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A. PERIAKARUPPAN CHETTIAR

v.

STATE OF TAMIL NADU & ORS.

January 15, 1971.

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[J. C. SHAH, C.J., K. S. HEGDE AND A. N. GROVER, JJ.]

Admission to Medical Colleges—Allegation of malafides against Selection Committee—Proof of —Interview marks—Government specifies heads of distribution of marks but no marks allotted to each head—Presumption that marks should be distributed equally—Violation of presumption by Selection Committee—Effect on selections made.

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The petitioner, who was an unsuccessful applicant for a seat in one of the medical colleges in the respondent-State challenged the selections made by a writ petition in this Court. This Court came to the conclusion that the selections made were invalid, but did not strike them down, and instead, directed the State to constitute a separate expert Committee for making selections to the unfilled seats. The Court further directed that the Committee should interview only the candidates shown in the waiting list and those who moved unsuccessfully the High Court and this Court. This Court observed that the 75 marks allocated for interview should be divided equally among the five different heads with respect to which the marks should be given at the interview.

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In pursuance of the direction the State constituted a Selection Committee. The Committee called for interview several other candidates besides those asked to be interviewed by this Court, though the Committee refrained from interviewing such additional candidates. The Selection Committee also distributed the 75 interview marks among the five heads not equally but according to its own discretion. Candidates were selected for all the unfilled seats but the petitioner was not selected. He challenged the selection on the grounds that : (1) the Selection Committee showed open hostility to him at the interview, (2) the violation of the directions of this Court showed *malafides*, and (3) those illegalities vitiated the selection made.

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HELD : (1) The Selection Committee denied that they had exhibited any hostility towards the petitioner. The charge of *malafides* has to be established by the petitioner by satisfactory evidence, and the fact that the petitioner could not get any outside evidence to establish what happened at the interview cannot shift the burden that is on him. [451 F-H]

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(2) The Selection Committee explained that they called additional candidates for interview because they did not understand the scope of the judgment of this Court, and that they distributed the 75 marks in their discretion because there was no specific direction in the operative portion of the judgment of this Court to distribute them equally. Though the explanation was not satisfactory, it could not be said that the Committee had acted *mala fide*. [452 B-C; 453 E-F]

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(3) The interview rules were made by Government and Government alone could have distributed the marks amongst the various heads. In the absence of such a distribution it should be deemed that each one of the heads carried equal marks. Therefore, the procedure adopted by the Committee was illegal and contrary to the directions of this Court and was likely to have affected the result of the interview. [453 F-G]

Moreover, the Committee, even on the basis adopted by it, had proceeded on wholly wrong premises while granting marks to the petitioner under the head 'National Cadet Corps activities'. [455 F-G] A

Therefore, the selections made could not be sustained.

ORIGINAL JURISDICTION : Writ Petition No. 623 of 1970.

Petition under Art. 32 of the Constitution of India for enforcement of fundamental rights. B

K. K. Venugopal and *R. Gopalakrishnan*, for the petitioner.

S. Govind Swaminathan, *Advocate-General*, *Tamil Nadu*, *S. Mohan* and *A. V. Rangam*, for respondents Nos. 1 to 5. C

The Judgment of the Court was delivered by

Hegde, J. This is an unfortunate case. The petitioner, a bright young student is approaching this Court for the second time to seek justice. He had a brilliant academic career. He secured high marks in all the examinations in which he appeared. In the Pre-University Examination, he secured First class with Grade D plus in Physics and Chemistry and A plus in Biology. He stood 4th in his college. Grade D plus represents 85 to 99 per cent marks and A plus 65 to 75 per cent marks. He applied for admission for a seat in one of the medical colleges in the State of Tamil Nadu. He was called for interview but was not selected as he is said to have secured low marks in the interview. He challenged before this Court the selections made on various grounds in Writ Petition No. 285 of 1970. That petition was heard along with another petition and those petitions were allowed on September 23, 1970. In that petition the petitioner had alleged that the selections made were illegal for various reasons. He had also alleged that the selections were manipulated by the Government. This Court came to the conclusion that the allegations of *mala fide* had not been established but yet selections were held to be invalid for the reasons mentioned in our order dated 23rd September, 1970. Despite coming to the conclusion that the selections made were invalid, we did not strike down the selections in view of the fact that the selected candidates had not been made parties to those petitions. We directed the State of Tamil Nadu to immediately constitute a separate expert committee consisting of eminent medical practitioners (after excluding all those who were the members of the previous committee) for making selections to the 24 unfilled seats. We further ordered : D
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"The selection shall be made on statewide basis. The committee shall interview only the candidates who are shown in the waiting list, the persons who unsuccessfully moved the High Court of Madras and the two H

A petitioners before this Court. They shall allot separate marks under the five heads mentioned in the rule. The committee shall take into consideration only matters laid down in the rule exclude from consideration all irrelevant matters and thereafter prepare a graduation list to fill up the 24 seats mentioned earlier."

B In pursuance of the above direction, the State of Tamil Nadu constituted a selection committee and the selection committee has selected 24 students for being admitted into one or the other medical colleges run by the Government of Tamil Nadu but the petitioner has not been selected. Thereafter the petitioner has come up with this writ petition challenging the validity of the selections made. The main contention taken by him in his writ petition is that in view of the widespread publicity given to our previous judgment by the newspapers and the radio, there had been a widespread discontent and criticism in regard to the prevailing system of interviews. That widespread publicity affected very much the prestige of the State Government of Tamil Nadu and therefore C the Government of Tamil Nadu was particular to see that the petitioner was not selected. He sought to establish this plea primarily on the basis of three circumstances namely (1) that during the interview the members of the selection committee showed open hostility towards him; (2) that despite the order of this Court, D the selection committee called for interview several persons in addition to those directed to be interviewed by this Court and it is only after he moved this Court to take action against the committee for disobeying the orders of this Court, the committee refrained from interviewing the candidates other than those directed to be interviewed by this Court and (3) the selection committee has deliberately contravened the directions of this Court.

F The members of the selection committee have denied the allegation that they had exhibited any hostility towards the petitioner during the interview. On the question as to what happened during the interview, we have only the version of the petitioner on the one side and of the members of the committee on the other. On the basis of the material before us it cannot be said that the allegations made by the petitioner are established. G The charge of *mala fide* is a serious charge and the same has to be established by satisfactory evidence. The fact that the petitioner could not get any outside evidence to establish what happened at the time of the interview cannot shift the burden that is on him to prove his allegations.

H It is true that at one stage, the selection committee called for interview several candidates other than those asked to be interviewed by this Court. When those persons were called for interview, the petitioner approached this Court to restrain the selection

committee from interviewing those persons. This Court declined to go into that matter at that stage. Thereafter the State of Tamil Nadu moved this Court for clarification of our order. We rejected that application as in our view the order did not require any clarification. Thereafter the selection committee refrained from interviewing the candidates whom it had called for interview in addition to those whom this Court asked the selection committee to interview. The members of the selection committee say that they did not clearly understand the scope of our judgment and it is in those circumstances they called for interview some candidates whom they ultimately did not interview. Though this explanation is not very satisfactory but from that circumstance alone, we cannot come to the conclusion that the selection committee had any ulterior purpose in calling a large number of candidates for interview.

So far as the illegalities said to have been committed during the interview are concerned, we shall separately deal with them. But those illegalities do not establish either by themselves or even when considered along with circumstances mentioned above the plea of *mala fide*.

This takes us to the illegalities alleged to have been committed by the selection committee. As mentioned in our earlier judgment, the selection committee was directed to interview the candidates under five different heads *viz.*—

1. Sports or National Cadet Corps activities;
2. Extra Curricular special services;
3. General Physical condition and endurance;
4. General ability; and
5. Aptitude.

The Government allocated 75 marks for interview but it did not prescribe separate marks for the separate heads. In the previous writ petition, it was contended that the interview was invalid inasmuch as the Government did not prescribe separate marks for separate heads. We rejected that contention with these observations :

“It is true that the rule did not prescribe separate marks for separate heads. But that in our opinion did not permit the selection committee to allot marks as it pleased. Each one of the tests prescribed had its own importance. As observed at foot-note 20 at p. 485 of American Jurisprudence Vol. 15 that the interviewers need not record precise questions and answers when oral tests are used to appraise personality traits; it is sufficient if the examiner’s findings are recorded on the appraisal

A sheet according to the personal qualifications itemised for measure. A contention similar to those advanced by the petitioners came up for consideration before the Mysore High Court in *D. G. Viswanath v. Chief Secretary of Mysore and Ors.*⁽¹⁾. There the Court observed thus :

B “It is true that Annexure IV does not specifically mention the marks allotted for each head. But from that circumstance it cannot be held that the Government had conferred an unguided power on the Committees. In the absence of specific allocation of marks for each head, it must be presumed that the Government considered that each of the heads mentioned in Annexure IV as being equal in importance to any other. In other words we have to infer that the intention of the Government was that each one of those heads should carry 1/5th of the ‘Interview marks’.”

D It is clear from our judgment that we quoted the decision in Viswanath’s case (*supra*) with approval. But yet when the impugned selections were made, the selection committee allotted marks to the various heads according to their own discretion. It was admitted before us at the hearing that the selection committee distributed the 75 interview marks among the five heads mentioned above according to its own discretion. For some heads, 10 marks were allotted and for others 25 marks. The procedure adopted by the selection committee clearly contravened our judgment in the earlier writ petition. There is no substance in the plea advanced on behalf of the selection committee that in the operative portion of our order, we did not direct the selection committee that each one of the heads should carry 1/5th of the “interview” marks. The selection committee was not the rule making authority. The interview rules were made by the Government. The Government alone could have distributed the marks amongst the various heads. In the absence of such a distribution, as mentioned by us in our earlier judgment, it should be deemed that each one of those heads carried equal marks. There can be no doubt that the procedure adopted by the selection committee is likely to have affected the result of the interview.

H As seen earlier, one of the heads under which the interviewees were asked to interview is “Sports or National Cadet Corps activities”. It is not Sports and National Cadet Corps activities. The requirement is either sports or National Cadet Corps activities. Admittedly the petitioner produced a “A” certificate to show that he had the National Cadet Corps training. But yet he was given

(1) A.I.R. 1964 Mys. 132.

only five marks out of the 10 marks allotted for that head by the selection committee. The petitioner's complaint is that the selection committee had no right to cut down the marks to which he was entitled to. We called upon the selection committee to disclose the basis on which the marks were given for National Cadet Corps activities. In response to that direction, the Chairman of the Selection Committee filed an affidavit on December 28, 1970. In paragraph 4 of his affidavit he deposed thus :

"Likewise in the National Cadet Corps also, there are various grades and the candidate may have joined in N.C.C. in school or college for one year or 2 years or more; (ii) passed examinations and attained certificates and stripes. The grades are certificate—A-Part I, lowest in rank then Part II, Certificate B, Certificate C being the highest. Some candidates may in addition have attained promotions as Lance Corporal, Sergeant or Under Officer. Marks were allotted according to the grades as shown by various certificates."

In the reply affidavit filed by one Ramanathan, a relation of the petitioner (the petitioner is a minor), it was averred as follows (in paragraphs 5 and 6 of the affidavit) :

"I state the averments in para 4 of the supplemental counter affidavit are misleading and do not attempt to place before this Honourable Court the entire facts. The N.C.C. is divided into two Divisions, namely, Junior Division and Senior Division. The Junior Division N.C.C. is conducted only in the High Schools, while the Senior Division N.C.C. only in the colleges. The 'A' Certificate is issued to the Junior Division N.C.C. cadets who pass the 'A' Certificate Examination, while the 'B' and 'C' Certificates are issued to the Senior Division N.C.C. Cadets who pass the 'B' and 'C' Certificate Examinations respectively held in the Colleges for the Senior Division. As such, a High School student would be eligible to obtain only an 'A' Certificate and not the 'B' and 'C' Certificates.

6. The students who appeared for the selection to the Medical course for the year 1970-71 could not have obtained a 'B' or a 'C' Certificate for the reason that N.C.C. was discontinued in the State of Tamil Nadu in all Schools and Colleges in Jan. 1968. In the Anglo Indian Schools, the school year ends in December, while in the rest of the schools the school year is from June—April. The students studying in the High Schools other than Anglo-Indian Schools during the year 1967-68

A would, therefore, not have obtained even an 'A' Certificate, as the Certificate is issued after undergoing training for a period of one year and then passing the examination. The petitioner obtained such a certificate in January, 1968 for the N.C.C. Course of one year in regard to which he wrote his examination in October, 1967. The students studying in the schools other than the Anglo-Indian Schools would, therefore, have not been able to obtain even an 'A' Certificate for the year 1967-68, since the N.C.C. was discontinued in the middle of their academic year, N.C.C. was resumed in the State of Tamil Nadu only in November 1969; and as such students studying in the schools and colleges in the State of Tamil Nadu would not have been able to get the 'A' 'B' or 'C' Certificate in the Schools and Colleges during the academic year 1968-69 or 1969-70. The petitioner, therefore, submits that none among the students who appeared for the selection to the Medical Course for the year 1970-71 could have obtained the 'B' or 'C' Certificates, the 'A' Certificate, therefore, was in effect the highest certificate that a candidate appearing for selection for the Medical Course for the year 1970-71 could possibly obtain. Even this certificate would not be available to the students passing out of the schools other than the Anglo-Indian Schools and who appeared for this selection for the Medical Course 1970-71. It is a matter of easy verification as to who among the 24 selected candidates or the 114 candidates eligible for the selection for these 24 seats in fact possessed the N.C.C. 'A' Certificate or even the 'B' and 'C' certificates."

F No reply was made to the allegations quoted above. Nor was the learned Advocate General of Tamil Nadu able to controvert those allegations. Under those circumstances we must hold that selection committee had proceeded on a wholly wrong premises while granting marks under the head "National Cadet Corps activities".

G For the reasons mentioned above we hold that the selections made are vitiated and as such they cannot be sustained. We were informed that the 24 students whose selections are impugned in the present writ petition have already joined one or the other medical college in the State of Tamil Nadu and they have been attending classes for over a month. In view of the hardship that may be caused to those innocent students, by the order that we proposed to make, we asked the Advocate General of Tamil Nadu on January 4, 1971, when the petition came up for hearing, to see if he could persuade the Government of Tamil Nadu to admit

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the petitioner in any one of the medical colleges in Tamil Nadu and thus avoid the unpleasant consequence. For that purpose we adjourned the petition to the 7th of this month. When the matter was taken up on that date, the learned Advocate General informed us that the Government was unable to accept our suggestion. That day the hearing of the case was completed. Bearing in mind the serious consequences that our order is likely to have on those 24 students, we again asked the Advocate-General to explain to the Government the hardship that is likely to be caused to the selected students for no fault of their own and inform us the decision of the Government before the 14th of this month. The Government's reaction was not favourable. Hence there is no alternative before us but to allow the writ petition, quash the impugned selections and direct the State of Tamil Nadu to appoint a fresh selection committee for making selections in accordance with our order dated September 23, 1970. The State of Tamil Nadu shall pay the costs of the petitioner in this writ petition.

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V.P.S.

Petition allowed