

**(1999) 11 MAD CK 0071**  
**In the Madras High Court**  
**Case No : Writ Petition No. 15131 of 1999**

S.Gayathri Devi

APPELLANT

Vs

State of Tamil Nadu and The Selection Committee

RESPONDENT

**Date of Decision :** 04-11-1999

**Acts Referred:**

Constitution of India, 1950 — Article 15(1)

**Citation :** (1999) 11 MAD CK 0071

**Hon'ble Judges :** P.Shanmugam, J

**Bench :** Single Bench

**Advocate :** V.Subramani, for the Appellant; M.Rathinam, G.A.(Edn.) (R-1) Mr. D. Murugesan, G.P.R-2, for the Respondent

**Final Decision :** Allowed

## Judgement

P.Shanmugam, J.—Petitioner is a candidate for admission to the M.B.B.S. Course for the year 1999-2000. In this writ petition, she seeks for a direction to the respondents to consider her for selection to the M.B.B.S. Course for the year 1999-2000 under the special reservation for the category of "Eminent Sportsman" or in the alternative, to make a provision or special reservation for N.C.C. Cadets as per the Government Orders. In so far as the first point is concerned, though the petitioner has furnished 11 certificates, all of them relate to her participation at the District level. Her contention that her participation in the cultural activities in the international events should be taken in to account cannot be accepted since the seats were reserved for eminent sportsmen and not for participating in the cultural programmes. It is true that the petitioner has furnished a list of 12 certificates of her participation in a variety of programmes like oratorical competition, dance competition, painting competition, essay competition, etc. However, in the light of the preference shown to the national level candidates in the prospectus, the petitioner could not be considered under the category of eminent sportsmen.

2. The case of the petitioner as specifically pleaded in the writ petition is that the

non-provision of reservation for the best Cadet in the N.C.C. for admission to the M.B.B.S. Course, unlike in the Engineering Course wherein two seats have been reserved, amounts to discrimination. It is further pleaded that there is not valid reason as to why such a reservation should be denied to N.C.C. Cadets for admission to the M.B.B.S. Course, especially when entrance examination is held for admission to both the courses. According to the petitioner, outstanding N.C.C. Cadets are eligible to be selected for admission.

3. Learned Additional Government Pleader, representing the Government, submitted that it is the policy decision of the Government to provide reservation under Article 15(1) of the Constitution of India. There is no right of reservation since it is only a concession. Secondly, it is submitted that the Government has taken a policy decision not to provide seats for N.C.C. Cadets in the M.B.B.S. Course.

4. Learned counsel appearing on behalf of the second respondent Selection Committee submitted that since there is no provision for reservation to N.C.C. Cadets, petitioner was not considered for selection.

5. Coming to the legal points raised by the counsel, it is seen that the Government has passed an order in G.O.Ms.No.354, Higher Education (D1) Department dated 8.7.97 reserving seats in Under Graduate and Post Graduate Courses for N.C.C. candidates. That order reads as follows:

Order:- The Deputy Director General NCC, in the letter read above, has stated that in order to have uniformity in the incentives to be given to the NCC Cadets all over the country, and based on the discussions at Joint State Representatives and Deputy Directors General NCC conference, New Delhi, the Deputy Director General NCC had requested guaranteed admission for minimum 2 NCC Cadets with proven merit and performance in all Educational Institutions.

2. The Government after careful consideration, reserve one seat for NCC Cadet of outstanding merit in any Under Graduate Course in each college and one seat in any Post Graduate Course and Polytechnic where NCC scheme is available.

3. The Deputy Director General NCC, should formulate detailed guidelines for screening the eligible cadets for admission.

(By Order of the Governor)

S.P.Elangovan Secretary to Government

To The Deputy Director General National Cadet Corps, Chennai-9.

The Director of Collegiate Education, Chennai-6.

The Director of Technical Education, Chennai-25.

Copy to Higher Education (G) and (J) section for necessary action.

6. Thus, the Government has taken a policy decision at the request of the Deputy

Director General, NCC to provide incentive to the NCC Cadets all over the country that there should be a guaranteed admission for a minimum of two NCC cadets with proven merit and performance in all educational institutions. This request was accepted by the Government after careful consideration, and it was decided to reserve one seat for NCC cadet in any Under Graduate Course in each college.

7. It is admitted that there is an NCC Wing in the Medical Colleges. It is also admitted that the Government has provided a special reservation for NCC in the Engineering Courses. Clause (xi) of the Prospectus for Engineering Admissions, 1999 reads as follows:

Candidates seeking admission under the reserved quota for the best cadets in NCC [Item No. 18] should obtain relevant certificates from the NCC Directorate. Only candidates who have earned A, B, or C certificates and any other special achievement under NCC shall alone shall claim selection under this category. Copies of relevant certificates shall be enclosed as proof. Selection will be made based on his/her achievements in NCC, such as medals and awards received, participation in Republic Day parade etc."

Insofar as the petitioner is concerned, she has obtained the following certificates:

- (1) Award of Tamil Nadu Scholarship for outstanding Cadets for the year 1996-97.
- (2) Director General NCC Scholarship for the year 1997-98 awarded by the Commanding Officer (TN) Girls Batallion, NCC.
- (3) "A" Certificate issued by the Government of India.
- (4) A certificate certifying that the petitioner has successfully completed the All India Trekking Expedition conducted by the National Cadet Corps.

8. Thus, the petitioner satisfies the requirement that she has outstanding merit as an NCC Cadet (Sergeant). In the light of the Government Order in G.O.Ms.No.354 dated 8.7.97. the respondents ought to have provided a seat for the NCC Cadets in the M.B.B.S. Course. The omission in the prospectus or their policy G.O. cannot nullify the earlier order of the Government of the year 1997. Further, in the Engineering Colleges, a separate provision is made for the NCC Cadets and when both the Engineering as well as Medical Colleges are having NCC Battalions, the stand of the respondents to deny the seat for NCC Cadet is arbitrary and unreasonable. The Government, having withstood by the stand providing incentive to the best cadets of NCC in each college wherever NCC is available, have provided only two seats for the whole of the Engineering courses. Similarly, the Government should have provided the seats for the Medical Course as well.

9. Even though this is a policy decision of the Government to reserve a seat under various categories, it cannot be stated that there is no policy for the Government to provide reservation, and the petitioner seeks only to implement the earlier decision of the Government to provide a reservation for NCC Cadets in

the Medical Course. It is in the fitness of things that students who devote their valuable time in training and equipping themselves on the defence side of the country should be encouraged. Denial of such a reservation is discriminatory since such a reservation is provided in other professional courses like Engineering.

10. In *M.N. Chaitaniya Vs. N.T.R. University of Health Sciences, A.P., at Vijayawada and others*, ), a learned Judge of the Andhra Pradesh High Court has taken the view that in the light of the Government Order providing a particular percentage of seats for NCC Cadets, it should be treated that there are two seats available for NCC Cadets. In that case, even though the prospectus provided only for one seat under the NCC quota in Medical Courses, the High Court, in the light of the general Order of the Government that 0.25% of the seats are to be reserved for NCC Cadets, directed the allotment of one more seat. Here also, it could be seen that even though the prospectus for the year 1999-2000 does not make a separate provision for NCC Cadets, in the light of the Government Order referred to above, it should be deemed that a reservation has been made for the NCC Cadets, and accordingly, the petitioner should be accompanied.

11. In almost similar circumstances, the Punjab & Haryana High Court, in *Dr. Ashutosh Kaushal Vs. State of Punjab and others*, , held that the policy of the Government to provide seats cannot be restricted or abridged to exclude the particular set of candidates. In that case, the Government took a policy decision to reserve 2% of seats in the technical/medical institutions in the State. However, the respondents in that case contended that the said reservation is not available to the sportsmen in the M.D./M.S. Courses. While dealing with this case, the Punjab & Haryana High Court held that the intention of the State Government is to encourage the sports talent in the State by providing reservation in their favour. No canon of interpretation can be invoked by the authorities to abridge or restrict the applicability of instructions in order to exclude a particular set of candidates who are otherwise eligible and qualify for admission under the reservation intended to be provided by the State Government. Any interpretation in support of the view taken by the respondent would defeat the very purpose and objective sought to be achieved by the State Government at the time of making provision for such reservation, i.e. to encourage sports talent. Applying this ratio, it is seen that it is the Government's intention as set out in the Government Order that incentive is to be given to N.C.C. Cadets and that was accepted by the Government after careful consideration. The Government decided to reserve one seat for N.C.C. Cadet in any Undergraduate Course in each college. This clear intention and object of the Government cannot be defeated by saying that the same is not found in the prospectus specifically. Even assuming that there is a Government Order in support of the prospectus, inasmuch as there was no exclusion or suppression of the Government Order in G.O.Ms.No.354, Higher Education (D1) Department dated 8.7.97, the said Government Order has to be enforced and given effect to. In the above circumstances and in the circumstances that the petitioner has

proved to be a NCC Cadet (Sergeant) of outstanding merit, she is entitled to be admitted in the First Year M.B.B.S. Course (1999-2000) in the reserved category as per the Government Order in G.O. Ms. No.354 dated 8.7.97. The writ petition is accordingly allowed and the respondents are directed to provide the petitioner a seat in the First year M.B.B.S. Course (1999-2000) expeditiously. No costs. Consequently, W.M.P.No.21871 of 1999 is closed.