

(1978) 01 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 7647 of 1977

Y. Shantha

APPELLANT

Vs

The Selection Committee for Post Graduate Degree and
Diploma Courses in Government Medical College and Others

RESPONDENT

Date of Decision : 18-01-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 228A
Karnataka Medical College (Selection for Post Graduate Courses) Rules, 1977 — Rule 6
(2), 8 (1), 9 (1)

Citation : AIR 1978 Kar 66

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : K.R.D. Karanth, for the Appellant; R.N. Byra Reddy, General, for the Respondent

Judgement

1. Dr. Y. Shantha, petitioner before me having completed M.B.B.S. and Senior Horsemanship was an applicant for selection to a Post Graduate Degree in Paediatrics, Micro Biology and five other subjects, the selection of which is regulated by the Karnataka Medical Colleges (Selection for Post Graduate Course) Rules, 1977 (hereinafter referred to as "The 1977 Rules"). She has been selected for a Post Graduate Course in Micro Biology by the Selection Committee. But, her case is that she should have been selected to Post Graduate Course in Paediatrics having regard to her merit in preference to respondents Nos. 2, 3 and 4 who are less meritorious than herself. In this writ petition under Article 226 of the Constitution, she has challenged her non-selection to the subject of Paediatrics and the selection of respondents Nos. 2 to 4 as violative of Article 14 of the Constitution. In the Statement of Objections filed, respondent No. 1 has not denied the assertion of the petitioner that she is more meritorious to respondents Nos. 2 to 4. At the hearing of the writ petition, Shri S. G. Doddakalegowda, learned Government Advocate, did not also contest the above assertion of the petitioner. In the Statement of Objections and also at the

hearing, respondent No. 1 resisted the claim of the petitioner for selection to the subject of Paediatrics principally on the ground that she has been selected to one of the subjects viz., Micro Biology and therefore I should not interfere with the selection made to the subject of Paediatrics.

2. Shri R. N. Byra Reddy, learned Advocate General, who later argued the case for respondent No. 1, at the forefront urged that the petitioner was enforcing "the 1977 Rules" which undoubtedly have been framed by the Government in exercise of its executive powers meant for the guidance of its officers or the Selection Committee as ruled by a Full Bench of this Court in *Gokula Education Foundation (Regd.) and Others Vs. The State of Karnataka and Others*, and therefore the writ petition was not maintainable and was liable to be thrown out on to the ground. In her writ petition the petitioner is not enforcing her right under "the 1977 Rules". On the other hand, she is enforcing the right guaranteed by Article 14 of the Constitution. Her case is that in all cases of selection which equally applies to selection to the subject of Paediatrics, the most meritorious candidate unless otherwise disqualified, should be selected and the Selection Committee by ignoring such a mandate has violated the equality clause enshrined in Article 14 of the Constitution. It is only incidentally that the petitioner is relying on "the 1977 Rules" in support of her case. In my view, the Government has framed "the 1977 Rules" in exercise of its executive powers only to give effect to the mandate of Article 14 of the Constitution. An examination of "the 1977 Rules" would show that the Selection Committee has to make selection having regard to the merit of candidates and the reservations provided and is not conferred with arbitrary and unguided discretion. In *Gokula Education Foundation's* case, the Educational Institutions had challenged the validity of an analogous set of rules unlike a candidate seeking to enforce her constitutional right under Article 14 of the Constitution. It is in that view, the Full Bench of our High Court ruled that those rules were not "law" and were not required to be dealt by a Constitution Bench under Article 228A of the Constitution. In my view, the principles enunciated in *Gokula Education Foundation's* case have no application in examining the claim of the petitioner who is enforcing her constitutional right. I therefore hold that there is no merit in the contention of the learned Advocate General and reject the same.

3. Shri K. R. D. Karanth, learned counsel for the petitioner, contended that the Selection Committee is required to prepare a merit list for each subject and select the most meritorious candidates to the number of seats available and if that principle had been adhered to, the petitioner should have been selected in preference to respondents Nos. 2 to 4 from the reserved category of Backward Communities. Shri S. G. Doddakalegowda, learned Government Advocate, while admitting that the Selection Committee had not made a selection for each subject, and had made selections treating all the Post Graduate Courses as one unit and allocating candidates to different subjects contended that the same was in accordance with the 1977 Rules and was not violative of Article 14 of the Constitution.

4. Under Sub-rule (2) of Rule 6 when a candidate applies for more than one course or subject, he is required to send a separate application in respect of each course or subject along with the prescribed fee in respect of each application Sub-rule (ii) of Rule 3 directs reservations to the various categories enumerated in Sub-rule (i) to be made subject-wise as far as possible. Sub-rule (1) of Rule 8 directs the Selection Committee to make selection on the basis of merit of candidates, in the allotment of candidates to Colleges also under Rule 9 the Selection Committee shall have regard to the merit of the candidates in addition to other factors enumerated in sub-rule (1) of Rule 9. Sub-rule (2) of Rule 6 requiring candidates to make a separate application in respect of each subject or course is not without significance. By directing the candidates to make a separate application for each course. Government, in my view, really intended and provided that the Selection Committee should make a selection subject-wise. A combined reading of all the Rules and the Rules referred to by me earlier in particular contemplates selections to be made subject wise. Shri S. G. Doddakalegowda, learned Government Advocate, strenuously contended that the subject wise selection was extremely difficult and was almost impossible of compliance and therefore a construction as would create serious difficulties to the Selection Committee should be avoided by the Court. In my view, the apprehension or the difficulty envisaged by the learned Government Advocate is totally unfounded. It is not as if when a candidate makes an application for more than one subject, his case cannot be considered for more than one subject and selection for more than one subject cannot be made. Such a mode of selection is neither insurmountable nor causes any unmanageable difficulty as pleaded by the learned Government Advocate. In selections by the Public Service Commission to a class of service consisting of more than one cadre where preferences are indicated by candidates, the Public Service Commissions dealing with a very large number of posts and candidates in our country easily make selections to each cadre of service for which preferences are indicated by the candidates. In this case, it is not even a case of preference to a course or subject. Under the 1977 Rules, a separate application is required to be made for each subject. In that view, I do not see any difficulty for making selection to each course or subject that too where the number of seats for which candidates have to be selected does not exceed 15 or 20 in each subject and the total number of candidates for all the subjects does not exceed 150. I, therefore, hold that the Selection Committee was required to make a selection subject-wise and the fact that the petitioner had applied for Micro Biology and has been selected in that subject does not and cannot defeat her rights for selection to the Post Graduate Course in Paediatrics. On such a conclusion, it follows that the petitioner who did not suffer from any other disability was entitled for selection in the subject of Paediatrics in preference to the least meritorious candidate viz., respondent No. 4 or in addition to the candidates already selected by the Selection Committee.

5. In all cases of selection whether it be a Civil Post or in a College or in any

other institutions maintained by the State, the most meritorious candidate if he does not suffer from any other disability is required to be selected by the appropriate selecting authority and if the same is not done, it is well settled that the same would result in violation of Article 14 of the Constitution of India. I have already pointed out that there has been an infraction of Article 14 of the Constitution in the case of the petitioner. Notwithstanding the same, Shri R. N. Byra Reddy, learned Advocate General, strenuously contended that the Selection Committee having regard to the scheme and object of the rules, the preferences of candidates and their merit has selected the petitioner to the subject of Micro Biology and therefore there is no real infraction of Article 14 of the Constitution of India. In support of his contention, the learned Advocate General relied on several passages in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, ; *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, and *Dr. R. Narayana Swamy v. State of Mysore*. (AIR 1968 Mys 189). In my view, many of the well-known general principles enunciated by the Supreme Court and our Court on classification in the cases relied on by the learned Advocate General has no bearing on the real question that arises for determination in the case viz., when a candidate applies for more than one subject whether he is entitled to be considered for more than one subject and whether there should be subject wise selection or not.

6. Learned counsel for respondent No. 1 vehemently contended that as the petitioner has been selected to Micro Biology, I should not examine her claim for Paediatrics and interfere with the selection of candidates to Paediatrics. According to the petitioner, she has completed her Housemanship in Paediatrics, 9 clinical subject and that she was keen to continue her studies only in Paediatrics and that she was not keen on joining Micro Biology and studying Micro Biology Course. I cannot compel the petitioner to join a particular course. When I find that the claim of the petitioner for a particular subject is justified, I cannot refuse to uphold her claim merely on the grounds that she has been selected to another subject and that it would cause some difficulty to the Selection Committee and the authorities. For the foregoing reasons the petitioner was entitled for selection to the Post Graduate Course in Paediatrics and the same has been illegally and arbitrarily denied by the Selection Committee. I therefore direct the issue of a writ in the nature of mandamus to respondent No. 1 to provide a seat to the petitioner in the Post Graduate Course of Paediatrics in any of the Government Medical Colleges for the academic year 1977-78 if necessary by unseating respondent No. 4 or any other least meritorious candidate arrayed as a party respondent in this writ petition expeditiously and in any event within 15 days from the date of receipt of the order of this Court. I make it clear that my order does not prevent respondent No. 1 to accommodate the petitioner without disturbing any of the respondents by taking such steps as are necessary in that behalf.

7. Rule made absolute.

8. In the circumstances of the case, I direct the parties to bear their own costs.
9. Writ petition allowed.