
(2011) 09 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 1064 of 2011

Suraj R.K.

APPELLANT

Vs

Anil P. and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Indian Medical Council (Post Graduate Medical Education) Regulations, 2000 — Clause 9.1(a), Clause 9.1(b)

Citation : (2011) 4 KLJ 282

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mohan Pulikkal, Manju Rajan, K. Jayasankar and K.S. Arun Babu, for the Appellant; Anil K. Narendran ; Alexander Thomas (SC); Reji George ; Tony George Kannanthanam ; C.P. Sudhakara Prasad (Sr.); A. Jayasankar ; Arun Raj and K.P. Dandapani (SC), for the Respondent

Judgement

C.N. Ramachandran Nair. J.

1. Admissions to the super specialty medical course namely D.M. Gastroenterology is the subject matter of controversy in these three writ appeals, two filed by the State and the other filed by a doctor in the Government Service seeking admission based on condition in the prospectus. Out of the total 10 seats available for admission to the course for 2011-2012, the prospectus provides that 7 seats will go to General Merit Quota, 2 for Medical Education Service (MES) Quota and the remaining one was reserved for Health Service Quota. There is no dispute with regard to the admissions given to the 7 seats in the General Merit Quota and one to the Health Service Quota. However, from the results of entrance examination it turned out to be that there is no claimant for admission in the quota reserved for MES. Consequently, in terms of clause X (c) of the prospectus the two seats available from MES quota were allotted to the candidates from Health Service which was questioned by the candidates in merit quota on the ground that the two seats which are not claimed by candidates from MES Quota should be allotted to the General Merit Quota which was

accepted by the learned Single Judge against which, these writ appeals are filed. We have heard the learned Advocate General appearing for the appellants in two State appeals, counsel appearing for the appellant in the other appeal and Senior counsel Sri. CP Sudhakara Prasad and the other counsel appearing for the respondents in all the appeals. Admittedly, the controversy is only with regard to the two seats that fell vacant for the reason that there is no claimant for those seats reserved for MES Quota. While the claim of the respondents is that it should be given to the Merit Quota, the claim of the State and the appellant doctor in Health Service is that it should be allotted to Health Service Quota in terms of the provision in the prospects contained in X (c) which is as follows:

X (c): Unfilled seats: Any seat tailing vacant in the Health Service Quota will be filled up by the Medical Education Service Quota and any vacant seat in MES Quota will be filled by eligible Health Service candidates. The seats again left vacant will be added to General Merit quota. Any seat vacant in the General Merit Quota will be filled by MESQ and Health Service quota respectively.

2. There can be no controversy that under the above clause any seat unclaimed by eligible candidate from MES quota will first go to Health Service candidate and only in the absence of eligible candidate from Health Service it will go to the merit quota. However, the candidates in the merit quote who filed writ petitions claimed before the learned Single Judge that the Medical Education Directorate and the Commissioner of Entrance Examination were well aware of the fact that no candidate was qualified for admission under the MES quota and so much so, the reservation of two seats in that quota itself is illegal. Learned Single Judge accepted this contention of the respondents and held that the two seats reserved for MES quota in the absence of candidates from Medical Education Service should go to candidates claiming admission in the merit quota. It is this judgment that is under challenge before us.

3. Even though the respondents also participated in the entrance examination and the selection process, they challenged the above provision in the prospectus only after declaration of the results and allotment of the unclaimed seats in the MES quota the Health Service candidates in terms of the prospectus. The learned Advocate General appearing for the appellant in the two writ appeals filed by the State relied on the decisions of the Supreme Court in K. Duraisamy and Another Vs. The State of Tamil Nadu and Others, and The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, in support of the claim for reservation in super speciality courses. Senior counsel Sri. CP. Sudhakara Prasad and other counsel appearing for the respondents relied on the decisions of the Supreme court reported in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, , Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, and Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, and contended that no reservation for super speciality courses is permissible and admissions have to be given based on merit alone. Counsel for the respondents also relied on clause 9.1(a) and (b) of the

Medical Council of India (Post Graduate Medical Education) Regulations, 2000, which provides reservation for in service candidates only for Diploma courses. After hearing both sides what we notice is that in spite of several judgments of the Honourable Supreme Court declaring that no reservation is permissible for super specialty courses for which the criteria for admission is only merit, the practice of reserving few seats to those in the State Medical Education Service and in the State Health Service continues to be followed on regular basis and this year is no exception to this. The contention of the Advocate General is that providing few seats to the candidates serving the State Health service and those serving the State Medical Education Service by way of incentive to attract doctors to serve the Government is not the kind of usual reservation provided to members of Scheduled Caste, Scheduled Tribe, handicapped, sports personnel etc. On the other hand, according to the Advocate General the Health Service and Medical Education Service of the State are only the other two channels for selection for admission to post graduate and super specialty courses where service candidates are also selected based on merit. It is submitted by counsel for the respondents that during 2010-2011 only one seat was reserved for Health Service candidates for D.M. Gastroenterology and no seat was reserved for MES quota. The contention of the respondents, which found acceptance with the learned Single Judge is that there was no candidate in the Medical Education Service qualified for admission for DM Gastroenterology and therefore, the reservation of two seats for MES quota itself is illegal and arbitrary. We are unable to accept this contention because, in our view nothing obliges the Government or the Commissioner of Entrance Examination to verify before issuing prospectus as to whether there are eligible members of the teaching staff of the Medical Education Service seeking admission and if so whether they are willing to join the course for which admission is offered. Similar is the position with regard to those serving the Health Service because Government cannot be expected to verify in advance availability of eligible candidates and if available to further verify whether they are interested to go for higher studies which is absolutely a matter of their choice. All that Government could provide is facility for doctors to acquire higher qualification while serving the Government and that is what is done by the Government by providing reservation of three seats out of 10 to be filled up by members of the Medical Education Service and State Health Service together. The prospectus is very clear that in the absence of eligible candidates from Health Service, the quota reserved for them will go to MES and vice versa and in the absence of both, the seats reserved will revert to merit quota. The respondents in our view cannot now ask for re-writing the prospectus in such a way that in the absence of MES candidates, the unclaimed seats will go to merit quota, though it may be desirable. The main contention raised by the respondents which found acceptance with the learned Single Judge is against the reservation itself provided to Medical Education Service candidates because nobody in MES was eligible. We asked a specific question to the counsel appearing for the respondents as to whether the prospectus could have been successfully challenged in court if in the absence of eligible candidates from MES

all the three seats were reserved for candidates from Health Service. The respondents have no case that such reservation would have been hit by any provision of the Kerala Medical Officers? Admission to Post Graduate Courses (under Service Quota Act) 2008 which provides for reservation up to 40%. Though super specialty courses are not specifically covered by this Act, the total reservation provided for service candidates for PG Courses is 46% whereas the total seats reserved in this case for both MES and State Health Service Candidates is 3 out of 10 which is only 30% as against 40%, provided in the Statute. Further, in the first decision cited by the Advocate General, the Honorable Supreme Court has upheld reservation of 50% seats for in service candidates for Post Graduate courses. We therefore, do not find any merit in the challenge raised by the respondents against the provision in the prospectus providing for allocation of unclaimed seats reserved for the candidates from the Medical Education Service to those candidates from Health Service seeking admission as in-service candidates. The writ appeals are accordingly allowed vacating the judgment of the learned Single Judge and by upholding the allotment of two unclaimed seats in MES quota to candidates from Health Service.