as evident from Ext. P4 certificate and Ext. P8 letter of the third respondent. The second respondent authorised the third respondent to prepare a separate ranked list under "individual event" and "team event" for reservation under sports quota. However, the third respondent by

mistake, included her name in Ext. P5 ranked list with Rank No. 5 for individual event, while she is entitled to be included in Ext. P9 list for "team event" with Rank No. 4; it is alleged.

4. The petitioner further points out that the fourth respondent, who is having less index marks than her, is placed with 4th rank in Ext. P6. She further alleges that this anomaly could not be traced out at the time of publication of provisional list, as the same shows that she was included in the sports quota and it does not show whether, she is included under "individual event" or under "team event". However, on publication of Ext. P6, the third respondent by Ext. P8 letter requested the second respondent to rectify the mistake committed by them. However, the second respondent refused to rectify the anomaly. The grievance of the petitioner is that she, who is eligible for the 7th seat for MBBS, was denied her hard earned opportunity while the ineligible 4th respondent is about to be allotted the seat. Thus, she has approached this Court.

5. In the counter affidavit filed by the second respondent, they would contend that admission through sports quota is on the basis of special reservation permitted under the prospectus by virtue of clause 5.2.17. They would further contend that the category list of candidates, who were included in the provisional/community-wise category list, was published on 10.06.2014 and the applicants were requested to verify the list and to submit complaints, if any, in this regard to the Commissioner for Entrance Examinations before 5 p.m. on 14.06.2014. It was also informed to the candidates that those complaints which were intimated after 14.06.2014 would not be considered. The category/community-wise list were finalised and published on 17.06.2014.

6. It is further stated by the second respondent that the writ petition was filed on 23.06.2014 and Ext. P8 is dated 18.06.2014. If the petitioner had any grievance against the provisional allotment, she ought to have addressed the issue to the Commissioner for Entrance Examinations within 14.06.2014; it was contended. It was pointed out that the petitioner was not vigilant enough to prosecute her rights. It is also stated that the right of the petitioner to apply under clause 5.2.17 claiming such special reservation is subject to the conditions prescribed therein.

7. According to the second respondent, the candidates, who claim reservation under the sports quota, had to attach with the application, the Eligibility Certificate, for selection under this quota, issued by the Kerala Sports Council as per the guidelines published by them. The candidate should have forwarded the original application form to the Commissioner for Entrance Examinations and a copy of the application to the Kerala Sports Council. The Sports Council have to allot the marks according to their proficiency in sports and the maximum marks that could be allotted was fixed as 500. Hence, the Sports Council authorities have collected the roll numbers of the candidates and furnished their mark lists before the Commissioner, who integrated the marks for the total marks secured by the candidates in entrance examinations computed out of 500 and the

maximum marks would be 1000.

8. The merit list for sports quota prepared on the basis of inter-se merits of the candidate fixed as above and category-wise list of candidate included under "team" and "individual" events had been published by the Commissioner for Entrance Examinations on 10.06.2014. The provisional list thus published on 16.06.2014 was finalised and published on 17.06.2014, after verifying the requests/complaints made by the candidates. According to the Office Notification No. CEE/4848/13/TAI dated 17.06.2014, the category/community-wise list of candidates, who are included in the medical/engineering/architecture/ayurveda ranked list, 2014, was published. It is further stated that the petitioner was included under "individual event" in the category ranked list for medical other than MBBS/BDS and also for MBBS/BDS.

9. It is further contended that a perusal of Ext. P8 would show that the petitioner complained before the Kerala State Sports Council only on 18.06.2014, though the provisional category list was published on 10.06.2014 and time was given till 14.06.2014 for verifying the list and making corrections. The petitioner did not make any complaints against such provisional list; it was contended.

10. It is further stated that candidates upto 4th position under sports quota were given allotment during the first phase of allotment. They also pointed out 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 options exercised by her. Therefore, it is submitted that petitioner's right to get allotment in a college under the special reservation quota is circumscribed by the requirements under clause 5.2.17.

11. It is further stated that the respondents are bound by the time limit fixed by the Apex Court for MBBS admission as well as engineering admission. For MBBS/BDS admission, the cut off date for making first round of allotment is 25.06.2014 and for engineering admission, the cut off date for making the allotment is 30.06.2014. Therefore, if the category list and rank list prepared in accordance with the prospectus conditions were not published by giving sufficient time for verification or raising objections, the allotment or admission could not be materialised by the second respondent. Therefore, the allegation that the second respondent did not heed to Exts. P7 and P8 was not correct; it is stated. They would further state that they are only the authority under the Government, who is bound to follow the prospectus religiously, and any deviation from the prospectus by them, would be without jurisdiction.

12. It is further contended that in the first round of allotment, even if the petitioner was considered under team event, the petitioner would not have been able to obtain a seat opted by her under sports quota. If she was to be included in the category list of "Sports Team Event" she would have got 4th position. In the first round of allotment, the total number of MBBS seats reserved under sports category, as per the KEAM, 2014 prospectus was 6. As the selection of

candidates from these two lists is done alternately, this candidate would not have got a sports quota seat for MBBS even if she were to be placed in the category list for "Sports Team Event".

13. It is submitted that after the first round of allotment as per G.O. (RT) No. 2549/14/H & FWD. dated 25.07.2014 one seat each was allotted in Government Medical College, Cochin (CMC) and Government Medical College, Idukki (IDM) under sports quota. The office of the Commissioner proceeded with the allotment as per the option status and the existing category rank of the petitioner. In the allotment conducted on 27.07.2014, the candidate with Roll No. 207813 was allotted to Government Medical College, Cochin and the candidate with Roll No. 219356 was allotted to Government Medical College, Idukki. With these contentions, they prayed for a dismissal of the writ petition.

14. The third respondent would contend that as per the prospectus of KEAM, 2014, the claim for sports quota is based on the norms of Kerala State Sports Council. The candidates should forward the original application to the Commissioner for Entrance Examinations and a photocopy of the application to the Kerala State Sports Council. The Sports Council would allot marks to the candidates, according to their proficiency in sports. The maximum marks for proficiency is 500. The Sports Council would collect the roll number from the candidates and furnish it in the proficiency mark list for sports.

15. The third respondent would further contend that they had prepared a separate ranked list for Professional Degree Courses for "team event" and "individual event" and the certificate produced by the petitioner was issued by Kerala Badminton (S) Association, certifying that Inter-District Championships is a team event. The Sports Council by mistake had included the petitioner's name in the ranked list for individual event, while she was ineligible to be included in the team event. The third respondent would submit that the Sports Council had published separate provisional list for individual event and team event for professional degree courses and as per their letter dated 12.06.2014 in the ranked list forwarded to the Entrance Commissioner, the petitioner's name was included under sports quota in the individual event and she was awarded 155 marks, out of 500.

16. They would further contend that in the original certificate produced by the petitioner at the time of verification, it was not mentioned whether the event was team event or individual event. Thereafter on 18.06.2014, the father of the petitioner requested them to rectify the mistake. He had also produced a letter from the concerned association.

17. They further contended that as per the request of the petitioner's father, a letter was forwarded to the Entrance Commissioner by them, as per the Council's letter No. KSSC/B4/338/2014 dated 18.06.2014, requesting to include the candidate's name in the team event. On the same day, they forwarded a letter to the Commissioner of the Entrance Examinations requesting to rectify the

defect that had occurred due to clerical error. In reply, the Commissioner informed the Council that the provisional category list was published on 10.06.2014 and the complaints were invited upto 14.06.2014 and that after verification of the complaints received, the category lists were finalised and published on 17.06.2014.

18. In the counter affidavit filed by the fourth respondent, it was contended that the fourth respondent was a member of the District Soft Ball Boys Team, which secured third place in the 17th Kerala State Junior Soft Ball Championship for boys/girls held at Kalpatta, Wayanad. Copy of the merit certificate is produced as Ext. R4(a). It was stated that the fourth respondent was admitted to the BDS course at Dental College, Thiruvananthapuram in the sports quota accordingly. Ext. P4 produced by the petitioner is one issued by the Joint Secretary, Kerala Badminton Association, who is not the competent authority. They contended that Ext. P4 is a document worth no credence at all.

19. It is further submitted by the fourth respondent that as per the special category list forwarded by the second respondent (index marks), the petitioner is in the 5th position, whereas the fourth respondent is in the 4th position. The sports council published the lists much prior to the first allotment in their website with the marks with an opportunity to rectify mistakes, if any. The phone number was also provided and the details thereof would be available with the respondents 3 and 4.

20. It is stated that the trial allotment was made subsequently by the second respondent wherein also opportunity was afforded to rectify mistakes, if any. The petitioner waited till the fag end and came out alleging discrepancies/mistakes only after publication of the category list.

21. It is further contended that as of now, there are only seven seats under the sports quota for MBBS and BDS (6+1), which is allotted to the eligible candidates as per their index marks. As per Ext. P6, the respondent herein who got qualified in the team event turned out to be in the 4th position. As per the prospectus clause 5.2.17, it is clear that candidates seeking admission to Medical/Agricultural/Veterinary/Fisheries courses, the marks out of 500 awarded to the candidates for proficiency in sports would be added to the marks obtained by the candidates in the Medical Entrance Examination computed out of 500. The merit list of individual and team events would be prepared on the basis of inter-se merit of the candidates computed as above and would be published separately. Copy of the relevant portion of the prospectus is produced as Ext. R4(b).

22. It is pointed out that as can be seen from Ext. R4(b), the allotment is made on a 1:1 ratio. The petitioner remained silent till the publication of the category list presumably to stake a claim accordingly. There is absolutely no justification in her belated action, seeking interference of this Court; it is contended. The certificates produced by the petitioner (Exts. P2 and P4) does not indicate her category as senior or junior. As per Annexure XVIII (ii) of the prospectus, the

norms for selection for admission to professional course under sports quota, marks are awarded out of 100 in the order of priority. Petitioner and the fourth respondent are of same age. There is nothing to show that the petitioner had participated in any event in the senior category in order to be eligible for 31 marks. All that is discernible from Ext. P2 is that the petitioner had represented Trivandrum District Women inter-district shuttle tournament and won third price.

23. The fourth respondent further contended that Ext. P2 does not bear any authentication. It can be seen from Ext. R4(a) that the third respondent had given ample opportunity to all the candidates to correct mistakes, if any, well in advance. Therefore, there is no justification, seeking interference under Article 226, to raise a claim which the petitioner is not otherwise eligible. The fourth respondent also contended that the writ petition lacks bona fides much less any merit and is, therefore, liable to be dismissed with costs.

24. The petitioner filed reply controverting the averments contained in the counter affidavits by the respondents.

25. I have heard the learned counsel for the petitioner, the learned Government Pleader, the learned standing counsel for the third respondent and the learned counsel for the fourth respondent.

26. Ext. P2 certificate relied on by the petitioner would reveal that she has won third prize in the Inter-District Championship of Badminton (S) Tournament. Therefore, the petitioner alleges that she is eligible to claim reservation under the sports quota as dealt in clause 5.2.17 of Ext. P3 prospectus.

27. The grievance of the petitioner is that while she is entitled to be included in Ext. P9 list for team event with Rank No. 4, the third respondent mistakenly included her name in Ext. P5 ranked list with Rank No. 5 for individual event which resulted in making the fourth respondent eligible for MBBS seat and making the petitioner ineligible for the MBBS seat.

28. The gist of the contention taken by the contesting respondents is that the petitioner complained before the third respondent only on 18.06.2014 though the provisional category list was published on 10.06.2014 and time was given till 14.06.2014 for verifying the list and to make corrections. According to the respondents, the petitioner did not make use of that opportunity or make any complaints against the provisional list. Inviting my attention to the counter affidavit filed by the State, the learned Government Pleader pointed out that the petitioner exercised the following options through the website of the second respondent:

29. It is stated in the counter affidavit filed by the State that the first phase allotment of sports quota, candidates in medical and allied course is shown below:

30. Serial No. 7 in the aforesaid list is the fourth respondent. It was submitted that candidates upto 4th position under sports quota were given allotment during

the first phase of allotment. The learned Government Pleader submitted that the State is bound by the time limit fixed by the Apex Court for MBBS admission as well as for engineering admission. As far as the admission to MBBS/BDS is concerned, the cut off date for making the first round of allotment was 25.06.2014. The cut off date for making the allotment to the engineering admission was 30.06.2014.

31. It was pointed out by the learned counsel for the petitioner that the anomaly in publishing the provisional list denied the petitioner an opportunity to point out the mistake in time. According to him, only in Ext. P6 final list, the names of candidates for "individual event" and "team event" were shown separately. Therefore, immediately the petitioner approached the third respondent, who requested the second respondent to rectify the defect; so submitted the learned counsel for the petitioner. The petitioner alleges that the second respondent erred in denying to rectify the defect. The learned counsel for the petitioner submitted that the respondents are legally bound to rectify the mistake committed by them and render justice to the petitioner.

32. Ext. P10 produced by the petitioner would reveal that the provisional category/community-wise ranked list was published only on 17.06.2014. The learned counsel for the petitioner points out that Ext. P10 was not made available to the petitioner at the time of filing of the writ petition. It is submitted that clause 5.2.17 of the prospectus of KEAM, 2014 provides that the category list of candidates who were included in the provisional category/community-wise list of candidates would be published on 10.06.2014 and the candidates were requested to verify the list and complaint, if any, in this regard to the Commissioner for Entrance Examination before 5.00 pm on 14.06.2014. The whole complication arose on account of the fact that no provisional category/community-wise list showing separately the team event list and individual list under sports quota was published on 10.04.2014. What was published is Ext. P5(a). No separate list for team event and individual event was published.

33. Ext. P11 is the notification of the second respondent, which makes it clear that the category/community wise list based on the ranked list would also be published in due course and complaints regarding the category list should reach the Commissioner for Entrance Examinations within 5 days after the publication of the category list. The category/community wise provisional list was published only on 17.06.2014 in the website of the second respondent. Therefore, it was argued that as per Ext. P11, the petitioner was entitled to file complaint within five days from 17.06.2014. It is submitted that the petitioner had made complaint on 18.06.2014 itself through the third respondent. Therefore, the petitioner is entitled to get her name included in the list of candidates eligible for sports quota under "team event" with Rank No. 4; so submitted the learned counsel for the petitioner. I see valid force in the said submission

34. Ext. P12 which is another notification dated 17.06.2014 makes it clear that the detailed category list was published only on 17.06.2014 enabling the

petitioner to find out the mistake committed by respondents 2 and 3. In Ext. P12 it was advised that the candidates have to verify the category list and satisfy themselves regarding their position in the list such as inclusion under different categories, eligibility for communal/special reservation etc. Exts. P11 and P12 grant the petitioner an opportunity to point out the defects and accordingly, Ext. P7 was filed through her father.

35. It is evident from Ext. P5(a) that it is not a category/community wise list enabling the petitioner to understand that she was wrongly included in the ranked list of individual events while she was entitled to be included in the ranked list for team events. The argument advanced by the learned counsel for the fourth respondent is that Ext. P5 and Ext. P9 lists were published in the website of the sports council and thereafter it was the duty of the petitioner to see whether her name was rightly included in the appropriate list. But, it is crucial to note that nowhere in the prospectus or in any notifications issued, respondents 2 and 3 have mentioned that such a list was published and the petitioner will have to file objection. The petitioner was not given any notice on this aspect. Exts. P5 and P7 itself show that it is not downloaded from the website and the said copies are issued from the office of the sports council along with copy of Ext. P8. They would indicate that the petitioner was not aware of the said publication.

36. The learned Single Judge, who considered the writ petition on 14.08.2014, directed the third respondent sports council to file an affidavit in response to the pleadings in this case. It was directed that the third respondent would particularly state therein whether the candidates like the petitioner were informed on production of their certificates like Ext. P2 as to the sub category like "team" of "individual events", to which they would be allotted in preparing the merit list of sports quota candidates as envisaged in clause 5.2.17 of Ext. P3 prospectus. It was also directed to state the dates on which Exts. P5 and P9 merit lists were furnished by them to the Commissioner for Entrance Examinations and whether they had requested the Commissioner to publish Exts. P5 and P9 in the website of the Kerala Sports Council also. The circumstances under which the third respondent had construed the participation of the petitioner as per Ext. P2 to be in individual event as done in Ext. P5 were also directed to be explained. Explanation was also sought as to whether the grantee of a similar certificate as in Ext. P2 was allotted by the third respondent in the list for team event as per Ext. P9, as averred in Ext. P7. The third respondent was also directed to produce the certificate of participation of the said candidate referred to in Ext. P7, who is said to be included as Rank No. 3 in Ext. P9.

37. No convincing answers to the aforesaid queries are forthcoming from the third respondent. What is stated in the counter affidavit filed by the third respondent is that they had enquired to the petitioner on production of her certificate as to whether the category was "team event" or "individual event". It is further added that after preparing the merit list, the same was published in the

website of the third respondent from 27.05.2014 to 02.06.2014 and no complaints were received regarding the list. The third respondent has no case that the petitioner made them to believe that she was claiming sports quota reservation under the individual event. On the other hand, it is evident from the counter affidavit filed by the third respondent that due to a clerical error, the petitioner's name was wrongly included in the ranked list under "individual event" in the sports quota. Exts. P10 and P11 would go to show that the provisional category/community-wise list of sports council under two separate phase was published only on 17.06.2014.

38. Along with the counter affidavit, the third respondent has produced Ext. R3(a) series of documents which would show that one Ameya Nazar, who was placed with runner-up which is just above the petitioner in the very same tournament of which the petitioner was awarded with Ext. P2 certificate, is included in the ranked list for MBBS course under sports quota under "team event". At the same time, the petitioner was included in the ranked list pertaining to "individual event".

39. Immediately on publication of Ext. P10 provisional ranked list revealing separate ranked list under "team event" and "individual event", the petitioner has filed complaint and approached this Court in time. The respondents cannot take advantage of her mistake saying that the allotment has advanced, since only a very small change would be effected by allowing this writ petition. The fourth respondent has no case that he has got a better claim than the petitioner on merits. The fourth respondent is trying to take advantage of the petitioner's misfortune.

40. It is also relevant to note that the fourth respondent was allotted BDS seat in the first allotment and was not having any claim for MBBS course. The second phase of allotment is subject to the final orders of this Court in the writ petition and hence, the fourth respondent or any other candidate cannot claim any legal right. Nobody, including the fourth respondent would be put to injustice by rectifying the defect as pointed by the third respondent in Ext. P8. The fourth respondent is only eligible to be included as 5th rank holder in Ext. P6. Only because of the mistake committed by the third respondent in including the petitioner in Ext. P5 list, the fourth respondent was awarded with the 4th rank.

41. It was the second respondent, who authorised the third respondent, to prepare the ranked list of sports quota. Therefore, the second respondent is liable for the mistake committed by the third respondent. The second respondent committed mistake in publishing Ext. P5(a) provisional list of sports quota jointly for individual events and team events and the petitioner was not given an opportunity to point out the mistake at the time of publishing the provisional list. By rectifying the mistake and including the name of the petitioner in the ranked list of sports quota under team event, no additional hardship would be caused to the second respondent and no eligible candidates would be put to unnecessary hardships. Therefore, this Court is of the definite view that the petitioner is

entitled to succeed.

In the result, the writ petition is allowed. Ext. P6, insofar it makes the fourth respondent the 4th rank holder for MBBS seat, is hereby quashed. The second respondent is directed to rectify the defect as pointed out in Ext. P8 letter of the third respondent and to place the petitioner as 4th rank holder in Ext. P6 ranked list under the reservation quota for sports "team event" and to allot the petitioner the respective seat to which she is eligible for MBBS course under sports quota on account of the rectification as above. This shall be done forthwith.