

ANAND S. BIJI

A

v.

STATE OF KERALA AND ORS.

APRIL 22, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

B

*Constitution of India, 1950:*

*Articles 136,14—Appeal—All India post graduate entrance examination of 1992—Appearance of appellant along with others—Students with lesser marks admitted but not appellant—Vacant seats surrendered to State Government filled up—Direction of Supreme Court—Existing system and Modified system—Effect of.*

C

*Education—All India post-graduate entrance examination— Admission to M.D./M.S/Diploma and M.D.S. courses—Existing system— Modified system—Effect—Directions of Supreme Court.*

D

The appellant had appeared for All India competitive examination. He was not allotted any seat in any college according to the merit-com-preference-cum-eligibility. His grievance now is that students with lesser marks than him are being admitted to Colleges in Kerala. He says that he may be given a seat in any subject in any of the colleges in Kerala—or for that matter anywhere else. After the first, second and third lists pertaining to All-India seats were published, the remaining vacant seats have been surrendered to the State Government already. The State Government had already filled almost all of them.

E

Disposing of the appeal, this Court,

F

HELD: 1.1. This Court cannot withdraw one seat from the State Government, at this belated stage—the course has begun in the month of September, 1992 itself—and give it to the appellant. Even otherwise it is not certain that there are no other candidates (who had appeared in the All India competitive examination) who may have scored higher marks than the appellant. No direction can be given for his being considered against the 1993 vacancies because he has not appeared for the 1993 examination. If, in case, any seat is lying vacant in any of the medical courses in Kerala, the second respondent, Director of Medical Education Thiruvananthapuram shall consider admitting the appellant against such seat relating to the year 1992.

G

H

(342 -G)

**A** 1.02. The post-graduate courses comprise degree courses as well as diploma courses. After the results of examinations are published, the admissions are made on the basis of merit-cum-preference-cum-eligibility with the aid of a computer. (339-G)

**B** 1.03. According to the system in vogue, a candidate who applies for admission in the All India quota is required to indicate eight medical colleges and six subjects, in the order of preference, to which he seeks admission. (339 -G)

**C** 1.04. In the first instance, a list of admissions is issued. But it so happens that for one or the other reason, many of the candidates in the list do not turn-up to join the course. Hence, a second list is issued and then a third. But while preparing the second list or the third list, the overall merit-cum-preference-cum-eligibility is not again, examined, with the result that sometimes a candidate with lesser score gets a better subject than a candidate with higher score. (339-H)

**D** 1.05. In spite of promptings from this court, the authorities in-charge of holding All India competitive examination have not been able to adhere to the prescribed schedule. In such a situation, it is bound to happen that issuance of second and third lists delay the process of admission still further. By the time the second and third lists are communicated, half the course is over. (340-D)

**E** 1.06. The new system, in short, is this: after the examination is over, the results would be published in the order of merit. The selection committee will call 150 candidates a day in the order of merit. A chart will be kept ready and displayed at all relevant places indicating the colleges and subjects wherein the seats are available. Candidates will be called in the order of merit and asked to indicate his/her choice. The slot chosen by him/her then gets closed. This procedure will be gone through until all the seats are filled up. There would be no second or third list. Any seats remaining vacant thereafter will be surrendered to the State Government. But this modification will apply to and come into effect only for and from the admissions for the year 1994. It will not apply to the admissions currently underway. (340-H, 341-A)

**F** 1.07. In all other respects, the scheme in vogue shall continue to be effective. **H**

*Dr. Pradip Jain v Union of India*, [1994] 3 S.C.C. 654; *Dr. Dinesh Kumar v. Motilal Nehru college*, [1986] 3 S.C.C. 327; and *Dr. Dinesh Kumar v Motilal Nehru College*, [1987] 4 S.C.C.459, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1944 of 1993.

From the Judgment and Order dated 21.1.1993 of the Kerala High Court in O.P.No. 13371 of 1992.

G. Prakash for the Appellant.

V.R. Reddy, Addl. Solicitor General, C.V. Subba Rao, B. Parthasarthy and R. Sasiprabhu for the Respondents.

The following Order of the Court was delivered:

Leave granted. Heard counsel for the parties.

Having regard to the broader considerations of equality of opportunity, this Court directed in *Dr. Pradip Jain v. Union of India* [1984] 3 S.C.C. 654 that a certain percentage of seats in the post-graduate medical courses should be made available to the candidates on the basis of All India Competition. The percentage was later determined at 25%. In *Dr. Dinesh Kumar v. Motilal Nehru College* [1986] 3 S.C.C. 327 this Court prescribed a schedule for the All India Competitive Examination, which was modified in certain respects in *Dr. Dinesh Kumar v. Motilal Nehru College* [1987] 4 S.C.C. 459. In subsequent decisions, this Court has been impressing upon the concerned authorities the necessity of adhering to the time-frame prescribed in the matter of holding All India Competitive Examination and for making admissions.

According to the system in vogue, a candidate who applies for admission in the All India quota is required to indicate eight medical colleges and six subjects, in the order of preference, to which he seeks admission. There are seventy medical colleges/institutions and forty specialities. The post-graduate courses comprise degree courses as well as diploma courses. After the results of examinations are published, the admissions are made on the basis of merit-cum-preference-cum-eligibility with the aid of a computer. In the first instance, a list of admissions is issued. But it so happens that for one or the other reason, many of the candidates in the list do not turn-up to join the course. Hence, a second list is issued and then a third. But while preparing the second list or the third list, the overall merit-cum-preference-cum-eligibility is not again examined, with the result that sometimes

- A** a candidate with lesser score gets a better subject than a candidate with higher score. We may illustrate what we say. In the first list, a candidate with say 250 marks is allotted a seat in M.S. (General Surgery) and a candidate with 225 marks is allotted a seat in M.S. (Ophthalmology). Now for some reason, the candidate allotted a seat in M.S. (General Surgery) does not join. That seat falls vacant. When the second list is taken up, the candidates available will necessarily be those who
- B** have secured less than 225 marks. Since the merit-cum-preference-cum-eligibility is not determined overall again, what happens is that a candidate with 220 marks gets M.S. (General Surgery), while the candidate with 225 marks has to continue in M.S. (Ophthalmology), though given a choice, he would very much like to come into M.S. (General Surgery). That there have been many such instances, is beyond
- C** dispute and has been commented upon by the Kerala High Court in the judgment under appeal. Besides the above, there is yet another circumstance. In spite of promptings from this court, the authorities in-charge of holding All India competitive examination have not been able to adhere to the prescribed schedule. In such a situation, it is bound to happen that issuance of second and third lists delay the process of admission still further. By the time the second and third lists are
- D** communicated, half the course is over. This aspect has been agitating us while hearing this appeal.

- We have, therefore, discussed this matter thoroughly with Sri V.R. Reddy, Additional Solicitor General for the respondents. He, in turn, discussed the matter with the concerned authorities and has placed before us a modified scheme for
- E** allotment of the candidates declared successful in All India post-graduate entrance examination for admission to M.D./M.S/Diploma and M.D.S. courses. We must make it clear that the modification which we are proposing herewith is only with respect to the procedure to be followed in the matter of making admission and is designed to eliminate unequal results and the delay mentioned above. In the place
- F** of present requirement of a candidate indicating his preference for eight colleges and six subjects, on the basis of which admissions are finalised, we wish to introduce the system of what is called 'counselling', which is in vogue in some of the States and is working satisfactorily. The learned Additional Solicitor General agreed whole-heartedly that this would be a definite improvement and would eliminate grievances which are arising from the present system and would also
- G** help the authorities to adhere to the time-frame prescribed by this Court. The new system, in short, is this: after the examination is over, the results would be published in the order of merit. The selection committee will call 150 candidates a day in the order of merit. A chart will be kept ready and displayed at all relevant places indicating the colleges and subjects wherein the seats are available. Candidates will be called in the order of merit and asked to indicate his/her choice.
- H** The slot chosen by him/her then gets closed. This procedure will be gone through

until all the seats are filled up. There would be no second or third list. Any seats remaining vacant thereafter will be surrendered to the State Government. But this modification will apply to and come into effect only for and from the admissions for the year 1994. It will not apply to the admissions currently underway. In approving the modifications, we have kept in mind the fact that most of the candidates for post-graduate admissions are employed and have the means to come to Delhi for a day for counselling. We, accordingly, approve the modifications, mentioned below, as suggested by the Director General of Health Services, New Delhi.

1. The All India PG Entrance Examination will be conducted on second Sunday of January. The candidates will not be required to give any choices at the time of submission of the application forms.

2. The results will be announced by the third week of February every year.

3. The merit list will consist of number of candidates equal to the number of seats available for allotment. A waiting list containing not more than 10% of the merit list will also be declared from amongst the successful candidates who have secured more than 50% marks in the competitive examination.

4. The allotment by personal appearance will start from the first of March every year and will continue upto 15th March.

5. In the Bulletin of Information the dates for allotment by personal appearance and the venue at Delhi will be notified. The time schedule for personal appearance will also be notified alongwith the results in the newspapers.

6. For personal appearance, the candidates will be called in batches of 150 each day in the order of merit.

7. The candidates shall have the right to choose any one of the available seats at his/her rank. The same will be allotted to him/her and the allotment letters will be issued on the next day.

8. In case a candidate is unable to appear in person on a notified date for personal appearance, he/she can send his/her representative with an authority letter for allotment. The allotment made to the authorised representative shall be binding on the candidate.

**A** 9. Each candidate shall be given 15 days time to join the allotted college and course. The last date of joining shall be 31st March every year.

10. The allotments made will be firm and final.

**B** 11. The candidates who will not appear for allotment on the notified dates or who will reject the available seats for allotment or those who will not join the allotted course and college by the 31st March shall forfeit the claim for a seat under the All India Scheme.

**C** 12. All the seats remaining vacant after the allotment shall be deemed to have been surrendered back to the respective States.

In all other respects, the scheme in vogue shall continue to be effective.

**D** Now coming to the relief to be granted to the appellant, we regret, we are not in a position to make any positive direction. The appellant had appeared for All India competitive examination. He was not allotted any seat in any college according to the merit-cum-preference-cum-eligibility. His grievance now is that students with lesser marks than him are being admitted to college in Kerala. He says that he may be given a seat in any subject in any of the colleges in Kerala—or for that matter anywhere else. We are afraid, we cannot do so at this stage. After **E** the first, second and third lists pertaining to All-India seats were published, the remaining vacant seats have been surrendered to the State Government already. The State Government has already filled almost all of them. We cannot withdraw one seat from the State Government, at this stage—the course has begun in the month of September, 1992 itself—and give it to the appellant. Even otherwise it is not certain that there are no other candidates (who had appeared in the All India **F** competitive examination) who may have scored higher marks than the appellant. We cannot also give any direction for his being considered against the 1993 vacancies because he has not appeared for the 1993 examination. The only observation we can make is this: if, in case, any seat is lying vacant in any of the medical courses in Kerala, the second respondent, Director of Medical Education, Thiruvananthapuram shall consider admitting the appellant against such seat **G** relating to the year 1992.

The appeal is disposed of with the above directions and observation. No costs.