
(2006) 04 KL CK 0016
In the High Court Of Kerala
Case No : Writ Petition No. 6903 of 2006

Pradeepan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Indian Medical Council (Post Graduate Medical Education) Regulations, 2000 — Regulation 9

Citation : (2006) 2 KLT 585

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Viju Abraham, Government Pleader, Alexander Thomas, T.A. Ramadasan, Cibi Thomas, M.V. Amaresan, V.N. Ramesan Nambisan, K. Sanil Kumar and S. Anil Kumar, for the Respondent

Judgement

Kurian Joseph, J.—Whether there can be different cut off marks for general merit and in-service candidates in the common entrance test for admission to Post Graduate courses is the main issue arising for consideration in this case. There is also an issue as to the lower minimum for the SC/ST/OBC candidates. The case pertains to admission to the Post Graduate Degree/Diploma courses, 2006 under the Directorate of Medical Education, in the case of in-service candidates belonging to Scheduled Caste/Scheduled Tribe communities. Ext. P5 is the prospectus published on 14.12.2005. The common entrance test was conducted on 11.2.2006 and Ext. P4 select list was published on 20.2.2006. The Writ Petition is filed on 7.3.2006. The contention of the petitioners is that as far as in-service candidates are concerned, without any distinction as to the community they belong to, all candidates should secure 50% marks. The contention of the respondents is that as per the Medical Council of India Post Graduate Medical Education Regulations, 2000, the candidates belonging to SC/ST and Other Backward Class (SEBC) need only secure 40% marks.

2. Regulation 9 reads as follows:

9. Selection of Post Graduate students

(1) Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/institution may adopt any one of the following procedures for degree and diploma courses:

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same State; or

(ii) On the basis of merit as determined by a centralised competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same university; or

(iv) Combination of (i) and (iii):

Provided that wherever entrance test for postgraduate admission is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes:

Provided further that in non-governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent by the management of the institution on the basis of merit.

Thus it is clear from the proviso that the Medical Council of India has made a classification between candidates belonging to general category and candidates belonging to SC/ST/OBC. In the case of the former, the requirement is 50% in the common entrance test and in the case of the latter, it is only 40%.

3. Inviting reference to the decision of the Supreme Court in *The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others*, it is submitted that the requirement of 40% for the reserved communities is only in the case of general merit candidates and not in the case of in-service candidates. It is seen from the said judgment that the Supreme Court has made it clear that the Regulations framed by the Medical Council of India are binding on the State Governments and in case any State has a case for making a departure from the Regulations, it is for such State to represent the matter to the Central Government or Medical Council of India. Paragraph 36 of the judgment deals with the conclusions on the principles. Paragraph 362 deals with the issue under consideration. The same reads as follows:

There can be only one common entrance test for determining eligibility for

postgraduation for in-service candidates and those not in-service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India Regulations framed in this behalf.

4. The question is whether there is any relaxation or deviation contrary to the Medical Council of India Regulations. Learned Counsel for the petitioners, inviting reference to Ext. P9 counter affidavit filed by the Medical Council of India in another case submits that the Council had rejected the request of the State Government to relax the condition regarding minimum qualifying marks in the case of candidates belonging to the reserved communities. It is seen from the counter affidavit that "in response to the letter of the State of Kerala dated 16.2.2004, the MCI addressed a letter dated 1.3.2004 informing the State authorities that in the light of the statutory regulations and the judgments of the Hon"ble Supreme Court, it would not be permissible for the MCI to permit any relaxation in marks to in-service doctors." It is the submission of the learned Counsel appearing for the petitioners that in answer to the request from the Government as to the relaxation in the case of in-service candidates only, the above clarification was given. I am afraid, the contentions are misconceived. As permitted under the Regulations, the prospectus was issued fixing 50% marks for the general merit and 40% for SC/ST/OBC(SEBC). There cannot be two standards in the case of the general merit and in-service as far as cut off marks are concerned. If a general merit candidate under SC/ST/OBC(SEBC) is required to secure only 40% marks, an in-service candidate belonging to any of those groups cannot be required to secure more marks. It will be profitable to refer to one paragraph of the judgment of the Supreme Court wherein the similar contentions were addressed. The Supreme Court repelled the same holding that the merit cannot be sacrificed. Paragraph 27 of the judgment reads as follows:

The in-service candidates may have been away from academics and theories because of being in service. Still they need to be assessed as eligible for entrance in PG. For taking up such examination, they must either keep updating themselves regularly or concentrate on preparatory studies to entrance examinations but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services.

Therefore, the question of relaxation arises only when there is a deviation/relaxation in the case of the prescribed marks, be it that of the general merit candidates or that of the reserved communities. There is no case of any relaxation from the Regulations. The Regulations do not make any distinction as to whether it is general merit/in-service. The Regulations only prescribe the cut off marks. So long as there is no deviation from the prescribed Regulations, it cannot be said that the selection already conducted is in any way irregular or faulty. In case the petitioners feel that the Regulations require modification, it is for them to move the Medical Council of India/ Government of India.