

Dr. B. Rama Murthy Vs. Selection Committee

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Court : Karnataka

Decided On : Jun-09-1986

Reported in : ILR1986KAR3068

Judge : Doddakale Gowda, J.

Acts : Karnataka Medical Colleges (Selection for Admission to Post Graduate Courses) Rules, 1985 - Rule 11(1) and 11(4); [Constitution of India](#) - Articles 15(4) and 16(4)

Appeal No. : W.P. No. 4780 of 1986

Appellant : Dr. B. Rama Murthy

Respondent : Selection Committee

Advocate for Def. : N. Devadas, HCGP for R-2 and ;Ravi varma Kumar for R-3

Advocate for Pet/Ap. : V.C. Brahmarayappa, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Doddakale Gowda, J.

1. Denial of admission to petitioner to Post-Graduate Super Speciality in Cardiology and selection of third respondent to that course is questioned in this Writ Petition.

2. Contention of petitioner is, whichever criteria is adopted for selection, be it merit or reservation, he should have been preferred for admission instead of third respondent. Selection Committee has not filed any statement of objection justifying selection, except making records available. Third respondent has filed statement of objection to-day justifying his selection.

3. Admission as per Karnataka Medical Colleges (Selection for Admission to Post Graduate Courses) Rules, 1985, is on merit, subject to reservation. Marks in medicine forms the basis for determining merit. Petitioner has secured 63 per cent; whereas third respondent has secured 58 per cent.

In order of merit as arranged by Selection Committee, Sriyuths Somashekar, Gajanana Narayana Gudigar and A.G. Ravishankar are ranked at Sl. Nos. 911, 912 and 913 and petitioner and third respondent are ranked at Sl. Nos. 914 and 915 respectively. It is also relevant at this stage to mention that petitioner belongs to Backward Tribe; whereas third respondent belongs to Backward Community.

4. In the first instance, Somashekar and Gajanana Narayana Gudigar alone were selected for two seats available in the course. Gajanana Narayana Gudigar having not opted to join the course, filling up of lapsed seat has given rise to controversy viz., whether petitioner who has secured 63 per cent and ranked at Sl. No. 914 above third respondent should have been selected instead of third respondent with lesser marks.

5. Primary contention of Sri V.C.Brahmarayappa, learned Counsel for petitioner, is that Sri Gajanana Narayana Gudigar belonged to merit pool and vacancy caused by such candidate not joining the course, should have been necessarily filled by a next merited candidate. Facts alluded to above undisputedly demonstrate that petitioner is more meritorious than third respondent. Neither petitioner nor third respondent had any grievance, regarding selection dated 1-2-1986. As they did not challenge their selection, lapsed merit seat should have been necessarily gone

in favour of a next merited candidate.

Sri A.G. Ravishankar ranked at Sl. No. 913 has not been considered for selection by Selection Committee on the ground that there is no declaration of probationary period for him. Thus, Ravishankar though placed above petitioner stands excluded. Persons in between Gajanana Narayana Gudigar and Ravishankar and persons between petitioner and third respondent have not been called for interview, hence their cases have not been considered by Selection Committee. Petitioner being the next merited candidate, should have been, in all fairness, selected.

6. However, Sri Ravi varma Kumar, Learned Counsel for third respondent, submitted that petitioner has passed his M.D. examination in second attempt, whereas his client has passed M.D. examination in first attempt, hence, he is more meritorious than petitioner. Rules governing admission to the course do not refer to number of attempts taken to pass M.D. Rule making authority wherever considered attempts as relevant criteria, has provided manner of reckoning merit. In the absence of such specification, it is not possible for this Court to embark upon attempts to decide merit or demerit of a candidate.

7. Second submission is that as per Clause 5 (a) of Government Order No. DPAR 1 SBC 77, dated 4-3-1977, lapsed merit pool seat should go in favour of candidates belonging to Scheduled Caste or Scheduled Tribe. If those candidates are not available, same should go in favour of candidates belonging to Backward Communities or Backward Caste in the ratio of 2 : 1 as far as possible.

Reliance has been placed on this Government Order as there is reference in Sub-rules(1) and (4) of Rule 11. Sub-rule (1) of Rule 11 reads thus :

'Subject to reservation by persons referred to in Rule 8 which shall be worked out as far as may be in accordance with the procedure specified in G.O. No. DPAR 1 SBC 77, dated 4-3-1977 the selection should be made on the basis of merit determined as follows.'

This Government Order is issued under Article 16(4) of the Constitution providing mode or method for recruitment, though, to some extent, reservation in favour of persons belonging to socially and educationally backward class under Articles 15(4) and 16(4) may be the same, method of selection to a technical course has nothing to do with roster system provided for recruitment to public services. I have not come across instances where a roster system is adopted for admission to technical courses. Roster system is adhered to in cases of recruitment to public services invariably to maintain their seniority. Rule making authority having regard to this position has used words "as far as may be" in Sub-rule (1) of Rule 11.

8. Even otherwise, as per Government Orders of 1977, first vacancy should go to general merit, second should go to Scheduled Caste. As has already been indicated, at no time, third respondent challenged selection of Gajanana Narayana Gudigar. Third respondent, not being a person belonging to Scheduled Caste or Scheduled Tribe, cannot claim this benefit. Submission of Learned Counsel is that in the absence of candidates belonging to Scheduled Caste and Scheduled Tribe, a person belonging to Backward Community has been preferred. He was unable to answer whether Backward Tribe gets preference over Backward Community or vice-versa.

9. Sri N. Devadas, learned High Court Government Pleader, also tried to justify selection of third respondent on the same lines as canvassed by Sri Ravi varma Kumar. In order to establish plea of roster system, necessary material must have been made available from 1977, the date on which Government Order was promulgated to establish how vacancies have been filled up starting from No. 1 up to impugned selection; without these particulars it is impossible to sustain, selection, claiming protection of roster system.

10. Lastly, it was submitted that academic year is coming to an end and there is no justification to interfere with this selection.

On 17-3 1986, this Court has directed Government Pleader to take notice and secure records of Selection Committee. On 18-4-1986, the last day of working day before Summer vacation, order made reads thus :-

'Statement of objection, if any, may be filed within 2 weeks. Petitioner is permitted to move the Vacation Court after 2 weeks.'

For various reasons, petition was not heard though matter was required to be heard during vacation. Course is said to be three years duration and hardly four months have elapsed after selection. On account of delay caused in not hearing this Writ Petition, petitioner cannot be denied his legitimate right.

It was submitted that instead of disturbing his selection, Selection Committee may be directed to reserve a seat for petitioner for next academic year. I see no justification to deny rights of the prospective candidate for admission for academic year 1987-88 and even on this ground also, petitioner cannot be denied relief to which he is entitled to.

For reasons stated above, Writ Petition succeeds. The selection of third respondent is hereby quashed. A Writ in the nature of Mandamus shall be issued directing Selection Committee to select and admit petitioner to Post-Graduate Super Speciality Course in Cardiology, forthwith. Rule made absolute.

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