

SUPREME COURT OF INDIA

Puneet Gulati & Ors.

Vs.

State of Kerala & Ors.

C.A.No.7037-7038 of 2011

(Altamas Kabir, J., Cyriac Joseph and Surinder Singh Nijjar, JJ.,)

17.08.2011

ORDER

Altamas Kabir, J.,

SLP(Civil)No.11320-11321 of 2011

1. Leave granted.

2. This is a classic example where despite having succeeded in the proceedings before the High Court, the Appellants have not got the fruits of their victory. Although, initially there were five petitioners in the two Special Leave Petitions (now appeals) which we are considering, during the pendency of the matters all the petitioners, other than Dr. Amish Kiran Bhai Mehta, opted for separate disciplines and are no longer interested in admission to the Super Speciality Courses concerned. The appeals are, therefore, confined only to Dr. Amish Kiran Bhai Mehta.

3. The constitutional validity of reservations for local students by the State for admission to Super Speciality Medical Courses in the State of Kerala, commencing from the academic year 2010-2011, was the subject matter of the writ petition before the learned Single Judge of the Kerala High Court. The prospectus for admissions provided that students who had completed MBBS or Post-graduate courses from Medical Colleges in Kerala and Doctors who had done Rural Service in Kerala, would be given preference for admission and students who were not from Kerala would get a chance for admission only if there were no students from the State of Kerala available for admission in the aforesaid courses.

4. Altogether, 85 seats were available for the Super Speciality Courses in the DM and MCH groups, of which 19 seats were reserved for Doctors who were in Government service and the remaining 66 seats were available for selection in the open merit quota. After the selection process had commenced, the prospectus was amended limiting reservation in respect of candidates with Rural Service in Kerala to 10% of the seats and enlarging the scope for students of Kerala origin and children of members of All India Service in Kerala.

Students who were from outside Kerala and had participated in the written examination, questioned both the original and revised terms of the different prospectus and challenged the preferences and reservation provided to the local students in the prospectus. The learned Single Judge dismissed their writ petitions on the ground that after participating in the entrance examination they were not entitled to challenge the prospectus. However, in the writ appeals preferred by the said students, the question as to whether it was open to the writ petitioners to challenge the prospectus in Court, was referred to a Full Bench, which, after holding that the writ petitions were maintainable, remanded the matters to the appeal court for a decision on merits. In the appeals, the appellants prayed for restoration of the original prospectus, which would have the effect of restoring unlimited preference to Doctors having performed Rural Service in Kerala. The remaining writ appeals were filed by the State challenging the decision of the learned Single Judge declaring the provisions of the original prospectus and the revised prospectus providing for reservation for Kerala students only, as unconstitutional.

5. At this stage it may be kept in mind that challenge to the original and subsequent prospectus was based mainly on the ground that 100% reservation was unconstitutional as had been held by a Constitution Bench of this Court in *Saurabh Chaudri & Ors. Vs. Union of India & Ors*¹. The Division Bench of the High Court has extracted the relevant portion from the judgment in Saurabh Chaudri's case, relating to reservation at the level of Super Speciality. It was, inter alia, held that the higher the level of speciality, the lesser the role of reservation.

6. The Division Bench agreed with the views expressed by the learned Single Judge, but while technically allowing the claim of the candidates who were from outside Kerala, on the ground that 100% reservation was unconstitutional, chose not to give any relief to the said students on the ground that the course had commenced more than 6 months prior to the matter being heard by the Division Bench of the High Court.

7. Mr. M.C. Dhingra, learned Advocate appearing for the appellants, submitted that a great injustice had been caused to the said appellants, who were denied admission to the Super Speciality Medical Courses in the State of Kerala on the basis of an invalid legislation, which was ultimately struck down by the High Court. Mr. Dhingra submitted that most of the candidates who had been admitted in the groups of Super Speciality Courses, were far below the appellants in merit. Accordingly, despite being superior in merit, the appellants were denied admission in the aforesaid courses on the basis of a reservation policy, which was unconstitutional and was ultimately held to be so. Mr. Dhingra submitted that after striking down the reservation policy, as contained in the prospectus for admission to the Super Speciality Courses, the High Court ought to have evolved a mechanism by which the appellants were also admitted to the courses.

8. Ms. Liz Mathew, learned Advocate, who appeared for the State of Kerala, attempted to support the decision taken to admit the 10 students from the State of Kerala to the said course, but faced with the decision of both the learned Single Judge as well as the Division

Bench, she had no other option but to accept the fact that the appellants had been discriminated against. Since the State of Kerala had not challenged the decision of the Division Bench on the question regarding 100% reservation, Ms. Mathew merely reiterated the views expressed by the Division Bench that it was too late to grant any relief to the appellants herein, as a long time had elapsed since the commencement of the courses. Ms. Mathew, however, stated that five seats had been kept apart in the relevant courses as per the direction of this Court for the Academic Session 2011-2012.

9. Mr. S. Gopakumaran Nair, learned Senior Advocate, who appeared for Dr. Cecil Kunnappilly, who was the 2nd candidate in the waiting list for admission to the M.Ch. Genito Urinary Surgery course, submitted that despite having been kept in the waiting list, his client would stand to be eliminated therefrom, if the appellant, Dr. Mehta was to be absorbed in the said discipline for the academic year 2011-2012.

10. Mr. V. Giri, learned Senior Advocate, and counsel appearing for the Medical Council of India, did not have much to add to the submissions made by Ms. Mathew and Mr. S. Gopakumaran Nair.

11. Having considered the judgment of the learned Single Judge and the Division Bench and the submissions made on behalf of the respective parties, we have no hesitation in upholding the decision of the learned Single Judge and the Division Bench as to the constitutional validity of the first and second prospectus reserving 100% of the seats in the said Super Speciality Courses for students from Kerala alone, but we are also convinced that since the appellant was not given admission to the aforesaid course, on the strength of an invalid policy, he deserves to be accommodated in the aforesaid course in some way.

12. By an interim order dated 20th July, 2011, we had stayed the admission process for the Super Speciality Courses for the year 2011-2012 in the Government Medical Colleges in Kerala. Subsequently, by order dated 22nd July, 2011, we had modified the said order on the prayer made on behalf of the State of Kerala by directing that the admission process could continue but 5 seats were to be set apart for the petitioners, 2 seats in the M.Ch. Genito Urinary Surgery Course, 1 seat in M.Ch. Neuro Surgery Course and 1 seat in the DM Cardiology Course.

13. Since, of the 5 seats reserved in terms of our order, 2 are available in the M.Ch. Genito Urinary Surgery Course, we direct that although the appellant, Dr. Mehta, did not sit for the entrance examination for the year 2011-2012, on the strength of his marks in the entrance examination for the year 2010-2011, he should be given admission in one of the two seats in the M.Ch. Genito Urinary Surgery course, which has been kept vacant in terms of our order dated 22nd July, 2011.

14. At this stage we may also consider the submissions which had been made by Mr. S. Gopakumaran Nair, learned Senior Advocate, that the candidate who was No.1 in the waiting list had opted for a different discipline, namely, Thoracic Surgery and had already been given admission in the Trivandrum Government Medical College. Accordingly, Mr. Nair's

client, Dr. Cecil Kunnappilly, could be considered for the second seat which has been kept vacant in terms of our order dated 22nd July, 2011. In the event the seat is available, Dr. Kunnappilly may be considered for allotment of the same, in accordance with the rules.

15. We make it clear that this order is being passed in the special facts of this case and should not be treated as a precedent in future cases. The concerned authorities will be at liberty to fill up the other three seats, which had been kept apart, in accordance with the Rules.

16. The appeals are disposed of accordingly. In the facts of this case, the parties shall bear their own costs in the appeals.