
(1994) 08 KL CK 0003

In the High Court Of Kerala

Case No : W. A. No's. 605/92 and Connected Cases

P.S. C. and Others

APPELLANT

Vs

Dr. Mohan and Others

RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 320

Citation : (1994) 2 KLJ 583

Hon'ble Judges : V.V. Kamat, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : M.K. Damodaran and P.C. Sasidharan, for the Appellant; S.M. Prem, K.P. Dandapaal and M.C. John Govt. Pleader, for the Respondent

Judgement

Kamat, J.—Dr. J. Mohan of ENT Department, Medical College, Trivandrum, filed OP. No: 1943 of 1992 for relief quashing (Ext. P3-rank list) issued by the Kerala Public Service Commission (respondent No: 1) and a direction to adopt interview performance as the criterion leading to a direction to issue advice in his favor as rank No: 1. As a consequence he also prayed for quashing of ranking of Dr. K. Ramachandran (respondent No: 3) as No: 1 in an illegal manner. This was in relation to the post of Assistant Professor in ENT Department by special recruitment as per Rule 17-A of the Kerala State and Subordinate Services Rules. Dr. Mohan and Dr. Ramachandran were the only two candidates before the Commission for selection. By the impugned judgment dated March 26, 1992, the learned single Judge quashed the rank-list selecting Dr. Ramachandran and directed Public Service Commission to make selection according to law and in the light of the judgment. The Kerala Public Service Commission has preferred W.A. No: 605 of 1992 to justify selection of Dr. Ramachandran wholly. Dr. Mohan has preferred W. A. No: 585 of 1992 contending that performance at oral interview alone and not any other performance would be permissible for consideration, alternatively also contending that on average of M.B.B.S. marks and interview marks if combined for average would entitle him to selection. Dr. Ramachandran by preferring W. A. No; 800 of 1992 has a grievance regarding direction to the

Public Service Commission to make selection afresh. Therefore, these three appeals arise out of one impugned judgment

2. Dr. S. Harikrishnan filed O. P No; 8351 of 1992 against Rank-list (Ext. P10 Page 34) prepared by the Kerala Public Service Commission (respondent No: 1) for the posts of Tutor/Lecturer in Ophthalmology in the Medical Education Department, wherein he has been shown at serial No: 12 instead of being at serial No: 1, obviously bye-passing the method of selection to be based on written test and interview, by taking into account the marks (percentage) in the qualifying examination-M.B B.S. illegally. In view of writ Appeals, this O. P. is referred to be heard along With them by referring judgment dated 27-1-1993.

3. The common feature is that in both the proceedings marks (percentage performance) in the qualifying examination-M. B. B. S. have been taken into consideration as the basis of selection to the extent of totally ignoring performance in the subsequent selection process. The common contention is that this is not permissible on facts, in law and is also violative of the principles of natural justice.

4. Relevant facts and pleadings in both these proceedings would be as hereunder;

A) Dr. Mohan and Dr. Ramachandran, both Tutors of ENT Department applied for the post of Assistant Professor in reply to Notification dated 15-2-1991-Special Recruitment-S. C and S. T under rule 17-A of K. S. S. Rules. Requirement was MS (ENT) as specified in the Notification (Ext. P1 to O. P). Both were interviewed on 15-1-1992. Their documents were verified. The Rank-list was published on 29-1-1992 showing Dr. Ramachandran holding rank No. 1 and Dr. Mohan as rank No. 2. There being only two candidates for the post, written test was not held.

At the interview. Dr. Mohan secured 15 out of 20 marks whereas Dr. Ramachandran secured 12 out of 20 marks. Marks at the M. B. B. S. Examination (qualifying examination as M. S. Degree has no marking system) where Dr. Mohan secured 56% whereas Dr. Ramachandran secured 62% were considered and consequently the ranking was made out.

The Commission contended that performance at M. B. B. S. is not unrelated to the selection process.

B) Dr. Harikrishnan along with others applied for the post of Tutor in Ophthalmology in reply to Notification dt. 17-7-1990 of Kerala Public Service Commission. The petition gives details of his qualifications and service experience undisputedly. He appeared for written test on 18-4-1991 and interview on 28-4-92. In the rank-list dt. 20-6-92 he was shown holding 12th rank to his surprise. The rank-list is at Ext. P10 to O. P. 8351 of 1992. Dr. Bindu (respondent No: 4) who was given rank No: 1 is a party to the O. P. in a representative capacity. It is urged that the process of selection is erroneous, firstly in taking into consideration performance at the Degree-M. B. B. S. examination and secondly ignoring factual difference in standards of two

universities affording no satisfactory basis of comparison. Reliance is placed on the provisions of Rules of the P. S. C. as well as on reported decisions, to contend not only unequal treatment but also on illegal reliance on performance at the qualifying examination-M. B. B. S-together with violation of principles of natural justice.

5. The learned Judge in the impugned judgment considered the question as hereunder:

A) Dr. Mohan and Dr. Ramachandran obtained both M. S. (ENT) and M. B. B. S degree from Kerala and Calicut University respectively. Standards of assessment are uncomparable. Reliance is placed on 1978 KLT 369 - State of Kerala v. Rafia Rahim. Five Judges Bench of this Court and a subsequent decision of the Supreme Court Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, to hold that there would be no comparable standards.

B) The submission of the Commission that decisions relating to admission to University courses by the admission authorities cannot be pressed into service and applicability in regard to selection to Public Services, in these matters to teaching posts was not accepted and it was held that different standards uncomparable treated as the basis for selection is hit by the equality clause in Article 14 of the Constitution of India.

C) The learned Judge also did not rely on the method of calculation of average of combined percentage of MBBS marks and Interview performance, as was submitted on behalf of Dr. Mohan.

D) Performance of MBBS Examination was consideration of irrelevant matter and so decision of the Commission cannot stand.

E) The learned Judge directed the Kerala Public Service Commission to reconsider the matter of selection.

6. We have extensively heard not only all counsel for the appellants in all three appeals, but also for parties in the petition. In our judgment, the submissions made by the learned counsel Shri. Damodaran for the Kerala Public Service Commission are formidable and would ultimately rule the matters on all aspects. The submissions are based on the contentions in the counter which are also well-supported by the decisions in support thereof. We state that the aspects presented in the submissions would do away "with the necessity of dealing with the submissions of the petitioners in the O. P."s although we would narrate them for the completion of this judgment. We propose to narrate them first and then to deal with the submissions on behalf of the Kerala Public Service Commission.

7. The submission is that the basis of selection entirely on the performance at the qualifying-M B. B. S. Examination cannot be spelt out even from the rules in any manner. In the context reference is made to Rules 3 and 11 of the Kerala Public Service Commission-Rules of procedure. For convenience, they are reproduced as follows:

Rule 3: The Commission may conduct all or any one or more of the following examinations to assess the merits of candidates considered for recruitment to a service or post;

i) Written Examination

ii) Practical Test

iii) Physical Efficiency Test

iv) Oral Test (interview)

v) Any other test or examination which the Commission may deem fit to hold.

Rule 11: A decision as to the following shall be taken by the Commission in respect of all selections made by them:

i) whether any candidate possesses the prescribed qualifications for the post.

ii) the basis on which the marks should be awarded;

iii) the minimum or minima of marks for inclusion in the ranked lists;

iv) the manner in which the practical examination, physical efficiency test or any other test or examination is to be conducted;

v) any other matter incidental to the selection

It is urged that performance at qualifying M.B.B.S. Examination is not at all contemplated from the above position of the Rules. In this context, the provisions of Rule 5 also would require reference. For convenience, the said provision are reproduced below:

Rule 5: Where an oral test (interview) alone is to be conducted by the Commission for recruitment to a service or post the Commission shall:-

i) announce the qualification and other conditions including fee required of candidates and the number of vacancies to be filled up.

Provided that when the exact number of vacancies to be filled is not ascertainable the Commission may either announce the approximate number of vacancies to be filled or state that the number of vacancies has not been estimated;

ii) invite applications, consider all applications so received and interview the candidates whose applications are found to be in order:

Provided that where the number of qualified applicants is unduly large having regard to the number of vacancies the Commission may restrict the number of candidates to be called for the oral test (interview) to such extent as they may decide after conducting any examination as they deem fit:

Provided that the Commission may also restrict the number of candidates to be

called for oral test (interview) on the basis of any one or more of the following criteria;-

(a) Higher Qualification

(b) Higher marks

If the above provisions are considered together, it cannot be left to be observed that there is element of flexibility and elasticity to suit the needs of the occasion.

8. The submission is also made on the basis of the concerned notifications inviting applications that they are wholly absent with regard to the performance at the qualifying MBBS Examination being decided to be made the basis of the selection process. Reference is made to the said Notifications (Ext. P1 in both petitions) to urge that what is apparent is the mention of the qualifications and not to performance in relation thereto even by a whisper, if clause 7 to Ext. P1 in O. P. 8351 of 1992 and contents of Ext. P1 in O. P. 1943 of 1992 are perused. What is to be considered in the process of selection need not form part of the notifications and needs no more discussion.

9. The learned counsel for Dr. Mohan contended on facts and without prejudice that even if the performance at the qualifying examination-M.B.B.S. - is taken into consideration and if combined effect is seen in comparison with that of Dr. Ramachandran, the performance of Dr. Mohan would have to be termed as superior giving him a legal right to selection forthwith (Dr. Mohan; 56% M. B. B. S. + 75% interview - 65.5% and Dr. Ramachandran: 62% MBBS. + 60% interview = 61%). We are afraid that we cannot substitute our own consideration under the extraordinary jurisdiction.

10. It was submitted that forming the basis of qualifying examination MBBS-relating to performance of the candidate belonging to different universities is violative of Article 14 of the Constitution inasmuch as it is ruled consistently that such an approach introduces elements of inequality in protection and treatment. Reliance is placed on the decision of the Five Judges judgment of this Court 1978 KLT 369-State of Kerala v. Rafia Rahim and of the Supreme Court Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, . dealing with the situation relating to matters of admission to medical courses to concerned students, wherein it is ruled that basis of marks obtained at qualifying examination held by different universities/state would be violative of Article 14 of the Constitution of India. Reliance was placed on the following observations from the above two decisions.

1. Re: Rafia Rahim's case.

As a result of our discussion we are of the opinion, that the scheme of selection for admission to the Medical Colleges on an assessment of merit of students drawn from different Universities with no uniformity of standards is objectionable and violative of Art. 14 of the Constitution, We grant a declaration to the writ-petitioner to that effect. We deny effective relief to the writ petitioner on account

of non-joinder of the selected candidates, and the futility and ineffectiveness of upsetting the selections and directing fresh admission at this stage. We consider that the best scheme of selection in the circumstances would be the method of selection of candidates by holding a uniform Entrances Examination to secure uniformity of standards as recommended by the Indian Medical Council-vide Exts P5 and P8-, and as endorsed by the University Authorities (vide Ext. P7). We direct the State Government to forthwith devise a scheme of selection by holding such an Entrance Examination and publish the same within three months from today, so that the candidates, wishing to apply for selection to the Medical Colleges of this State for the next academic year, have due notice of the scheme of selection. The object being to secure uniformity of standards for assessment and evaluation of students drawn from different Universities, our direction should not be understood as unalterably and inelastically fixing the limits for Governmental action. Methods for securing uniformity of syllabus, pattern of examination, and mode of evaluation in the different Universities, would well be within the province of the Government to undertake.

2. Re; Dr. Dinesh Kumar's case.

There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to the students by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution. We must, therefore, make it clear that no State Government or University or Medical College shall grant admission to students to fill the minimum 30% non-reserved seats for the M B. B. S. course, on the basis of comparison of the marks obtained by them at different qualifying examinations. The admissions must be based on evaluation of relative merits through an entrance examination which would be open to all candidates throughout the country.

11. It was also submitted that in fairness the candidates are entitled to know through the notification in advance the exact method settled to be adopted by which selection is proposed to be made and it cannot be determined and settled afterwards. Reliance is placed on the decision of this Court relating to scope of Rule 9 of its recruitment Rules and consequent following observations at page 745 of the report to the effect;

The rule specifically says that all eligible candidates whose applications are found to be in order shall be invited for interview or written test or both, as the Board may determine. When once the Board determines the procedure to be followed by them, all candidates whose applications had been found to be valid are to be invited either for the written test or for the interview or for both. The manner in

which the written test has to be conducted can also be determined by the Board. It is thereafter that a rank list has to be prepared by the Board in the order of merit. On a reading, of R 9 it therefore follows that the Board has first to decide whether candidates are to be selected on the basis of a written test or on the basis of an interview or on the basis of both. When once such a decision is taken, the Board shall determine the manner in which the written test has to be conducted. If interview alone is conducted, the rank list has to be prepared on the basis of such interview. If a written test alone is conducted, the rank list has to be prepared on the basis of the performance in the written test. In case the Board conducts a written test and an Interview, a rank list has to be prepared on the basis of the marks obtained in both and that too in the order of merit?

After perusing the entire judgment, it would have to be observed that this Court applied provisions of Rule 9 which provided the basis for observation and therefore the decision cannot be an authority for the wide proposition sought to be placed before us.

12. It was submitted that the MBBS result cannot form the basis of post-graduate admission and a broad-based arrangement should be made to ensure equality in the matter of selection to admission to post-graduate admissions. Reliance was placed on the decision of the Supreme Court. U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, . The decision relates to admission to Post-graduate Medical course to students and is not relating to the appointment of Teachers and/or Professors by the Public Service Commission through its select committee. Even in regard to the question of admission, the feelings of anxiety are thus expressed:

Appropriate knowledge and expertise are a prerequisite for a person to be allowed to register himself as a medical practitioner. Very often, health problems require expert treatment. If anyone is authorized in society to practice medicine or undertake medical care without the appropriate qualification, society exposes itself to health hazards. The prescription by the Indian Medical Council and the attempts made by Government for regulating the medical study are for establishing a basically uniform knowledge to be imparted to the students before they can be entrusted with the nation's medicare Unless there is a sincere and thorough educational discipline to be gone through as a precondition to the grant of the requisite certificate the lives of citizens would be at peril.

It is in the light of these aspects, it becomes necessary and compelling for us to see as to whether the approach of the High Court in extra ordinary jurisdiction in the matters of appointments of the Tutors/Lecturers/professors-Teaching posts by the Public Service Commission could be more considered and cautious in bodily applying the decisions, as referred to above, governing issues relating to admissions to Medical courses, relevant facts of fairness and application of the principles of natural justice. Our subsequent consideration of the above aspect would determine the result of these proceedings. Before proceeding the consider it resumes of the counter of the Kerala Public Service Commission would be a

facility. We do so.

13. A) Factual contentions in Writ Appeals would be found in the following Para Nos: 6 to 8 of the counter to O, P. 1943 of 1992 and

6. The Commission felt that the necessity of finalizing the selection without further delay, as the process of selection had started as early as 1983-84. The commission decided not to conduct a written elimination test as there were only two candidates for one vacancy. Moreover, written test would have further delayed the process of selection.

7. The Commission decided to take into account the marks of the candidates in the academic examination. Since mark lists were not issued for M. S. Degree, the Commission decided to take into consideration marks awarded for Final Year M. B. B. S. Examination. Therefore, the basis of marking was decided as "Percentage of marks for the basis degree examination (Final Year M. B. B. S) plus interview marks out of 20; (Grace marks are allowable to physically handicapped persons (as per G. O. (P) 158/78/PD dated 19-1-1978).

8. The selection was finalized on the above basis. The ranked list was finalized and brought into force with effect from 29-1-1992. Dr. K. Ramachandran was assigned Rank No: 1 and Dr. J. Mohan (the petitioner) was assigned Rank No: 2. The First rank holder Dr. K. Ramachandran was advised on 6-2-1992 against the vacancy reported by the Government in their letter dated 15-10-1983.

the submissions is to be found in para 11 thereafter as follows:

It is submitted that no ground is made out to hold that the selection is bad. The commission has only considered relevant factors to decide the comparative merits of the candidates for a middle level teaching post in the Medical College. The percentage of marks for M.B.B.S. (Final Year) is a relevant factor; it is not unrelated to the process of selection. The decision of the Commission also reflects the policy of the Commission to base selections on as many relevant criteria as possible. Further the Commission wanted to finalize the selection as quickly as possible. Therefore, in view of the fact that there were only two candidates, thus affording practically no scope for elimination, a written test was not conducted for this selection. The action of the Commission is not illegal. It is within their managerial power.

B) As regards O.P. No: 8351 of 1992, para II reproduced below:

In the case of selection to various teaching posts, the commission adopt the basis of selection by written test, marks for qualifying examination and interview. The commission fixed the basis of selection to the post of Tutor in Ophthalmology strictly adhering to the selection method fixed by the Commission. Accordingly, the selection to the post was made on the basis of percentage of marks for the qualifying examination plus marks for written test out of 100 plus interview marks out of 40. In calculating the percentage of marks for the qualifying examination, the marks for final M.B.B.S. (parts I & II) are taken into account. In

this connection it is to be pointed out that by adopting percentage of marks for qualifying examination and marks for written test out of 100 in addition to interview marks out of 40, the Commission tried to keep an equilibrium. No preponderance is given to percentage of marks at the qualifying examination. In fact the marks for qualifying examination form only a part of the basis of selection, written test and interview conducted by the commission being the other parts of the process of selection.

14. In fact, it is necessary to note, that in the said counter of respondent No : 1 in the "following averments, the practice of considering performance at the qualifying examination in allied disciplines is specifically averred in para 16 :

Regarding the contentions under Ground "D", it is submitted that the basis of selection to the posts of Tutor in Medical Colleges, Tutor in Ayurveda College, Lecturer in Engineering Colleges and Lecturer and Junior Lecturer in Arts and Science Colleges and Law Colleges, is percentage of marks for the qualifying examination plus written test marks out of 100 plus interview marks out of 40. In the case of selection to the post of Tutor in Homeopathic Medical Colleges the Commission have decided to avoid percentage of marks for the qualifying examination for the reason that there are three alternative academic qualifications prescribed for the post. The qualifications include Degrees and Diplomas and as such the decision not to consider the marks secured at the qualifying examination for the post of Tutor in Homeopathic Medical Colleges is justified. This cannot be held discriminatory. As far as the post of Assistant Surgeon in Health Services Department is concerned, it is not a teaching post and as such the percentage of marks is not taken into account.

15. Nor it would be necessary to consider the constitutional position of the Kerala Public Service Commission. The provisions of Part XIV chapter 2 of the Constitution shows that the State Public Service Commission is a creature of the Constitution and its functions are specified in Article 320 and it has to be consulted and it has the duty to advice on all matters of recruitment referred to in the said provision and the Kerala State Public Service Commission regulates its internal matters as provided in Rules 25 onwards of the Rules of procedure. The principles governing aspects of admissions to Medical Courses and public employment have been distinct and separate, so much so, that the Supreme Court, when inadvertently with reference to the interview as the exclusive test for reliance was rejected, subsequently held it to be per incuriam; (see Anzar Ahmed Vs. State of Bihar and others, referring observations in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others,).

16. The approach of the Writ Court relating to the matters of selection by the select committees and Public Service Commission with regard to the application of the principles of natural justice and the guiding principles relating to interference there with is amply declared by the Supreme Court in atleast four decisions. R.S. Dass Ors. Vs. Union of India (UOI) and Others, They are, inter alia, as follows:

- 1) Selection is an administrative act and not a judicial or quasi judicial act; requires no reasons to be recorded.
- 2) Taking into consideration the academic performance and practice in regard thereto cannot be termed as arbitrary, but it reduce its possibility.
- 3) Where there is nothing to show that the selection was arbitrary or whimsical or the Committee did not act fairly towards a particular candidate and where the Selection Committee consists of experts in the subjects for selection and are men of high status, of unquestionable impartiality, the Court has to be slow to interfere.
- 4) The Public Service Commission is an independent expert body established under the Constitution. It has to act in an independent manner in making selection on the prescribed and established norms. The purpose of competitive selection is to select most suitable candidates for the appointment to public services. The rules of natural justice do not apply to competitive examinations.
- 5) The rules of natural justice are not rigid rules, they are flexible and their application depends on the setting and background of statutory provision, nature of the right which may be attested and the consequences which may entail, its application depends on the facts and circumstances of each case, and is excluded in regard to administrative actions as it would have the effect of paralyzing the administrative process.
- 6) Selection for admission to educational institutions vis-a-vis to public employment have different consideration re; emphasis on interview and written test.
- 7) Where the candidates' personality is to be yet developed and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in written examination to the interview be minimal.
- 8) In the case of employment to which recruitment has necessarily to be made from persons of mature personality, interview must be the only way, subject to basic and essential academic and professional requirements being satisfied.
- 9) The written examination assesses a candidate's overall intellectual and personal qualities and has certain distinct advantages over interview.
- 10) There are yet no written tests to evaluate a candidate's initiative, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, in meeting and dealing with others, adaptability, judgment, ability to make decisions, ability to lead, intellectual, and moral integrity. Some of these qualities, perhaps with some degree of error, by an interview test are much depending on the constitution of the Board.
- 11) It is entirely for the Selection Committee or the Commission to decide what would be appropriate in a given case, and it is not for Court to lay down whether

interview test be held at all and there cannot be any hard and fast rule regarding the precise weight to be given and it differs from situation to situation and the Court does not possess the necessary equipment and it would not be proper to pronounce unless "exaggerated weight has been given with proven or obvious oblique motive".

17. These principles, if applied, make out no case for interference of any kind. Only grievances are (1) that academic performance has been made the basis of selection and (2) that the petitioners did not know from the notifications that academic performance would be considered which is violative of the principles of natural justice. Undisputedly no oblique motive is even whispered. The selection is by the Kerala Public Service Commission constituted and established under the Constitution. The Supreme Court¹ with regard to the appointment of the Teaching Staff and Educational Officers by the Selection Committee properly constituted has clearly observed that such matters are not meant for interference by the Court, much less by exercise of extra ordinary powers under Article 226 of the Constitution of India.

18. For the above reasons, we pass the following order

The judgment dated March 26, 1992 in O.P. No: 1943 of 1992 gets quashed and set aside. The decision of respondent No: 1 (Kerala Public Service Commission) in selecting Dr. K. Ramachandran (respondent No: 3) is confirmed and as a consequence the order of the learned Judge directing the Public Service Commission (respondent No: 1) to make the selection again also gets quashed and set aside.

19. As a result, Writ Appeal No 605 of 1992 preferred by the Kerala Public Service Commission is fully allowed confirming the decision to appoint Dr. K. Ramachandran (respondent No. 3 in O. P. No. 1943 of 1992) in accordance with the selection made.

20. As a result, Writ Appeal No. 800 of 1992 preferred by Dr. K. Ramachandran (respondent No. 3 in the Original Petition), is allowed holding that the matter of his selection is confirmed, with no necessity for the Public Service Commission to make selection again.

21. Writ Appeal No. 585 of 1992 (preferred by Dr. J. Mohan (Petitioner in O. P. No. 1943/92) stands dismissed.

22. As far as O. P. No. 8351 of 1992 is concerned, the petition stands dismissed and thereby the rank list (Ext. P10- page 34 of the petition) with regard to the list of candidates for the post of Tutor in Ophthalmology settled by the Commission (respondent) No. 1 therein) stands confirmed. The Kerala Public Service Commission is directed to proceed with the selection made in these two proceedings.

Accordingly all these proceedings are disposed of with no order as to costs.