
(1995) 09 KL CK 0025
In the High Court Of Kerala
Case No : W.A. No. 1108 of 1995

P.V. Rithesh

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Ker 41 : (1996) 1 ILR (Ker) 341

Hon'ble Judges : K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench : Division Bench

Advocate : E.V. Nayanar, for the Appellant; Lal George, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shanmugam, J.—The petitioner in the original petition is the appellant. The appellant, a candidate for admission to the Medical and Agricultural courses, sought for a direction to treat his application as one for payment seat. Learned Judge declined to grant the said relief and hence the appeal.

2. Admittedly the appellant did not exercise his option for admission to the payment seats in the 4th respondent's college. It is also admitted that in the column in the application form to exercise the option for the payment seat the appellant did not indicate his option. After the publication of the results, on finding that the appellant was not selected, he submitted a petition to the 2nd respondent requesting that he may be considered for payment seat. According to the appellant, the petition has submitted in view of the decision of the Supreme Court revising the fees fixed for the payment category. Apprehending that he would not be considered for the payment category in spite of the subsequent option he came to this Court. Learned Judge declined to grant the relief.

3. Writ appeal was admitted and on notice the 2nd respondent has filed a counter affidavit.

4. Learned counsel for the appellant submitted that in view of the changed circumstances, namely the revision of fee structure, the appellant is in a position to pay the fees and, therefore, he is entitled to opt for payment seat. Even though the results of the entrance examination and rank list have been announced, the interview for the Medical College is scheduled to be held on 26-9-1995 and, therefore, he may be permitted to opt for the payment seat before the finalisation of the results. The appellant has filed a petition to amend the memorandum of Writ Appeal by filing C.M.P. No. 3221 of 1995 wherein he has stated that the Government themselves are seeking to change the stipulation contained in the prospectus by providing communal reservation in payment seat, and thereby vary the norms of the admission to the payment seats. Therefore, the appellant is entitled, even at this stage to exercise his option for the payment seat.

5. " Learned Government Pleader by referring to the counter affidavit filed by the 2nd respondent submitted that the appellant is not entitled to change his choice for payment seat after filing the application and after announcement of result. He stated that the total number of persons who have expressed their willingness to payment seat is 703 in which 240 rank holders are above the appellant, There are, 463 candidates below the rank of the appellant. According to him, the appellant cannot be permitted to correct the statement contained in the application form at this belated stage. If the relief sought for by the appellant is allowed at this stage, it would prejudicially affect the interest of those applicants who had already opted their willingness for payment seat. In this context the learned Government Pleader referred to the decision of this Court in *Prasanth v. State of Kerala*, (1989) 1 KLT 164 This Court held that a candidate who has not opted for the particular reservation should not be allotted a seat on the basis of a subsequent filing. The relevant findings of the learned Judge is as follows:

"It is for the candidate himself to claim all that he wants and he cannot expect the selection committee to go behind the application and grant a relief which he himself does not choose to claim. It will be improper for the selection committee to go behind what is stated in the application, and grant benefits which the candidates themselves have not chosen to claim. Any such power in the selection committee will lead to arbitrariness as also uncertainty in the selection process. It will even lead to prolonged delay in the completion of the admissions with belated claims and litigations. It is in public interest that the selection of candidates to such courses is done with all expedition. If the selection committee is to entertain claims contrary to, or de hors, what is stated in the application itself, there will be no limit to which they will be bound to go and they will have to reckon with all sorts of claims raised by candidates on second thoughts or otherwise leading to delay and uncertainty in the selection process. It is in the interests of the candidates themselves that they are pinned down to what is stated in the application and the selection made only with reference to what is stated therein. Chaos and confusion will result if the applications are not to be treated as final as to what is contained therein, and candidates are permitted to

set up further claims as the selection process goes on. What the petitioner seeks is the recognition of a power in the selection committee to overlook his negative answer in column 11 and confer a reserved Ezhava seat on him. This is not possible, recognition of any such power will be against public interest". "

6. In another case in *C. Thanuja Vs. State of Kerala and Another*, this Court following the same principle stated as follows:

"Claim for the seat in the reservation quota has to be made along with the application. This is the requirement of Clause VII of the prospectus. In fact the community and income certificates have to be appended in the pro forma given in the application itself and as part of it. There is good reason for this clause. It is one essentially in the interests of expeditious completion of the selection process and to avoid uncertainties. Else the position will be that any candidate can come forward with a claim for reservation at any subsequent period of time with reference to subsequent events, and attempt to unsettle settled things. This process can go on endlessly, and there will be no certainty for any candidate admitted in the reservation quota about his admission to the Court as any other candidate could come forward at any time in the future and claim a seat in the reservation quota based on subsequent events. It is therefore in the interests of certainty and finality that the state of affairs as on the last date of receipt of applications and as disclosed in the application should be treated as the relevant conclusive factor in the matter of adjudging claims for a seat in the reservation quota. Public interest certainly and expedition in the selection process required it. It is in " the interests of the candidates themselves. The eligibility has to be decided with reference to the state of affairs as disclosed in the application, with reference to the last date for its receipt, and not with reference to any subsequent events unless such a course is specifically permitted".

On the basis of these decisions learned Government Pleader submitted that the appellant should not be permitted to alter his choice which would prejudicially affect the applicants who have already exercised their options.

7. Learned counsel for the appellant referred to the decision of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*, JT (1995) 5 (SC) 33 : (AIR 1995 SCW 3000) and submitted that the fee structure had been altered considerably reducing the initial fee fixed for payment seats. In view of this notification, the appellant is now in a position to opt for the said category. The Supreme Court judgment enables the appellant now to seek for allotment of payment seat.

.8. We have considered the submissions made. The .Supreme Court decision itself takes notice of the fact that admissions are already under way in several States in accordance with the scheme framed in *Unnikrishnan*'s case as modified by the subsequent orders. All of them cannot suddenly be suspended at this point of time. It requires a much wider and more extensive hearing of all points of view and a deeper consideration of the suggestions of several Governments,

councils, institutions and others before a definite opinion is expressed. In reference to the fee structure the Supreme Court has modified the fee payable by the students allotted against free seats. We find that the modified order for payment seats will be applicable to those students who have been allotted against the free seats and payment seats. The Supreme Court did not consider the question of enabling the students to exercise option subsequently in the light of the modified fee. Whereas in reference to Karnataka State the Supreme Court issued additional directions for selection of the students on the basis of fresh applications since there was no sufficient time limit for conducting fresh common test for non-Karnataka students for admission. Therefore, we find that the appellant, who had not exercised this option as per the requirement and had not applied for the payment seat will not be entitled to change his choice. Apart from the fact that it would prejudicially affect the candidates who have opted for payment seats, it would be against the general interest of all to change his choice after the submission of the application. The direction issued by the Supreme Court regarding the modified scheme would apply only, to those who have opted for payment seat. As a matter of fact we find that there are only 40 seats in the 4th respondent's college and there are already 240 candidates above the rank of the appellant. Therefore, there is absolutely no possibility for the appellant even if he is allowed to change his choice to get a seat. This Court would not issue a futile writ.

9. The appellant in his additional grounds of appeal raised the point against the reservation now sought to be applied to payment seats by the Government. The appellant has not sought for any relief based on the said plea. Besides the appellant has based his additional point on the newspaper report. We hold that if the appellant is aggrieved against this communal reservation for payment seats, it is open to him to agitate the same in a separate proceeding, if he is so advised. In so far as this appeal is concerned, we hold that the appellant has not made out any grounds in support of his case for interfering with the judgment of that learned, single Judge.

For the reasons stated above, we dismiss the appeal. No order as to cost.