

(2013) 07 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16697 of 2013

Satheesh Kumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Kerala Medical Officers Admission to Post Graduate Courses under Service Quota Act, 2008 — Section 5(4)

Citation : (2013) 3 ILR (Ker) 568 : (2013) 3 KHC 271 : (2013) 3 KLJ 631 : (2013) 3 KLT 538

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam, P.A. Salim, V.A. Muhammed, T.R. Ravi, P.S. Murali, M.R. Sreelatha, K. Sasikumar, R. Rohith, M. Sajjad, S. Mohammed Al Rafi, Tony Geroje Kannanthanam and Jiji Thomas, for the Appellant; N.N. Sugunapalan, P.G. Parameswara Panicker, S. Krishnamoorthy, C.G.C., P. Parameswaran Nair, Asst. Solicitor General of India, Roshan D. Alexander, Government Pleader, Alexander Thomas, P. Leelakrishnan, M. Sasindran, K.R. Vinod, Shyam Krishnan, Sneha Rose, P. Sankarankutty Nair, K. Sandesh Raja, Vidya Menon, S. Sujin, R. Suraj Kumar, T.B. Hood, M. Isha and K. Sanil Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

V. Chitambaresh, J.—All the Writ Petitions are connected. I shall refer to the parties and exhibits in W.P. (C) No. 16697 of 2013 for the sake of convenience. The qualifying criteria for eligibility for admission to Post Graduate Medical Courses in the year 2013 as set out in Ext. P4 prospectus issued by the Government of Kerala is as follows:-

IV. Eligibility for admission

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) Qualifying Criteria: All candidates including Service Quota Candidates shall have to qualify the NEET PG 2012 and admission 2013. In order to be eligible for admission in any Postgraduate course in 2013, it shall be necessary for a candidate to obtain percentile of 50 and above in NEET PG 2012. However in respect of candidates belonging to Scheduled Caste (SC), Scheduled Tribes (ST), Socially and Educationally Backward Classes (SEBC) - the minimum percentile shall be 40. In respect of candidates with locomotor disability of lower limbs, the minimum percentile shall be 45 (Refer Clause VI(b)(xi))

Provided when sufficient number of candidates in the respective categories failed to secure minimum marks as prescribed in NEET held for any academic year for admission to P.G. courses, the Central Government in consultation with MCI may at its discretion lower the minimum marks required for admission to PG courses for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

The decision to request to lower the minimum marks for any category will be vested with Government of Kerala with regard to State Quota seats for 2013.

(emphasis supplied)

This is in tune with the relevant clauses of Ext. P1 Information Bulletin for National Eligibility cum Entrance Test (NEET) and Ext. P3 amended Regulations of the Medical Council of India.

2. Thus there are three categories, viz., (1) General (2) Scheduled Caste/Scheduled Tribes/Socially and Educationally Backward Classes and (3) Physically Disabled for whom the passing criteria has been fixed at 50th percentile, 40th percentile and 45th percentile respectively. The term "percentile" has also been explained in Ext. P1 Information Bulletin of NEET as follows:-

A percentile rank is the percentage of candidates that fall below a given score. For example, a 75 percentile would imply that you have scored higher than 75% of the total NEET-PG test-takers.

The results of the Post Graduate Medical Courses, 2013 were published on 17.5.2013 when it was detected that sufficient number of candidates in category (ii) of SC/ST/SEBC were not available to fill up the seats in the quota allotted to them. It appears that the Chairman of the National Commission for Scheduled Caste/Scheduled Tribes addressed a letter to the fifth respondent which evoked Ext. P6 communication in reply. The impact of Ext. P6 communication is to relax the bench mark for all the three categories enumerated as Sl. Nos. (1), (2) and (3) from the percentile 50th, 40th and 45th to 50%, 40% and 45% respectively. The implementation of Ext. P6 communication after the publication of the results is challenged in W.P. (C) Nos. 16697, 15361, 15735, 17549, 17967 and 18264 of 2013. W.P. (C) No. 17584 of 2013 has been filed seeking to implement Ext. P6 communication and prune the results accordingly lowering the bench marks as

directed. The writ petitioners are in-service candidates who stake claim for admission in the State in-service quota seats for the year 2013 and the challenge is confined to that stream.

3. The proviso to Clause IV(d) of Ext. P4 Prospectus only enables the Central Government in consultation with the Medical Council of India to lower the minimum marks required for admission to PG courses for candidates belonging to "respective categories". The respective categories are indicated as (1) General (2) SC/ST/SEBC and (3) PD in the earlier part of Clause IV(d) of Ext. P4 prospectus and do not admit of any ambiguity. The power to lower the minimum marks in the respective categories can be exercised only when sufficient number of candidates in the "respective categories" fail to secure the minimum marks as prescribed in the NEET held for admission to PG courses. (The NEET and the admission procedures conducted this year has been saved by the judgment dated 18.7.2013 in T.C. (C) No. 98/2012 and connected cases by the Supreme Court.)

4. The letter addressed by the Chairman of the National Commission for Scheduled Caste/Scheduled Tribes which triggered Ext. P6 communication shows only the dearth of candidates in the category of SC/ST/SEBC and not in the categories of General or Physically Disabled. There is therefore no warrant to lower the bench mark with regard to the General Category or Physically Disabled category as is now attempted to be done in Ext. P6 communication. Such lowering of bench marks would affect the in-service candidates to the maximum since their eligibility is also dependent on the seniority as per Section 5(4) of the Kerala Medical Officers Admission to Post Graduate Courses under Service Quota Act, 2008. More number of candidates would fall under the zone of consideration by the lowering of bench marks and many with far lower percentage of marks and higher seniority in service might sneak into the in-service quota.

5. Ext. P6 communication is also inequitable in so far as it adopts a completely different yard-stick and that too after the results are published for admission to the Post Graduate Medical Courses. Nothing disabled the fifth respondent from invoking the power under the proviso to Clause IV(d) of Ext. P4 Prospectus atleast before the publication of results and after the identification of eligible candidates. The earlier criterion of "percentile" applied in Ext. P4 Prospectus, Ext. P3 Regulations and Ext. P1 Information Bulletin is given a complete go-by and instead "percentage" is sought to be interpolated. The term "percentile" is an indicator of comparative performance of all the test takers while the term "percentage" in the context denotes the rate of marks secured by each of the candidates. Such a different yard-stick and that too after the publication of the results on 17.5.2013 by Ext. P6 communication on 31.5.2013 is wholly arbitrary.

6. The petitioner in W.P. (C) No. 16697 of 2013 has impleaded additional respondents 7 to 9 as those representing the candidates staking claim in the in-service quota and paper publication was also effected. Suffice it to say that Ext. P6 communication shall not be enforced in so far as the admission of candidates

in the State in-service quota is concerned for the General Category and Physically Disabled Category. I should also take note of the fact that there has been no request from the Government of Kerala to lower the minimum marks for General Category or the Physically Disabled Category with regard to the State quota seats. There is however no serious challenge to the amendment of prospectus by the Government of Kerala increasing the upper age limit for in-service candidates in the General Category. Now that the rank list in so far as the in-service candidates are concerned deserves to be recast in accordance with the directions contained in this judgment. It is only proper that petitioners 1 and 3 in W.P. (C) No. 17584/2013 are documents as required under Clause 10 of Ext. P4 Prospectus. This is because they have a genuine grievance that they did not produce the documents earlier on the firm belief that they would secure admission by virtue of Ext. P6 Communication. It is declared that Ext. P6 Communication shall not be enforced as regards the admission of candidates in the General Category and Physically Disabled Category for the in-service quota of the State of Kerala. The Writ Petitions are disposed of. No costs.