

V. Ramagopal and ors. Vs. Y.V.S. Siva Kumar and ors.

V. Ramagopal and ors. Vs. Y.V.S. Siva Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/798195

Court : Chennai

Decided On : Oct-22-1980

Reported in : AIR1981Mad228

Judge : Ramanujam and ;Dsengottuvelan, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Writ Appeal Nos. 457, 459, 484 and 488 of 1980

Appellant : V. Ramagopal and ors.

Respondent : Y.V.S. Siva Kumar and ors.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : M.K. Ramaswami, Adv.

Judgement :

1. All these appeals arise out of the same order of Mohan J. quashing the selection of appellants for admission to the M. S. Degree Course (General Surgery) in the Madras Medical College for the academic year 198081, and directing reconsideration of the case of the petitioner in W. P. No. 3543 of 1980 who is the first respondent in all these Writ Appeals for admission to the M. S. (General Surgery) Degree Course in the Madras Medical College. The appellants herein were respondents 4 to 8 in the said Writ Petition and their selection to M. S. Degree Course in the Madras Medical College was challenged by the writ

petitioner and the said challenge has been upheld by Mohan, J. Aggrieved against the order setting aside their selection to the M. S. Degree Course and directing reconsideration of the question of selection, the appellants have come before us in these appeals.

2. Though the said writ petition was disposed of along with a batch of other writ petitions 3318/80 etc. Which deal with the selection of candidates for M. D. Course in the same Madras Medical College, it is unnecessary to deal with the case as put forward by the petitioners in the other writ petitions as the appeals arising there from are not before us as at present. It is for these reasons. We confine the discussion only to the question of selection made for M. S. Degree Course in the Madras Medical College which is the only subject matter before us in these appeals.

3. The selection to the Post-graduate Course both in medicine and surgery is governed by the following Government Orders:- In G. O. Ms, No. 1187, Health, dated 21-57-1970, certain criteria was laid down for selection of candidates to various Post-graduate Courses in Medicine and Surgery. In paragraph 2 of the said Government Order, the Government had laid down the following guidelines for constitution of the various selection committees including their Chairman: Sub clause 1 of paragraph 2 states that the qualification prescribed by the Universities and the Medical Council of India for admission to the various Post-graduate Course should be strictly adhered to. In sub-clause (5), the Selection Committees directed to preserve the mark list and to submit the same along with the list of applicants and the list of selected candidates to the Government for their perusal,

Sub-clause (7) says that candidates who have passed the Final M. B.B S. Examination with high grades should as far as possible be selected. Sub-clause eight says that preference should be given to candidates who have put in three years or more service⁶ Sub-clause nine says that recognition should be given for services in the Army, F. S. L, Primary Health Center, Jail, Family Planning and similar postings. Sub-clause 10 says that only in the absence of availability of service candidates, private candidates should be &-elected except those with academic distinction. We are not concerned with the other portions of the said

Government Order at this juncture. By a further Government Order in G.

0. Ms. No. 408, Health and Family Planning dated 16-2-1976, the Government has set down the procedure for awarding marks at the time of the interview of the candidates by the Selection Committee for the selection of post-graduate degree and Diploma Courses in the said Medical College and the procedure is as follows.:-

(See below for Table)

The Government have also directed in the said Order that the selection should be guided only by consideration on merit within the framework of broader policy

(Contd. in Col. 2)

1. Proficiency in subjects(Prizes, medals certificates and I I and II Ranks
 2. Academic Record Deduct one mark for every failure Maximum marks will be given for no failures
 3. Nature of work done after graduation Senior House Surgeoncy/I year in a teaching department or 3 years in the Directorate of Medical Education or 5 years In the regular service.
 4. Subsequent work of merit
- (or)
- postings in Primary Health Centers, Army, Jail,
Leprency,Tuberculosis, Taluk Head Quarters Hospitals and Rural Dispensaries.
5. Extra curricular activities in a professional character of a social Service nature.
 6. Interview.

and guidelines laid down hitherto. A perusal of the said Government Order indicates that at the time of the interview, the Selection Committee has been

empowered to award in the aggregate 25 marks Seven marks under the head proficiency in subjects' is covered by columns 1 and 2. Three marks are to be awarded for the work done after graduation such as Senior House Surgeoncy or service in a teaching department or service in the Directorate of Medical Education or in regular service as per column 3. Four marks are to be awarded for the subsequent work of merit such as service in the primary Health Centers, Army, Jail, Leprosy, Tuberculosis, Taluk Head Quarters Hospitals and Rural Dispensaries under column 4, and four marks for extra curricular activities has been set down in column 5. Seven marks have been allotted for interview as such.

3A. For the academic year 1980-81 a Selection Committee headed by the Dean of the Madras Medical College interviewed all the candidates who applied for the M. & Degree Course and ultimately finalised the list of selected- candidates for admission to the said Course The writ petitioner, who was perhaps hopeful of getting admission to the. said Course, finding that his name had not been included in the list of selected candidates has prayed for the issue of a Writ of Certiorari Mandamus for quashing the selections made and to select him as one of the candidates for the said Course. The said Writ Petition appears to have been filed on 15-7-1980 and the same has been admitted and rule nisi ordered on 1-7-1980. The rule nisi had been made returnable by four weeks. However, the said writ petition along with the Writ Petition 3318 of 1980 dealing with the selection of candidates for AL D. Course appears to have been heard by Mohan, J., on 15-7-1980 long before the date fixed for hearing In the rule nisi.

After hearing the learned Advocate General who appeared on behalf of the State of Tamil Nadu and the Director of Medical Education, the learned Judge passed an order dated 15-7-1980 expressing his view in the matter, though the learned Judge calls it his prima facie view. In that order, the learned Judge has categorically stated that the selection of candidates for M. S. and M. D. Courses by giving weightage for Senior House Surgeoncy would clearly contravene Article 14 of the Constitution, in that unequals are being treated alike~ which according to the learned Judge is forbidden by the said Article, After service Of notice on the appellants herein who were respondents 4 to 8 in the said writ petitions, they appeared by their counsel and filed their counter-affidavits. After hearing the

counsel for all the parties, Mohan, J., passed a final order on 21-8-1980 which is the subject matter of the present appeals, setting aside the selections to M. D. and M. & courses in the Madras Medical College and directing the respondents 1 to 3 in the Writ petitions to reconsider the case of the writ Petitioner for selection to the M. S. course.

4. Even before filing of these appeals, the matter was brought before another Division Bench of this Court in the form of Writ Appeals against orders passed in certain interlocutory petitions. After Mohan, J. has passed the so called interim order expressing his prima facie view, the respondents filed two petitions before the same learned Judge. One is for Posting the Writ Petitions Nos. 3318 and 3543 of 1980 for hearing before a Division Bench and the other is to add the Registrar of University of Madras as a party-respondent. When Mohan, J. dismissed both these petitions, his order was questioned in two *Jayashree v. T. S. Chandrasekhar*, Writ Appeals Nos. 382 and 383 of 1980. In those two writ appeals, the main contention advanced by the appellants was that the learned Judge having passed an interim order expressing his view against them so strongly, in the interest of justice the matter should be heard by a Bench instead of a single Judge.

Tim Beach however dismissed the two writ appeals holding that positing of a matter before a Bench is exclusively within the domain of the single Judge and that exercise of such discretion cannot be the subject matter of an appeal before a Bench. The Bench further observed that Mohan, J., even before completion of service of notice on all the respondents, should not have passed an interim order expressing his views so strongly; but that however strong the observation may be, they can be taken to be only a tentative or a prima facie view, that it cannot be taken to be a constructive one and that it cannot also bind the respondents who have not been served and heard before the order passed. The Bench also observed that the learned Judge will pass orders after duly considering all the objections that may be put forward by the respondents 5 to 8 in the writ petitions who are likely to be affected by any order that may be passed by the learned Judge in the writ petition.

5. Before us, the first and foremost submission made by the learned counsel for the appellants is that the learned Judge (Mohan, J.) should not have passed an interim order on merits without actually hearing the parties likely to be affected and that opinion which the learned Judge carried right through even in his final order. Though it is unfortunate that the learned Judge has chosen to pass an interim order on merits even before the affected parties were heard it is unnecessary for us to go into that question any longer for the reason, that the same has been commented upon by mother Division Bench of this Court and that the learned Judge has now passed a considered order after dealing with the contentions urged by the respondents 4 to 8 in the writ petitions who are likely to be affected and it is the correctness of the order which is now in dispute and not the earlier interim order which is attacked as being violative of the Principles of natural justice. We therefore proceed to deal with the correctness or otherwise of the final order passed by the learned Judge without reference to the interim order passed by him.

6. In the affidavit in support of the writ petition, the writ petitioner has alleged two grounds for his non-selection. One is that he is a candidate belonging to Forward Community and the other that he has not undergone the Senior House Surgeoncy. In the affidavit, the petitioner has also very much highlighted his academic distinctions and had asserted that because of those academic distinctions, he is entitled to get a seat for M. S. Degree Course. Since at the earlier stage the Government did not seek to sustain the non-selection on the ground that the petitioner belongs to Forward Community but sought to sustain the non-selection only on the ground that the petitioner did not have the additional qualification of having undergone Senior House Surgeoncy, Mohan, J., felt that the requirement of a Senior House Surgeoncy for admission to the M. S. or M. D. Course especially after abolition of the Senior House Surgeoncy Course would be violative of Article 14 as it amounts to treating unequals as equals.

7. However, when the matter came up for final disposal, the learned Judge has gone on a different footing. In the final order of Mohan, J., the validity of the Government Order G. O. Ms. No. 408, Health dated 12-2-1976 which lays down the guidelines for allotment of marks for various qualifications, was held to be valid. As

a matter of fact the learned Judge (Mohan, J.) specifically 'points out that the validity of the said Government Order has not been challenged by the petitioner. The following observation of the learned Judge will indicate that he proceeded on the basis that the Government Order providing for the marking system is valid and that it cannot successfully be challenged:

"Therefore, it cannot for a moment be contended that the Government have no power to lay down norms through the Government Orders for selecting candidate. Fortunately in this case the Government Order* as such is not attacked excepting a faint argument that the award of 7 marks for interview carries no guidelines. For my part I am totally unable to accept this argument".

Thus before the learned Judge, the award of seven marks for interview under column 6 of the Government Order was alone challenged as being absolutely arbitrary. Even there, the learned Judge finds that having regard -to, the fact that a committee is constituted consisting of men who are experts in their respective fields and their integrity being beyond question the award of seven marks at the interview cannot be said to be arbitrary at all. An attack also has been made before the learned Judge by the writ petitioner regarding the allotment of marks under columns 3 and 4 of the said Government Order. Column 3 refers to the work done by a candidate after graduation such as Senior House Surgeoncy or service in a teaching department or in regular service. Column 4 refers to sub sequent work of merit after graduation The attack against the validity of columns 3 and 4 by the writ petitioner was that a candidate seeking selection for Post-graduate Course fresh from M. B. B. S. will have no opportunity to do any work after graduation either as Senior House Surgeon or as a person in service or any work of merit which is referred to in columns 3 and 4 and there fore a fresh M. B. R S. candidate will have no opportunity to get any marks under columns 3 and 4 and therefore, the allotment of marks under columns 3 and 4 cannot legally be justified as they create inequality between equals. It was also pointed out before the learned Judge by the Writ Petitioner that the Government themselves have abolished the Senior House Surgeoncy and therefore, there is no question of awarding any mark for having undergone the Senior House Surgeoncy to any candidate. The learned Judge after considering the petitioner's contention held that the award of marks

under columns 3 and 4 cannot be said to be bad for, the work done by a candidate after graduation is a relevant criteria and therefore the allotment of marks under those columns cannot be questioned as invalid or as arbitrary. The learned Judge has thus upheld the guidelines prescribed by the Government in G.

0. Ms. No. 408, Health dated 16-2-1976 and also the allotment of marks for any course undergone or any work done after graduation which is quite relevant for the selection of candidates for the Post-graduate Course. Having upheld the marking system as contained in the said Government Order, particularly the allotment of marks under columns 3 and 4 which was specifically challenged by the writ petitioner, the learned Judge has however set aside the selection on a ground which we are not able to uphold either as just or reasonable.

8. The reason given by the learned Judge for setting aside the selection made in this case is that the allotment of marks under columns 1 to 6 of the G. 0. Ms. No. 408, Health dated 16-2-1976 has been done at one and the same stage while the consideration referred to in columns 3 and 4 should have been taken into account by the Selection Committee only when the marks allotted to the candidates under either columns are equal. The learned Judge has taken the view that the allotment of marks under columns 3 and 4 will come in only at a subsequent stage after the marks had been allotted under columns 1, 2, 5 and 6 and when the marks so allotted to the candidates are found equal. That means when the marks secured by the candidates under columns 1, 2, 5 and 6 are found to be equal, then alone the allotment of marks under columns 3 and 4 will arise. It is on this basis, the learned Judge has held -that the writ petitioner has secured 16 marks under columns 1, 2, 5 and 6 which is higher than marks obtained under the same columns by the respondents 4 to 8 and therefore he has to be preferred in the matter of selection. We find it difficult to understand the reasoning of the learned Judge. The Government Order prescribing the marking system is in general terms and it merely sets down six clauses under which marks are to be allotted to the candidates by the Selection Committee at the time of the interview. It does not say in what order and in what stage the marks under each clause has to be given. If the Government Order is silent as to the Order the marks under each column has to be allotted, we do not see how the Court can say that some columns in the

same Government Order should be applied first and others later. If the Government Order has stated specifically that clauses 3 and 4 should be applied last only when the marks obtained by the candidates under other clauses are found to be equal, then the said clauses 3 and 4 can be taken to have qualified or restrictive operation. If the Government Order prescribing marking system does not restrict application of columns 3 and 4, it is not possible for the Court to restrict or control its operation by introducing its own notions of justice or fair-play.

Admittedly, the Government Order does not say that the allotment of marks under columns 3 and 4, will arise only when marks obtained by the candidates under other columns are equal. As already stated, if the Government Order is silent, the normal rule of construction is that all clauses found in the Government Order will have their own operation and one clause cannot be read so as to control or restrict the operation of another clause in the same Government Order. If it is open to the Court to give emphasis for clauses other than 3 and 4 in the said Government Order at the instance of the persons like the writ petitioner and overlook clauses 3 and 4 for similar reason, Court can also justify the prominence being given to clauses 3 and 4 in preference to other clauses at the instance of persons like the appellants who are respondents 4 to 8, who have, to their credit, some work done after graduation which entitle them to get marks under columns 3 and 4. It cannot be in dispute, and the learned Judge has also not doubted, that every one of the factors referred to in clauses 1 to 6 are relevant and germane in the matter of selection of candidates for Post-Graduate Course.

As already stated, clauses 1 and 2 refer to academic proficiency and distinction and seven marks have been set apart for the same. Columns 3 and 4 refers to the work done by the candidates subsequent to graduation in the field of medicine and seven marks have been allotted for such work. It cannot be stated that the work done after graduation in the medical field cannot be said to be irrelevant in the matter of selection of candidates for Post-graduate studies. Clause 5 deals with extra curricular activities and clause 6 deals with allotment of marks for interview. Thus, all the six clauses referred to in the Government Order are germane and relevant in the matter of selection of candidates for Postgraduate Medical Courses and among the various considerations, it is not possible for either the Selection

Committee or the Court to lay emphasis on any one of the clauses overlooking or ignoring the criteria set out in the other clauses. It may be that persons who have got bright academic record will score high marks under columns 1 and 2 at the interview, and the Persons who may not have that good academic record may secure marks under columns 3 and 4 for the subsequent work done by them after graduation. Thus, one set of persons coming afresh from the Medical College are enabled to get marks for the academic records while others who are not able to get marks for such academic record are allowed to get marks for the subsequent work after graduation in the medical field. We are not able to see any hardship or injustice in the application of marking system as set out in the Government Order. We are also not inclined to share the view of Mohan, J., that only after allotting marks under columns 1, 2, 5 and 6 the allotment of marks Under columns 3 and 4 should be resorted to and that too only when the marks are allotted to the various candidates under the columns 1, 2, 5 and 6 are found to be equal. If the view taken by the learned Judge is accepted as correct, then in very many cases there cannot be any room for the application of clauses 3 and 4 and the allotment of marks under those two clauses for, there may not be always equality of marks between various candidates and as such there is no necessity to apply clauses 3 and 4.

This will mean that though the Government have set down certain criteria under columns 3 and 4 as relevant considerations, those relevant considerations will stand ignored in circumstances where the marks allotted to the candidates under columns 1, 2, 5 and 6 are found to be unequal. By restricting the operation of clauses 3 and 4 to cases where there is equality of marks between the candidates after allotting marks under clauses 1, 2, 5 and 6, the learned Judge has not only restricted the operation of clauses 3 and 4 but completely given a go-by to the objects, with which the factors as contained in clauses 3 and 4, had been introduced. As already pointed out, when the Government Order proceeded on the basis that every clause Out of clauses 1 to 6 should have equal application and had not restricted the scope of the application of any of the clauses, if the Court were to say that clauses 3 and 4 will not operate in certain circumstances or will operate only in certain specified circumstances, the Court will be re-writing the Government Order and laying down a fresh marking system which is not

contemplated in the said Government Order by the Government.

The only ground on which Mohan, J., has set aside the selection in this case is that all the clauses under the Government Order have been applied at the same time and that in fact clauses 3 and 4 should have been applied Only if the equality is obtained between the candidates after applying clauses 1, 2, 5 and 6. Now that we have held, on a due and proper interpretation of the Government Order which lays down the relevant criteria for awarding marks at the interview of candidates for selection of Postgraduate Degree Course, that all the clauses should have equal operation and one clause cannot override the other especially when the allotment of marks was under different clause, it leads to the inference that one clause cannot have an impact on the other. Hence the order of the learned Judge in setting aside the selection cannot in law be sustained.

9. The learned counsel for the first respondent brings to our notice two decisions of this Court that once a basic qualification is prescribed for entry into a course, no regard shall be had to any further qualification possessed by a candidate. In an unreported judgment in *M. Pandian v. State of Tamil Nadu* (W. P. No. 4522 of 1979) a Division Bench of this Court set aside the selection made to the B. G. L. Course on the ground that after providing graduation as the minimum for selection to the B. G. L. Course, the award of marks for Post-graduation cannot be sustained. We do not see how that decision will be of any assistance to the first Respondent. Here, marks have not been awarded to any further or Post-graduate Course. Under Cls. 3. and 4, additional marks have been awarded for subsequent work after graduation in the medical field either as Senior House Surgeoncy or as a person in teaching Department or as a person in regular service. There cannot be a dispute that any work in the medical field by a candidate after finishing M. B. B. S. Course will be a relevant criteria for purpose of making selection for the Post-graduate course. As between the two candidates, one fresh from the Medical College and another having medical experience after graduation in the medical field, the latter is to be preferred, as the work in the medical field after graduation cannot be said to be irrelevant or not germane in the matter of selection for the Post-graduate Course. In the case referred to above marks are allotted for the Post-graduate candidates which had nothing to do with the law. But here the work

done subsequent to graduation was in the medical field and therefore it is a quite relevant circumstance to be taken into account at the time of selection of the candidates for the postgraduate course. We are not therefore inclined to agree with the contention of the learned counsel for the first respondent that the award of marks for the work done after post-graduation can be said to be either arbitrary or violative of Art. 14 of the Constitution.

10. The learned counsel then refers to another unreported decision in *Anuratha v. State of Tamil Nadu* (W. P. No. 3522 of (1978) and contends that since the Senior House Surgeoncy Course have been abolished and as the writ petitioner had no opportunity to undergo that Course, he should be awarded full marks under column 3. We are at a loss to understand the submission made by the learned counsel. It is true that the Senior House Surgeoncy Course has been abolished. But the abolition of Senior House Surgeoncy Course does not obliterate experience gained by a candidate as Senior House Surgeon before its, abolition, nor such experience should stand nullified by the abolition of the system. If the candidate has undergone the Senior House Surgeoncy while that scheme was in force, the experience gained by the candidate as a Senior House Surgeon cannot in any sense be taken to be nullified by the subsequent' abolition of the scheme. Therefore as between two candidates, one candidate without having undergone the Senior House Surgeoncy and another having experience of House Surgeonship when the scheme was in force, the latter will definitely be preferred as he has got additional qualification of having experience of Senior House Surgeon.

In the above case referred to by the learned counsel, in some of the schools the facility of N. C. C. was available and in other schools the said facility was not available. Therefore, as between the candidates who came up for selection a distinction was made between candidates who had undergone N. C, C. course and those who bad not undergone, It is this anamoly that was pointed out by the Bench and it was stated that sal students should be awarded marks for N. C. C. course. However, that reasoning will not apply to the facts on hand, In this case, there is abolition of Senior House Surgeoncy in all Medical colleges in the State⁶ But that does not mean that the persons who have already got experience as

senior House Surgeon while the scheme was in force should lose the benefit of the experience merely because subsequently the said scheme was abolished by the Government We are not therefore Inclined to agree with the learned counsel for the first respondent that the abolition of the senior House Surgeoncy had anything to do with the allotment of marks under column 3 of the said Government Order.

11. In view of the above discussion, we set aside the order of Mohan J, setting aside the selection made in the Madras Medical College, and dismiss the writ petition. There will however be no order as to costs. course in the Madras Medical College, and dismiss the writ petition. There will however be no order as to costs.

12. Appeals allowed

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