
(1970) 07 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 105 of 1969

Shamim Akhtar and another	Vs	APPELLANT
State of Jammu and Kashmir and others		RESPONDENT

Date of Decision : 15-07-1970

Acts Referred:

Constitution of India, 1950 — Article 32(2A)
Constitution of Jammu and Kashmir, 1956 — Article 103

Citation : AIR 1971 J&K 50

Hon'ble Judges : Syed Murtaza Fazl Ali, C.J; Raja Jaswant Singh, J

Bench : Division Bench

Advocate : O.N. Tikku, for the Appellant; A.N. Raina, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—The petitioners who passed their Pre-Medical (1st Year T.D.C.) from the Jammu and Kashmir University in the year

1969 obtaining 304 and 315 marks respectively and who were applicants for admission to the first year of the Medical degree course of the

Medical College, Srinagar, for the session 1969-70, but were not selected have moved this court under Article 32(2-A) of the Constitution of

India and Section 103 of the Constitution of Jammu and Kashmir challenging the direction (to the Selection Committees) contained in Clause (IV)

of the Notification No. 352-GD of 1969 dated February 12, 1969 to exclude from consideration the marks, if any, obtained by the candidates in

Practical Examinations in Science subjects in determining their inter se academic merit for admission to the various training institutions and colleges

and the selection made including that of respondents Nos. 4 to 20 as arbitrary, unreasonable, discriminatory, against the principles of fair play and

justice and violative of Articles 14 and 15 of the Constitution. It is also averred by the petitioners that the aforesaid direction was unfair and mala

fide as it was meant to over-look the merit of deserving candidates and push up undeserving candidates on the basis of nepotism, that the said

direction was not founded on any reasonable basis and had no connection with the object sought to be achieved namely the suitability of the

candidates for admission to the professional or technical institutions, that the practicals in Chemistry and Biology are particularly of importance for

the candidates who have to study the M. B.B.S. course and the exclusion of big chunk of marks obtained by the candidates in the practical

examinations in science subjects in the qualifying examination is unreasonable and arbitrary, that the selection made on the aforesaid basis is

farcical, illegal and repugnant to the Constitution as it enabled the Selection Committee to plump the marks in such a way so as to convert merit

into demerit and demerit into merit and that the Government in giving the direction traversed beyond the rules laid down by the Supreme Court in

R. Chitralekha and Another Vs. State of Mysore and Others, and the State High Court, in Subash Mohan Jalali v. Principal, Medical College, AIR

1967 J&K. 106 (FB). It has been further contended by the petitioners that the aforesaid direction issued by the Government to the Selection

Committee set up for the purpose of selecting candidates for the M. B.B.S. Course is also violative of the letter and spirit of the Regulations

adopted by the Indian Medical Council prescribing the minimum qualifications for admission to the Medical course.

2. In the affidavit filed on behalf of the State in reply to the petition, Shri H.R. Sharma, Secretary to Government General Department, while

admitting that the petitioners fulfilled the basic requirements of age and qualification for admission to the aforesaid course has inter alia averred that

neither the impugned clause of the Notification nor the selection made on the basis of the recommendation of the Selection Committees appointed

by the Government was arbitrary, discriminatory, unfair, unreasonable or violative of Articles 14 and 15 of the Constitution of India, that it was

wrong to say that respondents Nos. 4 to 20 had obtained lesser marks than both the petitioners, that all the said respondents had secured higher

percentage of marks in the theory papers of the Science subjects, that the criterion laid down by the Government in order No. 352 of 1969 dated

February 12, 1969 for selection of candidates was neither meant for any mala fide or oblique purpose as alleged nor was it against the principles

laid down in the decisions alluded to by the petitioners but was objective, just, fair, reasonable and uniform and was completely adhered to in all

cases and the candidates who secured the highest marks amongst the interviewees were selected, that there being complaints from a large number

of persons that the marking in the practicals of the qualifying examination was not fair and that the marks were plumped in favour of influential

examinees in order to give them undue advantage over deserving and uninfluential examinees, the Government in order to make the selection

unquestionable and above suspicion decided to exclude the marks obtained by the candidates in the practical examinations by the interviewees,

that the regulations adopted by the Indian Medical Council are neither sanctioned by the Central Government nor have they any statutory force:

that there has been no departure from the regulations even though they had no binding or statutory force, that so far as the question of eligibility for

admission to the medical college was concerned 45 % of the aggregate marks including the marks in the theory and practicals obtained in the

qualifying examinations were taken into consideration, and that the candidates had been selected on the basis of the merit list prepared by the

Selection Committees.

3. The petition came up for hearing in the first instance before Jalalud-din, J. who by his order dated May 6, 1969, referred it to this bench as in his opinion it involved important points of law and the Constitution.

4. We have heard the learned counsel for the parties who have supported the contentions raised by their clients in the petition and the reply affidavit respectively.

5. For a proper appreciation of the points raised by the parties it is necessary to reproduce notification No. 352-GD of 1969 dated February 12, 1969 in so far as it is relevant for the purposes of this case.

In supersession of all previous orders on the subject, sanction is hereby accorded to the setting up of selection committees for the year 1969-70

(as detailed in Annexure A) for selection of candidates for various courses of trainings within and outside the State:

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(III) The functions of the selection committees will be as under:-

(a) to scrutinize in accordance with the conditions governing admissions the applications of candidates seeking admission;

(b) to interview the candidates at Srinagar/Jammu on dates to be specified by a notification by the Chairman/ Convener of the Concerned

Committee;

(c) to judge in the course of the interview the physical fitness, personality, general knowledge and aptitude of candidates for a particular profession/

course.

(iv) The interview will carry 50 marks, equal marks to be given for (i) physical fitness (ii) personality, fiii) general knowledge, and fiv) aptitude. In

addition there will be 100 marks for academic merit which shall be allotted to each candidate in accordance with the percentage of marks secured

by him in the basic qualifying examination. Excluding the marks, if any. obtained in practical examinations in Science subjects. For purpose of

admission to various courses, the marks obtained by a candidate in the basic qualifying examination alone will be taken into consideration in the

matter of determining his academic merit even if he has passed a higher examination.

NOTE:

For the purpose of eligibility of a candidate for a particular course, the overall percentage of marks secured by him would be taken into account. It

is only for the determination of inter se academic merit that the marks, if any, obtained by him in science practicals examination will be excluded

from consideration.

The above Notification as would be apparent from its plain reading does not confer uncontrolled powers on the selection committees nor does it

aim at treating any person of a particular religion or caste unfavourably when compared with persons of other religions or castes merely on the

ground that he belongs to a particular religion or caste. Moreover. the impugned clause is of universal application meant for all candidates seeking

admission to various colleges and institutions and applies equally to all candidates similarly situate. It cannot therefore, be held that the Notification

in any manner violates the guarantees enshrined in Articles 14, 15 and 29(2) of the Constitution.

6. Now let us see whether the principles or guidelines laid down in the rulings referred to by the learned counsel for the petitioners have been

violated. The decision in *R. Chitralkha and Another Vs. State of Mysore and Others*, is not helpful to the petitioners. The following observations

made in that case by their Lordships of the Supreme Court are apposite:-

Any order passed by the Government prescribing interviews for selecting from candidates possessing minimum academic qualifications for

admission to colleges and definite criteria in the matter of giving marks at the interview and appointing competent men to make the selection on that

basis does not in any way contravene Article 14 of the Constitution.

At another place their Lordships observed:

so long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, the court cannot have any say

in the matter.

The decision in AIR 1967 J&K. 106 (FB) was rendered on the particular facts of that case and is also of no assistance to the petitioners. In that

case the admission of some of the candidates to the Medical College at Srinagar was quashed on the ground that the Selection Committee selected

candidates purely on the basis of the marks allotted to them at the interview without giving any credit to the academic merit of the candidates. The

following observations made in that case by Hon'ble S. M. F. Ali (as his Lordship then was) while speaking for the court are worth quoting.

Reading the decision of the Supreme Court as a whole, in our opinion following propositions emerge therefrom:

(1) The selection by interview is a permissible method provided the persons constituting the selection committee are highly qualified persons

inspired by a sense of objectivity and devotion to duty.

(2) The order of the Government must lay down relevant criteria of a definite nature in allotting marks at the interview.

(3) Where the academic merit of a candidate is kept into consideration by adding the marks allotted at the interview to the aggregate secured by

the candidates at the last qualifying examination, the criteria so laid down is both definite and objective and minimises the possibility of plumping

marks at the interview to certain candidates so as to convert merit into demerit and demerit into merit. Although their Lordships have not said so

specifically yet reading the observations of their Lordships in the light of the facts of the case before them, this is what their Lordships clearly

intended to lay down. We might also state here that their Lordships were fully alive to the special facts of the case before them where the marks

allotted for the interview by the government were fixed at a particular minimum which was not to exceed a certain percentage (25 percent in that

case) of the total aggregate of the optional subjects in the last qualifying examination. Their Lordships while giving facts of that case have also

mentioned that according to the government order the marks allotted at the interview were to be added to the aggregate secured by the candidates

at the last qualifying examination and selection was to be made on the basis of the total marks secured by the candidates. It seems to us that the

selection of the candidates to technical institutions such as medical college in the present case in order to be fair, scientific and objective may be

made in any of the following ways:-

(a) Either the candidates may be selected purely on the basis of aggregate secured by them at the last qualifying examination with or without any

interview. This mode of selection may, however, be subject to reservation for certain class of citizens as laid down by Article 29, Sub-clause (2) of

the Constitution of India but should not exceed permissible limits of these provisions as held by us in AIR 1966 J&K 101.

(b) Or by holding an interview by a committee consisting of highly qualified persons and adding the marks allotted at the interview to the aggregate

secured by the candidates in the last qualifying examination and selecting them in order of merit thus disclosed.

(c) Or by holding interview of only those candidates by a committee consisting of highly qualified persons, who have secured a particular

percentage of marks in the last qualifying examination and allotting marks at the interview for various counts where the academic merit of the

candidates as revealed by their performances in the last qualifying examination is given due weight and consideration. If any of these modes of

selection is resorted to, the courts of law cannot find fault with the selection made in accordance with such a mode.

Thus it is only where academic merit is completely ignored by the State in the matter of selection of candidates for admission to an educational

institution that the court is entitled to interfere. The present is not, however, a case of that nature. A bare perusal of the impugned clause of the Notification would show that the government not only laid down a clear policy and prescribed a definite criteria in the matter of giving marks reserved for the interview but also directed that 100 marks for academic merit be allotted to each candidate in accordance with the percentage of marks secured by him in the basic qualifying examination excluding the marks, if any, obtained by him in the practical examinations in science subjects. In the note appended to the clause it has been made clear that the overall percentage of marks secured by a candidate would be taken into account for the purpose of determining his eligibility for a particular course and it is only for assessment of inter se academic merit that the marks obtained by him in Science practical examinations would not be taken into consideration. This directive (regarding exclusion from consideration of the marks obtained in Science practicals) as appears from the counter-affidavit filed on behalf of the government was not given arbitrarily for any ulterior object but was intended to safeguard the interests of all the concerned candidates as there were a large number of complaints that the markings in the practical examinations in science subjects of the basic qualifying examinations were not fair and marks were plumped in favour of influential examinees to the disadvantage of uninfluential but more deserving and meritorious candidates. It is also not disputed that the Selection Committee constituted by the Government for selecting candidates for admission to the Medical College consisted of persons inspired by a sense of objectivity and devotion to duty. Thus the academic merit of the candidates as revealed by their performance in the last qualifying examination having been given due weight and the selection in the instant case having been made substantially in accordance with the third mode laid down in Subash Mohan Jalali's case, AIR 1967 J&K. 106 (FB) referred to above, the impugned clause of the above notification cannot be struck down as laying down unscientific, unreasonable, arbitrary, unfair or discriminatory criteria.

7. The regulations framed by the Indian Medical Council which do not appear to have a binding force have also not been violated inasmuch as for

the purpose of determination of eligibility of candidates for admission to the Medical College 45 % of the aggregate marks including the marks in

theory and practicals obtained by them were duly taken into consideration.

8. For the foregoing reasons the petition fails and is hereby dismissed but without any order as to costs.

S.M. Fazl Ali, C.J.

9. I agree.