

SUPREME COURT OF INDIA

Amina Marwa Sabreen A (Minor)

Vs.

State of Kerala

WP(Civil)No.541 of 2017

(A.K.Sikri and Ashok Bhushan,JJ.,)

24.08.2017

JUDGMENT

A.K.Sikri,J.,

1. The petitioners herein, three in number, belong to Muslim minority community. They are, however, not residents of Kerala and their fixed abode is Tamil Nadu. They have appeared in the National Eligibility Cum Common Entrance Test (for short, 'NEET-UG') examination, which is an All India examination for admission to various medical courses. Results of NEET-UG examination were published on June 23, 2017. Though the petitioners have qualified the said test, their All India ranking appears to be quite low. Notwithstanding this ranking, the petitioners are hopeful of getting admission in minority institution run and administered by their community, as they feel that because of the preference which can be given by the minority institutions to the persons belonging to their community, it provides a reasonable chance of getting admission to such colleges. Respondent Nos. 4 to 8 are the medical colleges run by the minority institutions. However, the petitioners feel their chances to get admission in any of the aforesaid colleges, i.e. respondent Nos. 4 to 8 which are situated in Kerala, are denied because of the undue preference given to those who are residents of Kerala. This mars the chances for getting admission in Kerala colleges as they are non-keralites being residents of Tamil Nadu.

2. In the writ petition reference is made to Ordinance No. 7 of 2017 known as "The Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Ordinance of 2017" , {Notification No. 4246/leg.H1/2017/LAW} which was promulgated on June 01, 2017 by the Governor of Kerala. This Ordinance provided for the regulation of admission and fixation of fee for private medical educational institutions in the State of Kerala and also for providing reservation of seats to persons belonging to the Schedules Castes, Scheduled Tribes and Other Backward Classes in medical/educational institutions. Section 10 of this Ordinance provided for reservation of seats.

This provision reads as under:

“10. Reservation of seats. - In admission to private aided or unaided medical educational institutions, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, there shall be reservation at the stage of admission for the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens as may be prescribed by the Government.”

3. As per the aforesaid provision, reservation was made for persons belonging to Schedules Castes, Scheduled Tribes and Other Backward Classes. Further, persons belonging to these classes are not confined to the State of Kerala and all those who are citizens of India are qualified for such reservation. Further, the minority institutions governed by Article 30 of the Constitution of India are excluded from this provision, meaning thereby they are not supposed to make reservation for these classes as prescribed by the Government and they can have their own system of reservation, if any. Section 2(c) of this Ordinance defines ‘centralised counselling’ as under:

“(c) “centralized counselling” means a common counselling and allotment of seats in colleges through a single window procedure by the Government or by any agency authorised by it for persons who have qualified in the entrance test for the purpose of merit based admission to medical colleges or institutions;”

4. Section 2(l) defines ‘minority’ and Section 2(m) defines ‘minority institution’ . Under Section 3 of the Ordinance, admission and fee regulatory committee is to be constituted by the Government by issuing notification in the Gazette. This committee is supposed to supervise and guide the admission process as well as fixation of fee which is to be charged from candidates seeking admission in various medical institutions. It is the say of the petitioners that provisions of this Ordinance reflected that the admission to medical colleges or institutions would be merit based and, therefore, they have no quarrel with this Ordinance.

5. After the NEET-UG results were announced on June 23, 2017, the Commissioner of Entrance Examinations, Government of Kerala (respondent No.3) issued a Press Release dated July 01, 2017 titled ‘Admission to Medical and Allied Courses, Kerala 2017’ , as per which the admission to the State quota seats in the Government medical/dental colleges and the entire MBBS/BDS seats in self financing medical/dental colleges including minority quota/NRI quota for the academic year 2017-18 shall be through a centralised counselling to be conducted by the Commissioner for Entrance Examinations from the rank list prepared by the Commissioner based on the score of the candidates in NEET-UG 2017. As per this press release, even the educational institutions run by minorities are bound to be part of the centralised counselling. The petitioners’ grievance is that insofar as the minority institutions are concerned, they can have their own counselling process.

6. It is on the basis of the aforesaid pleadings the instant writ petition has been filed for a direction or order in the nature of mandamus quashing press release dated July 01, 2017

issued by the Commissioner for entrance examinations for admission to medical and allied courses in the State of Kerala for the year 2017 and for directing respondent No.2 - Directorate General of Health Services (DGHS) to conduct admission to minority medical institutions on All India basis. Precise prayers which are made by the petitioners in this behalf are reproduced below:

“(a) Issue an appropriate writ, direction or order in the nature of mandamus quashing press release dated 1.7.2017 issued by the Commissioner of Entrance Examinations qua admission to medical & allied courses, Kerala 2017 in so far as it pertains to the Respondent State conducting the counselling process to minority Institutions;

(b) Issue an appropriate writ, direction or order in the nature of mandamus directing the Respondent DGHS to conduct admissions to minority medical Institutions on an all India basis;

(c) Issue such other writ, order or direction, as deemed fit in the circumstances of the case in the interest of justice.”

7. From the aforesaid pleadings and prayers made in the writ petition, it can clearly be discerned that the petitioners are aggrieved by Press Release dated July 01, 2017 and the grievance is that insofar as minority institutions are concerned, they should not be included in the counselling process that is to be undertaken by the State. In that hue, further prayer is that the DGHS should conduction admission to minority medical institutions on All India basis.

8. Notwithstanding the aforesaid prayers, at the time of hearing, nothing was argued about the validity of Press Release dated July 01, 2017. On the contrary, reference was made to G.O. (MS) No. 31/2017/H.Edn. dated January 30, 2017, issued by the State of Kerala, whereby prospectus for admission to professional degree courses, including MBBS/BDS, was approved. Clause 6.1 of the said prospectus gives edge to the students from Kerala and excludes, to a major extent, non-keralite students. Details of conditions of eligibility, etc. mentioned in clause 6.1 of the said prospectus are as under:

“Nativity: Only Indian citizens are eligible for admission to professional courses unless otherwise notified. Persons of Indian Origin (PIO)/Overseas Citizen of India (OCI) will also be treated at par with Indian citizens for the limited purpose of admission. However, PIO/OCI candidates will not be eligible for any kind of reservation.

Candidates seeking admission to professional courses will be categorised as Keralite, Non-Keralite Category I (NK I) and Non-Keralite Category II (NK II).

(i) Keralite: A candidate of Kerala origin will be categorised as a Keralite. Children of All India Service (AIS) officers (Non-Keralites) allotted to Kerala cadre are demd

to be Keralites’ as per G.O. (Rt) No. 822/08/H.Edn. dated 29/05/2008. But they will not be eligible for Communal/Special/Persons with Disabilities reservation or any fee concession.

(ii) Non-Keralite Category I (NK I): A candidate who is not of Kerala origin but fulfils any one of the following conditions will be categorised as ‘Non-Keralite Category I (NK I):

(a) A candidate who has undergone qualifying course in Kerala and who is son/daughter of Non-Keralite parents belonging to Government of India/Defence Service, posted at Kerala.

(b) A candidate who has undergone qualifying course in Kerala and who is son/daughter of Non-Keralite parents who are serving/served Government of Kerala for a minimum period of two years.

(c) A candidate who is not of Kerala Origin but has been a resident of Kerala State for a period of 5 (five) years within the period of 12 (twelve) years of his/her study.

(d) A candidate who is not of Kerala Origin but who has undergone his/her school studies in Kerala from standard VIII to XII. Non-Keralite Category I candidates will be considered against ‘State Merit’ seats for Engineering / Architecture / Medical and Allied courses. But they will not be eligible for Communal/Special/Persons with Disabilities reservation or any fee concession.

(iii) Non-Keralite Category II (NKII): Candidates who do not come under Keralite’ or Non-Keralite Category I’ will be categorised as ‘Non-Keralite Category II’ . Such candidates are eligible for admission to Government seats and Management quota seats in Engineering courses in Government Controlled Self Financing Colleges. However, the Non-Keralite Category II (NK II) candidates will be considered for admission to the Government seats in Government Controlled Self Financing Engineering Colleges only when the Keralite and Non-Keralite I (NK I) candidates are not available for admission. Non-Keralite Category II (NK II) candidates are also eligible for admission to Government Seats and Management Quota seats in Private Self Financing Engineering/ Architecture Colleges, which will be notified separately. But they will not be eligible for Communal/Special/Persons with Disabilities reservation or any fee concession. ‘Non-Keralite Category II’ (NK II) candidates are not eligible for admission to Medical and Allied Courses including MBBS/BDS and for admission to Government Engineering Colleges.

Note: The following category of candidates will not be governed by clauses (i), (ii) and (iii) above: Candidates to be admitted in respect of seats reserved for the nominees of Government of India, Administration of Union Territory of Andaman & Nicobar Islands, Lakshadweep Administration, Jammu & Kashmir, candidates

selected through the All India quota seats for MBBS/BDS courses and candidates sponsored under reciprocal quota by Government of Karnataka/Tamil Nadu.”

9.As is clear from the reading of the aforesaid provision, students seeking admission are put in three categories, namely, Keralite, Non-Keralite Category I (NK I) and Non-Keralite Category II (NK II). Insofar as NK I is concerned, though persons mentioned therein who come under that category are not of Kerala origin, they are also eligible to be considered against ‘State Merit’ seats for certain courses, including medical courses. Further, NK II candidates are totally excluded from eligibility insofar as admission to medical and allied courses, including MBBS/BDS and for admission to Government Engineering Colleges is concerned. It is this provision which hits the petitioners and makes them ineligible for admission to medical courses.

10. Entire thrust of the argument of the petitioners was that the aforesaid G.O. dated January 30, 2017, which carves out NK II and makes them ineligible for admission to medical and allied courses, including MBBS/BDS, is unconstitutional as it is discriminatory and violative of Articles 14 and 15 of the Constitution of India. This document does not find a mention in the writ petition and not even filed along with the writ petition, but was filed as an additional document subsequent to the filing of the writ petition. In these circumstances, the preliminary submission which is raised by the learned senior counsel appearing for the State of Kerala was that when there is no prayer to quash the aforesaid G.O. dated January 30, 2017, it is not permissible for the petitioners to challenge the validity of this notification by way of oral arguments.

We find substance in this preliminary objection raised by the respondent State.

11.We may mention that Mr. Dushyant Dave, learned senior counsel appearing for the petitioners, had made detailed submissions to attack the validity of the aforesaid G.O. and has cited various judgments in support. It may also be mentioned that respondent No.4, which is a minority institution, has supported the case of the petitioners by means of counter affidavit filed by it and at the time of oral hearing also Mr. Huzefa Ahmadi, learned senior counsel appearing for respondent No.4, made scathing attack on the vires of the said G.O.

12.It may also be mentioned that the learned senior counsel appearing for the State of Kerala also advanced detailed arguments refuting the submissions made by the petitioners as well as respondent No.4. He had submitted that there is an All India quota of 15% and in this quota students from all over India, on the basis of their merit, were entitled to get admission in the State run medical colleges as well as private aided and unaided medical colleges. He further submitted that after setting apart the aforesaid quota of 15% for students from all India, it was the prerogative of the State to take students from the State of Kerala alone in respect of the balance 85% seats as these colleges are State colleges and are not having national status. It was additionally submitted that the first phase of counselling to the State quota seats in MBBS/BDS courses in the State have already been completed in accordance with the time schedule fixed by the Medical Council of India and approved by this Court. In that

counselling 262 candidates belonging to NK I category (who are otherwise non-Keralities) are given admission. The office of the Commissioner for Entrance Examinations is heading to the activities related to the second phase of counselling to the MBBS/BDS courses along with other medical and allied courses and the second round of allotment is scheduled to be published on August 18, 2017. In Kerala, a total of 1044 seats were available under MBBS course in nine Government medical colleges for allotment by the Commissioner for Entrance Examinations. Also a total of 2050 seats are available for allotment by the Commissioner in eighteen self financing medical colleges in the State of which twelve colleges are minority colleges. Of these twelve colleges, six each belong to Christian and Muslim minorities. He also argued that similar provisions are contained in other States as well, providing 15% seats/quota on All India basis and earmarking 85% seats for the natives. Submission was that the provision in the State of Kerala was more liberal where NK I category was carved out giving some representation to non-Keralites even against 85% quota. However, since we are accepting the argument of the State predicated on the maintainability of the writ petition, it is not necessary to deal with the submissions on merits.

13. Reverting to the preliminary objections raised by the respondent State, as already mentioned above, there is no reference to the G.O. in the entire writ petition. This document is not even part of the writ petition. Therefore, there are no foundational facts and/or pleadings in the writ petition challenging this G.O. as unconstitutional. More importantly, there is no prayer in the writ petition seeking quashing of this G.O. Even when learned counsel for the State had pointed out fundamental infirmity in the writ petition, no attempt was made by the petitioners to amend the writ petition so as to incorporate challenge to the said G.O. as well. In the absence of any pleadings and the prayer seeking quashing of the said G.O., it is not permissible for the petitioners to seek a relief by making oral submissions in this behalf.

14. For the aforesaid reasons, we dismiss the writ petition on the ground of maintainability only as we do not deem it necessary to go into the issue on merits for lack of pleadings as well as requisite prayers in this behalf.

15. No costs.