

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.07.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.A. NO. 932 OF 2016
AND

C.M.P. NOS. 11906 & 11907 OF 2016

Minor Govind Ashok
rep. By his Father
Dr. Asok Kumar K.R.
Chief Medical Officer-NFSG
(DHFWS - Puducherry)
PHC Pandakkal, Mahe 673310. ... Appellant

- Vs -

1. The Government of India
rep. By its Secretary
Ministry of Health & Family Welfare
New Delhi.
2. The Director
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER)
Puducherry.
3. Medical Council of India
Pocket-14, Sector-8
Dwaraka Phase - 1
New Delhi. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge of this Court in W.P No.14235 of 2016 dated 29.06.2016.

WP 14235 of 2016: Filed under Article 226 of the Constitution of India praying for the issue a writ of certiorarified mandamus Calling for the prospectus issued by the 2nd Respondent for the MBBS Admission to the 2nd Respondent Institute for the year 2016 and quash the clause IV (b) pertaining to Puducherry unreserved (P-UR) category in so far as it inserts the following additional qualification in the prospectus children of the said employees

should have studied in the Higher Secondary course of TWO years in any of the schools in the Union Territory of Puduchery and should have passed the Higher Secondary from the same school and direct the 2nd Respondent to admit the students as per the terms of the prospectus issued in the year 2015.

For Appellant : Mr. N.R.Chandran, SC for
Mr. R.Kannan

For Respondents: Mr. G.Rajagopalan, ASG for
Mr. M.T.Arunan

JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

This writ appeal has been filed by one of the unsuccessful petitioner, against the order of the learned single Judge, whereby and whereunder learned single Judge rejected the relief to quash a portion of the clause in the prospectus wherein additional qualification relating domicile status of was prescribed.

2. The petitioner is a minor represented by his father Thiru. Ashok Kumar and he has sworn to the affidavit on behalf of his minor son stating among other things that he is a permanent Group 'A' employee under the Puducherry Union Territory in the Department of Health and Family Welfare and presently working as the Chief Medical Officer, NFSG in Mahe region and continues to remain in service as on date.

3. The contention put forth by the appellant is that the impugned clause in the prospectus for admission to MBBS course for the academic year 2016 is in gross violation of Regulation 28 of the JIPMER Regulations, 2008 which clearly provides that any reservation/category is to be in accordance with the general orders issued by the Central Government. The said Government Order is meant for Union Territory of Puducherry administration and there is no need or necessity on the part of the second respondent to adopt the said Government Order and the said adoption was put into effect all of a sudden overlooking the fact that the wards of the above said persons had already studied in schools located outside Mahe on the fond hope that as they fulfill the eligibility criteria as to the period of service rendered by the Government servants etc., they are eligible to be accommodated under the said quota. However their aspirations and aim were shattered by the insertion of the said clause, which is in gross violation of the powers conferred under the Regulation. In the above circumstances, the

petitioner filed the the writ petition challenging the vires of Clause IV(b) of the prospectus issued by the second respondent.

4. Learned single Judge, after exhaustive reference to the judicial precedents and the rule of law on the subject, negatived the contention raised by the petitioner and held that interference by the Court in policy decision under the prerogative writ jurisdiction is very limited and, therefore, refrained to grant the relief as sought for. Aggrieved by the said order, the appellant is before this Court by filing the present appeal.

5. Mr. N.R.Chandran, learned senior counsel appearing for the appellant relied on the Division Bench judgment of this Court in to drive home the point that the clause inserted in the brochure is not in consonance with the JIPMER Act, but has been inserted at the behest of the Standing Committee, which is not authorised to frame conditions. It is further submitted that the said decision has no statutory force to be construed as a policy decision and, therefore, the G.O. issued in pursuant to the decision taken by the Standing Committee is bad in law. Therefore, it is submitted that the decision of the Standing Committee couldn't be termed as a policy decision and the clause inserted pursuant to the said decision by issuance of the G.O. is per se illegal, having been taken by an authority, who is not authorised to take such a decision.

6. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General reiterated the submissions as advanced before the learned single Judge and submitted that the order of the learned single Judge being in consonance to the well accepted judicial precedents, where Courts generally refrain from interfering with the policy decision of the Government, the appeal is liable to be dismissed. It is further submitted that the policy decision taken is well within the powers of the Standing Committee to recommend necessary changes and the Government, after careful consideration having accepted the said suggestions and issued the G.O., it cannot be termed that the policy decision is illegal and unreasonable.

7. Heard the learned senior counsel appearing on either side and perused the materials available on record as also the order of the learned single Judge and also perused the judgment relied on by the learned counsel for the parties.

8. G.O.Ms.No.04, Chief Secretariat (Higher and Technical Education), Puducherry dated 09.02.2016, has amended Clause 2.5 of the CENTAC Information Bulletin 2015-16, issued vide G.O.Ms.No.27 dated 01.04.2015 of the Chief Secretariat

(Education) Puducherry and it is relevant to extract the same:

FOR	READ
2.5(C) Children of Central/State Government Servants/Defense Personnel Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Puducherry Union Territory Administration posted and serving in the Puducherry UT for at least a minimum period of one year prior to the last date of submission of application	2.5 (c) (i) Children whose parents are Central/State Government Servants/Defense Personnel Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Puducherry Union Territory administration, posted and serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application
	(a) Children of the above said employees should have studied in the Higher Secondary Course of Two years in any of the schools in the U.T. of Puducherry and should have also passed the Higher Secondary Examination from the same school.

The Government Order further prescribes that the amended clause will come into effect from the ensuing academic year 2016-2017.

9. Section 13 (m) of the JIPMER Act enables JIPMER to reserve at least twenty seats out of every seventy five seats in undergraduate courses in the Institute for local applicants. It is also not in dispute that JIPMER is located in Puducherry. The Government, in the larger interests of the public, has taken a decision to provide localities with an opportunity of entering the medical stream of JIPMER, and, therefore, in tune with Section 13 (m) of the JIPMER Act, prescribed conditions that for certain categories of persons, as quoted above, the father of the student, who aspires to enter medical stream in JIPMER, should have served atleast for a minimum continuous period of three years immediately prior to the last date of submission of

application and that the said student should have studied the Higher Secondary Course of two years in any of the schools situated within the Union Territory of Puducherry and should have passed the said exam from the same school.

10. Article 15 (1) of the Constitution stipulates that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The Government Order issued mandates that the person, who seeks admission in the institution within the Union Territory of Puducherry should satisfy certain conditions in order to avail the reservation given to the localities of Puducherry. A careful perusal of the conditions prescribed and as quoted above, reveal that it is a class restriction insofar as reservation is concerned and it is not a blanket restriction. That being the case, the conditions stipulated cannot be said to be excessive, arbitrary or discriminatory. The Government has stipulated the said conditions only for the reserved seats and not for all the other open competition seats, wherein no discrimination is made. The Central Government having arrived at a policy decision for the benefit of the localities of Puducherry in the educational system, more particularly at JIPMER, the said decision cannot be termed to be ultra vires the Constitution breaching any fundamental right. Further, the said policy decision has been adopted by the academic council of JIPMER, which is vested with power under Section 9 and 10 (5) of the JIPMER Act, which is extracted hereinbelow for better clarity :-

"9. The Institute shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government and thereafter, the Institute shall meet as such times and places and observe such rules of procedure in regard to the transaction of business including quorum at its meetings as may be specified.

* * * * *

10.

(5) Subject to such control and restrictions as may be prescribed, the Institute may constitute as many standing committees and as many adhoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising

upon, any matter which the Institute may refer to them."

11. The above provision of the Act makes it clear that consequent upon the formation of the Committees, the said Committees are to observe the rules of procedure as formulated and deal with the matter in the exercise of the said powers. That being the case, the Committee having decided to impose the abovesaid conditions, which the Central Government has accepted and issued the abovesaid G.O., it cannot be termed to be unreasonable, arbitrary and in violation of the fundamental rights of the appellant as enshrined in the Constitution. Therefore, by no stretch of imagination, could the condition imposed by the academic council based on which the G.O. has been issued by the Government be said to be without the authority of law. Further, Article 15 (1) in no manner prohibits the Government from making a discrimination on the place of residence, which in effect means the Government is empowered to grant reservation to the localities on the basis of imposition of certain conditions. In the light of the above stated position, the policy decision of the Government to protect the interest of the localities, more so the residents of Puducherry, by granting them a benefit in admission to educational institutions by prescribing 20% reservation cannot be said to be in violation of Article 15 (1) of the Constitution.

12. Useful reliance can be had to the decision of this Court in N.Priyadarshini & Ors. - Vs - The Secretary to Government, Education Dept., Fort St. George, Chennai (2005 (3) CTC 449), wherein this Court has held that policy decision of the State, which is not in conflict with any statutory rule or regulation nor is shockingly arbitrary in the Wednesbury sense need not be interfered with.

13. Insofar as the contention of the appellant that his father was very much in service of the Puducherry Government (i.e.,) in Mahe, however, no record is placed before this Court to prove the said fact. That apart, a perusal of the records forming part of the typed set reveals that the appellant has studied throughout in Kerala and has not studied the Higher Secondary School within the Union Territory of Puducherry and or any other course equivalent to it just preceding the date of admission for two years as a resident of Union Territory of Puducherry to take the benefit of reservation provided to the Puducherry localities. In such a backdrop, the decision of the learned single Judge dismissing the claim of the petitioner that

the petitioner does not satisfy the conditions as laid down in the brochure cannot be found fault with.

14. In the above circumstances, this Court finds that the decision of the Government in granting the said reservation cannot be said to be ultra vires the constitutional provisions. Accordingly, this writ appeal fails and the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Ministry of Health & Family Welfare
Government of India
New Delhi.
2. The Director
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER)
Puducherry.
3. Medical Council of India
Pocket-14, Sector-8
Dwaraka Phase - 1
New Delhi.

- 1 cc to Mr.R.Kannan, Advocate, sr.42868
2 ccs to Mr.M.T.Arunan, Advocate, sr.42800

W.A. NO. 932 OF 2016

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kra 10.08.2016