

(1989) 06 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petns. No's. 15990 of 1988 and 2975 of 1989

S. Ramesh and etc.

APPELLANT

Vs

The Selection Committee for Admission to M.B.B.S. Course,
Bangalore and others

RESPONDENT

Date of Decision : 08-06-1989

Acts Referred:

Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS)
Rules, 1987 — Rule 4 (2), 5

Citation : AIR 1990 Kar 36 : (1989) 2 KarLJ 192

Hon'ble Judges : N. Venkatachala, J

Bench : Single Bench

Advocate : M. Aswathanarayana Reddy and Nanjunda Reddy, for the Appellant;
H. Kantharaj, Govt. Pleader, for the Respondent

Judgement

1. Where a medical seat of Scheduled Tribe category out of the number of seats set apart for B.Sc. Group under Cl. (b) of sub-rule (2) of R.4 of the Karnataka Medical Colleges (Selection of Candidates for Admission to First Year M.B.B.S. Course) Rules, 1988 (for short "the Rules"), remains unfilled, has such seat to be filled up by a candidate of the same category seeking selection from seats set apart for P.U.C. Group under Cl. (a) of sub-rule (2) of R. 4 of the Rules, is the question which arises for consideration and decision in these writ petitions.

2. S. Kamesh, petitioner in Writ Petition No. 15990/88, who has passed the B.Sc. Examination, had sought for a medical seat out of the seats of the first year M.B.B.S., Course in Government/Private Medical Colleges in Karnataka for the year 1988-89 available for Scheduled Castes in B.Sc. Group under the Rules. So also, Smt. G. P. Savithramma, petitioner in Writ Petition No. 2975/89, who has passed the P.U.C. Examination, had sought for a seat out of the seats of the same course available for Scheduled Tribes in P.U.C. Group under the Rules. Admittedly, both of them did not secure the seats sought for by them as they fell next below the successful candidate of their respective categories. Since a seat of the Scheduled Tribe category out of the seats available for B.Sc. Group

remained unfilled for want of a candidate, both the petitioners put forth their claims for that seat. As the Selection Committee constituted under the Rules did not decide upon the rival claims of the petitioners for the available Scheduled Tribe category seat in B.Sc. Group, petitioner in each of these writ petitions has sought for from this Court issue of a writ in the nature of mandamus to the Selection Committee for allotment of that seat.

3. It was contended by Sri M. Aswathanarayana Reddy on behalf of the petitioner in Writ Petition No. 15990/88, that that petitioner, who had sought for a seat in the Scheduled Caste category out of the seats available for B.Sc. Group, but who did not get it for the non-availability of another seat in that category, would be entitled to get the unfilled seat in the Scheduled Tribe category seats of the B.Sc. Group. According to him, since Government Order No. DPAR 28 SBC 86 dated 12-12-1986, as amended or modified, relating to reservation of appointments and posts in State Civil Services is, under R. 5 of the Rules, made applicable by reference to the filling up of medical seats under the Rules, the petitioner would be entitled to the unfilled seat of the Scheduled Tribe category in B.Sc. Group by operation of Cl.9 of that Government Order. He sought to support his contention by relying upon a Division Bench decision of this Court in *Srikantappa v. Selection Committee* (1978 (1) Kar LJ 82 : AIR 1978 NOC 115) wherein, having considered the scope of Karnataka Medical Colleges (Selection for Admission) Rules, 1975, it was held that non-consideration by the Selection Committee of a claim of a candidate belonging to a category in B.Sc. Group against an unfilled seat of the same category in P.U.C. Group cannot be found fault with in the absence of a specific rule in that regard.

4. On the other hand, it was contended by Sri Nanjunda Reddy on behalf of the petitioner in Writ Petition No. 2975/89 that the provision in Cl. 9 of Government Order No. DPAR 28 SBC 86 dated 12-12-1986 cannot be invoked for the benefit of the petitioner in Writ Petition No. 15990/88 when the unfilled seat of the Scheduled Tribe category in B.Sc. Group has to be allotted to the petitioner of the same category of the P.U.C. Group under the proviso to sub-rule(1) of R. 5 of the Rules, which specifically provides for such contingency.

5. The learned High Court Government Pleader appearing for the Selection Committee under the Rules, a respondent in these writ petitions, supported the contention advanced on behalf of the petitioner in Writ Petition No. 2975/89.

6. It is how the question formulated at the outset has arisen for consideration and decision in these writ petitions.

7. As the said question has to be considered and decided upon having regard to the Rules governing the matter, I propose to reproduce them in so far as they are material for the purpose :

"4. DISTRIBUTION OF SEATS :

(1) Seats shall be reserved in favour of the following categories of candidates in

Government and Private Medical Colleges to the extent as may be notified by the Government from time to time :

(a) to (e).....

(2) Out of the number of seats available, after deducting the seats reserved under sub-rule(1) :

(a) Ninety-five per cent of the seats shall be reserved for those who have passed the Pre-University Examination or equivalent examination;

(b) Five per cent of the seats shall be reserved for those who have passed B.Sc., Degree examination.

5. RESERVATION OF SEATS IN FAVOUR OF SCHEDULED CASTES. ETC.:

(1) Out of the number of seats set apart for each group in accordance with sub-rule(2) of R.4,..... the reservation shall be made for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Group A, B, C, D and E in accordance with the Government Order No. DPAR 28 SBC 86 dated 12-12-1986 and as amended or modified by the State Government from time to time;

Provided that if sufficient number of candidates either in Cl.(a) or (b) of sub-rule (2) of R. 4 belonging to the category of General Pool, Backward Classes, Groups A, B, C, D and E, Scheduled Castes or Scheduled Tribes are not available, such seats shall be filled up by the candidates belonging to the same category in the other groups.

(2) If any of the seats reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and Groups A, B, C, D and E are not filled up due to non-availability of eligible candidates, such seats shall be filled up in accordance with the Government Order No. DPAR 28 SBC 86 dated 12-12-1986 and as amended or modified by the State Government from time to time."

Before dealing with the scope and ambit of the above Rules, it has to be noticed here that Government Order No. DPAR 28 SBC 86 dated 12-12-1986, which is, under the Rules, made applicable by reference, not only provides for reservation of number of posts for various categories of persons, but also provides for filling up of unfilled posts in a reserved category for want of an applicant in that category.

8. Coming to the Rules reproduced above, while sub-rule(1) of R. 4 refers to the seats in Government and Private Medical Colleges to be reserved in favour of the category of candidates mentioned therein, sub-rule(2) thereof refers to distribution of seats left over after deducting seats reserved under sub-rule (1) thereof for P.U.C. Group on one hand and the B.Sc. Group on the other. Thus, under Cl. (a) of sub-rule (2) of R. 4, 95% of the left over seats stands reserved for P.U.C. Group and under Cl. (b) thereof, 5% of such seats stands reserved for B.Sc. Group. Then, comes sub-rule (1) of R. 5 and it declares that out of the

number of seats set apart for each Group in accordance with sub-rule (2) of R. 4, the reservation shall be made for candidates belonging to various categories according to Government Order No. DPAR 28 SBC 86 dated 12-12-1986. The proviso to that sub-rule tells how unfilled seat in each category of the reserved seat in either of the Groups, i.e., P.U.C. Group or B.Sc. Group, should be filled up. According to that proviso, when any seat in a reserved category of seats in either of the Groups remains unfilled, the same is required to be filled up by the candidate of the same category in other group. Thus, the proviso makes a specific provision for filling up of an unfilled seat in a category of one Group from the same category of another Group if a candidate of such category in the other Group is available. Then, comes sub-rule (2) of R. 5, which provides for filling up of unfilled seats in various reserved categories according to Government Order No. DPAR 28 SRC 86 dated 12-12-1986. When the Government Order so operates, Cl. 9 of that Government Order also becomes operative, but only when when the seat in the reserved category of each Group remains unfilled by even after the operation of the proviso to sub-rule(1) of R. 5, because the proviso to sub-rule (1) being a specific rule governing such contingency prevails over Cl. 9 of the Government Order which is in the nature of a general rule governing the matter. It has to be stated that the decision relied upon by the learned Counsel appearing for Sri Ramesh in support of his contention cannot be of assistance, in that, there was no specific rule with which this Court was concerned in the matter of allotment of seat from a seat available in a category of one group to a category of another group, whereas in the instant case, specific rule to meet such contingency is provided in the proviso to sub-rule (1) of R. 5 of the Rules.

9. Hence, I hold that where a medical seat of Scheduled Tribe category out of the number of seats set apart for B.Sc. Group under Cl. (b) of sub-rule (2) R. 4 of the Rules remains unfilled, such seat has to be filled up by a candidate of the same category seeking selection from seats apart for P.U.C. Group under Cl.(a) of sub-rule (2) of R. 4 of the Rules. In the light of my holding as to the operation of the proviso to sub-rule (1) of R. 5 of the Rules, it is the petitioner in Writ Petition No. 2975/89 who becomes entitled to the unfilled medical seat of the Scheduled Tribe category in B.Sc. Group and not the petitioner in Writ Petition No. 15990/88.

10. In the result, I dismiss Writ Petition No. 15990/88, allow Writ Petition No. 2975/89 and direct the Selection Committee, a respondent in these writ petitions, to allot the unfilled first year M.B.B.S., seat of Scheduled Tribes category of the year 1988-89 to the petitioner in Writ Petition No. 2975/89 (Smt. G. P. Savithramma).

11. However, in the circumstances of the case, I make no order as to costs.

12. Order accordingly.