

(1982) 01 KAR CK 0017
In the Karnataka High Court
Case No : WP 31091 & 31092/81

Swati Bichu

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 29-01-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 1 KarLJ 422

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. These two petitions coming up for orders have been taken up for hearing by consent of counsel for parties and disposed of by the following order:

2. The petitioners are residents of Belgaum city residing within the Municipal limits of the Belgaum City Corporation. It is claimed that their parents are also residents of Belgaum city. The petitioners applied to the 2nd respondent-selection committee for admission to I Year MBBS Course, constituted under the Karnataka Medical Colleges (Selection for admission) Rules, 1981, hereinafter referred to as "the Rules" for seats in the 3rd respondent J.N. Medical college, Belgaum run by the 4th Respondent K.L.E. Society Ltd., Belgaum. The petitioners have alleged that in addition to the advertisement in the papers by the Government calling for applications to I Year M.B.B.S. Course the 4th respondent Society which owns and runs the 3rd respondent College also advertised calling for applications for admission to the college for I Year MBBS Course from residents of Belgaum in order to fill five seats.

This advertisement is said to have appeared in one of the local papers of Belgaum.

3. It is alleged by the petitioners that the 4th respondent society entered into an agreement with the then Municipality of Belgaum to provide five seats to students belonging to Belgaum city in the college in consideration of Municipal land being given to the society for locating the Medical College at concessional rate. It is further alleged by the petitioners that in consideration and pursuant to

that agreement all these years five seats were given to the resident applicants of Belgaum city for the I year M.B.B.S. course year after year. In fact, the allegation is that in the rules made by the State Government in exercise of its executive power under Art. 162 of the Constitution of India for the academic year 1980-81 specific provision was made for the Selection committee to provide for five seats within the quota permitted to be filled by the Government in the 3rd respondent-college. The writ petitioner in WP 31092/81 R.B. Kulkarni was called for interview by the Selection Committee but not selected. Similarly, the petitioner Miss. Swati Bichu in writ petition 31091/81 was not selected nor called for interview. Aggrieved by such non-selection, they have approached this Court under Art. 226 of the Constitution inter alia contending that the Selection committee, was bound to select them as they were applicants for the first Year M.B.B.S. Course hailing from Belgaum city and give each of them a seat in the 3rd respondent college pursuant to the agreement between the Municipal corporation and the 4th respondent-society as the task of selection has now fallen on the Selection committee and as the Selection committee stood transposed as a party to the contract in consideration of the concessional land given to the society for locating the Medical college. It is also contended that while disposing of W.P. 15955/80, this court did direct issue of writ of mandamus to the Selection Committee constituted under the 1980 rules to admit the petitioner therein to the 1st year M.B.B.S. Course during the academic year 1980-81 even if it became necessary to increase the intake by one. And therefore the petitioners who are similarly placed for the academic year 1981-82. it is contended are also entitled to an identical relief in these writ petitions.

4. The 3rd respondent-college and the 4th respondent-society have entered appearance and filed their statement of objections. In the statement it is averred that the college and the society have filed writ petition 19593/81 in this court challenging the Government order dt. 29.8.81 by which the Government had assumed powers to fill all the 100 seats sanctioned to the college and that this court has stayed the impugned order there in to extent of 35 seats being available to the college for being filled up and that they have filled up those 35 seats. The respondents also admit that the college was started in the year 1963. The Belgaum Municipal Corporation had granted the land to the 4th respondent at a concessional price subject to certain terms and conditions one of which was to the effect that five seats should be given every year to the students residing in Belgaum Municipal area.

5. Respondents 1 and 2 are represented by the Government Pleader Sri M.H. Motigi, He has made the relevant records available to the court and has stated that the Selection Committee under the Rules could not select the applicants because in the merit pool the last candidate, selected had got marks higher than the petitioners and therefore the Selection committee acted in accordance with the rules and not selected the petitioner who was called for the interview and did not call the other petitioner for interview as it was unnecessary to do so. It is further stated that the Selection committee of 1981 was not required to reserve

five seats in the 3rd respondent-college while making selection for private Medical Colleges also as was done in the previous year as no such direction or provision was made in the rules. The Government order dated 23.7.80 in regard to 1980 rules has been brought to the notice of the Court and it is seen therefrom that there was a direction to the Selection committee under those rules to reserve five seats to the students of Belgaum.

6. The prayer in the writ petition is for issue of a writ of mandamus to respondents 2 and 4 to select and admit the petitioners in the category of five seats agreed to be reserved for students of Belgaum in J.M. Medical college. Issuance of mandamus to the 4th respondent in the circumstances of the present petitions does not arise as the 4th respondent is not any one of "other authorities" within the meaning of that expression occurring in Art. 12 of the Constitution of India. A mandamus can be issued compelling performance by an authority, or an officer under that authority when a duty is cast upon it or him which has not been performed in spite of a written demand made. While a writ of mandamus in appropriate cases may issue to the Selection committee, the petitioners must make out that they have a legal right which is required to be respected and a corresponding duty to be performed by the Selection committee and the Selection committee has failed to perform that duty in spite of a demand made. In the absence of such a thing this Court will not issue a writ of mandamus.

7. Sri K.I. Bhatta, learned counsel appearing for the petitioners has strenuously contended that the 1st respondent-State and the 2nd respondent-Selection Committee which took over the right of selection of students to the 3rd respondent-college under the rules also took over the obligation under the agreement between the erstwhile. Municipal Corporation of Belgaum and the 4th respondent-College to provide five free seats for residents of Belgaum Town and therefore, they are duty bound to make provision for reservation of five seats in the 3rd respondent-college. It may be so if one were to accede to the contention that the Government has stood transposed as the contracting party in place of the college by virtue of the power assumed to fill a large number of seats in the 3rd respondent college. But it is not enough. The right that may accrue to have those five seats filled is a contractual right flowing in favour of the Municipal Corporation of Belgaum or its successor in law. What can be enforced by this Court by virtue of a writ of mandamus is performance of a duty in relation to a legal right and not contractual rights even when the locus standi of the petitioners to enforce such a right is in doubt.

8. Sri Bhatta has next contended that the Selection Committee was bound to select five residents of Belgaum having regard to the contractual obligation of the 3rd respondent-college more so when a specific provision had been made for the purpose in the earlier rules. This argument again cannot be accepted in the light of absence of such reservation in the rules of 1981. It is not only that, in the rules the Selection committee is fully empowered to select candidates in

accordance with those rules but it is empowered to allot them to any college. Government or private owned Medical college, in the State of Karnataka notwithstanding the fact that the students may have applied from the areas of the different Universities in the State. In other words, even if one were to assume that the petitioners had established their right to seats in the Belgaum college in some other manner, their right to be admitted to that college would necessarily affect the power of the Selection Committee, under rule 11 of the Rules to allot the selected candidates to any one of the Medical Colleges in the State of Karnataka. However that may be, the fact of absence of reservation of five seats is sufficient to hold that the Selection Committee was not in any way bound to make a special selection of five students for Belgaum college only notwithstanding other provisions made in the rules.

9. For the foregoing reasons, these petitions do not succeed. Therefore, they are rejected.

10. There will be no order as to costs.

11. Sri M.H. Motigi, learned Government Pleader is permitted to file his memo of appearance in two weeks.