

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2024

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

WRIT PETITION NO.24070 OF 2023 (EDN-RES)

BETWEEN:

DR. RAJINI C.K
W/O DR. LOKESH B.S
AGED ABOUT 33 YEARS, FEMALE
NO.201, LAKSHMI NIVASA
NEAR CITY CLUB
KUVEMPUNAGAR
CHANARAYAPATNA
HASSAN DISTRICT-573 116

WORKING AT PRIMARY HEALTH CENTRE
ANEGOLA, KR PETE TALUK
MANDYA DISTRICT-571 423
YEARS OF SERVICE :04 YEARS

...PETITIONER

(BY SHRI. G.S. KANNUR, SENIOR ADVOCATE FOR
SHRI. R. GIRISHKUMAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
DEPARTMENT OF HEALTH
AND FAMILY WELFARE
VIKASA SOUDHA
BENGALURU-560 001

2. THE DIRECTORATE OF MEDICAL EDUCATION
REP. BY ITS DIRECTOR
HAVING OFFICE AT
ANANDA RAO CIRCLE
BANGALORE-560 009

 3. DIRECTOR
NO.961-965
ESIS MEDICAL SERVICES
RAJAJINAGAR
BENGALURU-560 010

 4. KARNATAKA EXAMINATIONS AUTHORITY
REP. BY ITS EXECUTIVE DIRECTOR
HAVING OFFICE AT 18TH CROSS
SAMPIGE ROAD, MALLESHWARAM
BANGALORE-560 012

 5. NATIONAL MEDICAL COMMISSION
POCKET 14, SECTOR-8
DWARKA PHASE, NEW DELHI-110 077
REPRESENTED BY ITS SECRETARY

 6. DR. SUNIL KUMAR H.B
AGED ABOUT 38 YEAR
WORKING ADDRESS
ESI DISPENSARY, HARIHARA
DAVANAGERE DISTRICT-577 601 ...RESPONDENTS
- (BY SHRI. SUDEV HEGDE, AGA FOR R1 TO R3;
SHRI. N.K. RAMESH, ADVOCATE FOR R4;
SHRI. N. KHETTY, ADVOCATE FOR R5;
SMT. BELLE RAVIVARMA KUMAR, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER IN THE NATURE OF CERTIORARI OR SUCH ORDER THIS HON'BLE COURT MAY DEEM FIT TO QUASH THE ALLOTMENT LIST DATED 20.10.2023 ISSUED BY THE 4TH RESPONDENT PRODUCED AT ANNEXURE-A AND ISSUE WRIT OR ORDER IN THE NATURE OF MANDAMUS OR SUCH ORDER THIS HON'BLE COURT MAY DEEM FIT TO CONSIDER THE REPRESENTATION DATED 25.10.2023 MADE TO 1ST RESPONDENT PRODUCED AT ANNEXURE-B AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.01.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR, J.**, PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition is presented with following prayers:

- (i) *Issue writ or order in the nature of certiorari or such order this Hon'ble Court may deem fit to quash the Allotment List dated 20.10.2023 issued by 4th Respondent produced at **Annexure-A**.*
- (ii) *Issue writ or order in the nature of Mandamus or such order this Hon'ble Court may deem fit to Consider the representation dated 25.10.2023 made to 1st Respondent produced at **Annexure-B**.*
- (iii) *Issue writ or order in the nature of Mandamus or such order this Hon'ble Court may deem fit to Consider the representation dated 25.10.2023 made to 2nd Respondent produced at **Annexure-B-1**.*
- (iv) *Issue writ or order in the nature of Mandamus or such order this Hon'ble Court may deem fit to Consider the representation dated 25.10.2023 made to 3rd Respondent produced at **Annexure-B-2**.*
- (v) *Issue writ or order in the nature of Mandamus or such order this Hon'ble Court may deem fit to Consider the representation dated 25.10.2023 made to 4th Respondent produced at **Annexure-B-3**.*

- (vi) *To direct the 1st, 2nd, 3rd and 4th respondent to allot the MD Radio Diagnosis Seat at MRMC Gulbarga to the Petitioner.*
- (vii) *Grant such other relief as this Hon'ble Court deems fit under the circumstances of the case in the interest of justice and equity.*

2. We have heard Shri. G. S. Kannur, learned Senior Advocate for the petitioner, Shri. Sudev Hegde, learned AGA for the State, Shri. N.K. Ramesh, learned Advocate for the KEA¹, Shri. N. Ketty, learned Advocate for the NMC² and Ms. Belle Ravivarma Kumar, learned Advocate for respondent No.6.

3. Brief facts of the case are, petitioner is an in-service Doctor working in Anegola Primary Health Centre, K.R.Pete Taluk, Mandya District under the Department of Health and Family Welfare³, Government of Karnataka. On 19.08.2023, the State Government issued a notification fixing

¹Karnataka Education Authority

²National Medical Commission

³ 'HFW Department' for short

20% of seats in post graduation for in-service candidates. Pursuant to the notification, the Directorate of Medical Education⁴ published a Seat matrix for 315 seats.

4. On 02.10.2023, the DME announced 264 Seat for the second round of counselling. The seat in 'MD Radio Diagnosis' at MR Medical College, Kalaburgi was reserved for in-service candidate from HFW Department.

5. Petitioner's case is, she opted for 'MD Radio Diagnosis' at MRMC, Kalaburgi as her third option. According to her, on 19.09.2023, when she appeared for the second round of counselling, she was offered a seat in 'MS- Obstetrics and Gynaecology', which she opted. Later she learnt that on 20.10.2023, respondent No.6, who is from ESI Department was allotted the 'MD radio Diagnosis' seat at MRMC, Kalaburgi reserved for HFW Department. Feeling aggrieved, petitioner has filed this writ petition.

⁴ 'the DME' for short

6. Shri. Kannur, for the petitioner, praying to allow the writ petition, submitted that:

- Petitioner appeared for second round of counselling on 06.10.2023. The MD Radio Diagnosis seat was reflecting in the list published at 2:40 P.M on that date. Petitioner was offered a seat in MS- Obstetrics and Gynaecology. She had no other choice but to accept the same;
- later petitioner learnt that MD Radio Diagnosis seat has been given to respondent No.6 from ESI Department who is not eligible.
- the KEA had deliberately blocked the seat in favour of respondent No.6, which is unsustainable in law;
- the action of respondents in allotting seat to respondent No. 6 is arbitrary. It has affected petitioner's academic career, hence, violative of Article 19(1)(g) of the Constitution of India.

7. Opposing the writ petition, Shri. N.K. Ramesh, for the KEA, submitted that:

- a seat in Dermatology was allotted to one K.V. Nagaraj in Raichur Institute of Medical Science;
- on 16.09.2023, Nagaraj opted for second round and sought for cancellation of his seat in Dermatology. On 19.09.2023, his seat was cancelled. As per his ranking he was entitled for a seat in Radio Diagnosis. By that time, result of second round of counselling was already run and it was pending publication. Hence, the seat could not be put back in the second round. It was withdrawn from the allotment process to be notified in the mop-up round;
- on 06.10.2023, final seat allotment was published. On that day, petitioner opted for Gynaecology and she was allotted a seat as per her choice;

- Radio Diagnosis seat was notified in the mop-up round and as per his ranking it was allotted to respondent No.6.

8. In substance, he submitted that there is no malpractice or irregularity in allotment of seats. All candidates have been allotted seats strictly in accordance with their ranking.

9. Ms. Belle, for respondent No.6, submitted that respondent No.6 has been allotted the seat as per his entitlement. The KEA has notified the seats strictly in accordance with law. Nagaraj who had got his seat cancelled was about to be allotted the Radiology seat in second round of counselling on 06.10.2023. Therefore, the KEA rightly withdrew the same and offered it in the mop-up round.

10. We have carefully considered rival contentions and perused the records.

11. Undisputed facts of the case are, one Nagaraj was allotted a seat in Dermatology. He sought for its cancellation by submitting an application. The specific stand of the KEA as averred in para 4 of the statement of objections is that Nagaraj, an in-service candidate with NEET ranking of 50411 was allotted a seat in MD Dermatology. During the first round, he had opted for choice-2. In the second round, he had chosen Radio Diagnosis at Kalaburgi. After making such option, he sought to withdraw from the counselling process on the ground of critical health of his father. His request was considered and he was permitted to withdraw from the counselling process.

12. If the above stand of the KEA is to be accepted, the seat in MD Radio Diagnosis ought have been made available to other eligible in-service candidates.

13. Along with the statement of objections, respondent No.6 has made available the list of allotment on 06.10.2023 as Annexure-R6. Adverting to the same, it was

vehemently contended by Shri. Kannur that the MD Radio Diagnosis seat was shown as allotted to Nagaraj in the list announced at 2:40 P.M and the same was not found at 4:11 P.M, when petitioner appeared for counselling. We have carefully perused Annxure-R6. It is in two parts (R6- A& B). Allotment of 130 seats in various disciplines has been made upto 2:40:04 P.M. In that list, MD Radio Diagnosis seat in MR Medical College, Kalaburgi is shown as having been allotted to the candidate having PG NEET rank of 50411 i.e., K.V Nagaraj (at Sl.No.9). The second part of Annexure R6 is a list issued at 04:11:36 PM. In that list petitioner having PG NEET rank of 170997 has been allotted MS Gynaecology in Sapthagiri Institute of Medical Science, Bengaluru.

14. The above facts are startling in nature in view of the stand taken by the KEA. We say so because the MD Radio Diagnosis seat in MR Medical College, Kalaburgi was available to an in-service candidate of HFW Department. According to the KEA, Nagaraj had shown that seat as his second choice; but he withdrew from participation in the counselling. He

was permitted to withdraw and his seat was cancelled as per his request on 19.09.2023. If that were to be so, the KEA was duty bound to offer MD Radio Diagnosis seat to all candidates who appeared for counselling from and after 19.09.2023.

15. The first part of the list as per Annexure R6 clearly shows that MD Radio Diagnosis was allotted to Nagaraj who had withdrawn from counselling on 06.10.2023 as per the list published by the KEA at 2:40 P.M. It is not understandable as to why the seat in MD Radio Diagnosis was allotted to Nagaraj who could not participate in the counselling after the date of cancellation on 19.09.2023.

16. KEA is an instrumentality of the State Government. Candidates desirous of obtaining seats for the under-graduation and post-graduation courses repose immense trust with the KEA. Therefore, the KEA is bound to practice a fair and transparent method of allotment of seats. We repeatedly queried the learned Advocate for the KEA as to how the seat in MD Radio Diagnosis was made available on 06.10.2023,

when it was already cancelled on 19.09.2023. It was sought to be explained by Shri. N.K. Ramesh that the result of second round counselling was 'already run and finalised' pending publication. In the synopsis dated 09.01.2024 filed by the KEA it is stated thus:

*"19/9/2023 – The seat was cancelled as per his request. **By that time, since the result of the 2nd Round Counselling process was already run and finalized pending publication.** At that moment it was found that the said MDRD seat was about be allotted to K V Nagaraj as per his Ranking and the 2nd Choice given. At that point, the seat could not be put back in the 2nd Round, hence the seat was withdrawn from the allotment process for being notified in the Mop-up round."*

(Emphasis Supplied)

17. We may record that Annexure A6 is the allotment list of the second round of counselling and it is dated 06.10.2023. Therefore, the contention urged by the KEA that the result of second round of counselling was finalised on 19.09.2023, is *ex-facie* fallacious. Allotment of MD Radio Diagnosis on 06.10.2023 to Nagaraj who had withdrawn participation as early as 19.09.2023, corroborates petitioner's strong contention that in the ostensible guise of allotment on

merit, the MD Radio Diagnosis seat was blocked in the name of meritorious candidate namely, Nagaraj who had already withdrawn from participation which was approved by the KEA as early as on 19.09.2023.

18. The other limb of KEA's argument that the MD Radio Diagnosis seat was withdrawn from the allotment process for being notified in the mop-up round, is equally fallacious because it deprived the candidates from choosing that seat in the second round of counselling. No explanation is forthcoming as to why MD Radio Diagnosis seat was offered in the mop-up round held between October 11-13, 2023. Admittedly, the respondent No.6, not being an in-service candidate under HFW Department and ineligible for allotment has been allotted the seat on 13.10.2023. This is wholly illegal and therefore, unsustainable.

19. It was argued both on behalf of the KEA and the respondent No.6 that even if allotment in favour of respondent No.6 is held to be bad in law, the same cannot

inure to the benefit of the petitioner. The reason urged by both the said learned Advocates was that there could be other candidates more meritorious than the petitioner, and therefore, any consideration of allotment of that seat to the petitioner shall be not strictly in accordance with law. In our view, this argument is noted only to be rejected because, the collective stand of the KEA and the respondent No.6 is to defeat petitioner's claim in the event the allotment in favour of respondent No.6 is held bad in law.

20. The critical analysis of the facts recorded hereinabove, clearly shows that after permitting Nagaraj to withdraw from participation in the counselling as early as on 19.09.2023, KEA continued to show the MD Radio Diagnosis seat as "available" even as on 06.10.2023 but made a dummy allotment in favour of Nagaraj who was not in the fray at all and that list was announced at 2:40 P.M. Obviously, for the candidates who appeared subsequently, MD Radio Diagnosis seat was not available. Petitioner was driven to a optionless situation, forced to accept whatever was available and she

opted for a seat in Gynaecology. This is a rule of law society. Any illegal act by anyone much less an instrumentality of the State cannot be tolerated. It is unfortunate that the KEA has dealt with a post graduate medical seat in this fashion. So far as the contention urged by the KEA and the respondent No.6 that there could be more meritorious candidates than the petitioner and therefore, she is not entitled for MD Radio Diagnosis, we may record that no other candidate has approached this Court. We are conscious of the fact that it is very difficult to get a seat in post graduation seat in any disciplines in Medicine. Therefore, during the course of the argument, we also called upon the learned Advocate for the respondent No.6 to indicate whether respondent No.6 was agreeable to inter change the seat with the petitioner and we were informed that he was not ready to accept any other seat other than MD Radio Diagnosis.

21. In the light of the above discussion, the following:

ORDER

- i. Writ petition is **allowed** with cost of Rs.5,00,000/- payable by the KEA, holding that allotment of MD Radio Diagnosis seat in favour respondent No.6 is wholly illegal and accordingly, it is set-aside.
- ii. The KEA shall allot the MD Radio Diagnosis seat in favour of the petitioner and issue necessary orders in that behalf.
- iii. The first and the second respondent shall issue necessary instructions to MR Medical College, Kalaburgi to admit the petitioner in MD Radio Diagnosis and to permit her to attend the classes.
- iv. The KEA shall ensure that the fee paid by petitioner for MS-Obstetrics and Gynaecology is adjusted towards her seat in MD Radio Diagnosis in MR Medical College, Kalaburgi.

- v. Out of the cost of Rs.5,00,000/- imposed, a sum of Rs.2,50,000/- shall be payable to the petitioner and the remaining sum shall be paid to the Karnataka State Legal Services Authority.

**Sd/-
(P.S. DINESH KUMAR)
JUDGE**

**Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE**

SPS