

(1980) 12 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 11555 and 14793 of 1980

Preethi Srinath

APPELLANT

Vs

The Selection Committee for admission to the first M.B.B.S.
Course Govt. and Pvt. Medical Colleges

RESPONDENT

Date of Decision : 02-12-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Indian Medical Council Act, 1956 — Section 33

Citation : AIR 1981 Kar 58

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; G.R. Nataraj, Govt. Pleader, for the Respondent

Judgement

1. As common questions of law arise for determination in these cases, I propose to dispose of them by a common order.

2. In response to the relevant notification calling for applications, the petitioners along with a large number of eligible candidates applied to the selection committee constituted for that purpose for selection to the First Year M. B. B. S. course for the academic year 1980-81. Petitioner in Writ Petn. No. 11555 of 84. Per cent marks in Part 11 subjects of the P. U. C. examination held in 1980 that being the criteria for* selection, claims to be an outstanding sportswoman. Petitioners in Writ Petitioner. No. 14793 of 1980 has secured 83.33 per cent of marks in Part 11 subjects of the P. U. C. examination held in 1980. The petitioners belong to the general category and the last candidate selected from that category has secured 87.06 per cent. As the merit of the petitioners visa wise the superior merit. of others from the general category did not measure up to the requirements, the selection committee did not call the petitioners for interview and has not selected them for the course. Aggrieved by their non-selection. the petitioners have approached this Court under Art 226 of the Constitution for appropriate reliefs.

3. The petitioners have alleged that for those candidates that had appeared for the F. U. C. Examination held in the previous year 1979 and have been selected, the examining body viz., the Pre-University Board had uniformly added as much as 23 marks as moderation and grace marks irrespective of the marks secured by the candidates and that weightage added to those candidates of the year 1979, but has been denied to the candidates that passed during the year 1980. The petitioners contend that the weightage given to the candidates of the year 1979, but denied to the candidates of the year 1980 has resulted in unequal and hostile treatment, which is violative of Article 14 of the Constitution.

4. In the Karnataka Medical Colleges (Selection for Admission) Rules of 1980 (hereinafter referred to as the Rules), there is no reservation of seats to outstanding sportsman or sportswoman. Petitioner in Writ Petition No. 11555 of 1980 who claims to be an outstanding sportswoman, contends that there was reservation for outstanding sportsman till 1977 and the State by not providing for any reservation to the category of outstanding sportsman, as in the past, has violated the mandate of Art 14 of the Constitution. She has claimed that there is reservation of seats to outstanding sportsman in other technical courses like Engineering and the denial of the same in medical course is violative of Art. 14 of the Constitution and the scheme of higher education in the country as envisaged by our Constitution.

5. On the aforesaid pleas and grounds, the petitioners without impleading any of the selected candidates, have sought for a mandamus to consider their cases for - election in preference to persons who have secured lesser percentage of marks but whose marks have been boosted or inflated by adding moderation or grace marks. At the hearing, submissions were also made on the basis of the recent increase of 50 seats in a Government Medical College which have to be filled shortly, the course of which is to commence in Jan., 1981.

6. In denial of the allegations and, contentions urged by the petitioners the respondents have not filed their return. On 16-9-1980 a memo has been filed by the respondents admitting the uniform addition of 10 moderation marks and 5 grace marks in the subject of Chemistry for the candidates that appeared for the examination held in the year 1979. Sri G. R. Nataraj, learned High Court Government Pleader, that appeared for the respondents, did not dispute that till 1977 there was reservations of certain seats in Medical Colleges also to outstanding sportsman and the same has been discontinued from 1978 and that reservations to that category are still available in the other technical courses like Engineering. He gave the reason for the discontinuance of reservations in medical courses to outstanding sportsman as the paucity or the limited number of seats that are available in that course and the large number of candidates that apply which is not the position in the other technical courses, in particular, Engineering. Sri Nataraj gave the figures that are available in Engineering as 4000 and the seats that are available for medicine as 400 in all the colleges of the State.

7. Sri S. K. Venkataranga Iyengar, learned Counsel for the petitioners, has contended that the addition of moderation and grace marks for the candidates that appeared for the 1979 examination and the denial of the same to the candidates that appeared for the year 1980 examination was violative of Art. 14 of the Constitution.

8. Sri Nataraj, urged that the uniform addition of marks for the 1979 candidates is not violative of Art. 14 of the Constitution. In support of his contention. Sri " Nataraj strongly relied on an unreported decision of my learned brother Rama Jois in G. S.Radhika v. The Selection Committee for admission to Medical Colleges, W. P. Nos. 10081 ". 10562, 15103 and 15570 of 1980, decided on 26-9-1980: (since reported in) G.S. Radhika Vs. The Commissioner for Health and Family Welfare and Secretary to Govt. of Karnataka,

9. In Radhika's case this Court had occasion to examine the very question urged for the petitioners in these cases on the very same facts. On an examination of the very contention urged by Sri Iyengar, Rama Jois, J. found that the addition of marks to 1979 candidates and the denial of the same to the 1980 candidates and the selections made on the basis of the marks by the respective candidates, was not violative of Article 14 of the Constitution.

10. Sri Iyengar firstly urged that the views expressed and the conclusions drawn in Radhika's case call for reconsideration principally on one ground that this Court had not considered the scope of Entry 66 of List I of the VII Schedule of the Constitution.

11. As a single Judge, I am bound to follow the ruling rendered in G.S. Radhika Vs. The Commissioner for Health and Family Welfare and Secretary to Govt. of Karnataka, . Assuming that I find that the ruling in that case, requires reconsideration, the only course that is open to me is to state my views and refer the matter to a Division Bench. Sri Iyengar has not been able to point out any ground on which I should adopt such a course and therefore the question of referring "these cases to a Division Bench does not arise.

12. Sri Iyengar placed - great reliance on Para 11 of the order in Radhika's case and urged that the State was bound to take notice of the observations made thereto, and remove the hardship caused to the 1980 candidates, which has not been done by the State Government so far.

13. While expressly rejecting the contention urged before him, the learned Judge has expressed the desirability of Government coming to the succour of the 1980 candidates. The sentiments or hopes expressed by a Court in an order cannot be equated to a legal and enforceable direction, either at the instance of the parties in those cases or at the instance of others. In this view, there is no merit in this contention of Sri Iyengar and I reject the same.

14. Sri Iyengar next contended that the State by not making reservations to sportsman bad contravened the regulations called "Minimum recommendations

of the Medical Council of India on Under-graduate Medical Education made by the Medical Council of India" (hereinafter referred to as the Council) u/s 33 of the Indian Medical Council Act of 1956 (hereinafter referred to as the Act) approved by the Government of India. In support of his, contention Sri Iyengar placed strong reliance on the ruling of the Supreme Court in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*,

15. The regulations framed by the Council, approved by the Government of India, prescribe the standards that should be observed by the medical colleges in the country for admission to undergraduate medical courses. Clause I of the Regulations prescribes the eligibility for admission of candidates to medical courses. Clause II dealing with the selection of candidates including concessions to be extended to members of scheduled castes and scheduled tribes to whom reservations can be made, provides for giving weightage to those candidates that have undergone N. C. C. training and participated in sports and athletics. The relevant part of the said regulation reads thus:

"(f) Weightage on a graded scale may be given for N. C. C. training and for participation in sport/athletics during the course of training for the qualifying examination.

Note: A total of up to 5% weightage can be given for category above to candidates who are otherwise eligible for admission to the medical course on the basis of marks secured in the qualifying examination."

So far as sportsman, the Rules do not provide for what is provided by the Regulations.

16. As the heading of the Regulation itself discloses they are the minimum recommendations of the Council to be observed for admission to undergraduate medical courses in the country. While the requirements of Clause I of the Regulations dealing with the eligibility for admission cannot be dispensed with, Clause II stipulating the criteria or method of selection cannot be said to be mandatory. The Regulations or the Act under which they are made do not operate as binding statutory directions on the selection committee to be given effect to by it, in the absence of a provision made thereto by the State Government. If the State Government were to make provisions for the same, then only it would be binding on the selection committee and not otherwise. By its failure to make a similar provision in the Rules to give weightage in marks to sportsman, Government does not contravene the provisions of Clause 11 of the Regulations or the provisions of the Constitution. In my view, the ratio in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, interpreting the scope and ambit of Entry 66 vis-a-vis the entries relating to education in the State list, does not bear on the point and does not assist Sri Iyengar. Hence, I see no merit in the contention of Sri Iyengar and rejected the same

17. Sri Iyengar contended that Government by its failure to provide reservations

to sportsman, as in the past, has acted arbitrarily and has contravened Art, 14 of the Constitution. In support of his contention Sri Iyengar, strongly relied on the Division Bench rulings of this Court in Subbashini V. State of Mysore (1965) 2 Mys LJ 571 : (AIR 1966 Mys 40) and the Kerala High Court in State of Kerala and Another Vs. R. Jacob Mathew and Others,

18. As is well-known, provisions relating to reservations made in the Constitution are only enabling provisions in the exercise of which it is open to the executive Government to make reservations. Whether reservations should be provided to a particular category or classes of persons to whom reservations can be made is exclusively a matter for the executive Government to decide. A Court cannot compel the executive Government to make reservations if it decides not to make reservations to a category or classes of persons for whom reservations can be made. In this view, I cannot uphold this contention of Sri Iyengar and reject the same.

19. In Subliashini's case (AIR 1966 Mys 40) and State of Kerala and Another Vs. R. Jacob Mathew and Others, this Court and the High Court of Kerala were examining the validity of the reservations made to the category of sportsman and the attack made by others as violative of Article 14 of the Constitution. This Court and the High Court of Kerala rejected the challenge on the ground that the reservation to the category of sportsman does not contravene the principles of classification and the equality clause enshrined in Art. 14 of the Constitution. But, that is not the position here. What is challenged by the petitioners is the failure of the Government to make reservations to the category of sportsman. In my view, the principles enunciated in those cases do not apply to a case where Government refuses or fails to make reservations to "lie said category.

20. The reason for Government not making reservations to sportsmen only in medical colleges is stated to be the paucity or limited number of seats. While the failure of Government to make reservations to sportsmen only in medical colleges is rather unfortunate, the action of Government cannot be characterised as arbitrary, whimsical and as violative of Art. 14 of the Constitution.

21. Sri Iyengar contended that Government by its failure to provide for reservations to sportsman has contravened the principles of promissory estoppel, the scope and ambit of Which has been exhaustively dealt by the Supreme Court in Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 ; Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, and in the latest ruling in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

22. Firstly, the petitioner has neither pleaded the necessary allegations, nor urged a ground thereto to invoke the principles of promissory estoppel and compel the Government to abide by the assurances, if any, made by it. In this view itself, this contention of Sri Iyengar cannot be examined by me.

23. Assuming that the petitioner had made all the necessary allegations that are"

necessary to examine the plea, in such an event also, I am of the opinion that the principle of promissory estoppel can hardly be applied to a case where Government is free to modify its policies from year to year depending on a variety of factors. For these reasons, I see no merit in this contention of Sri Iyengar and reject the same.

24. Sri Iyengar lastly contended that the selection committee is bound to consider the cases of the petitioners for the increased seats from the general category on the basis of their merit and the merit of other candidates" and make a selection if their merit permits them to the increased seats.

25. Sri Nataraj also does not dispute the correctness of this submission of Sri Iyengar.

26. So far as the seats that have been recently increased, the selection committee has not called for fresh applications. On the other hand, the selection committee proposes to fill the seats only on the basis of the applications already made with due regard to the merit of the candidates and the reservations made under the Rules. Whether the merit of the petitioners would permit their selection or not to the general category from which category their cases will have to be considered, is a matter primarily for the selection committee to decide.

27. In the light of my above discussion, I issue a writ in the nature of mandamus to respondent No. I to consider the cases of the petitioners for selection to the increased 50 seats recently sanctioned by Government from the general category in accordance with law and in the light of the observations made in this order.

28. Rule issued is made absolute to the extent indicated above only in this changed in all other respects.

29. Let a copy of this order be communicated to respondent No. I forthwith. Let another copy of this order be simultaneously furnished to Sri G. R. Nataraj, learned High Court Government Pleader, who is also permitted to file his memo of appearance for the respondents within 15 days from this day.

30. Order accordingly.