(2014) 11 KL CK 0134

In the High Court Of Kerala

Case No : Writ Appeal Nos. 923, 927, 928, 952, 978, 979 and 980 of 2014 in WP (C). 7501/2014

U. Babu APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 3, 4, 5, 5(1), 5(3)

Citation : (2014) 11 KL CK 0134

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : V. Rajendran and P. Riji, Advocate for the Appellant; Roshan D. Alexander, Spl. Government Pleader, Advocate for the Respondent

Judgement

Antony Dominic, J.—WA Nos. 923, 927, 928, 978 and 980/14 are filed by the petitioners in WP(C) Nos. 7501/14, 6564/14, 7806/14, 8553/14 & 5704/14 respectively, who are aggrieved by the common judgment rendered by the learned single Judge on 13th of June, 2014 dismissing the writ petitions. WA No. 952/14 is filed against the judgment in WP(C) No. 17131/14 and WA No. 979/14 is filed against the judgment in WP(C) No. 8797/14.

2. The appellants in these writ petitions are all Doctors who are employed in various departments of the State. They aspire for admission to the Post Graduate Medical Courses in terms of the provisions contained in the Kerala Medical Officers'' Admission to Post Graduate Courses under Service Quota Act, 2008 (Act 29 of 2008) and the prospectus for admission to Medical Post Graduate Degree/Diploma Courses, 2014, a copy of which has been produced as Ext. P3 in WP(C) No. 7806/14, against the dismissal of which WA No. 928/14 is filed.

3. Clause 6.5.3 of the prospectus provided that candidates belonging to Socially and Educationally Backward Classes as per G.O. (P) No208/66/Edn. dated 2/5/1996, whose annual family income [i.e., annual income for the financial year

2012-13 as per GO (Ms) No. 03/2014/BCDD dated 9/1/14 of all members in the family inclusive of the income of applicant and spouse (in the case of married candidates) from all sources taken together] is upto Rs. 6 lakhs (Rupees Six Lakhs only) are eligible for reservation under this category.

4. In so far as the appellants herein are concerned, their annual family income as quantified in terms of its definition contained in Clause 6.5.3 of the prospectus is admittedly above Rs. 6 lakhs and therefore they were ineligible to seek admission in terms of the prospectus. It was in such circumstances that they filed the writ petitions mainly challenging Clauses 6.5.3 and 6.5.4 of the prospectus and for consequential directions enabling them to seek admission to Post Graduate Medical Courses, in terms of the prospectus mentioned above.

5. By the judgment under appeal, the learned single Judge of this Court dismissed the writ petitions mainly taking the view that the fixation of the income limit contained in Clause 6.5.3 of the prospectus reflects a policy decision of the Government and that in the absence of any arbitrariness or illegality, the same cannot be questioned in a proceedings under Article 226 of the Constitution of India. It is aggrieved by this judgment, the appeals are filed.

6. We heard the learned counsel for the appellants, learned Government Pleader appearing for the official respondents, the learned standing counsel appearing for the Medical Council of India and have considered the submissions made before us.

7. Act 29 of 2008 is an Act providing for quota of seats among Medical Officers of the State of Kerala and to have a selection procedure for admission to various Post Graduate Courses in the Medical Colleges under the service quota considering their service under the Government and for matters connected therewith or incidental thereto. Section 3 of the Act provides for selection of Medical Officers for admission to Post Graduate Course under the Act. This section provides that notwithstanding anything contained in the Indian Medical Council Act, 1956 or any rule or regulation issued thereunder or in any judgment, decree or order of any court or authority, the selection of Medical Officers for admission to Post Graduate Course of study in the State under the service quota shall be made only under the provisions of Act 29 of 2008. Section 4 provides for constitution of Selection Committee and Section 5 provides for the procedure for selection.

8. In so far as these cases are concerned, Section 5(1) and (3), being relevant, are extracted below for reference;

"5. Procedure for selection (1) The Government may set apart seats not exceeding forty percent of the total seats available to state quota in an academic year, for selection of Medical Officers under service quota considering their service under the Government for admission to Post Graduate Medical Courses in the Medical Colleges of the State in such manner as may be prescribed.

(2) xxxxx

(3) The details of eligibility for admission, the duration of courses, allotment, fee to be paid, reservations of seats and such other details shall be published every year in the prospectus before the commencement of admission."

9. In exercise of its powers under Section 5(3), prospectuses are being issued by the Government every year. In 2013, prospectus was issued specifying the income limit of Rs. 4.5 lakhs. That prospectus came to be challenged before this Court in WP(C) No. 14659/13 and connected cases. Those writ petitions were disposed of by judgment dated 30th of July, 2013 upholding the income limit fixed and at the same time clarifying that the judgment is applicable only for the year 2013 and that the Government is free to fix annual income ceiling limit to be at par with non creamy layer segment in the reserved category for the years to come.

10. According to the respondents, while matters stood thus, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued Office Memorandum dated 27th of May, 2013 conveying their decision to raise the income limit from Rs. 4.5 lakh to Rs. 6 lakh per annum for determining the creamy layer amongst the Other Backward Classes.

11. The counter affidavit filed by the respondents show that the income limit as revised by the Government of India as per the office memorandum referred to above was adopted by the Government and on that basis when the Government issued prospectus for the year 2014, income limit of Rs. 6 lakhs was specified in Clause 6.5.3 of the prospectus, which reads thus;

"Candidates belonging to Socially and Educationally Backward Classes as per G.O. (P) No208/66/Edn. Dated 2/5/1996, whose annual family income [i.e., annual income for the financial year 2012-13 as per GO (Ms) No. 03/2014/BCDD dated 9/1/14 of all members in the family inclusive of the income of applicant and spouse (in the case of married candidates) from all sources taken together] is upto Rs. 6 lakhs (Rupees Six Lakhs only) are eligible for reservation under this category. Only the claims of the candidates of those communities that are included in the SEBC list as Annexure VII will be considered. Claims by candidates belonging to other communities, which are not included in the list, will be rejected even if certificates from the concerned Revenue Officers have been obtained and furnished along with the application form."

12. In so far as the appellants are concerned, as we have already stated, their income limit as determined in terms of Clause 6.5.3 was admittedly above Rs. 6 lakhs and therefore they were ineligible to seek admission under the SEBC category. It was in such circumstances that they filed the writ petitions which came to be dismissed by the learned single Judge.

13. One of the main contentions raised by the learned counsel for the appellants

is that the limit of Rs. 6 lakhs specified in clause 6.5.3 of the prospectus is unreasonably low. It is pointed out that if both husband and wife, of whom at least one is a Doctor, are employed in the Government service, ordinarily, their annual income will be more than Rs. 6 lakhs. According to him, the salary itself will render them ineligible for the benefit of admission as SEBC candidates. It is stated that clause 6.5.3 further provides that the income from all sources of the family has to be taken while quantifying the annual family income. It is stated that this therefore means that even in the case of married couple, income of their parents will have to be taken, which will render them ineligible for the benefit. In other words, what is contended is that while reservation is provided for candidates belonging to SEBC category, by virtue of Clause 6.5.3 of the prospectus, they are deprived of the said benefit. This, according to the counsel, amounts to arbitrariness rendering fixation of the income limit of Rs. 6 lakhs illegal and unconstitutional.

14. Though this contention raised by the learned counsel for the appellants would sound attractive at the first blush, we are unable to accept the same. The income as the basis for determination of SEBC status has been accepted by the Apex Court in the judgment in Indira Sawhney Vs. Union of India and Others, . Therefore, adoption of income as the criteria cannot be followed for any reason.

15. Then the question is whether fixation of Rs. 6 lakhs income limit as done in these cases, as per Clause 6.5.3, by itself reflects any arbitrariness. Ext. R2(b) office memorandum issued by the Government of India shows that while in 1993, the income limit fixed was Rs. 1 lakh, that was periodically revised by the Government of India and that in 2013, the income limit fixed was Rs. 4.5 lakhs. Thereafter, it was revised to Rs. 6 lakhs. It is adopting the income limit thus fixed by the Government of India, Ext. P3 prospectus (produced in WP(C) No. 7806/14) also was issued by the Government of Kerala. This shows that it cannot be contended that Rs. 6 lakhs was fixed without any basis.

16. The fixation of the income limit for extending the benefit to SEBC category is certainly a policy decision. Therefore, while we appreciate the validity of fixation of Rs. 6 lakhs, what we have to examine is whether the said fixation is vitiated for any reason which would otherwise invalidate a policy decision of the Government. A policy decision of the Government can be vitiated only if it is shown to be arbitrary, illegal or malafide. We should also caution ourselves that we are not concerned with the wisdom of the policy or whether the policy in force would advance the cause behind such policy.

17. In so far as these cases are concerned, Government have uniformly adopted Rs. 6 lakhs as the income limit for SEBC benefit which is applicable not only for admission to Post Graduate Medical Courses, but also for other courses as well. Such uniform adoption of Rs. 6 lakhs does not reflect any arbitrariness as contended by the learned counsel. It may be true that in certain cases, this policy would cause individual hardships to those whose annual income is more than Rs. 6 lakhs. However, that will not render the policy decision invalid.

Therefore, we are unable to see any vitiating circumstances calling for interference with the fixation of Rs. 6 lakhs as done in Ext. P3.

18. Appellants in WA Nos. 927 and 928/14 contended that they belong to Araya/ Dheevara community. According to the learned counsel, in view of the provisions contained in Ext. P8 G.O. (P) No. 81/09/SCSTDD dated 26th of September, 2009, the concept of creamy layer is inapplicable to candidates belonging to Araya/ Dheevara communities. Therefore, according to him, even if the appellants'' family annual income is above Rs. 6 lakhs, since the concept of creamy layer itself is inapplicable to their community, they were entitled to have been granted admission treating them as candidates belonging to SEBC category. This contention also cannot be accepted for the simple reason that a reading of Ext. P8 Government Order itself would show that the said Government Order is applicable only for the purposes of employment in public service and not for admission to educational institutions.

19. Counsel then contended that the provisions contained in the prospectus does not reflect a policy decision of the Government for the reason that the provisions of Clauses 13, 14 and 15 of the Rules of Business of the Government of Kerala have not been followed. We are unable to entertain this contention either, for the reason that nowhere in the writ petition has the appellants raised such a contention. Therefore, in the absence of such pleadings having been raised, we decline to entertain that plea.

For all these reasons, we uphold the judgment of the learned single Judge and dismiss the appeals.