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Court : Chennai

Decided On : Dec-07-2012

Judge : D. Hariparanthaman

Appeal No. : W.P.Nos.27497 & 27498 of 2012 & M.P.Nos.1 & 1 of 2012

Appellant : Renisha E.K. and Another

Respondent : The Union of India, Represented by the Secretary to Government Ministry of Home Affairs and Others

Advocate for Pet/Ap. : For the Petitioners: Bharatha Chakravarthy, Advocate. For the Respondent: R1 to R4 - T. Murugesan, Senior Govt. Pleader (Pondy) Assisted by K.R. Hasin, Addl.Govt. Pleader (Pondy), R5 - R. Muthukumaraswamy, Senior Counsel for D. Sreenivasan, Advocate.

Judgement :

(R5 impleaded as per order of the Court dated 5.12.12 in M.P.Nos.2 and 2 /12 in W.P.Nos.27497 and 27498 of 2012)

(Prayer: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of writ of mandamus directing the respondents or their subordinates to grant admission to the petitioner to the M.Sc (Plant Science)

course for the academic year 2012-13.)

ORDER

1. The petitioners are the residents of Kerala State. They passed B.Sc., (Botany). The petitioner in W.P.No. 27497 of 2012 secured 71.10% of marks and the petitioner in W.P.No. 27498 of 2012 secured 58.59% of marks in the Degree Course. They applied for M.Sc., (Plant Science) in Mahatma Gandhi Government Arts College, Mahe, the fourth respondent herein. The said College was established by the Government of Union Territory of Pondicherry. The College is at the Mahe region of the Union Territory of Pondicherry. The Mahe region is in the midst of Kerala State. Because of its geographical position, the population in Mahe are all Malayalam speaking people. The Mahe Region is very small area comprising about 9 sq. km.

2. There are 10 sanctioned seats for M.Sc (Plant Science) course in the 4th respondent College. The duration of the said course is two years. Only two persons applied from Mahe region. They were given admission and 17 persons from Kerala State including the petitioners applied for M.Sc (Plant Science). Further, one person hailing from the State of Kerala, who obtained higher mark was given admission. In total, three students are admitted in M.Sc., (Plant Science) of the 4th respondent College. It is not in dispute that seven seats remain vacant. Since seven seats are vacant without being filled up, the petitioners have come up before this court by filing these writ petitions seeking for direction to the respondents to grant admission to the petitioners to M.Sc., (Plant Science) Course for the academic year 2012-13.

3. The 5th respondent got impleaded in both the writ petitions. The 5th respondent is the President of National Student Union of India, Mahe.

4. Counter affidavit and additional counter affidavit are filed by the respondents 1 to 4. The petitioners have filed reply affidavit.

5. The respondents in their counter affidavit have stated that there is no right available for the petitioners to seek enforcement of their claim for admission in the

4th respondent College and they are entitled to the facilities available for education in their own State. Merely because there are vacant seats in the 4th respondent College, the petitioners need not be considered against those seats, in the absence of any law entitling them to seek the same. Though the students of Kerala are benefited by 10% reservation provided by the Pondicherry Government at Mahe, the State of Kerala is not reciprocating the same. It is averred that already one person was admitted from Kerala State. In such circumstances, unless a decision is taken in the matter of admission of students from other States, no more additional seats could be allotted to the students of other States as 10% reservation for other States was already filled up. The phenomenon of seats falling vacant is only a temporary one and the same may vary from year to year. Therefore, the claim of the students from Kerala to give admission in addition to 10% of reservation would create serious problems and that despite discussion by the Government of Pondicherry with the Government of Kerala for reciprocal arrangement, so far there is no response from the Government of Kerala. In W.P.No. 16149 of 2011 dated 16.8.2011, a Division Bench of this Court was pleased to direct the Government of Pondicherry to go ahead with the discussion with the Government of Kerala and arrive at an amicable settlement for accommodating the students of Kerala on reciprocal basis, as the Government of Kerala has not so far favourably responded. Thus, the judgment of the Division Bench squarely covers this case. Hence the writ petition is liable to be dismissed.

6. The impleaded respondent also has supported the stand of the Government of Pondicherry and he has opposed the admission of the petitioners in M.Sc. Course.

7. Heard both sides.

8. During August 2012, the 4th respondent called for applications for admission to M.Sc.,(Plant Science). The petitioners made their applications on 14.8.2012. Admissions were over on 24.10.2012. Classes for M.Sc., (Plant Science) commenced on 24.10.2012. The claim of the petitioners is that since the seats are vacant they could be accommodated in those seats, otherwise, it would serve no purpose to anybody.

9. On the other hand, the claim of the petitioners is contested by the Government of Pondicherry stating that the Honourable First Bench of this Court in the order dated 16.8.2011 in W.P.No. 16149 of 2011 negated a similar request and therefore the petitioners cannot be given admission.

10. Secondly, according to the Government of Pondicherry, the prospectus issued by the 4th respondent College provides for 10% of reservation for other States and the same was filled up and therefore no more students from other States could be admitted.

11. Thirdly, it is the case of the Government of Pondicherry that the State of Kerala is not reciprocating by giving reservation for the students hailing from Union Territory of Pondicherry and therefore the Government of Pondicherry also would not accommodate over and above 10% reserved for students of other States.

12. Fourthly, it is submitted that since classes commenced on 24.10.2012 the petitioners could not be admitted.

13. I am not impressed by none of the arguments made by the learned Government Pleader (Pondicherry). In my view the judgment of the Hon'ble First Bench of this Court made in W.P.No. 16149 of 2011 does not cover this issue. The said case arose out of a writ petition filed in public interest. A general direction against the respondents was sought in the public interest litigation, mainly basing on the circular dated 13.11.2008 issued by the Government of Pondicherry. In the circular dated 13.11.2008, the Government of Pondicherry directed the Heads of Government and quasi Government institutions to fill up the unfilled seats from any other States only after considering all the local applicants and the students from outside Pondicherry will be charged two times of the existing fees. Later, the said circular was kept in abeyance by an order dated 30.12.2008. Many seats in the Mahatma Gandhi Government Arts College, Mahe, remained unfilled during 2008-2009. Out of the total strength of 285, only 136 seats got filled up. In these circumstances, a general direction was sought in the public interest litigation in W.P.No. 16149 of 2011 to direct the respondents to admit students as per the circular dated 13.11.2008. The said writ petition was not filed by any individual student seeking admission in an unfilled seat. The petitioner in W.P.No. 16149 of

2011 was a resident of Mahe. He is not a student. The Government of Pondicherry submitted that discussions are being held with the Government of Kerala for reciprocal arrangement. In view of such a submission made on behalf of the Government of Pondicherry the writ petition was disposed of recording the said submission. In my view, the said judgment cannot be pressed against the petitioners herein.

14. As stated above, the petitioner in the public interest litigation was not a student and he did not ask for any specific relief. He prayed for filling up of all the unfilled seats based on the circular dated 13.11.2008. In the said circumstances, the Hon'ble First Bench of this Court recording the statement made on behalf the Government of Pondicherry disposed of the writ petition. Hence, the Government of Pondicherry cannot unsuit the petitioners relying on the orders passed in W.P.No. 16149 of 2011.

15. The second submission of the learned Senior Government Pleader (Pondy) is that the prospectus issued by the 4th respondent College provides for 10% of reservation for other States and the same was filled up and therefore no more students from other States could be admitted. The said submission also has no merit. The learned Senior Government Pleader has heavily relied on the prospectus issued by the 4th respondent College. According to him, only 10% of the seats is earmarked for the students belonging to outside States and 10% of 10 seats comes to one seat and that one seat was filled up by a student belonging to Kerala State. Hence, the fourth respondent College could not fill up the remaining seats, though the students from Mahe or any other students from other region of Pondicherry are not available and willing to join the Course in the 4th respondent College. I am not able to appreciate such a submission from a State. It is a different matter, if the students from Mahe region or a student from other region of Pondicherry are available and therefore the petitioners could not be accommodated. When there are 10 seats only three students got admitted and 7 seats are still vacant. This is not disputed. Hence reliance placed by the Government of Pondicherry on the prospectus deserves to be rejected. It is a different matter if the petitioners seek to increase the percentage of the seats to outside states. It is not their case. The case of the petitioners is that since the

seats are unfilled they could be accommodated. Hence, the submission in this regard is also rejected.

16. The third submission is that the Government of Kerala is not reciprocating by coming forward to reserve seats for the students of Pondicherry and therefore, the Pondicherry Government would not fill up the seats by offering the same to the Kerala students, though the seats are available. In this regard, only vague statements are made. Though it is stated that the Government of Pondicherry has taken up the issue with the Government of Kerala, yet no materials are placed before this Court. Even a perusal of the Division Bench judgment, referred to above, shows that there are no materials placed before the Court. When the Court posed a question as to whether any letters have been addressed by the Pondicherry Government to Kerala Government in this regard, there was no forthright answer from the Government of Pondicherry.

17. This Court also sought the details of number of students who sought admission in Kerala but did not get seats. However, no details were produced. Hence, I am of the view that it is for the Pondicherry Government to take up any issue relating to the welfare of the people including the welfare of the students of Pondicherry with Kerala Government. But the same cannot be a reason for not offering seats to the petitioners, when the seats are lying vacant. It is not the case of the Pondicherry Government that seats are vacant in Kerala State and the students of other States are not accommodated even in the vacant seats. Hence, the third contention also deserves to be rejected.

18. The last submission is that the classes have commenced on 24.10.2012 and therefore the petitioners could not be accommodated belatedly at this stage. I am not able to countenance this plea also. The petitioners filed the writ petitions on 8.10.2012. On 9.10.2012 the Government of Pondicherry took notice and the matter was posted to 11.10.2012. On 11.10.2012, the Government of Pondicherry had sought time to file counter and the matter was adjourned to 16.10.2012 for filing counter by Pondicherry Government. It was adjourned on many occasions for filing counter which ultimately came to be filed only on 30.10.2012 and the same was served on 8.11.2012. Thereafter also the Government of Pondicherry took

time as per the records. In these circumstances, the aforesaid plea has no substance. Hence, the submission in this regard is rejected.

19. The entire approach of the Government of Pondicherry proceeds as if the Pondicherry and Kerala do not belong to India. What is stated in Part IV A of The Constitution of India regarding fundamental duties of every citizen of India shall equally apply to Pondicherry State also. Sub-clauses (a) to (f) of Clause 51A of Part IVA are extracted hereunder:-

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture; "

20. The above extracted portion of Clause 51A would make it clear that the averments made by the Government of Pondicherry in its counter affidavit, which are extracted hereunder, are contrary to the fabric of the Constitution.

"There is no right available for the petitioners to seek enforcement of their claims in as much as they are entitled to all the facilities available for education in their own State.

.....

.....

Merely because there are vacant seats in the subject offered the petitioners should be considered is absolutely a baseless plea which can never be countenanced in the absence of any law entitling them to seek the same."

21. I make it clear that this Court has not issued any direction to increase the percentage of seats for other States. It is purely a policy decision and the Government of Pondicherry can decide on it. Therefore, providing 90% seats to the students hailing from Pondicherry is not the issue herein. The Pondicherry Government is perfectly justified in providing 90% seats to the students hailing from Pondicherry, but if no students are available to take the seats the Government of Pondicherry cannot say that they could keep it vacant since 10%seats alone is provided for other States.

22. For all the above reasons, the writ petitions are allowed directing the respondents to grant admission to the petitioners to the M.Sc (Plant Science) course for the academic year 2012-13. Consequently, the connected M.Ps are closed. No costs.

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