

## **Khalid Hussain (Minor), Representedby ... vs Commissioner & Secretary To Government ... on 19 August, 1987**

**Equivalent citations: 1987 AIR 2074, 1987 SCR (3)1049, AIR 1987 SUPREME COURT 2074, (1987) 2 CURCC 600, (1987) 2 SUPREME 318, 1987 SCC (SUPP) 329, (1987) 3 JT 370 (SC), 1988 SCC (L&S) 165**

**Author: A.P. Sen**

**Bench: A.P. Sen, B.C. Ray**

**PETITIONER:**

KHALID HUSSAIN (MINOR), REPRESENTEDBY FATHER DR. AKTHAR HUSS

Vs.

**RESPONDENT:**

COMMISSIONER & SECRETARY TO GOVERNMENT OFTAMIL NADU, HEALTH

DATE OF JUDGMENT19/08/1987

**BENCH:**

SEN, A.P. (J)

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RAY, B.C. (J)

**CITATION:**

1987 AIR 2074                      1987 SCR (3)1049

1987 SCC Supl. 329              JT 1987 (3) 370

1987 SCALE (2)351

**ACT:**

Professional Colleges--Admission to: Category of 'eminent sportsmen'--Selection of--Validity of--Selection must necessarily depend upon academic merit.

Constitution of India, Arts. 226 & 136: Powers of the Court--Not obligatory to interfere unless justice of the case so demands.

**HEADNOTE:**

The State Government of Tamil Nadu reserved three seats for the category 'eminent sportsmen' for admission to the MBBS Course for 1986-87 in the Government Medical Colleges. Category (iii) in Annexure I to the prospectus indicated their order of preference as participation at (a) Interna-

tional level, (b) National level, and (c) State level. Candidates securing 50 per cent aggregate marks in science subjects in the qualifying examination were made eligible. The Selection Committee adopted participation at the national level to be the criterion and selected three candidates on the basis of merit in the qualifying examination. Four candidates were placed in the waiting list in order of merit. The petitioner who was next in order of merit and could not be selected, filed a petition under Art. 226 of the Constitution assailing the select however, struck down the selection of respondent No. 6 placed third in the select list since he had actually not played at the national level, and directed the Selection Committee to fill up the vacancy from the waiting list and go by the order of merit. Dismissing the appeal by the petitioner the Division Bench held that the decision of the Selection Committee was reached bona fide on the basis of academic merit and that it was not just and proper that the respondent No. 6 should lose his seat in the medical college for no fault of his but at the instance of the petitioner who stood no chance compared to the other candidates in the waiting list.

In this special leave petition, it was contended for the petitioner that the only criterion for selection was pre-eminence in sports and not

1050

academic excellence, and that the Division Bench was in error in not sustaining the order of the Single Judge setting aside the selection of respondent No. 6, who had played in the Zonal tournament which was not of national level.

Dismissing the special leave petition,

HELD: 1. All that Category (iii) does is to lay down a rule of preference. A candidate who had participated at international level would exclude a candidate participating at National level and a person who had participated at National level would exclude a person participating at State level. There are no guidelines provided for determination of comparative eminence as between candidates belonging to the same class, e.g. at National level. Nor does it provide for any guidelines by which the choice has to be made between the candidates who have excelled in a particular field of sports, e.g. aquatics, or when there is more than one candidate who have excelled in their respective fields of sports e.g. cricket, football, hockey etc. and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. The selection must, therefore, necessarily depend upon their academic merits. If the adjudging of comparative merit amount the eligible candidates is left to the discretion of the Executive that would necessarily introduce an element of subjectivity, which would introduce arbitrariness. [1055B-F]

2. It is not obligatory for the Court to interfere in all cases unless justice of the case so demands. In the

instant case the High Court was entitled to take the view that the Court ought not to, in the facts and circumstances of the case, exercise its discretionary powers under Art. 226 of the Constitution at the instance of the petitioner who was not entitled to any relief. Any other view would have been manifestly unjust. [1056C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petitions (Civil) Nos. 5535-36 of 1987.

From the Judgment and Order dated 28.4. 1987 of the Madras High Court in W.A. No. 1302 and 1307 of 1986. Nalini Chidambaram and Ms. Seita Vaidyalingam for the Petitioner.

B. Datta, Additional Solicitor General, Shanti Bhushan S. Padmanabhan, M.A'. Krishnamurthy, K.K. Mani, K. Swami anti A.V. Rangam for the Respondents.

The Judgment of the Court was delivered by SEN, J. The short question involved in these special leave petitions is whether the proper criterion to adopt for selection of candidates belonging to the category 'eminent sportsmen', for admission to the MB.B.S. course, is pre- eminence in sports, and not academic excellence. In the prospectus issued by the State Government of Tamil Nadu for admission to the M.B.B.S. course for 1986-87 in the Govern- ment Medical Colleges in the State, there was reservation of three seats for the category 'eminent sportsmen' as speci- fied in category (iii) to Annexure I, also indicating the order of preference. The relevant provision reads:

"(iii) Eminent Sportsmen, The order of preference is as follows: -

(a) participation at International level, the candidate being sponsored by a national body.

(b) participation at National level, the candidate being sponsored by a State Body or University.

(c) participation at State level, the candi-

date being sponsored by Zonal or District Association.

Sponsorship Certificate should be produced. If not produced, candidate will not be considered under this category.

Note: Candidates applying for admission to categories (i), (ii) and (iii) must have secured 50% aggregate marks in science sub- jects in the qualifying examination."

It appears that the petitioner along with 2 16 others applied for the sports quota reserved for 'eminent sportsmen'. The petitioner who is a champion in aquatics had been sponsored by the Tamil Nadu State Aquatic Association showing participation in several tournaments at National level. The Selection Committee adopted participation at National level to be the criterion and thus 16 candidates were left in the field. It selected respondents nos. 4-6 for the three seats reserved for 'eminent sportsmen' on the basis of marks obtained by them at the qualifying examination. The petitioner having obtained 174.50 marks was not placed either in the select list or in the waiting list. It is necessary to set out the marks obtained by the petitioner as well as respondents nos. 4-6 as also the candidates placed in the waiting list:

1. Khalid Hussain, Petitioner 174.50
2. R. Vijaya Sree, 4th Respondent 215.40
3. Seshasayee Narasimhan, 5th res. 202.95
4. K. Subramaniam, 6th res. 200.90 Waiting List Candidates

1. T. Jayaraj 196.55
2. Suja Ramakrishnan 192.80
3. Praveen Kumar David 190.58

4. G. Rajalakshmi 186.60 Aggrieved by the non-inclusion of his name in the select list, he moved the High Court of Madras by a petition under Art. 226 of the Constitution. A learned Single Judge (Mohan, J.) by his judgment dated December 2, 1986 observed that the whole purpose of reservation of three seats for the category 'eminent sportsmen' was to encourage sports and held that in order to show some distinction with regard to individual achievements, three categorisations had been made, such as participation at International level, National level and State level and beyond that, he saw absolutely no scope for importing the concept of determining eminence inter se among the candidates falling within a particular category. He further observed that the decision of a Division Bench in P. Sabitha v. The Director of Medical Education & Ors., (W.P. No. 9406/83 decided on April 6, 1984) which upheld the validity of such reservation of seats for sportsmen was of little avail to the petitioner. The learned Judge struck down the selection of respondent no. 6 as invalid on the ground that the Selection Committee proceeded on a wrongful assumption that he had actually played at National level in the V. Pattabhiraman Trophy Tournament, while he had only been selected to play at the Tournament. He, however, dis-

missed the writ petition and declined to grant the petitioner any relief since he had no chance of getting admission as there were candidates in the waiting list who had obtained higher marks than

him and made a direction that the Selection Committee would fill up the vacancy from the waiting list and go by the order of merit.

Being dissatisfied with the judgment, the petitioner preferred an appeal, but the Division Bench declined to interfere. In delivering the judgment of the Division Bench, M.N. Chandurkar, CJ speaking for himself and M. Srinivasan, J. referred to P. Sabitha's case which upheld reservation of seats for the category 'eminent sportsmen'. As regards the category 'eminent sportsmen' appearing in the present rule, the learned Chief Justice observed:

"It has to be pointed out that the rules themselves do not provide for any comparative degree of eminence between different candidates in the same category. Such a determination of comparative eminence, apart from introducing an element of subjective determination and providing a scope for discretion which would be capable of being arbitrarily exercised in the absence of any guidelines, also appears to us to be impracticable. The reservation for 'eminent sportsmen' is not restricted to any particular game. There are different kinds of game and different kinds of tournament. In some games, tournaments are held more frequently than in others. To compare the performance, whether qualitywise or quantitywise, by a candidate proficient in one game with the performance of a candidate in an altogether different game is neither possible nor feasible. The proper approach to determine which of the candidates in one particular category should be given a preference in the selection must therefore necessarily depend only on their academic merit."

We are in agreement with the observations made by the learned Chief Justice.

In support of the petition, Ms. Nalini Chidambaram, learned counsel for the petitioner sought to raise two points before us. The first was that a Division Bench of the High Court in P. Sabitha v. The Director of Medical Education (supra) laid down a principle that preeminence in sports was the only criterion for selection of candidates falling under the category 'eminent sportsmen', and not academic excellence. She pointed out that the learned Advocate General in P. Sabitha's case adopted the stand that the seats were reserved for eminent sportsmen and therefore it is only eminence attained in the field of sports that can be the guiding factor for selection of candidates in that category, and not anything else, and submitted that it was not open to the State Government to shift the stand now and justify the action of the Selection Committee in selecting candidates, not by their distinguished superiority as compared with others, fame or excellence in the field of sports, but merely on the basis of higher marks obtained in the qualifying examination. The contention was that the view expressed by the learned Judges that in case of professional courses merit alone should be the criterion and therefore reservation of seats under the category 'eminent sportsmen' could be availed of only by deserving candidates which, it was said, runs counter to the principle laid down by the earlier Division Bench in P. Sabitha's case. The second contention was that at any rate, the learned Judges were in error in observing that though they were inclined to take the view that respondent no. 6 had really not participated in a national tournament as he had in fact played in the zonal tournament, that the Selection Committee had wrongly selected him as a successful candidate on the impression that the zonal tournament was of national level, even then they were

not inclined to sustain the order of the learned Single Judge by which he set aside the selection of respondent no.

6. The learned Judges held that the Selection Committee was justified in making the selection of respondents nos. 4-6 under the category 'eminent sportsmen' on the basis of their academic merit. The learned Judges further held that there were no allegations of mala fides and the decision of the Selection Committee was reached bona fide and merely because respondent no. 6 had been wrongly selected, that was no ground for interference inasmuch as respondent no. 6 had been admitted to the Medical College and undergone studies for the M.B.B.S. course for almost a period of six months, and had given up his seat in another technical course for which he had been admitted, namely, in the Regional Engineering College, Kurukshetra and there was no change of his getting back that seat, and it would not be just and proper that he should lose his seat in the Medical College for no fault of his but at the instance of the petitioner who stood no chance compared to the other candidates in the waiting list having secured much lesser marks. In 'taking' that view, the learned Judges observed that it was not obligatory for the Court to interfere in all cases unless justice of the case requires interference. We are afraid, we are unable to accept any of the contentions.

The argument of learned counsel for the petitioner does not take note of the fact that the decision in P. Sabitha's case proceeded on an interpretation of a provision for reservation of seats for the category 'eminent sportsmen' which was altogether different. The importance of the decision in P. Sabitha's case lies only on the view that a provision for reservation of seats in professional courses for sportsmen was not irrational or arbitrary but had reasonable nexus to the object sought to be achieved in public interest, namely, promotion of sports. In the prospectus for the year 1986-87, the State Government has brought about a change. The provision, as it now stands, provides for a rule of preference. Category (iii) dealing with eminent sportsmen lays down the order of preference as between candidates for selection and makes sponsorship certificate a condition prerequisite for eligibility. Further, candidates applying for admission to category (iii) like categories (i) and (ii) must have secured 50% aggregate marks in science subjects in the qualifying examination. The rule nowhere provides for any determination of comparative eminence. All that the rule does is to lay down a rule of preference. A candidate who had participated at International level would exclude a candidate participating at National level and a person who had participated at National level would exclude a person participating at State level. It has to be pointed out that the rule itself does not provide for determination of comparative eminence as between different candidates falling within the same class but as between sportsmen who have participated at International level, National level and State level. It only provides for the rule of exclusion of one by the other. There are no guidelines provided by which comparative eminence can be judged as between candidates belonging to the same class e.g. at National level, as here. Nor does it provide for any guidelines by which the choice has to be made as between the candidates who have excelled in a particular field of sports e.g. aquatics. The real difficulty arises when there is more than one candidate who have excelled in their respective fields of sports e.g. cricket, football, hockey etc. and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits. Even in P. Sabitha's case, the Court realised the difficulty to lay down any guidelines for adjudging comparative eminence between sportsmen

falling within the same class and it was said that when candidates are shown to have attained equal proficiency in sports, then their academic superiority can be pressed into service as a tilting factor in their favour.

In the absence of any guidelines for purposes of selection, the adjudging of comparative merits among the eligible candidates falling under the category 'eminent sportsmen' would necessarily introduce, as the learned Chief Justice observed, "an element of subjectivity which would introduce arbitrariness" in the selection of candidates because it would be left to the discretion of the Executive in making the choice. In the absence of any guidelines, there is nothing for the Selection Committee to fall back upon except the marks obtained by the candidates at the qualifying examination. The argument of the learned counsel obviously based on the observations in P. Sabitha's case that the proper test to adopt in the matter of selection of candidates for admission to the M.B.B.S. course belonging to the category 'eminent sportsmen' was pre-eminence in sports and not academic excellence, cannot be accepted. That test cannot obviously be applied in interpreting the present rule.

The remaining contention does not merit consideration. The learned Judges although inclined to the view that respondent no. 6 had really not participated in a National tournament, were entitled to take the view that the Court ought not to, in the facts and circumstances of the case, exercise its discretionary powers under Art. 226 of the Constitution at the instance of the petitioner who was not entitled to any relief merely because the Selection Committee was wrong in its view that respondent no. 6 had played in a National tournament although he had in fact played in a zonal tournament. Any other view would have been manifestly unjust as respondent no. 6 though admitted to the Regional Engineering College, Kurukshetra had given up his seat there on his being admitted to the M.B.B.S. course and had already undergone his course of studies for more than six months. The learned Judges rightly observe that it is not obligatory for the Court to interfere in all cases unless justices of the case so demands.

In the result, the special leave petitions must fail and are dismissed.

P.S.S  
dismissed.

Petitions