
(1994) 02 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 3788 of 1993

Sapan Shankar

APPELLANT

Vs

Director of Technical Education

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Karnataka Selection of The Candidates for Admission to Engineering, Medical, Pharmacy, Dental and Nursing Courses Rules, 1993 — Rule 10, 12, 6

Citation : (1994) ILR (Kar) 611 : (1994) 2 KarLJ 14

Hon'ble Judges : S.B. Majmudar, C.J.;N.D.V. Bhat, J

Bench : Division Bench

Advocate : Basava Prabhu Patil, for the Appellant; A.M. Farooq, Government Advocate for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

S.B. Majmudar, C.J.—The appellant was the Writ Petitioner before the learned Single Judge. He has filed this appeal being aggrieved by the order rendered by the learned Single Judge on 29.11.1993 dismissing his Writ Petition. For the sake of convenience we will refer to the appellant as the petitioner and the respondents as the original respondents in later part of this Judgment.

2. The petitioner is a student who has completed second year Pre-University Course. He sought for admission to medical course in -the State of Karnataka for the year 1993-94, under reserved category as made available under Rule 12 of the Karnataka Selection of the candidates for admission to Engineering, Medical, Pharmacy, Dental, and Nursing Courses, Rules 1993 (hereinafter referred to as the "Rules"), These Rules are promulgated by the State of Karnataka and they govern such admissions.

3. The petitioner's case is that he falls in the reserved category, being a candidate who possessed "B" Certificate under N.C.C. It is his contention that he has got more number of N.C.C. points-cum-marks showing his proficiency in N.C.C. activities as compared to other students who have been admitted for this

reserved category, he has scored 95 marks and has obtained the requisite N.C.C. "B" Certificate. Respondents 4 & 5 who are joined in this Appeal had obtained similar such N.C.C. "B" Certificates but had got lesser number of marks as compared to appellant for N.C.C. activities. They had got 70 marks each. Thus, according to the petitioner he was entitled to be given admission on the reserved category 12(1)(i)(a) of the Rules in preference to respondents-4 & 5. Petitioner submitted that instead of adopting the correct criterion for judging the eligibility of concerned students for such reserved category the respondent-authorities proceeded on a wrong premise, namely that even for ranking of eligible students in this reserved category their marks in the entrance test have also to be taken into consideration. Merely Because the appellant had got lesser marks in the Entrance Test as compared to the newly added respondents-4 & 5, he was denied admission to the medical course from this reserved category. We are told that all in all there were eleven such reserved seats, eleven students in the aforesaid category were selected for admission to first MBBS course, under N.C.C. quota during 1993-94. The said list is annexed as Annexure-H. It is the contention of the petitioner that if Rule 12 was correctly interpreted by the authorities he would have been included as one of the selected candidates in the said list and would have been one of the selected eleven candidates at Annexure-H as he had got 95 N.C.C. points-cum-marks in N.C.C. and students listed at Serial No. 1 and 4 viz., present respondents-4 & 5 were required to have been listed at the bottom of the list with the result that one of them would have been denied admission instead of admission being denied to the petitioner. It was further contended by the petitioner that while applying the very same Rule 12 for governing admissions to the Engineering Course for the same year the respondent-authorities have applied correct test and correct interpretation of the Rule as canvassed by the petitioner and granted admissions to First Year B.E. degree course under N.C.C. quota, purely on the basis of their performance in N.C.C., by only relying on N.C.C. points and not considering marks obtained by concerned students in the Entrance Test. That aspect is sought to be brought out by placing reliance on the Notification issued by the Directorate of Technical Education, Karnataka State, annexed at Annexure-J of the petition.

4. The petitioner's aforesaid grievances were examined by learned Single Judge in Writ Petition No. 38994/93 and after hearing petitioner as well as respondent-authorities, the learned Single Judge took the view that Rule 12 of the Rules had to be read with Rule 10 and when so read performance in Entrance Test even for such reserved category of students claiming admission on N.C.C. quota, had to be kept in view and when such performance in Entrance Test was considered the appellant could not get admission even in the last eleventh seat reserved for such category of students, as his ranking on the basis of the result of Entrance Test was lower as compared to the result of the last student included in the select list at Annexure-H. therefore, no fault could be found, according to the learned single Judge, with Annexure-H which does not name the* appellant for admission in N.C.C. quota during 1993-94 and accordingly Petition was dismissed.

5. Petitioner as noted earlier, has come in Appeal against the said Order. If the result of the Appeal went in favour of the appellant it was likely to displace one of the aforesaid two selected candidates viz. Himamshu G.K. and Jayashree D. Kulkarni, as listed at SI.Nos. 1 & 4 in the impugned select list, Annexure- H. We, therefore, thought it fit to issue notice to these two candidates in I.A.No.II which was moved by the appellant for joining them as parties to this Appeal. We are informed that Respondent-5 has refused to accept the notice, and notice to Respondent-4 was sent by regd. post on 3.1.94 but till date acknowledgment is not received back; as more than a month is over he can be said to have been served. Still they have not thought it fit to remain present either personally or through their Counsel to oppose their joinder. Accordingly, we allow I.A.II and permit R4 and R5 to be brought on record.

6. This appeal was admitted to final hearing on 20.12.1993. We have heard the learned counsel for the appellant Sri. Patil and Sri A.M.Farooq, learned Government Advocate for the respondent-authorities 1 to 3. The newly added respondents 4 & 5 not contesting these proceedings, have remained served in I.A.II as stated above. We would have been required to issue fresh notice to them as we allowed their joinder by granting I.A.II only today, but, as it will be noticed in the latter part of the Judgment, we are not inclined to disturb their admissions to the 1st year M.B.B.S., course granted to them by Annexure-H, hence this procedure is not required to be followed at this stage.

RIVAL CONTENTIONS:

7. Mr. Patil, learned Counsel for appellant/Writ petitioner vehemently submitted that learned Single Judge with respect was in error when he interpreted Rule 12(2) in the light of Rule 10(2), and held that on a conjoint reading of this Rules even for getting ranking in the reserved category of N.C.C. certificate holder candidates, their performance in Entrance Test was also to be kept in view. That on the interpretation placed by the learned Single Judge on these Rules, the words "as the case may be" employed in sub-rule (2) would be rendered redundant. Similarly, the interpretation which appealed to the learned Single Judge results in rendering Rule 10(2) completely otiose so far as the present reserved category of students are concerned. It was also contended that the authorities themselves have interpreted Rules 12(2) read with 10(2) on the same lines as the appellant submits, so far as the question of granting admissions to First year B.E. degree course under N.C.C. quota for this very year under the same set of Rules was concerned. Thus the respondent-authorities themselves are guilty of adopting inconsistent stands in interpreting the very same Rules for governing admissions to the different course when such admissions are governed by the very same set of Rules. Sri Farooq, learned Government Advocate appearing for respondents on the other hand submitted that on a conjoint reading of Rule 10(2) and 12(2) the interpretation placed by learned Single Judge is quite reasonable and proper and calls for no interference and once that conclusion is reached the select-list of candidates for admission to First M.B.B.S.

Course from N.C.C. quota for the year 1993-94 as per Annexure-H cannot be found fault with. He further submitted that if for governing admissions to First Year B.E. degree course under N.C.C. quota any mistake is committed by the respondents that cannot give rise to any legally permissible contention on behalf of the appellant and that if such admissions are challenged, then mistake if any on the part of the authorities can be corrected by the appropriate Court. But the appellant cannot make any capital out of such alleged mistake on the part of the authorities.

8. Mr.Farooq further submitted that under the scheme of the relevant Rules, performance in the Entrance Test is not ruled-out as seen from Rules 3 and 6 of the Rules and that has also to be kept in view while considering the question of eligibility of the candidates for being selected on reserved quota to any of the "free-seats" as per Rule 10.

9. On the aforesaid rival contentions the following Points arise for our Consideration:

(1) Whether the impugned select-list Annexure "H" selecting candidates to first MBBS Course from N.C.C. quota for the year 1993-94 suffers from any error as canvassed by the learned Counsel for the appellant?

(2) If it suffers from any such error what relief is the appellant entitled to?

10. We shall now deal with aforesaid Points seriatim:

11. POINT No. 1: The aforesaid narration of facts and events projects a short question for our consideration viz., whether on the reading of the relevant Rules governing admissions of students in the reserved category i.e., N.C.C. trained candidates for being admitted to First M.B.B.S. Course only performance in the N.C.C. activities has to be seen or performance of the candidates in the Entrance Test is also to be kept in view. In order to answer this question it is necessary to have a birds eye view of the relevant provisions of the Rules governing such admissions. The Government of Karnataka in exercise of the powers conferred by Sub-section 1 of the Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act 1984, has promulgated aforesaid Rules. These Rules shall apply to the Selection of the candidates for admission to the various courses listed in Rule 1 sub-rule 3 of these Rules. Those courses are Bachelor of Engineering, Bachelor of Technology, & Bachelor of Architecture, Bachelor of Medicine, Bachelor of Dental Surgery, Bachelor of Nursing & Bachelor of Pharmacy. As per the definition clause found in Rule 2 "free seats" are defined as per Sub-clause (g) to mean seats specified as "free seats" in such institutions as may be notified by the Government. It is not in dispute between the parties that the appellant has applied for admission to one of such free seats in the MBBS Course. Rule 3 lays-down the eligibility criterion for being considered eligible for admission to any of the degree course specified in Rule 1. It is obvious that if the candidate does not fulfill the basic eligibility criterion he would be out of contest. As per the relevant part of Rule 3(1) (a) the candidate must have passed the

second year Pre-university course with Physics, Chemistry and Biology in respect of medical and allied courses as optional subjects and English as one of the languages and must have obtained not less than fifty percent of the aggregate marks in the optional subjects. In addition to this requirement, as per Rule 3(1) (b) candidates must have appeared for three subjects viz., Physics, Chemistry and Biology in the Entrance Test for selection to the courses specified under sub-rule 3 of Rule 1 and must have passed the "second year Pre-University examination of Karnataka for selection to the medical course, during the period not exceeding two years prior to the year in which the application is made for Entrance Test. It is not in dispute that the appellant has fulfilled the eligibility criteria as laid down by Rule 3(1)(a) and 3(1)(b) for being treated as an eligible candidate for admission to the First year of the MBBS Course for the year 1993-94, meaning thereby he has passed 2nd Pre-University examination with the requisite subjects and has scored not less than 50% marks in the optional subjects and he has also appeared in concerned three subjects at the Entrance Test for such selection. The allocation of seats in the Institutions for the purpose of the Rules is governed by Rule 4 which divides the seats into free seats and payment seats. As it is not in dispute that the appellant claims admission to one of the free seats, we will have to see how the admission to free seats is governed by the relevant Rules. Rule 5 states that all free seats should be reserved for Karnataka students, The appellant is admittedly a Karnataka student. Then follows Rule 6 which lays-down the criterion to determine merit. It states that the merit shall be determined by taking marks obtained in Entrance Test and the marks obtained in optional subjects in the qualifying examination in equal proportion. "Qualifying Examination" is defined by Rule 2(ii) to mean, II year Pre-University course examination conducted by the Karnataka Pre-University Board amongst others. As the appellant is claiming admission to the first year MBBS course, for determining merit so far as he is concerned, the marks obtained by him in the Entrance Test and the optional subjects in the qualifying examination in equal proportion have to be kept in view. These subjects would be Physics, Chemistry and Biology. Rule 7 deals with the procedure for selection of candidates. As per the said procedure, Director of Technical Education in Karnataka State has to invite applications from the candidates for taking Entrance Test for the concerned course governed by the Rules. Rule 8 deals with method of conducting Entrance Test. Then follows Rule 9 which deals with preparation and publication of General merit list. As per Rule 9(1) the Entrance Test Committee constituted under sub-rule (1) of Rule 8 shall prepare the general merit list of all candidates who have appeared at the Entrance Test in accordance with Rule 6 and cause the publication of the said list. As per Rule 9(2) the appearance at the Entrance Test does not entitle the candidate to be considered for admission automatically unless the candidate satisfies all the conditions of admission requirement stipulated in the Rules. It becomes therefore obvious that General Merit list will include those candidates who have got eligibility for being considered for admissions as per the requirements of Rule 3 and their relevant merits would be determined for deciding their ranking in the general

merit list as per Rule 6. Then follows Rule 10 which deals with candidates seeking selection for "free seats". We are directly concerned with sub-rules 1 and 2 thereof. They are therefore extracted herein below:

"Rule 10. (1): A list called Selection List for "free seats" shall be prepared out of the general merit list consisting of different categories of seats in the following order having due regard to merit and preference for courses and institutions indicated by the candidate to such an extent as there are seats in a course and in an institution.

(a) Seats for general category.

(b) Seats reserved under sub-rule (1) of Rule 12.

(c) Seats reserved under sub-rule (4) of Rule 12.

Provided that no reservation shall be made to candidates belonging to clauses (ii) to (iv) of Rule 12(1) referred to in (b) above if the required number of candidates belonging to the said categories have been selected under (a) above.

(2) For selection against the seats reserved under Clauses (i) to (v) of Rule 12(1) the Committee constituted under Rule 14 will interview the candidates and prepare a rank list based on attainment in sports, N.C.C., Scouts/Guides and performance in the entrance test and the extent of handicap, as the case may be. The Committee may also interview the candidates seeking seats reserved under Clause (vi) of sub-rule (1) of Rule 12.

We may then turn to Rule 12 which deals with reservation of seats under "free seats". Rule 12(1) sub-rules (i) to (v) are relevant for the present purpose. They are extracted under:

12(i)(a) Candidates who possess atleast "B" Certificate under N.C.C.

(b) N.C.C. cadet who gets distinction as the "best cadet" at national level.

(c) Candidates who have represented the country at International Games/Sports or who have represented the State the All India Level.

(d) Candidates who as Scouts/Guides have received the President's Award.

(ii) Son or daughter of freedom fighters (political sufferers) as specified in the G.O.No. ED 73 TEC 85 dated 27th November 1985 as amended from time to time.

(iii) Son or daughter of defence personnel.

EXPLANATION:- Defence personnel for the purpose of this clause means a person in defence service who has been working at present continuously for a period of atleast twelve months in Karnataka immediately prior to the first announcement made for the year of admission and who has a minimum of five years of active service in Defence or a person from Karnataka, who at the time of entry into

Defence Service has declared as his Home Town, any place in Karnataka and who has a minimum of five years of active service anywhere in the country or abroad, including personnel belonging to civil GT Coys ASC who were civilian Class III or Class IV Government Servants.

(iv) Son or daughter of ex-servicemen.

EXPLANATION:- "Ex-Servicemen" for the purpose of this Clause includes personnel belonging to civil GT Coys ASC who were civilian Class III or Class IV Government Servants, who became permanently disabled or were killed during hostilities.

(v) Candidates who are physically Handicapped.

Similarly, Rule 12(2)(i) is also required to be noted, It is produced herein below:

"12(2)(i) The selection for admission to the reserved seats under Sub-clause (a) (c) and (d) of Clause (i) of sub-rule (1) shall be on the basis of outstanding performance in Sports/Games, NCC, Scouts/Guides; under Clause (v) of sub-rule (1) on the basis of merit and the extent of handicap; under Clause (ii) to (iv), (vi) and (vii) of sub-rule (1) on the basis of merit; under Sub-clause (b) of Clause (i) of sub-rule (1) on the basis of merit and distinction as the best cadet at the National Level."

12. In the light of the aforesaid relevant Rules the present controversy will have to be resolved. A conjoint reading of these Rules leaves no room for doubt that before a student is to be considered for selection for admission to MBBS First year course, he must obtain eligibility as required under Rule 3 viz., he must have passed II Pre-university course with Physics, Chemistry and Biology as optional subjects and must have obtained not less than 50% marks in optional subjects; in addition to that he must have appeared for three subjects viz., Physics, Chemistry and Biology in the Entrance Test for such selection within two years of his passing II PUC Examination of Karnataka State Pre-university Examination Board amongst others. So far as the appellant is concerned the first requirement is satisfied by him. He would therefore be considered as an eligible candidate for allotment of free seat to him. Such a candidate will be placed in General Merit list as per Rule 9 in the light of the merit as determined under Rule 6 keeping in view the marks obtained in Entrance Test and optional subjects in the "Qualifying examination" viz., II PUC examination of Karnataka Pre-University Examination Board, marks being kept in view in equal proportion. In that light General Merit list is prepared as per Rule 9 read with Rule 6, A further exercise has to be undertaken under Rule 10 of preparing selection-list of such eligible candidates whose names are found in General Merit list. It is not in dispute that the appellant's name is found in the General Merit list, he having got the requisite eligibility for being included in such a list. So far as the seats for General Merit category under Rule 10(1) (a) are concerned the Select list would obviously include candidates as per order of merit laid down by Rule 6. That has to be done in the first instance. It is obvious that if a meritorious eligible

candidate gets admitted in general category as per the ranking in the general merit list, there will be no occasion for him to seek admission in any of the reserved categories mentioned in Rule 10(1). But as the appellant is not claiming admission for such general-category we may not dilate on this aspect any further. Then comes category of candidates for whom seats are reserved under 12(1) as indicated by Rule 10(i). That is the first and the foremost reserved category. As the appellant is claiming admission in such reserved category we have to turn to Rule 10(2), which governs admission to such reserved category. As per that sub-Rule Committee constituted under Rule 14 has to interview the candidates and prepare a rank list out of the eligible candidates included in the general merit list. This rank list is to be based on the attainment in Sports, NCC etc., as seen above and performance in the Entrance Test and the extent of handicap, as the case may be. As Rule 10(2) deals with the question of preparing a rank-list for selection to the seats reserved under Clause (i) to (v) of Rule 12(1), the requirement of Rule 10(2) will have to be seen in the light of the reserved categories of "free seats" as contemplated by Rule 12(1)(i) to (v). Broadly five categories of candidates are covered by Clause 12(1)(i) to (v) which have a direct linkage with sub-rule 2 of Rule 10. The said five categories of candidates are as under: -

Category (1) NCC trained Candidates, Sportsmen or Scouts as indicated by Rule 12(1)(i) Clauses (a) to (d).

Category (2) Sons or daughters of freedom-fighters as mentioned in Rule 12(1)(ii):

Category (3) Candidates who are sons or daughters of defence personnel vide 12(1)(iii);

Category (4) Son or daughter of ex-servicemen vide Rule 12(1)(iv);

Category (5) Candidates who are physically handicapped vide Rule 12(1)(v).

Rule 10(2) lays-down in a comprehensive manner the criteria for preparing rank list for aforesaid reserved category of candidates as indicated by Rule 12(1) and while dealing with all these five categories in a comprehensive manner, it has been provided that the rank list will be prepared by the Committee based on attainment of such candidates in Sports, NCC, Scouts, Guides and performance in the Entrance test and the extent of handicap as the case may be. The words "as the case may be" clearly indicate that the various criteria laid-down in a comprehensive manner in sub-rule 10(2) for preparing a rank-list of reserved category of candidates will have a direct connection with the guidelines for such ranking of candidates in the concerned reserved categories as laid down by the relevant Rule 12(2) dealing with the procedure for selection of candidates falling under such categories. Rule 12(2)(i) clearly indicates that selection for admission to reserved seats under Sub-clause (a) (c) and (d) of Clause (i) of Rule 12(1) shall be on the basis of outstanding performance in Sports, Games, NCC, Scouts and Guides. That would mean that if a candidate seeks admission in the reserved-

category indicated by Rule 12(1)(i)(a) his performance in NCC would be relevant, Similarly, if a candidate seeks admission to reserved category as per Rule 12(1) (c) his outstanding performance in International Games/Sports or as representing the State at the All India Level has to be seen and if he seeks admission to the reserved category of candidates who are Scouts and Guides having received the President's Award, the selection has to be made on the basis of outstanding performance in Scouts & Guides, For determining the ranking for selection for admission to the reserved category (v) under Clause 12 (i) viz., candidates who are physically handicapped, the ranking has to be made on the basis of merit and on the extent of handicap. Similarly, for determining ranking of eligible candidates for reserved categories under Rule 12(1)(ii) to (iv) viz., being son and daughters of freedom-fighters, defence personnel, ex-servicemen, the relative ranking has to be done on the basis of merit only. While for selection in connection with reserved category under 12(1)(b) i.e., NCC cadet who gets distinction as the "best cadet" at National Level, the ranking has to be done on the basis of merit and distinction as the "best cadet" at National Level. It therefore becomes clear that for the aforesaid five cases of reservation of seats as indicated by Rule 12(1) sub-clauses (i) to (v), Rule 12(2) clearly enjoins that merit has to be kept in view while fixing ranking in connection with candidates claiming admission to categories other than the category which is reserved for sportsmen etc., and as indicated in Rule 12(1)(i)(a) (c) & (d) viz., candidates who possess atleast "B" Certificate under N.C.C. and those who represented County at National Level and International Level and candidates who gets "President Award". For such applicant only outstanding performance in the concerned Sports, Games or NCC will have to be kept in view and the relative merit has no role to play so far as this category is concerned. It of course governs ranking of candidates in the rest of reserved categories indicated by Rule 12(1)(i)(b) and 12(i) (ii)(iii)(iv) and (v) as seen above.

13. It is on the basis of aforesaid analysis of Rule 12(1) & (2) that we have to see as to what extent merit as contemplated by performance in Entrance Test as mentioned in Rule 10(2) has to be applied to the concerned reserved category of candidates for deciding their ranking in the select-list. As per Rule 10(2) rank list has to be based on (a) attainment in sports (b) attainment in NCC (c) attainment in Scouts and Guides (d) performance in Entrance Test (e) extent of handicap as the case may be.

14. Now let us see in what type of cases these different requirements of sub-rule 2 of Rule 10 could be applied in so far as (a) attainment of Sports is concerned, its linkage is with reserved category mentioned in Rule 12(1) clauses (c) i.e., candidates who have represented the Country at international Games/Sports or who have represented the State at the All India Level. So far as category (b) is concerned attainment in NCC has linkage with reserved category mentioned under Rule 12(1)(i)(a). So far as category (c) attainment under Scouts and Guides is concerned, it has linkage with reserved category mentioned in Rule 12(1)(i)(d). So far as category (d) is concerned it-has linkage with Rule 12(1)(ii)

(iii)(iv). It has also a linkage with category in Rule 12(1)(i)(b) dealing with NCC cadet who gets distinction as "best cadet" at National level wherein if there are more than one such contestants for admission in this category, merit has also to be kept in view alongwith distinction as the best cadet at National level as enjoined by Rule 12(2). So far as category (e) is concerned it has linkage with reserved category mentioned in Rule 12(2)(i)(v). This will be the result of reading 12(2)(i) with Rule 10(2) and the words "as the case may be" mentioned in Rule 10(2) will bring about this linkage of the general requirements mentioned under Rule 10(2) about preparation of rank-list with the respective reserved categories as contemplated by Rule 12(1) read with 12(2).

15. It is therefore not possible to agree with the contention of learned Counsel for respondents that the performance in the Entrance Test has to be uniformly applied to all the reserved categories contemplated by Rule 12(1) Clauses (i) to (v) as mentioned in Sub-rule 2 of Rule 10. If the construction put-forward by learned Counsel for the respondents and which appealed to the learned Single Judge is accepted then the words "as the case may be" employed by Sub-rule 2 of Rule 10 would be rendered otiose and inoperative. The said construction also in its turn would make the requirements of Rule 12 sub-rule (2) laying-down the criterion for admission to reserved seats under different categories mentioned in that sub-rule totally in operative and meaningless. While on the aforesaid construction of the relevant provisions of Rule 10(2) Rules 12(1) and 12(2) which appeals to us, all of them could be harmoniously reconciled. We, therefore, agree with the contention of the learned Counsel for the appellant, that the interpretation put-up by learned Single Judge on these relevant Rules, with respect, cannot be accepted. It must, therefore, be held that on a combined reading of aforesaid relevant Rules, once a candidate is found to be eligible for being included in the general-merit list prepared as per Rule 9 read with Rule 6, if such a candidate seeks admission on the reserved category of seats earmarked for candidates who possess atleast "B" Certificate under NCC as contemplated by Rule 12(1)(i)(a), ranking of such a student in the said reserved category of NCC quota shall be on the basis of the outstanding performance under NCC, meaning thereby on the light of the points-cum-marks obtained by him or her in NCC and not on the basis of Entrance Test results or marks. In other words, the performance in the examination on the basis of which merit is to be determined as per Rule 6 would not be a relevant consideration at that stage for deciding inter se ranking of candidates seeking admission in the reserved category for NCC quota. Once that conclusion is reached it must be held that the merit list prepared as per Annexure-H by not including the appellant who had more NCC points-cum-marks as compared to respondents 4 and 5 viz., Himanshu G.K. and Jayashree D., Kulkarni, will be totally ultra vires and contrary to the very scheme of relevant Rules holding the field. In fact appellant would have to be treated to be legally entitled to be selected for admission to Ist M.B.B.S., course under N.C.C. quota for the year 1993-94 on one of the eleven seats so reserved for that year, and any of the two respondents 4 and 5 would be liable to make room

for him. The select-list Annexure-H will have to be held to be defective and inoperative to that extent. As a direct consequence of this conclusion it must also be held that respondent-authorities were justified in preparing the select list of candidates for admission to Ist year B.E., degree course under NCC quota as per Annexure-J as that list is found to be based on correct interpretation of the relevant Rules.

16. Mr.Farooq, learned Government Advocate for the respondents submitted that merit reflected by Entrance Test is not foreign to the scope of ranking of candidates for the purpose of admission to academic courses. In support of this said contention, he invited our attention to the Decision of Punjab & Haryana High Court in Miss Daljeet Kaur Vs. State of Punjab and others, In that case, Punjab and Haryana High Court was concerned with the question of reservation for admission to medical college for Sportsmen, considering the policy of the Government as contained in notification dated 21.4.1987, it was observed that academic excellence was not thrown to the winds. It becomes at once clear that the policy with which the Punjab & Haryana High Court was concerned sought to give weightage of certain percentage of marks to sportsmen of different categories. Grade-A Sportsmen of International standing was to be given 8% more marks as compared to the marks secured in the written test, Grade-B Sportsmen of National standing was to be given 5% more marks, Grade-C Sportsmen of State's standing was to be given 3% and Grade-D; Sportsmen of District standing was to be given 2% more marks. It is, therefore, clear that policy before Punjab & Haryana High Court did not dispense with criterion of merit as obtained in the light of the marks secured in the written-test, but sought to give additional weightage of more marks to the concerned sportsmen. It is in this light that it was observed that academic excellence was not given a go-by even for reserved category. We fail to appreciate as to how this Decision can be of any avail to Mr.Farooq, the learned Government Advocate. In the present case, we are concerned with provisions of Rule 12(1) read with Rule 12(2) & 10(2) of the Rules. On the correct interpretation of these relevant Rules, we have reached a conclusion that for reserved category as contemplated by Rule 12(1)(i)(a) Entrance Test marks are not relevant. There being entirely a different policy before the Punjab & Haryana High Court, the aforesaid Decision of Punjab and Haryana High Court cannot help the respondents.

We were then taken to Decision in Registrar of Andhra University, Visakhapatnam and Others Vs. N. Venkateswarlu, A Division Bench of the Andhra Pradesh High Court had to consider Rule 5 of Andhra Pradesh Rules of Admission to B.E./ B.Tech. Courses. It dealt with category of Orthopaedically handicapped candidates. But Rule itself provided that the selection from eligible candidates of that category was to be only in the order of merit. Consequently, the A.P. High Court held that criterion of merit was not ruled out while considering eligibility of candidate falling under such reserved category. That Decision is also based on entirely different wordings of the Rules. Therefore, that Decision is also of no avail for Sri Farooq, learned Government Advocate for respondents.

In the result, it must be held that the selection list Annexure-H in so far as it tried to apply the criteria of merit on the basis of the result of Entrance Test for reserved category of NCC quota candidates is contrary to the scheme of the relevant Rules as discussed by us hereinabove.

17. Point No. 1 therefore has to be answered in the affirmative in favour of appellant and against the respondents.

18. POINT No. 2:- This brings us to the question as to what consequential relief can be given to the appellant. Now, it has to be kept in view that the selection was held for admission to first-year MBBS course for the year 1993-94. The course has already started and concerned selected candidates have paid-up their requisite fees and have already resumed their studies. Respondents 4 and 5 are studying at Manipal College where they are admitted pursuant to the list Annexure-H. Even if any of them is found to have been wrongly admitted in place of the appellant by the authorities he or she is not at fault. Once they were so admitted and had resumed their studies they must have by now undertaken practical as well as theoretical training for quite sometime.

19. Under these circumstances it would be too harsh for them to be told at such a late stage when the academic year has started and is in the midstream that admission of one of them should be cancelled and the appellant should be admitted vice respondents 4 or 5. It is also pertinent to note that the appellant had not joined them at the first stage before learned Single Judge in the Writ Petition. They are so joined only in this Writ Appeal. It is also pertinent to note that the appellant was not granted any interim relief directing respondents to keep one seat vacant in any of the Colleges in Karnataka State which would have abided by the result of the Writ Petition, Considering all these circumstances therefore, in our view, interests of Justice do not require voiding the admission given to respondents 4 or 5 at this late stage. We therefore cannot grant the request of learned Counsel for the appellant, that the appellant may be admitted to the seat which can be asked to be vacated by respondent 4 or 5. In fairness to him, he also stated that he is not keen for such a relief at this late stage. Then remains the question as to what other relief can be granted to the appellant.

20. Placing reliance on the Decision of Supreme Court in the case of SANDEEP BARAR AND ANR v. STATE OF PUNJAB AND ORS. SCC 1990 (2) SC 187, it was submitted by the learned Counsel for the appellant, that the respondents could be asked to make efforts to create more additional seat by taking permission from MEDICAL COUNCIL OF INDIA. Now, it must be kept in view that admissions to First Year MBBS Course for 1993-94 are strictly governed by the Decision of the Constitutional Bench of Supreme Court in the case of UNNI KRISHNAN, J.P. AND OTHERS ETC. ETC. - Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., We are told by learned Counsel for the respondents that all free seats which are to be filled in as per aforesaid decision of Supreme Court have already been filled-in by the State of Karnataka. Under these circumstances all that can be said is that if additional seat can be created by the

State of Karnataka in the First Year MBBS Course in any of the Colleges of the State after obtaining necessary clearance and permission from the MEDICAL COUNCIL OF INDIA, then such A newly created seat may be allotted to the appellant. This is required to be done as the appellant has. to suffer for no fault of his, and he is found to have been wrongly denied admission in the First Year MBBS Course in the reserved category of NCC quota for the year 1993-94 and as that result has followed on account of the decision of respondent-authorities which is found to be unsustainable. Interest of justice will therefore require that the respondents should make all efforts to redress the wrong done by them to the appellant and therefore they have to apply to the MEDICAL COUNCIL OF INDIA to permit the respondent-State as a special case to create one more free seat in the First Year MBBS course in any of the Medical Colleges in the State and once that seat is created, to allot it to the appellant. The respondent may also try to find-out whether by some good chance any vacant free-seat is available in any of the Medical Colleges in the State in First-year MBBS Course. If it is available, it may be allotted to the appellant. In that case it will not be necessary to ask for permission of MEDICAL COUNCIL OF INDIA for creation of an additional free-seat. The said exercise should be completed by respondent-authority within 3 weeks of the receipt of this order at their end. This time schedule will have to be rigidly adhered to in view of the fact that the First year MBBS course has already started in all the Colleges and before it is too late for the appellant to get admitted to the said course, such admission if possible should be given to the appellant on the "free seat" if available or newly created seat as the case may be.

21. If this exercise proves abortive for the appellant then in the alternative the appellant's case should be considered as a special case for the next year's course of First MBBS commencing in the State of Karnataka for the year 1994-95 and from the seats available for that course next year one "free seat" out of reserved NCC quota sub- shall be reserved for the appellant and only the remaining seats for the "reserved category" of NCC quota may be allotted to other eligible candidates claiming admissions for the next year's MBBS First year course in this "reserved category". This course which was to be adopted in the alternative by respondent-authorities will ensure to the appellant that atleast next year he will be guaranteed admission to one of the "free seats" to I Year MBBS Course from the NCC Quota which was wrongly denied to him this year/ This of course will entail loss of one precious year of study for him but that cannot be helped as he failed to get any interim relief in his Writ Petition ordering a "free seat" to be reserved for him in any of the Medical Colleges in Karnataka State for the First Year MBBS Course this year.

22. We direct the respondents as aforesaid. The alternative direction is based on the Supreme Court Decision in the case of Narendra Bahadur Singh and Others Vs. Gorakhpur University and Another, Point No. 2 is answered accordingly.

23. In the result, this Writ Appeal is allowed. The Judgment and Order rendered by the learned single Judge are set aside. Writ Petition filed by the appellant is

allowed by declaring that the appellant was wrongly denied admission for the First Year MBBS Course on a "free seat" in the NCC Quota specified in Rule 12(1)(i)(a) of the Rules, and that the select list Annexure-H was erroneous to that extent. He will be entitled to appropriate consequential relief for admission on a "free seat" in the aforesaid quota as indicated in Rule 12(1)(i)(a) for this year or for the next year as detailed hereinabove.

24. There will be no order as to costs.