

JYOTHIR R

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v.

SUNISHA N.S. & ORS.

(Civil Appeal No. 7025-7026 of 2019)

SEPTEMBER 05, 2019

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[INDU MALHOTRA AND SANJIV KHANNA, JJ.]

Education/Educational institutions: Admission – Sports quota – Issue in these appeals pertained to admission to M.B.B.S course in the State of Kerala, for the academic year 2019-20, for the seats reserved for the Sports quota – Appellant-candidate had applied for admission under Sports quota – As per the Prospectus, the applications for admission under Sports Quota are submitted to the Kerala Sports Council, which allots marks to candidates according to their proficiency in sports – The marks list of candidates under “Individual Events” and “Team Events” are prepared separately and forwarded to the Commissioner for Entrance Examinations (CEE) – In the case of candidates seeking admission to Medical courses, the marks for proficiency in sports are awarded out of 500, which are added to the marks obtained by the candidates in NEET-UG 2019 – The seats under the Sports Quota are filled up by giving equal representation to students in both the team categories – NEET-UG 2019 Examination was conducted on 5.5.2019 – On 19.5.2019, the Sports Council published the provisional list of candidates eligible for the Sports Quota, both in the Individual and the Team Categories, and invited objections to the same – Appellant raised no objection to the provisional list – On 27.5.2019, the Final List of eligible candidates under both the Individual and Team Quotas was prepared – Appellant did not raise any objection even at this stage – Final list was forwarded to the State CEE – On 6.6.2019, the All India NEET-UG 2019 result was declared – CEE published the category-wise list of candidates eligible for M.B.B.S., including the Sports Quota in the Individual and the Team Category on 28.6.2019 – There were 7 seats available for the Sports Quota for admission to M.B.B.S. course, while 2 seats were reserved for B.D.S. – Out of 7 seats, 4 seats were allotted to the Individual event category, and 3 were allotted to the Team event category –

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- A *Appellant secured final marks of 548.4722 in the NEET-UG examination, after including the marks awarded to him in the Individual category – Respondent No.5 was awarded 669.1667 in the Sports Individual category while Respondent No.1 was awarded 594.0278 in the Team category – Appellant filed a Representation to the Sports Council alleging that Respondent No. 5 had wrongly been included in the Individual List, as he had participated in a Team event – Appellant then filed writ petition before High Court praying inter alia for a direction to Sports Council to re-consider the marks allotted to him and consider shifting Respondent No. 5 to the Sports (Team) List – During the pendency*
- B *of the Writ Petition, on 6.7.2019, the State Sports Council informed CEE that 4 candidates including Respondent No.5 had erroneously been included in the Final Individual List, even though they ought to have been included in the Team List – CEE declined to consider communication dated 6.7.2019 received after the publication of the final list – Single Judge of High Court allowed the Writ Petition, holding that CEE was obligated to act on the communication of the State Sports Council – Accordingly, Respondent No.5 was directed to be considered for admission in the Sports (Team) List – Aggrieved, Respondent no.1 filed writ appeal – Division Bench of High Court set aside the order of single judge and directed that the rank of*
- C *Respondent no. 1 and 5 be retained as per the list prepared on 28.6.2019 – Hence the appeal – Held: Writ Petition by the Appellant was wholly speculative in nature – The entire case of the Appellant was based upon shifting Respondent No.5 from the Individual Quota to the Team Quota so that Appellant gets selected in the Individual category, and having the marks added to his NEET score – Such a plea was wholly unfounded, particularly since out of the candidates in the Sports (Individual) category, the Appellant admittedly scored the lowest marks – Respondent No. 1 had secured 57 marks, while Respondent No. 5 had secured 53 marks – Appellant did not disclose in the Writ Petition, that if the relief prayed for was granted, it would*
- D *have resulted in the displacement of another student in the Team category who had scored 60 marks in the final result who was not even joined as a party to the proceedings – Hence, the prayer made by the Appellant was liable to be rejected on this ground also – The entire case of the Appellant was an afterthought, and made at a belated stage of the admission process, and cannot be entertained*
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– *Appellant ought to have approached this Court with candour, and disclosed the correct facts – Sports Council was wholly unjustified in making a recommendation for shifting Respondent No. 5 after the release of Final List – The consequence of implementing such a direction at such a belated stage, would be that the entire admission process under the Sports Quota would require to be re-done – The prayer of the Appellant to consider Respondent No. 5 in the Sports (Team) Quota was unsustainable on merits – Appeals dismissed.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7025-7026 of 2019.

From the Judgment and Order dated 07.08.2019 of the High Court of Kerala at Ernakulam in W.A. Nos. 1757 and 1758 of 2019.

With

Civil Appeal No. 7028 of 2019.

Renjith B. Marar, Ms. Lakshmi N. Kaimal, Sadchith P. Kurup, Anil Sharma, Advs. for the Appellant.

P. N. Ravindran, Sr. Adv., Dillep Pillai, Ajay K. Jain, Atul Shankar Vinod, Kannan Gopal Vinod, M. P. Vinod, G. Prakash, Jishnu M. L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Anas Muhammed S., James P. Thomas, Advs. for the Respondents.

The following Order of the Court was passed:

O R D E R

IN S.L.P.(C) Nos. 20085-20086 of 2019

Leave granted.

1. The present Appeals have been filed by the Appellant to challenge the Judgement and Order dated 07.08.2019 passed by a division bench of the Kerala High Court in W.A. Nos. 1757 & 1758 of 2019.

2. The issue raised in the present Appeals pertain to admission to the M.B.B.S. course in the State of Kerala, for the academic year 2019-20, for the 9 seats reserved for the Sports Quota.

3. The Appellant – candidate had applied for admission under the Sports Quota, on the basis of having secured the 3rd position in Kerala

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A under 25 Chess Championship conducted by the Sports Association of Thiruvananthapuram in January 2019. The Appellant had represented the Kollam District.

B Prospectus states that :

"The Prospectus is subject to modification/addition/ deletion as may be deemed necessary by the Government".

C *The allotment to sports quota seats in professional degree courses is governed by clause 5.2.6 of the prospectus for admission to professional degree courses, approved by the State Government vide G.O. (M.S.) No. 22/2019/H.Edn.dated 1.2.2019."*

Clause 5.2.16 reads as follows :

D *"5.2.16 Sports Quota (SP): Candidates who claim reservation under Sports Quota shall fulfil their eligibility based on the norms of Kerala State Sports Council appended in Annexure XVIII (ii) prior to submission of application, for the seats as prescribed in the Prospectus."*

E As per the Prospectus, the applications for admission under Sports Quota are submitted to the Kerala State Sports Council, which allots marks to candidates according to their proficiency in sports. The maximum marks for proficiency is 500. The Guidelines of the Sports Council for awarding marks for proficiency in sports is provided under Annexure XVIII(ii) of the Prospectus. The marks list of candidates under "Individual

F Events" and "Team Events" are prepared separately and forwarded to the Commissioner for the Entrance Examinations on or before 30th April 2018.

G 5. In the case of candidates seeking admission to Medical courses, the marks for proficiency in sports are awarded out of 500, which are added to the marks obtained by the candidates in the NEET-UG 2019.

H The Sports Council allots marks to the candidates according to their proficiency in sports. The seats under the Sports Quota are filled up by giving equal representation to students in both the individual and team categories. The principle for allotment is 1:1

to be implemented by allotting the seats alternatively between the two categories of individual event and team event. A

6. The NEET-UG 2019 Examination was conducted on the 05.05.2019 for the current academic year 2019-20 for admission to the undergraduate M.B.B.S. course.

7. On 8/9th May, 2019 the verification of candidates was conducted by the Kerala Sports Council. B

8. On 19th May, 2019 the Kerala Sports Council published the provisional list of candidates eligible for the Sports Quota, both in the Individual and the Team Categories, and invited objections/complaints to the same. The last date for submission of objections was 25th May, 2019. C

It is relevant to note that the Appellant raised no objection to the provisional list.

9. On 27th May, 2019, the Kerala Sports Council published the Final List of eligible candidates under both the Individual and Team Quotas. D The Appellant did not raise any objection/complaint even at this stage. The Final list was forwarded to the State CEE.

10. On 6th June, 2019 the All India NEET-UG 2019 result was declared.

11. The State CEE published the category-wise list of candidates eligible for M.B.B.S., including the Sports Quota in the Individual and the Team Category on 28th June, 2019. E

12. There were 7 seats available for the Sports Quota for admission to the M.B.B.S. course, while two seats were reserved for B.D.S. Out of the 7 seats for M.B.B.S., in the Sports Quota, 4 seats were allotted to the Individual event category, and 3 were allotted to the Team event category. F

13. The Appellant secured final marks of 548.4722 in the NEET-UG examination, after including the marks awarded to him in the Sports (Individual) category. G

Respondent No.5 – Sujithraj U. Mallan was awarded 669.1667 in the Sports (Individual) category.

Respondent No.1 – Sunisha N.S. was awarded 594.0278 in the Sports (Team) category. H

- A 14. The Appellant filed a Representation to the Secretary of the Sports Council of Kerala alleging that Respondent No. 5 – Mr. Sujithraj Mallan had wrongly been included in the Individual List, as he had participated in a Team event.
- B 15. The Appellant then filed W.P.(C) No. 17995/2019 before the Kerala High Court praying *inter alia* for a direction to the Sports Council of Kerala to re-consider the marks allotted to the Appellant, and consider shifting Respondent No. 5 to the Sports (Team) List.
- C The Appellant impleaded two students i.e. Respondent No.5 – Sujithraj U. Mallan, and one Mr. Vinay Thomas Abraham as party Respondents in the Writ Petition.
- D 16. During the pendency of the Writ Petition, on 06.07.2019, the Kerala State Sports Council informed the Commissioner of Entrance Examinations that four candidates including Respondent No.5 – Sujithraj U. Mallanhad, had erroneously been included in the Final Sports (Individual) List, even though they ought to have been included in the Sports (Team) List.
- E 17. The Commissioner of Entrance Examinations declined to consider the communication of the Kerala State Sports Council dated 06.07.2019 received after the publication of the final list at a belated stage of the admission process.
- F 18. The first round of allotment was made by the Entrance Commissioner on 08.07.2019 with an option to the candidates to join on or before 12.07.2019.
- G 19. The Single Judge of the High Court *vide* Judgment dated 05.08.2019, allowed the Writ Petition, holding that the Commissioner of Entrance Examinations was obligated to act on the communication of the Kerala State Sports Council. Accordingly, Respondent No.5 – Sujithraj U. Mallanhad was directed to be considered for admission in the Sports (Team) List.
- H 20. Aggrieved by the said Judgment, Respondent No. 1 – Sunisha N. S. on 07.08.2019, filed Writ Appeal No. 1757 of 2019 to challenge the Judgment dated 05.08.2019 passed by the learned Single Judge.
- I 21. The Division Bench, after hearing the Counsel for Respondent No. 5 – Sujithraj U. Mallanhad, on the same day set-aside the Order of the Single Judge and directed that the Rank List be re-cast by amending

the category of Respondent No.5 – Sujithraj U. Mallan had in the Sports (Individual) category. The consequence of implementing the direction of the Single Judge at this belated stage would mean that the entire admission process would require to be re-done, which was undesirable.

It was ordered that the Rank of Respondent Nos. 1 and 5 be retained as per the list prepared on 28.06.2019.

22. The Appellant was not issued Notice in the Writ Appeal, and hence was not heard by the Division Bench.

23. Aggrieved, by the judgment dated 07.08.2019 passed by the Division Bench, the Appellant has filed the present Appeals.

24. We have heard the learned Counsels for all the parties, and perused the material on record. We affirm the judgment passed by the Division Bench for the reasons set out hereunder :

24.1. The Writ Petition filed by the Appellant before the High Court was wholly speculative in nature. The entire case of the Appellant was based upon shifting Respondent No.5 from the Individual Quota to the Team Quota, which would result in the Appellant getting selected in the Sports (Individual) category, and having the marks added to his NEET score.

Such a plea was wholly unfounded, particularly since out of the candidates in the Sports (Individual) category, the Appellant has admittedly scored the lowest marks.

Respondent No. 1 had secured 57 marks, while Respondent No. 5 had secured 53 marks.

24.2. The Appellant did not disclose in the Writ Petition, that if the relief prayed for was granted, it would have resulted in the displacement of another student in the Team category *viz.* Antony P. Alappat, who had scored 60 marks in the final result.

The Appellant did not even join Mr. Alappat as a party to the proceedings. Hence, the prayer made by the Appellant herein was liable to be rejected on this ground also.

24.3. The Appellant had admittedly not raised any objection to the provisional list which was published on 19th May, 2019

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A even though an opportunity was given to all candidates to raise objections.

The final list came was on 27.05.2019, which was also not objected to by the Appellant.

B The Appellant raised a challenge only after the category wise list of reserved candidates was published on 28.06.2019, when the Appellant chose to file his Writ Petition on 01.07.2019 after the seats were allotted in the Sports quota.

C The entire case of the Appellant is an afterthought, and has been made at a belated stage of the admission process, and cannot be entertained.

24.4. If the plea of the Appellant was to be accepted, it would impact the criteria adopted for admission not only to the M.B.B.S. course, but also other professional degree courses, for which the same norms for selection of candidates in the Sports category are applicable.

24.5. The Appellant did not reveal in the Special Leave Petition that the counselling had been completed on 08.08.2019, and all the students, including the Appellant, Respondent No. 1 and Respondent No. 5 had secured admission in various medical colleges, and were undergoing the course.

F This fact was not disclosed to the Court even at the time of admission hearing on 19th August, 2019 when this Court issue notice and granted an interim order in favour of the Appellant. These facts came on record in the Counter Affidavit filed by Respondent No. 1 on 27th August, 2019. The Appellant ought to have approached this Court with candour, and disclosed the correct facts.

G 24.6. The Kerala State Sports Council was wholly unjustified in making a recommendation for shifting Respondent No. 5 after the Final List had been released. The consequence of implementing such a direction at such a belated stage, would be that the entire admission process under the Sports Quota would require to be re-done. The letter dated 06.07.2019

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was wholly unjustified, and the Division Bench has rightly A
disregarded the same.

25. In view of the aforesaid discussion, the prayer of the Appellant to consider Respondent No. 5 in the Sports (Team) Quota is unsustainable on merits. It is made clear that for the purposes of admission to the M.B.B.S course in the Sports Quota, the position awarded to the candidates in the final Rank List published by the Commissioner of Entrance Examinations on 28.06.2019, shall be the basis for granting admission by the authorities. B

26. Accordingly, the Civil Appeals are dismissed.

The interim Order passed 19.08.2019 is vacated. C

Pending applications, if any, are dismissed.

IN S.L.P. (C) NO. 20529 OF 2019

Leave granted.

The Appeal is disposed of in terms of the order passed in the Civil appeal Nos. 7025-7026 of 2019. D

Devika Gujral

Appeals disposed of.