SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Devika Mohan Vs. State of Kerala

Devika Mohan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/59920

Court : Kerala

Decided On : Jun-24-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Devika Mohan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE24H DAY OF JUNE20153RD ASHADHA, 1937 WP(C).No. 18648 of 2015 (E) ---------- PETITIONER(S): ---------- DEVIKA MOHAN K, AGED52YEARS, REPRSENTED BY FATHER K. MADHANA MOHANAN PILLAI, SREE LAKSHMI, TC NO.18/253/1, GANDHI SMARAKA NAGAR, 69 B, MUTTADA P.O., THIRUVANANTHAURAM-695025. BY ADVS.SRI.S.KRISHNAMOORTHY SRI.P.KRISHNANKUTTY NAIR (KOLLAMALA) RESPONDENT(S): ---------- 1. STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARTE, GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695001.

2. ENTRANCE COMMISSIONER, O/O COMMISSIONER FOR ENTRANCE EXAMINATION, SANTHI NAGAR, THIRUVANANTHAPURAM-695001.

3. MEDICAL COUNCIL OF INDIA, REP. BY ITS SECRETARY, SECTOR8 POCKET14 PHASE I, DWARAKA, NEW DELHI-110 077. R1 & 2 BY GOVERNMENT PLEADER SRI.ROSHAN D.ALEXANDER R3 BY ADV. SRI.TITUS MANI VETTOM, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON2406-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ WP(C).No. 18648 of 2015 (E) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXHIBIT P1: TRUE PHOTOS OF THE DISABILITY CERTIFICATE ISSUED BY THE SUPERINTENDNET, GENERAL HOSPITAL, THIRUVANANTHAPURAM DATED231.2015. EXHIBIT P2: TRUE COPY OF THE RELEVANT PORTION OF THE PROSPECTUS ENABLING SUCH RESERVATION ISSUED BY THE2D RESPONDENT. EXHIBIT P3: TRUE COPY OF THE MARK LIST PUBLISHED BY THE CBSE. EXHIBIT P4: TRUE COPY OF THE RELEVANT PORTION OF THE RANK POSITION SHOWIN THE IN THE WEBSITE. EXHIBIT P5: TRUE COPY OF THE MEMO DATED215.2015. EXHIBIT P6: TRUE COPY OF THE RELEVANT PORTION OF THE PROSPECTUS IN MALAYALAM. EXHIBIT P7: TRUE COPY OF THE AMENDED NOTIFICATION DATED253.2009 ISSUED BY THE3D RESPONDENT. EXHIBIT P8: TRUE COPY OF THE

ORDER

G.O.(MS)NO.15/2015/H.EDN. DATED191.2015. EXHIBIT P9: TRUE COPY OF THE RELEVANT PORTION OF THE RANK LIST NOS. PUBLISHED BY THE2D RESPONDENT. RESPONDENT(S)' EXHIBITS ---------- NIL. / TRUE COPY / P.S. TO JUDGE PJ K. VINOD CHANDRAN, J.

---------- W.P.(C) No. 18648 of 2015 (E) ---------- Dated this the 24th day of June, 2015

JUDGMENT

The petitioner is aggrieved with the fact that she has not been selected for allotment on the basis of the relaxation granted to physically challenged persons, as has been provided for in the Prospectus to Kerala Engineering, Agriculture, Medical Entrance Examinations, 2015 (for brevity `KEAM2015).

2. The petitioner has been selected for Ayurveda, but however, her claim herein is with respect to the denial of admission to MBBS course. At the outset, it is to be mentioned that the eligibility for admission to the MBBS course and the Graduate course in Ayurveda are controlled by two separate regulatory bodies, being the Medical Council of India and the Central Council of Indian Medicine. The petitioner admittedly has 44% disability. The petitioner had scored around 71% in her qualifying examination, W.P.(C) No. 18648/2015 -2- being the Higher Secondary Examination conducted by the Central Board of Secondary Education. The petitioner appeared for the entrance examination in Paper I and Paper II; Paper I being Physics and Chemistry and Paper II being Biology (Botany and Zoology). The petitioner however did not qualify with respect to the minimum eligibility being 45% in aggregate in Paper I and Paper II of the entrance examination.

3. The specific contention raised is that by clause 5.3 of the Prospectus for KEAM2015 a candidate with Locomotory disability (the percentage of which is not really relevant since there is no dispute with respect to that) is entitled for the benefit of reservation under the Disability Act. This extends to 3% as provided for in the Act. There is an additional relaxation provided to such candidates with locomotory disability, which is available in clause 9.7.5 of the Prospectus thus: W.P.(C) No. 18648/2015 -3- "9.7.5 Qualifying Standards in the Entrance Examination for admission to various courses: xxx xxx xxx (i) Qualifying Standards as stipulated by the MCI for admission to MBBS/BDS Courses: Only those candidates who score 50% marks in the Medical Entrance Examination (Paper I & II taken together) will be considered for admission to MBBS/BDS courses. Candidates belonging to SEBC with annual income stipulation as given in Clause 5.4.2 and SC/ST, will be considered for admission to MBBS/BDS courses only if they have scored a minimum of 40% marks in the Medical Entrance Examination (Paper I & II taken together). This is applicable to all candidates seeking admission to MBBS/BDS courses including those under various 'Reservation'/ 'Special reservation' categories. Candidates with Locomotory disability of lower limbs between 40% to 70% will be considered for admission to MBBS course W.P.(C) No. 18648/2015 -4- only if they have scored a minimum of 45% marks in the Medical Entrance Examination (Paper I & II taken together).

4. The Malayalam version as produced by the petitioner in the writ petition also has a further recital insofar as the same being "in accordance with the norms of the Medical Council of India". The vernacular version is to be relied upon and the petitioner would contend that as per Ext.P7, a modification has been brought about by the Medical Council of India, which indicates that 45% marks is to be obtained in the qualifying examination and competitive entrance examination taken together. The petitioner would contend that hence, there can be no separate minimum specified for the entrance examination. With respect to the relaxation granted to candidates having Locomotory disability, the marks in the qualifying examination i.e., the Higher Secondary Examination, has to be taken together with the entrance examination marks and if a candidate obtains the minimum 45%, the same would W.P.(C) No. 18648/2015 -5- have to be considered as qualifying the threshold eligibility.

5. The learned Standing Counsel for the Medical Council of India and the learned Senior Government Pleader however, would refute such contention. The controversy raised by the petitioner has to be looked at not in the context of the amendment alone, as indicated in Ext.P7, but with the entire provisions which has been handed over across the Bar by the learned Standing Counsel for the Medical Council of India. The provision as it exits now is extracted hereunder:

"5. Procedure for selection to MBBS course shall be as follows:- i) In case of admission on the basis of qualifying examination under Clause

(1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause

(2) of regulation

4. In respect of candidates belonging to Scheduled W.P.(C) No. 18648/2015 -6- Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above. ii) In case of admission on the basis of competitive

entrance examination under Clause

(2) to

(4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause

(2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated W.P.(C) No. 18648/2015 -7- above. xxx xxx xxx xxx xxx xxx Provided that the eligibility criteria for admission to persons with locomotory disability of lower limbs in terms of Clause 4

(3) above - will be a minimum of 45% marks instead of 50% taken together in qualifying examination and competitive entrance examination for admission in MBBS course."

6. Going by the above provision, two requirements of minimum eligibility is prescribed, when the admission is on the basis of competitive entrance examination. One in the qualifying examination and the other in the entrance examination. The Medical Council of India, by their norms, prescribe that a candidate who seeks admission to the MBBS course has to pass individually in Physics, Chemistry, Biology and English as also obtain 50% marks in aggregate for Physics, Chemistry and Biology; at the qualifying examination, viz. the Higher Secondary Exam. With respect to the entrance examination also they prescribed a W.P.(C) No. 18648/2015 -8- minimum eligibility of 50% in Paper I and II.

7. The proviso cannot be read out of context and it has to be understood in the context of the prescription of minimum requirements. Since there are two separate

requirements prescribed, the Medical Council of India has provided for relaxation up to 45% of marks in the qualifying examination and competitive entrance examination from the 50% required as provided for general candidates. The words taken together cannot be read as to understand that the marks to be taken together is of the qualifying examination and competitive examination. The words are to be understood as the minimum requirement is 50% or 45% taken together for the subjects Physics, Chemistry and Biology and 50% or 45% taken together in Paper I and II of the entrance examination. The petitioner having not obtained the minimum qualifying criteria of 45% in aggregate in Paper I and II of the entrance examination, would not be entitled to be considered for admission to the W.P.(C) No. 18648/2015 -9- MBBS course at all; alone to be considered as a Locomotory Disabled Candidate.

8. The prospectus also, in consonance with the above requirements, provides for a threshold eligibility of 50% in the academic qualification i.e., the Higher Secondary Examination by clause 6.2 and a separate minimum of 45% in the entrance examination, Paper I and II, by clause 9.7.5. It is also to be observed in passing, that the strict adherence to the MCI norms is only in interdicting any dilution of the norms and it is well established that a further rigour in the prescriptions in a State is permissible 9. Further, contention raised by the petitioner is that Ext.P8 amendment indicates that 10 marks is the eligibility to figure in the ranked list. Learned Government Pleader submits that, that is only with respect to the eligibility to figure in the ranked list, which has to be tested with the minimum requirements that are provided by the various apex bodies, since the entrance examination is a common W.P.(C) No. 18648/2015 -10- entrance examination to the Engineering, Architecture, MBBS, BDS, Ayurveda, Homoeo, Siddha, Agriculture, Forestry, Veterinary and Fisheries. Hence, the said contention is to be rejected outright. The writ petition would hence stand dismissed. Sd/- K.VINOD CHANDRAN, JUDGE jjj

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com