
(2014) 09 KL CK 0140

In the High Court Of Kerala

Case No : WA. No. 1249 of 2014 and WP(C) 19207/2014

Sivanandan V.K.

APPELLANT

Vs

The Administrator Union Territory of Lakshadweep

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0140

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : V.P. Seemandini and B. Unnikrishna Kaimal, Advocate for the Appellant; S. Radhakrishnan, SC, Advocate P.I. Davis, Senior Government Pleader, Adv., Titus Mani Vettom, SC, Medical Council, R. Sreeraj and M.P. Asok Kumar, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—This appeal is filed by the petitioners in the writ petition challenging the judgment of the learned Single Judge in W.P. (C) No. 19207/2014.

2. The writ petition is filed challenging Ext. P9 circular dated 23.6.2014, issued by the Director of Education, Administration of Union Territory of Lakshadweep inter alia stating that in respect of one seat for MBBS Course reserved by Government of Kerala for the wards of persons of Kerala origin working under Lakshadweep Administration for the year 2014-2015, merit list will be prepared as per the direction given by CBSE as per their letter dated 4th July, 2013 and the grace mark prescribed in the selection rule will be added to the marks obtained for Physics, Chemistry and Biology in All India Pre-medical and Pre-dental Entrance Test, 2014 (AIPMT). The petitioners also sought for a direction to respondents 1 and 3 to follow Ext. P7 Rules in drawing up the merit list against MBBS seat reserved for the wards of Malayalees living in Lakshadweep and other consequential reliefs.

3. The facts involved in this case would show that the 2nd petitioner is the ward of the 1st petitioner. The 1st petitioner is working in Lakshadweep and the 2nd petitioner has undertaken her schooling in standards 3 to 10 in the Island itself.

She had undergone her plus 2 course also in the Island. She belongs to scheduled caste category. As per Ext. P7, the Administrator of Union Territory of Lakshadweep has framed rules for selection of candidates for MBBS Course in respect of one seat reserved by Kerala Government for the wards of Malayalees living in Lakshadweep other than local inhabitants. Ext. P7 is dated 18.7.1979. As per Ext. P7, those who have secured at least 50% of aggregate marks for the Pre-degree or equivalent examination shall be eligible to apply for the said reserved seat. Clause 4 further indicated that weightage will be given for duration of the candidates' schooling in Island school. The 2nd petitioner is also entitled for such weightage as she studied in the island schools in terms of clause 4. The contention of the petitioners is that when 2nd petitioner is eligible to get admission to the MBBS Course on the basis of Ext. P7 without anything further, the 2nd respondent has issued Ext. P9 on 23.6.2014, which is in variance with the rules framed in terms of Ext. P7 and the practice followed up to 2013. The petitioners submit that in terms of Ext. P9, 2nd petitioner had submitted necessary application for allotment of MBBS seat. A representation was also submitted on 15.7.2014 requesting to withdraw the condition stipulated in Ext. P9 which inter alia required to add the weightage to the marks obtained in the AIPMT examination. It is contended that the introduction of new stipulation in Ext. P9 that merit list will be prepared by adding prescribed grace marks to the marks obtained in the AIPMT examination is contradictory to the provision in Ext. P7 rule which states that for selection of candidates, the criteria/norms prescribed in the selection rule by the Lakshadweep Administration alone applies. Therefore, it is contended that Ext. P9 is in violation of Ext. P7 rules.

4. Respondents 1 to 3 have filed counter affidavit and additional counter affidavit. Counter affidavit is also filed by the additional 7th respondent.

5. Respondents 1 to 3, the Administration, inter alia contended that there is no contradiction between Ext. P7 rules and Ext. P9 circular. First of all Ext. P7 is not a statutory rule and that apart, though they were following the same upto 2012, during the previous year, by Ext. P10 circular, it was specifically mentioned that the candidate should have qualified in the National Eligibility Entrance Test, 2013 (NEET) for UG admission and the merit list will be prepared as per the direction given in CBSE letter dated 4.7.2013. Reference is also made to the amendment made to the Regulations on Graduate Medical Education, 1997 (hereinafter referred to as the MCI Regulations) to indicate that competitive examination is absolutely necessary in the case of institutions of all India character. Reference is also made to clause 5(i) of the amended Regulations, which indicated as under:

"(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in clause (2) of Regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled

Tribes or other Backward classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above."

Clause 4 (2) of the Regulations reads as under:

(2) In States having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority), a competitive entrance examination should be held so as to achieve uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies."

It is further contended that even during the previous year, Ext. P10 circular was issued and the only difference in Ext. P9 is that instead of NEET in Ext. P10, they have incorporated qualification of AIPMT, 2014.

6. Counter affidavit is also filed by the additional 7th respondent, parent of a candidate who has applied for the same seat. It is contended that the basic features of Ext. P7 are intact. In 2013, the marks for NEET were taken into account in accordance with the then prevailing circumstances. AIPMT is in replacement of NEET and the conduct of AIPMT was notified by the CBSE in October, 2013 itself with wide publicity. Reference is made to Ext. P10 to indicate that CBSE letter dated 4.7.2013 is categorical as to what should be done in respect of the said candidates. It is also contended that the petitioner has not applied for MBBS course during the current admission year.

7. Reply affidavit has been filed by the petitioners making specific reference to the judgment in W.P. (C) No. 17381/2012, wherein this Court has upheld Ext. P7 Rules.

8. The learned Single Judge, having considered the rival contentions, dismissed the writ petition. It is held that the petitioners cannot claim admission based on Ext. P7 rules alone. The same has to be read with the requirement under the MCI Regulations and therefore there is no reason to interfere with Ext. P9.

9. The appeal is filed inter alia contending that the admission procedure for one reserved seat for wards of persons of Kerala origin employed at Lakshadweep has to be considered only on the basis of Ext. P7 rules. Ext. P9 imposing a different procedure is bad in law. Reference is also made to an earlier judgment dated 3rd October, 2013 in W.P. (C) No. 17381/2012. It is contended that there is no provision in Ext. P7 Rules to prepare the rank list for the said one seat by taking into account the marks obtained in the qualifying examination of AIPMT.

10. Heard Smt. V.P. Seemanthini, the learned counsel appearing for the appellants, Sri. S. Radhakrishnan, learned standing counsel appearing for respondents 1 to 3, Sri. Titus Mani, learned standing counsel appearing for the 6th respondent and Sri. M.P. Ashok Kumar, learned counsel appearing on behalf of party respondents.

11. The short question to be considered is whether the petitioners can rely upon Ext. P7 circular alone for the purpose of getting admission to the one seat reserved for wards of persons of Kerala origin residing in the Island.

12. It is not in dispute that as per clause 4.1.11 (b)(iii) of the prospectus, for admission to professional degree courses of 2014, one seat is reserved for the candidate of Kerala origin settled in Lakshadweep. It is further observed in the aforesaid clause that "the candidates should be sponsored by the administration of that Union Territory and must possess the requisite qualifications as per clause 6." The distribution of seats is given Annexure III (2) which inter alia shows that only one seat in Kozhikode Medical College is reserved for "Kerala origin settled in Lakshadweep". Clause 6 of the prospectus is produced as Ext. R8(i) Clause 6.2.1. indicates that for MBBS, BDS and BSMS candidates who have passed the Higher Secondary examination of the Board of Higher Secondary Education, Kerala or examinations recognized equivalent thereto with 50% marks in certain subjects put together are eligible. Further, it is indicated in box that only candidates who secure 50% marks in the Medical Entrance Examination (Paper I & II taken together) of KEAM-2014 will be considered for admission to MBBS/BDS courses. Candidates belonging to SC/ST/SEBC will be considered for admission to the seat only if they secure a minimum of 40% marks in the Medical Entrance Examination. There is no challenge to the aforesaid prospectus condition. In Ext. P9, the Director of Education has only indicated that the marks of the entrance examinations also will be computed for the purpose of preparing the rank list for the said one seat reserved for persons of Kerala origin employed in Lakshadweep. Going by the prospectus condition as aforesaid and the circular, we do not think that there is any contradiction. Ext. P7 only gives certain weightage to the wards of persons of Kerala origin who has studied in the schools of Lakshadweep Islands. It does not in any way indicate that they should not participate or qualify in any other qualifying examination.

13. Much reliance has been placed by the learned counsel for the appellants in an earlier judgment of this Court, delivered by one of us, to indicate that Ext. P7 Rule has been upheld and the selection has to be done on the basis of the criteria fixed in terms of Ext. P7 alone.

14. But, it is relevant to note that, and as rightly contended by the learned counsel for the respondents, this Court was considering a situation which had arisen for the admission during 2012, wherein the prospectus condition clearly indicated that in respect of seats set apart for nominees of Government of India or Union Territory, such candidates need not write the entrance examination. That was a situation prevailing at the relevant point of time and the condition in the said prospectus. The situation has changed and the present prospectus especially clause 4.1.11. (b)(iii), clearly indicated that the candidates must pass the requisite qualification as provided under clause 6, which further indicates that they should participate in the entrance examination.

15. It is also brought to the notice of this Court that there had been substantial

change in the Regulations by which amendments of 2010 was brought into force in 2012. As per Ext. P10 circular dated 20.7.2013 for the very same seat, in the year 2013, the Director of Education had issued circular stating that for selection of candidates, the criteria/norms prescribed in the selection rule framed by the Administration will be applicable and the merit list will be prepared as per the direction given by the CBSE in the letter dated 4.7.2013. The said letter dated 4.7.2013 is produced as Annexure R1(a), wherein it is specifically stated that "As per the State criteria, if the, concession/additional benefits are to be given, the concession/additional benefits may be added in the field TOTAL and file may be sorted on updated TOTAL field in descending order and NE_R (NEET Rank) in ascending order for ranking of the candidates." It is therefore clear that Lakshadweep Administration has followed this procedure in 2013 and the same procedure is now being followed in 2014 entrance examination on account of the fact that examination is conducted by CBSE after directions were issued by the Supreme Court in *Christian Medical College Vellore and Others Vs. Union of India and Others*, . In that view of the matter we are of the view that the judgment in W.P. (C) No. 17381/2012 will not render any assistance to the petitioners to contend that Ext. P7 Rules alone has to be considered for preparing the rank list for the said reserved seat.

16. Another contention urged by the learned counsel for the appellants is with reference to the rank list prepared as Ext. R6(d). Ext. R6(d) is the rank list for non-islanders. It is pointed out that the 2nd appellant is shown as rank no. 7. The learned counsel points out that all others have already been allotted seats in various colleges and therefore the present reserved seat of persons from Kerala origin has to be given to her. Learned standing counsel for respondents 1 to 3 points out that Ext. R6(d) rank list is prepared for allocation of one seat reserved for non-islanders out of 11 seats from the Central quota. A separate test is conducted through the Cochin University of Science and Technology and thereafter the rank list is prepared. The said rank list is not with reference to the one seat reserved for persons of Kerala origin as provided under Ext. P7. At any rate, the claim of the petitioner in the writ petition is not based on the rank list aforesaid, whereas the contention was that the criteria followed in Ext. P7 rules alone should be looked into for preparing the merit list of the candidates for giving admission to the said reserved seat.

17. In the light of the said fact, we do not think that in the absence of any contention in that regard, there is any necessity to go into the claim of the petitioner based on Ext. R6(d) rank list prepared by the Cochin University of Science and Technology.

18. Though the learned counsel for the party respondents have relied upon various other judgments of the Supreme Court to contend that a qualification lower than the qualification prescribed by MCI cannot be considered, we do not think that a reference to the said judgments is necessary for adjudicating the above appeal. Suffice to say that when the prospectus condition applicable for

the reserved seat for persons of Kerala origin clearly indicates the manner in which the selection is to be conducted, the petitioners cannot take a stand that the marks obtained in the entrance examination shall not be computed for the purpose of preparing the list of such candidates.

In the said circumstances, we do not think that any grounds are made out to interfere with the judgment of the learned Single Judge. The writ appeal is hence dismissed.