
(2010) 09 KL CK 0132

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21063 of 2010

Vipin

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Kerala Medical Officers Admission to Post Graduate Courses under Service Quota Act, 2008 — Section 2, 5(1)

Citation : (2010) 4 ILR (Ker) 292 : (2010) 4 KLT 380

Hon'ble Judges : Thottathit B. Radhakrishnan, J;P. Bhavadasan, J

Bench : Division Bench

Advocate : Abraham Vakkanal, Paul Abraham Vakkamal, Dijo Sebastian and Vineetha Susan Thomas, for the Appellant; T.B. Hood, Government Pleader, Alexander Thomas, E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathal, P. Benny Thomas and P. Gopinath, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—1. This Writ Petition comes to the Division Bench on a reference made by the learned single Judge.

2. The Petitioner is the first rank holder in the open merit quota in the Entrance Examination for Admission to Super Speciality Post Graduate Courses namely, M.Ch. in Gastroenterology Surgery. There is only one seat available for that super speciality this year. That seat is earmarked for being allotted to an in-service candidate. The Petitioner challenges it as one amounting to the reservation of the lone seat, which according to him would result in 100% reservation. He pleads that the said seat should be allotted only on the basis of open merit, by competition and an in-service candidate cannot by reason of such earmarking, be given any preference. In that premise, he seeks an order quashing the earmarking of the single seat for M.Ch. in Gastroenterology Surgery for the in-service candidates as contained in the prospectus and for a declaration that Section 5(1) of the Kerala Medical Officers' Admission to Post Graduate Courses

under Service Quota Act, 2008, hereinafter referred to as "the State Act" and Rule 5(i) of the Rules framed thereunder providing for 40% reservation to service quota taking into account the total seats in all the 10 disciplines in the super specialty courses together, instead of treating each Speciality separately, are unconstitutional. He also seeks a direction that he be allotted the seat in Super Speciality Course, namely, M.Ch. in Gastroenterology Surgery in the Thiruvananthapuram Medical College for this year, he being the first rank holder in the open merit list.

3. Similar question arose in 2006 in W.P.(C). 15210/2006. The learned single Judge upheld the decision of the State Government to earmark the seat. Reliance was then placed on Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , 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, . That matter went up to the Division Bench as W.A. 1652/2006. The Bench noted that the Appellant in that case had competed in the examination along with the candidate who aspired for admission and the terms of the prospectus would stand in his way. However, the Bench had noticed that the point raised by the Appellant in that case was one worth consideration.

4. After the aforesaid sequence of events and the judgment of the Division Bench, Ext.P8 legislation was brought in by the State, bench-marking that 40% of the seats could be earmarked for in-service candidates. Under such circumstances, the learned Single Judge was of the opinion that the plea of the Petitioner in the Writ Petition in hand requires consideration by the Division Bench.

5. Ext.P8 - the State Act provides, among other things, for the setting off, of not exceeding forty percent of the total seats available to State quota in an academic year, for allotment to 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. Section 2(e) of that Act defines "Postgraduate Course" as meaning the course of study after M.B.B.-S. which may be a degree or diploma course declared as such in the prospectus. Though we notice such provisions in that Act, we find that the Rules framed under that Act, namely, the Kerala Medical Officers' Admission to Post Graduate Medical Courses under Service Quota Rules, provide for admission to 40% of the total seats for P.G degree/Super Speciality and Diploma from among the in-service candidates.

6. In the above backdrop, we notice that the Petitioner is an open market candidate. He could have applied, and had in fact applied, only on the basis of the prospectus which is Ext.P4. It has been repeatedly laid down that it is the prospectus which controls the admission and it is the Magna Carta as far as the applicant is concerned. In the case in hand, the uncontroverted situation is that Ext.P4 prospectus was issued on 5.5.2010 while this Writ Petition is presented on 6.7.2010; The Petitioner had applied for being considered as an open market

candidate. If Ext.P4 prospectus stands, he could not have applied, if he was applying for M.Ch. in Gastroenterology Surgery. This is because the prospectus itself had categorically disclosed the fact that the only one seat available for M.Ch. in Gastroenterology Surgery was earmarked for in-service candidates. The Petitioner, not having challenged the prospectus at that stage, but having participated and waited to know his prospects in the selection process, we are of the view that he is estopped from challenging the provisions in the prospectus made based on the Government decision to earmark one seat for M.Ch. in Gastroenterology Surgery, based on the recommendation of the appropriate committee. The learned senior counsel for the Petitioner argued in this context that the eligibility of the Petitioner to make a claim as against the seat for M.Ch. in Gastroenterology Surgery stems only because he had obtained the first rank as the open market candidate and could, therefore, make the first choice. He accordingly tried to justify the participation in the selection on the basis of the prospectus and the failure of the Petitioner to challenge the prospectus, or the Government decision in that regard, earlier. We are not impressed with that. As already noted, the Petitioner did not have even a right to apply for being considered for the seat of the M.Ch. in Gastroenterology Surgery, with the prospectus as it stands.

7. In the light of the law laid down by the Apex Court in Dr. Preeti Srivastava and K.Duraisamy as also the bench marks prescribed in Gopal D. Tirthani, earmarking of seats for in-service candidates is not by itself anethama. In fact, such earmarking has not been challenged as such. That being the situation, we see from the counter affidavit of the State Government (first Respondent) that the decision to earmark the seat of M.Ch. in Gastroenterology Surgery for Medical Education Service quota is supported by cogent reasons disclosed in paras. 7 and 8 of the counter affidavit which we quote as follows:

7. It is submitted that Surgical Gastroenterology Departments exist only in the Medical Colleges at Thiruvananthapuram and Kozhikode. In Medical College, Thiruvananthapuram, there are two posts of Lecturers in Surgical Gastroenterology Department. Only one Lecturer has the required super specialty qualification. The other Lecturer is the sixth Respondent, who has now been admitted for Super Specialty Course under MES Quota. In Calicut Medical College two posts of Lecturers in Surgical Gastroenterology Department are lying vacant for want of qualified hands. Surgical Gastroenterology Departments have to be developed in other three Government Medical Colleges also, in order to safeguard public interest since Government Medical Colleges are centers of higher learning and super specialty treatment. The poor and downtrodden section of the society depend mainly on the Government Medical Colleges for specialty treatments. Hence the Government are bound to ensure that adequate number of qualified faculties are available under the Medical Education Services for safeguarding public interest as well as academic concerns. Considering all these aspects, the only seat available for M.Ch Gastroenterology Surgery has been earmarked for service quota.

8. It is submitted that during the last 2 years, the lone seat in M.Ch Gastroenterology Surgery was allocated to Medical Education Services. But the admission was given to General Merit candidates, due to the unavailability of qualified candidates under MES Quota. In the last 6 years, only 2 Service Quota candidates were selected for M.Ch Gastroenterology Surgery; whereas 4 candidates were selected under the General Merit Quota.

8. Having noted that earmarking of seats for service quota could be made, it has also to be remembered that such earmarking is a need based allotment; thereby meaning earmarking of seats based on the need of the service. As already noted, the above quoted portion from the counter affidavit clearly discloses the fact situation which prompted the State to reserve the sole seat for M.Ch. in Gastroenterology Surgery for the service quota candidates. To make the service quota reservation and to apply the reservation permitted as per Ext.P8 Act, the State Government has taken all the subjects together and has applied the quota of 40%. Therefore, we do not find any room for any further classification on the basis of subjects. On this ground also, the reservation for the in-service quota for the year in hand stands.

For the foregoing reasons, this Writ Petition fails. The same is accordingly dismissed. No costs.