

(2001) 09 KL CK 0035

High Court Of Kerala

Case No: W.A. No's. 1457, 1461 and 1736 of 2000

Sumi Johnson

APPELLANT

Vs

Commissioner for Entrance
Examinations

RESPONDENT

Date of Decision: Sept. 25, 2001

Hon'ble Judges: P.K. Balasubramanyan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: K.G. Balasubramanian, for the Appellant; Ashok M. Cheriyan, Santhosh G. Prabhu and T.R. Ranjith, for the Respondent

Judgement

P.K. Balasubramanyan, J.

W.A. No. 1457 of 2000 is filed by respondent No. 4 in O.P. No. 6672 of 2000. W.A. No. 1461 of 2000 is filed by the petitioner in O.P. No. 6672 of 2000. W.A. No. 1736 of 2000 is filed by respondents 1 to 3 in O.P. 6674 of 2000. For convenience, hereafter we shall refer to the parties by their ranks in the Original Petition.

2. Both the petitioner and respondent No. 4 claimed a seat in the quota reserved for the children of Ex-servicemen. There is no dispute that both are eligible to have a seat in that quota. The petitioner secured rank No. 2912 in the ranked list for medical courses. Respondent No. 4 secured rank No. 3792. Both the petitioner and respondent No. 4 were called for counselling in the order of their ranks. As per the procedure, at the counselling, the candidate is entitled to select his course subject to availability and eligibility. The petitioner as her first choice sought a free seat in the B.H.M.S. course in the Dr. Padiyar Memorial Homoeo College, Ernakulam. As her second choice she sought a payment seat in the same college. As her fifth choice the petitioner chose a free seat in the Government Homeopathic College in Trivandrum. Respondent No. 4 sought as her first choice a free seat in the Government Homoeopathic College at Trivandrum. Her second choice was for B.Sc. Nursing at Medical College, Calicut. Since at the relevant time, no free seat for B.H.M.S. course in the case of Ex-servicemen quota was available, neither the petitioner nor

respondent No. 4 were able to get admission in a free seat in B.H.M.S. course in any college. Therefore, the petitioner was given the payment seat in Dr. Padiyar Homoeo College, Ernakulam, her second choice. Similarly, respondent No. 4 was given a seat in B.Sc. Nursing in Calicut Medical College, her second choice. Both the candidates joined the respective courses.

3. Thereafter a free seat in B.H.M.S. course in the Government Homeopathic Medical College at Trivandrum became available. The concerned authority did not offer that seat to the higher rank holder among the Ex-servicemen quota candidates, namely the petitioner. Proceeding on the basis that respondent No. 4 who had a lesser rank, but who had made the first option for a free seat in B.H.M.S. course in Trivandrum Government Homeopathic Medical College, the authority offered that seat to respondent No. 4. In other words, the claim of the petitioner based on her rank was ignored on the basis that a free seat in Trivandrum Government Homeopathic Medical College in B.H.M.S. Course was only the fifth choice of the petitioner. Respondent No. 4 accepted the seat in Trivandrum Government Homeopathic Medical College. According to her counsel, she was compelled to accept it and leave the Nursing course at Medical College, Calicut. Whatever it be, the free seat that became available, was given to respondent No. 4. It is at this stage that the petitioner, the higher rank holder among the candidates eligible for a seat in the Ex-servicemen quota, approached this Court with the original Petition, O.P. No. 6672 of 2000 praying that a direction may be issued to the Commissioner of Entrance Examination and the other authorities, to accommodate her in a free seat in B.H.M.S. course on the basis of her rank since the free seat that became available for the Ex-servicemen quota should have been offered to her first, in view of her rank. The Original Petition was opposed by the Controller of Examinations and respondent No. 4 by pointing out that under clause 11.10 of the prospectus the option of choice of the candidate would prevail and since respondent No. 4, thought lesser in ranking, had opted as her first choice, for a free seat in the Government Homeopathic College, Trivandrum, the seat was rightly offered to respondent No. 4. The higher rank of the petitioner was irrelevant in view of the option exercised by the petitioner. The learned Single Judge held that this stand adopted by respondent Nos. 1 to 3 on the one hand and respondent No. 4 on the other, could not be accepted and the provision in clause 11.10 of the prospectus, if it sought to ignore the ranking of the candidate concerned, has to be held to be discriminatory and has to be held to be not operative to prevent the petitioner from claiming the free seat that became available at a later point of time. The learned single Judge, therefore, directed that the free seat that became available given to the petitioner. It is feeling aggrieved by this that respondent No. 4 and respondent Nos. 1 to 3 have come up with these two separate appeals. The petitioner has appealed against the refusal of the learned single Judge to order refund of the payment made by the petitioner for securing the payment seat and the enhanced fee paid by her for the payment seat during her continuance in that seat.

4. It has to be noted that when the counselling took place and both these candidates were admitted, no free seat for the Ex-servicemen quota was available in the Trivandrum Government Homeopathic College. Therefore, no offer of a free seat in that college could be made either to the petitioner or to respondent No. 4 at the time of counselling. It is in that situation, that the petitioner opted for Dr. Padiyar Homoeo College at Ernakulam in a payment seat and respondent No. 4 opted for admission to B.Sc. Nursing in Medical College, Calicut. In a case where a free seat became available for Ex-servicemen quota at a latter point of time, after the initial admissions have been completed, it appears to us that the proper course to be adopted by the Commissioner of Entrance Examinations is to offer that free seat to the highest rank holder among the candidates in that category. What clause 11.10 of the prospectus says is as follows:

"11.10. Change of course/college/branch will be made only from lower to higher order options mentioned in the Option Form. A candidate once selected for higher choice will not be considered for lower choice. The candidates are bound to accept the allotment based on the priority given in the Option Form. The options once exercised will be final. Vacancies arising after the first phase of Counselling will be filled up according to rank and observing the reservation rules on the basis of the priority given in the Option Form."

It is the contention of the learned government Pleader and learned counsel for respondent No. 4 that the seat should be offered on the basis of the priority given in the Option Form and if so understood, respondent No. 4 was rightly offered the seat even though she had secured only a lesser rank than the petitioner. But while reading this provision, we cannot ignore the other elements referred to in this provision. It provides that vacancies arising subsequently will be filled up according to rank and observing the reservation rules and of course on the basis of the priority given in the Option Form. This, in our view, does not enable the Commissioner of Entrance Examinations to ignore the rank and the reservation rules. He has to adhere to the Rank, Reservation Rules and the option. The best method of working out the rule, in our view, would be to offer the seat which has fallen vacant subsequently or which has become available subsequently to the candidates of the particular reserved quota as per their rank and give them an opportunity to exercise an option at that stage. As observed by the learned Single Judge, this part of the provision would become arbitrary rank is to be ignored and merit displaced merely because of the option exercised by the candidate at the time of original admission. We are, therefore, not inclined to interfere with the direction of the learned Single Judge when he held that the petitioner was entitled to the free seat that became available subsequently in the Government Homeopathic College, Trivandrum from the Ex-Servicemen quota in preference to the claim of respondent No. 4. We think that there should be a direction to the Commissioner of Entrance Examinations to follow the procedure of offering the seat that becomes subsequently available to a particular reservation quota on the basis of the ranks obtained by the candidates

belonging to that quota and not arbitrarily allot it to a candidate merely on the basis that the option of that candidate for that type of seat is higher than that of a higher rank candidate in that quota.

5. Having held thus, the question arises as what should be the relief that has to be granted in this case. Though the learned Single Judge directed that the admission should be given to the petitioner in the free seat, while admitting the Writ Appeal filed by respondent No. 4, this Court stayed the operation of that judgment. The result is that for the last one year, the petitioner is studying in the payment seat in Dr. Padiyar Memorial Homoeo College, Ernakulam and respondent No. 4 is studying in the free seat in Government Homeopathic Medical College, Trivandrum. As pointed out by learned counsel for respondent No. 4, a displacement of the candidates now would cause irreparable hardship and loss to respondent No. 4 since the natural consequence of our decision would be, to send respondent No. 4 back to her B.Sc. Nursing course in Calicut Medical College. That obviously is impossible since the seating originally given to respondent No. 4 would have been offered to another candidate who had opted for it, and one academic year is also already over. At the same time, it is not proper to deprive the petitioner of what is due to her in view of her rank and the availability of a free seat in the Ex-servicemen quota and our conclusion in this judgment. The seat was due to her and she has been deprived of the same because of the manner in which that seat was got filled up by the concerned authorities. In that situation, consistent with our conclusion, we hold that the petitioner is entitled to be accommodated in a free seat. The learned Government Pleader submitted that in Dr. Padiyar Memorial Homoeo College, Ernakulam there is no free seat available for Ex-servicemen quota. We do not think that the objection raised by the learned Government Pleader is an insurmountable one. We think in the circumstances that the proper thing to do is to declare that the petitioner will be treated as admitted to a free seat and from this academic year 2001-2002 onwards, fees will be collected from her only on the basis that she is admitted to a free seat. If the petitioner has paid anything in excess in this academic year, that will be adjusted towards the fee payable by her for a free seat for the rest of the course. the loss in fees suffered by Dr. Padiyar Homoeo College, in this respect, will be reimbursed by the State. In the circumstances, we do not think that it is necessary to order a refund of what has been paid by the petitioner at the time of getting admission or during the academic year 2000-2001. The judgment of the learned Single Judge is modified only to the above extent.

6. Respondent No. 4 will be entitled to continue her studies in the Government Homeopathic College, Trivandrum since she has already studied there for one year and she is in the position where she is, due to no fault of hers.