
(2014) 09 KL CK 0173
In the High Court Of Kerala
Case No : D.B.P. No. 77 of 2014

The Secretary

APPELLANT

Vs

Deputy Director

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0173

Hon'ble Judges : P.N. Ravindran, J;P.B. Suresh Kumar, J

Bench : Division Bench

Advocate : Krishna Menon, SC and G. Rajagopal, SC, Advocate for the Appellant; A. Renjith, Sr. Govt. Pleader and Krishnakumar Mangot, Amicus Curiae, Advocate for the Respondent

Judgement

P.N. Ravindran, J.—This is a petition filed by the Secretary, Cochin Devaswom Board (hereinafter referred to as "the Board" for short) to modify the terms and conditions stipulated by this Court in the order passed on 9.6.2005 in D.B.A. No. 66 of 2005 and to grant permission to the Board to fill up seats in the degree courses reserved for the management of Sree Keralavarma College and Sree Vivekananda College at the discretion of the Board and in terms of Annexure A2 order dated 21.5.2014. The main ground raised is that in all private aided institutions including colleges in Kerala, seats reserved for the management are filled up by the management in accordance with their discretion, that such managements can make admissions to seats in the management quota without insisting on higher score of marks, but in case of the aided colleges administered by the Cochin Devaswom Board, the norms insisted and upheld by this Court in the order passed on 9.6.2005 in D.B.A. No. 66 of 2005 (Annexure A-1) have to be followed. It is stated that the Board has by Annexure A2 order dated 21.5.2014 resolved to take steps to seek a review of the aforesaid order and it is in such circumstances that the instant petition has been filed seeking the aforesaid relief.

2. The issue first came up before a Division Bench of this Court when the audit

report of the Cochin Devaswom Board was considered in C.M.P. No. 2657 of 1992. In paragraph 9 of the counter affidavit filed in support of C.M.P. No. 2657 of 1992, the Board had stated as follows:

"It is respectfully submitted that adherence to the rules of eligibility based on merit may not be insisted on, in regard to candidates who are admitted against the management quota. If such adherence is to be followed, it is respectfully submitted, that there is no need to earmark 20% of the seats as the management quota."

3. The contention of the Board was that merit should not be insisted upon in making admissions to 20% of the seats set apart as management quota. The Division Bench which considered the said aspect of the matter passed an order dated 1.12.1994 on C.M.P. No. 2657 of 1992 and it reads as follows:

"According to the learned counsel representing the Cochin Devaswom Board, the above statement is the actual state of affairs that is now in existence. We feel that it cannot be allowed to be continued. The Board must enunciate norms for filling up the 20% seats set apart as management quota. That norms must necessarily give due regard to the merit of the candidates to be admitted. Board is directed to formulate norms for admission to the 20% management quota and to file it in this Court within three weeks from today. Petitioners, on going through that norms, if feel that any modification is required, should file objection within one week therefrom. Post this matter after a month." (emphasis supplied)

4. The Division Bench held that the Board cannot be allowed to indiscriminately make admissions to the seats in the management quota. The Division Bench accordingly directed the Board to frame norms to fill up seats in the management quota. The Board accordingly framed a set of norms and produced them along with an affidavit. The norms were modified after discussion at the Bar. The modified norms as approved by the Division Bench of this Court by order passed on 4.7.1996 in C.M.P. No. 2657 of 1992, are as follows:

"(1) Candidates, who seek admission to the Sree Kerala Varma College, Thrissur and Sree Vivekananda College, Kunnankulam, must have secured at least 50% of the total marks for the qualifying examination.

(2a) 78% of the seats reserved for the management will be allotted to candidates who are Hindus by religion and faith. (b) 2% of the seats will be reserved to the candidates recommended by the Kunji Amma Trust as per earlier agreement.

(3) 10% of the seats will be allotted to the candidates who are children of the employees of the Board, including temple servants, Santhies, contingency staff and non-teaching staff of Colleges. For candidates who come under this Clause, the condition in Clause (1) regarding minimum marks will not apply and priority will be in the order of merit.

(4) The remaining 10% will be allotted to children of persons who have rendered

valuable services for the development of Devaswom and temples, but shall not include the President and members of the Board.

(5) Selection from among the candidates coming under Clause (4) will be on the basis of merit among them.

(6) A list of candidates in the order of merit shall be prepared observing the above norms and admission shall be made from that list".

5. The matter again came up for consideration before a Division Bench of this Court in the year 2005 when the Secretary, Cochin Devaswom Board filed D.B.A. No. 66 of 2005 seeking an almost similar relief as the one sought herein. The Division Bench of this Court considered the said application and rejected it by order passed on 9.6.2005. The said order is extracted below in full:

"This application has been filed by the Secretary, Cochin Devaswom Board. The Cochin Devaswom Board has under its management, certain educational institutions. The question that is now raised is regarding the filling up of the seats in those institutions. This Court while considering the audit report of the Cochin Devaswom Board in C.M.P. No. 2657 of 1992 laid down certain norms. That will be clear from Annexure A. The norms are as follows:

(1) Candidates, who seek admission to the Sree Kerala Varma College, Thrissur and Sree Vivekananda College, Kunnamkulam, must have secured at least 50% of the total marks for the qualifying examination.

(2a) 78% of the seats reserved for the management will be allotted to candidates who are Hindus by religion and faith.

(b) 2% of the seats will be reserved to the candidates recommended by the Kunji Amma Trust as per earlier agreement.

(3) 10% of the seats will be allotted to the candidates who are children of the employees of the Board, including temple servants, Santhies, contingency staff and non-teaching staff of Colleges. For candidates who come under this Clause, the condition in Clause (1) regarding minimum marks will not apply and priority will be in the order of merit.

(4) The remaining 10% will be allotted to children of persons who have rendered valuable services for the development of Devaswom and temples, but shall not include the President and members of the Board.

(5) Selection from among the candidates coming under Clause (4) will be on the basis of merit among them.

(6) A list of candidates in the order of merit shall be prepared observing the above norms and admission shall be made from that list".

6. The Board now wants a change in the norms that are detailed in paragraph 7 of the affidavit accompanying the application; they are as follows:

- (i) 2% of the total seats in Sree Kerala Varma College, Thrissur students recommended by Kunji Amma Trust.
- (ii) 10% of the seats-children of the employees of the Cochin Devawom Board and the non teaching staff of the educational institutions under it.
- (iii) 88% of the seats-open quota according to the discretion of the Cochin Devaswom Board".

Clause (iii) shows that 88% of the seats in open quota are to be filled up according to the discretion of the Cochin Devaswom Board. The Board has not clearly stated what is the basis for such a discretion. Merit of the students cannot be dispensed with. Exception by saying that the open quota is to be filled up according to the discretion of the Cochin Devaswom Board, nothing more is stated. We cannot approve such a norm. Hence, we don't grant our permission for a change in the norms.

Application is disposed of as above."

7. The Division Bench held that the Board has not clearly stated on what basis such discretion is sought and that the merit of the students cannot be dispensed with. The Division Bench also observed that this Court cannot approve a norm which gives absolute discretion to the Cochin Devaswom Board to make admissions in the management quota ignoring merit. The permission sought was expressly declined. The said order has admittedly attained finality.

8. On going through the petition and after considering the submissions made at the Bar, we find no good grounds to deviate from the view taken by the Division Bench in its orders dated 1.12.1994, 4.7.1996 and 9.6.2005. That apart, the Board order dated 21.5.2014 (Annexure A2) discloses that the decision taken by the Board is to seek a review of this Court's judgment. Since such an attempt has not been made, we are of the opinion that this Court cannot treat this petition as an application for review. In any case nothing is stated as to how the earlier orders of this Court suffer from any infirmity. It is settled law that if a long drawn out process of reasoning is required to correct an order it cannot be done in review by this Court but only by the appellate court. Therefore for that reason also, the permission sought by the Board to fill up the seats reserved in the management quota at its discretion cannot be granted. The relief sought is accordingly declined.