

(1965) 10 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 2147 of 1965

Parameswaran

APPELLANT

Vs

Principal, Medical College,
Trivandrum and Others

RESPONDENT

Date of Decision: Oct. 19, 1965

Acts Referred:

- Constitution of India, 1950 - Article 12, 14
- Kerala University Act, 1974 - Section 19

Citation: (1966) KLJ 717

Hon'ble Judges: K.K. Mathew, J

Bench: Single Bench

Advocate: C.S. Ananthakrishna Iyer, for the Appellant; K. Velayudhan Nair, K.J. Joseph, M.C. Sen, N.R.K. Nair and T.K.M. Unnithan for Respondent 2, A.S. Narayana Asan and V. Parameswaran Pillai for Respondent 4, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Mathew, J.

The petitioners applied for admission to the First year M.B., B.S. Course in the T.D. Medical College, Alleppey, for the academic year 1965-66. According to the prospectus issued by the College, no application would be registered in the College unless it is sponsored by the Kerala Cultural and Educational Society, a Society registered under the Societies Registration Act, and unless it is received by the 15th July 1965. The Society would sponsor no application unless the applicant pays a capitation fee of Rs. 7,500/- and an entrance fee of Rs. 101/-. Petitioners state that they have paid the capitation and the entrance fees, that their applications were registered, that they were interviewed by the Principal, and that he was satisfied about their eligibility for admission to the course. The contention of the petitioners is that according to the prospectus the final selection of the candidates has to be made by a selection panel to be constituted by the Administrative Council of the

College, but that contrary to it the selection was made by a selection committee constituted by the Registrar of the Kerala University after inviting applications from persons who had not applied through the Kerala Cultural and Educational Society within the time mentioned in the prospectus. They further contend that the constitution of the Selection Committee was unauthorised, that the invitation of fresh applications for the First year M.B., B.S. Course by the Committee was without authority, that some of the candidates selected by the Selection Committee have obtained only less marks than some of the petitioners, that the principle adopted by the Committee for making the selection was arbitrary and has resulted in discrimination and that the petitioners were not selected because the selection was made by the Committee. The prayer of the petitioners is for the issue of writ of mandamus directing the respondents to admit them to the First Year M.B., B.S. Course in the College, or in the alternative for a declaration that they are legally entitled to be admitted to the Course.

2. The Director General of Health Services of the Government of India requested the State Government to implement the recommendations of the Central Council of Health in regard to private medical colleges. One of the main recommendations is that private colleges should have a governing body constituted as follows:

State Health Secretary, Collector or an Officer appointed by the State Government, Director of Health Services or Director of Medical Services, one Superintendent of the attached Teaching Hospitals, a representative of the University, the President and the Secretary of the Society conducting the College, State Medical Council representative, Dean or Principal of the Medical College. (Member-Secretary.)

The Syndicate of the University of Kerala took a decision that the continued affiliation for the First Year M.B., B.S., Course to the T.D. Medical College can be given only subject to certain conditions. The conditions which are relevant for the present purpose are, (1) the management should agree to the conditions laid down by the Central Council of Health and constitute a Governing Board with the Secretary to Government (Health) as Chairman for the present: Dr. A. Abraham will be the representative of the University on the Governing Board, (2) the admission to Pre-professional and First Year M.B., B.S. Courses will be by inviting applications and selection made by a Committee on which there shall be one representative of the University: the selection committee should be constituted immediately: the constitution of the Committee and the rules regarding selection should receive the approval of the University: the University's representative on the Governing Board shall be the representative on the Selection Committee also, and (3) under no circumstances shall any capitation fee or special admission fee be levied or admission made in advance. Ex. R2 produced by the 3rd respondent in O.P. 2383/1965 would show that the authorities of the T.D. Medical College have agreed to the above conditions. By Ex. R2 Government ordered as a special case that the payment of the annual contribution to Government by the College Council be

waived so that the conditions laid down in the agreement are fulfilled by the T.D. Medical College Administrative Council. In their letter dated 8th July 1965, the University asked the College authorities to constitute a Selection Committee for selection of candidates for the Pre-Medical and First Year M.B., B.S. Courses stating that the constitution of the Committee, and the rules regarding selection should receive the approval of the University. As there was no response to this letter, on 14th July 1965 the Registrar of the University suggested the personnel of the Selection Committee and the general rules for admission. That was approved by the Government as is evident from Ex. R1 dated 11-8-1965 marked on the side of the 3rd respondent in O.P. 2383/65, but in his letter dated 6-8-1965 to the University, the Principal of the College said that the College authorities have already constituted a Selection Committee with the representative of the University as one of the members. In their letter Ex. X3 (produced by the petitioner in O.P. 2383/65) the University stated that they have not given any approval to that Committee and that the Committee did not meet or function. It appears that the administrative authorities of the College agreed to constitute the Selection Committee as suggested by the Registrar of the University in his letter dated 14th July 1965. The representatives of the administrative council of the College took part in the meetings of the Selection Committee. The Committee invited fresh applications in the name of the Principal of the College for admission to the Pre-medical and First Year M.B., B.S. Courses by Ex. R3 in O.P. 2383/65. It is stated in Ex. R3 that candidates who have already registered their names with the Kerala Cultural and Educational Society and who have already sent applications need not apply in pursuance to the invitation and that their applications will receive due consideration by the Selection Committee. Ex. R4 produced by the 3rd respondent in O.P. 2383/65 is a copy of the press-note issued by the Chairman of the Selection Committee stating that the following categories of candidates are invited to appear for interview at the College.

(1) All those who have registered their applications for admission to I M.B.B.S this year;

(2) All those who have registered their applications for admission to the Pre Professional Course (in the S.D. College, Alleppey); and

(3) All who have applied in response to the notification issued by the Principal in the press dated 17th August, 1965 for I M.B., B.S. or Pre-professional admission.

In the counter-affidavit filed by the Chairman of the Selection Committee in O.P. 2383/65 he has stated that the Selection Committee made the selection on the following basis:

Pre-Medical Course

Total number of seats ... 40

Government of India quota5

Quota for the Administrative Council of the College 30

Quota for recruitment from open market 5

I M.B.B.S. Course

Total number of seats 60

Seats ear-marked for pre-medical passed candidates selected in the previous years by the Administrative Council .. 50

Quota for the Administrative Council of the College 5

Quota for recruitment from the open market 5

Selection to the open market quota and to the quota left to the Administrative Council was made by the Selection Committee constituted by the University on merit basis. But selection to the quota reserved to the Administrative Council was confined to the list of candidates furnished by the Secretary of the Administrative Council. This list contained 60 names. So the best in the list on the basis of marks were selected for admission..... Selection for the quota reserved for the Management and the quota for the open market was made separately, each was treated as a category by itself and selection to each was made strictly on the basis of merit.

3. A Preliminary objection was raised to the maintainability of the writ petitions on the ground that the T.D. Medical College is a private institution and that no writ of mandamus can be issued against it. It was contended on behalf of the University on the basis of the ruling reported in *Joseph Mundassery v. St. Thomas College, Trichur* (A.I.R. 1954 T.C. 199) that the College is a private institution, and the mere fact that it is affiliated to the University and is therefore subject to the control of the University would not make it a public or quasi-public body to which a writ of mandamus can be issued. On the other hand, petitioners' counsel referred me to the ruling in *C.D. Sekkilar v. Krishnamoorthy* (A.I.R. 1952 Mad. 151), *Ajit Kumar v. State of Assam* (A.I.R. 1963 Ass. 46), [Ramesh Chandra Sahu Vs. N. Padhy, Principal, Khallikote College](#), and submitted that the T.D. Medical College is a quasi-public body as the College has received a grant of five lakhs rupees from the Central Government and as substantial aid is also being given to the College by the State Government; and by way donation by the public. It may not be necessary for me to resolve this controversy in view of my conclusion on the other points urged in these petitions.

4. In order this Court may issue a writ or an order in the nature of mandamus it must be established that the petitioners have got legal right and that the respondents (sic) corresponding duty to admit them to the course. My attention (sic) drawn to any statute or rule which would show that there is any legal obligation or duty on (sic) part of the College to admit the petitioners to the Course. It was

submitted on behalf of the petitioners that the payment of the capitation and the entrance fees on the faith of the representations in the prospectus gave them inchoate rights which would warrant the issue of writs of mandamus for enforcing those rights. But from this inchoate right I cannot infer any legal duty, statutory or otherwise on the part of the respondents to admit the petitioners to the Course. The payment of capitation and the entrance fees would not give them a legal right to get the remedy prayed for by them in these petitions. Since there is no statutory obligation or common law duty on the part of the respondents to admit the petitioners to the Course it is difficult to understand the basis of their prayers.

5. Counsel for the petitioners argued that even if there was no statutory or common law duty, there was contractual obligation on the part of the College to admit the petitioners to the Course. I am not quite clear whether the facts alleged or proved would be sufficient to make out a contract by the College with each of the petitioners. Assuming that there was some sort of contract with each of the petitioners, I do not think, that this is the forum for enforcing it. Considering the limited number of seats available for the Course, it is practically impossible for the College to fulfil its alleged contracts with the petitioners, and this Court cannot issue writs or orders for enforcing them. I am also not satisfied that the petitioners are entitled to any declaration that they are legally entitled to get admission to the Course.

6. The main contention of the petitioners was that the creation of the Selection Committee and its composition were ultra vires the Kerala University Act and the Statutes passed by the Senate. u/s 19(a) of the Kerala University Act the Syndicate shall have the power to affiliate institutions in accordance with the conditions prescribed in the statute. Rule 23 of Chapter XXXIV of the First Statutes lays down that the University may prescribe the conditions for admission to the Colleges under their jurisdiction. On 1-7-1965 the Syndicate among other things resolved that the admission to Pre-Medical and First Year M.B., B.S. Courses in the T.D. Medical College must be by a Selection Committee. The Government agreed with that resolution. Ex. R2 produced by the 3rd respondent in O.P. 2383/65 would clearly show that the College authorities have agreed to constitute a selection committee for the above purpose. It was argued on behalf of the petitioners that the Selection Committee was really constituted by the Registrar of the University and that the Registrar had no authority to constitute the Committee and impose it upon the College. It was further argued that the Syndicate itself has no power to direct that the admission of candidates to the Courses must be by a Selection Committee.

7. As regards the last argument I need only say that the College authorities cannot be allowed to go back upon their agreement to constitute a Selection Committee for admitting the candidates for the Pre-Medical and the First year M.B., B.S. Courses. Ex. R2 produced by the 3rd respondent in O.P. 2383/65 would put it beyond doubt that the College had agreed constitute a Selection Committee. Therefore I do not

think it necessary to go (sic) question whether the University or the Syndicate had the power to direct (sic) on of a Selection Committee for admitting candidates for the Courses in the (sic) Medical College. So the only question which arises for consideration is whether the Selection Committee was constituted by the Registrar of the University contended by the petitioners. It was argued by Mr. Subramanian Potti, appearing or some of the petitioners, that the Registrar had no authority to constitute the Committee as the power in that behalf--if at all there was any power--was with the Syndicate. I think the argument is misconceived. It is clear from Ex. X3 produced by the petitioner in O.P.238/655 that the University had on 8th July 1965 asked the College to constitute the Committee. No reply to that letter was received. So on the 14th July, the Registrar suggested the personnel of the Committee. The Government agreed to it. This was communicated to the College for their approval. On 6-8-1965 the Principal of the College wrote to the University saying that the College authorities had already constituted a Committee, with the representative of the University as one of its members and suggesting that the names of over 100 applicants have been registered in the College and the entries finalised. No record has been placed before me to show that a Committee has been constituted by the College authorities as stated in the letter of the Principal dated 6-8-1965. The approval of the University for the Committee so constituted was not also sought for by the College. The representative of the University in the Committee alleged to have been constituted by the College authorities was not notified about the formation of the Committee. In these circumstances I am inclined to agree with the contention of counsel for the University that no such Committee was really constituted by the College authorities. The silence of the College authorities after the receipt of the letter from the University dated 14th July 1965, coupled with the fact of their nominating a senior professor of the College as one of the members of the Committee, leads me to think that the College authorities agreed to the personnel of the Committee as suggested by the Registrar and approved by Government. The fact that the Committee sat on two occasions without any demur from the College authorities and with the representatives of the College authorities would indicate that the College had agreed to the selection being made by the Selection Committee. Ex. R3 notice (marked on behalf of the 3rd respondent in O.P. 2383 of 1965) under the name of the Principal of the College on behalf of the Selection Committee would also strengthen this conclusion. I do not think the petitioners have a higher right in this matter than the College itself to object to the selection being made by the selection Committee. They have no right to say that the College is irrevocably committed to the conditions in the prospectus and that no departure from those conditions is warranted. The petitioners certainly cannot contend that the College cannot agree to the selection being made by the Selection Committee simply because the College had stated in the prospectus that the selection would be made by a selection panel constituted by them. The argument that it was not the Syndicate that suggested the personnel of the Committee is equally without any merit. As the Syndicate has adopted the act of the Registrar in

that behalf, and has no complaint about it, the Petitioners cannot be allowed to demur to it.

8. Mr. V.R. Krishna Iyer, appearing for some of the petitioners, submitted that the governing body for the College was also constituted by the University without any authority. But it is clear from Ex. R 2 (produced by the 3rd respondent in O.P. 2383/65) that the College had agreed to have a governing body and the authorities of the College have nominated their representatives in the governing body.

9. Another submission made on behalf of the petitioners was that two of the candidates who have been selected by the Selection Committee from the open market got only less marks than some of the petitioners here, and therefore the selection was discriminatory. Unlike in the case of Government Medical Colleges, there are no rules for assessing the relative merits of the candidates applying for admission to the Courses in the College. In the absence of rules in that behalf I am not inclined to accept the contention that the selection was made arbitrarily or capriciously. Nor am I inclined to hold that there has been any violation of the provisions of Article 14 of the Constitution. The T.D. Medical College is not a "State" as envisaged in Article 12 of the Constitution. No part of the legislative or executive power of the State is vested in the T.D. Medical College. It is at best a State aided institution, and to such an institution the provisions of Article 14 cannot have any application. (See *Devadas v. Karnatak Engineering College*--A.I.R. 1964 Mysore 6).

10. It was argued that the Selection Committee had no authority to categorise the candidates and make the selection. It is clear that the categorisation was made by the Committee at the request of the College authorities. The candidates who have been selected by the Selection Committee are not made parties to any of these writ petitions. The candidates already selected have secured an advantage over the petitioners in the matter of admission to the Course in the College. Their claims to admission, as matters stand now, have to be given effect to and if their claims are to be dislodged, they should also have been made parties to these writ petitions. I think they are necessary parties as they are interested in maintaining the regularity of the selection made by the Selection Committee. This aspect of the question was considered by a Division Bench of this Court in *Narayana Pillai v. State of Kerala* (1964 KLT 512). That ruling followed the decision of the Supreme Court in *Udit Narain Singh v. Board of Revenue* (A.I.R. 1963 S.C. 782), wherein it was held that all persons who will be affected directly by the issue of a writ are necessary parties to the proceedings. The fact that in that case the question arose in connection with a writ of certiorari would make no difference in the position. Following these ruling I would hold that the selection made by the Selection Committee cannot be quashed in the absence of those candidates who have been selected by the Committee.

11. The only other point which needs consideration is whether the selection of the Committee can be upheld on the ground that there was no unanimity among the members of the Committee. It was argued for the petitioners that since the

Committee was not unanimous in accepting the categorisation principle the selection must be quashed. In the affidavit filed by Dr. A. Abraham, Dean of the Faculty of Science, it is stated that although the Secretary of the Administrative Council of the College expressed some dissent, ultimately there was a unanimous decision as regards the method of selection. I see no reason to disbelieve the affidavit. There is therefore no point in this submission.

12. The petitioners in O. P. 2297/1965 urged that they were selected by the Administrative Council of the College for admission to the First Year M.B., B.S. Course for 1964-65 and that the College authorities expecting to get sanction for additional seats for the First year M.B., B.S. Course for the year admitted them to the course as off the roll students, extending to them all the facilities in the College. The petitioners gave an undertaking to the effect that their admission would not entitle them to claim the rights of regular students. The fact that the petitioners were admitted as off the roll students for 1964-65 would not make any difference in their legal right to claim admission to the Course for the academic year 1965-66. I therefore see no difference in the case of these petitioners from the case of the petitioners in the other petitions.

13. In O.P. 2298/65 petitioners counsel submitted that the petitioner was admitted to the Course in the College on 18-8-1964, that he had paid the tuition fee, etc, that he was a regular student for the academic year 1964-65, but that he was not allowed to attend the class on the ground that the additional seats applied for by the College authorities were not sanctioned by the University. Counsel submitted that the petitioner was given a definite under-taking by the College that he would be admitted this year. This circumstance in my view would not in any way confer a right on the petitioner or a legal duty on the College authorities to admit him for the Course in the year 1965-66.

14. The petitioner's counsel in O.P. 2271 of 1965 urged that the petitioner there belongs to the scheduled Caste and therefore he has got a preferential claim for admission to the Course. There is no rule binding on the College which gives any reservation to the members of the Scheduled Caste. Therefore I am unable to see how the petitioner can claim any special right on the ground that he belongs to the Scheduled Caste.

15. In O.P. 2357/1965 the additional circumstances urged by counsel was that the petitioner there got 112.8 marks and therefore he ought to have been selected as two of the candidates selected from the open market by the Selection Committee got only less marks than the petitioner. I have already dealt with this contention and held that this circumstance would not confer a preferential claim to get admission to the College for the Course.

16. Counsel for the petitioners in O.P. Nos. 2147 and 2169 of 1965 argued that the petitioners were denied admission on the ground that they have not passed the

Intensive Training Course and that that was not justified. If that were the only ground on which the petitioners' claim for admission was rejected one could have understood the grievance in view of my judgment in O.P. Nos. 2050 of 1965 series. But the marks got by the petitioners in these two petitions are low when compared with those of the other petitioners, and they cannot therefore expect to get any admission if the number of seats remain as they are. In this view I see no merit in the contention.

17. The petitioners in O.P. Nos. 2350, 2352 and 2369 of 1965 submitted that they had passed the Pre-professional course and therefore they were entitled to get admission to the First Year M.B., B.S. Course in the College. In the counter-affidavit filed in O.P. 2350/65 it is stated that the petitioner therein has not been selected by the Selection Committee of the T.D. Medical College for the Pre-medical Course and that all the candidates selected by the Selection Committee will have to undergo the Course in the S.D. College, Alleppey. It is clear that the petitioners have not been selected by the Selection Committee of the T.D. Medical College for the Pre-Medical Course and that they did not undergo the course in the S.D. College. Therefore these petitioners have no superior claim for admission to the first year M.B., B.S. Course in the College. The writ petitions are dismissed. There will be no order as to costs.