

(1990) 11 SC CK 0059

In the Supreme Court Of India

Case No : IA No's. Nos. 2-4, 5-6, in Writ Petition (C) No. 1114 of 1990

Ajay Kumar Agrawal and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : AIR 1991 SC 498 : (1991) 1 JT 168 : (1990) 2 SCALE 1041 : (1991) 1 SCC 636 : (1990) 3 SCR 184 Supp : (1991) 1 UJ 54 : (1991) 1 UPLBEC 430

Hon'ble Judges : Ranganath Misra, J;R. M. Sahai, J

Bench : Division Bench

Advocate : Arun Jaitley, Additional Solicitor General, raju Ramachandran, A. Subhashini and C.V. Subba Rao, for the Appellant;

Final Decision : Disposed Of

Judgement

1. This is a group of cases under Article 32 of the Constitution with several applications for interventions and the dispute relates to admission in the Post Graduate Medical Courses in the seven Medical Colleges located within the State of Uttar Pradesh. This Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, for the reasons indicated therein, disapproved the idea of wholesale reservation made in some of the States on the basis of domicile or residential requirement and so far as medical education was concerned, with a view to providing an integrated base of such education on national basis provided reservation of quota at the MBBS stage as also at the Post Graduate stage to be filled up on all India basis. Such reservation so far as the Post Graduate Study is concerned was to be 25% and the selection examination in terms of the Court's decision was left to be done by the All India Institute of Medical Sciences at New Delhi. In respect of the remaining 75% of the seats in Post Graduate Courses it was left to the States to make their selection but the considerations which should weigh for the purpose of selection were appropriately indicated in some of the judgments of this Court.

2. We are concerned in this group of cases with the selection of candidates for the several specialties in the Post Graduate Courses in the seven Medical Colleges as referred to above. This Court in its order reported in *Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, had directed:

What remains now to be dealt with is the finalisation of the programme relating to the selection examination. As already decided the selection examination shall be conducted by the All India Institute of Medical Sciences, New Delhi. The announcement for holding of the selection examination shall be made on October 1 of every year and a full four weeks' time would be made available to candidates for making their applications. After the applications are received not later than six weeks from October, the same would be scrutinised and duly processed and admit cards would be issued. Examination shall be held on the 2nd Sunday of January. The result of examination shall be announced within four weeks from holding of the examination. Admission shall commence two weeks after the declaration of results. The last date for taking admission shall be six weeks from the date of the announcement of results but the Head of every Institution shall be entitled to condone delay upto seven days for reasons shown and grounds recorded in special cases. The courses of study shall commence in every institution providing such study throughout the country from May 2. Notification announcing examination, publication of result and allotment of place of admission (keeping preference in view and our direction regarding preference of lady candidates in place of proximity to residence) shall be published into successive issues of one national paper in English having large circulation in every State and at least in two local papers in the language of the State as quickly as possible.

3. A little later the State Bihar and others came up in appeal before this Court challenging a direction of the Ranchi Bench of the Patna High Court where the High Court had taken execution to steps taken by the Bihar Government in a manner contrary to the aforesaid direction. While disposing of the appeal we indicated in our judgment reported in 1989 4 J.T. 320 thus:

Obviously the relevant directions have not been followed by the examining body for the current year. Similarly the State of Bihar did not follow the directions of this Court while drawing up its prospectus. If the courses of study are to commence from May 2, the last qualifying date could not have been fixed as May 31, 1989. It has been reiterated before us that several States have not been following the directions. Instead of issuing notice to the States and Union Territories for examining the correctness of the allegations of delay and non-compliance of the directions, we have thought it appropriate to indicate that everyone including the States, the Union territories and other authorities running Medical College with Post Graduate Courses are bound by our order and must strictly follow the time schedule indicated in paragraph 6 of the order. We have not proceeded against the defaulting authorities for violation of this Court's order,

hoping that there would be no recurrence of it but we would like to administer a warning to every one that if it is brought to our notice at any time in future that there has been violation, a serious view of such default shall be taken. We hope and trust that every one concerned shall comply with the time-frame strictly and there would be no lapse in this regard in future.

4. Some time thereafter an application for the State of Uttar Pradesh came for disposal before this Court when not having complied with the directions made by this Court in the manner noticed in the Bihar case, the State wanted extension of time. This Court on that occasion observed as under:

This application is grounded upon the default which this Court has been anxious to eliminate and apprehensive of non-compliance of directions wherein a serious threat of punishment have been held out. Both the State of Uttar Pradesh and the seven medical colleges run by it are bound to implement the scheme in the main judgment as modified from time to time and were covered by the orders of 1987 and 1989. We have read our order of 1987 again and find no scope for the stand of the respondents in the present petition for the position that there was scope for confusion relating to the directions in regard to uniform pattern of the courses and the time schedule for the various aspects concerned with the selection examination, admission of students into the Post Graduate Courses and commencement of sessional teaching. These were two different matters and while regard to items referred to in the order of 1987 a clear five-year period was allowed to evolve the system of uniformity, time-frame for every purpose like admission and teaching was intended to be brought into force from the year 1988. Two distinct sets of directions were made—one in regard to the requirement of change of the regulations and rules and the procedural aspects in operating the scheme, and the other for regulating admission and commencement of teaching. We reject the plea of the Uttar Pradesh Government and the other respondents that there was scope for confusion and non-compliance with the directions was relatable to a bona fide mistake.

This is a clear instance of either wilful default and total callous indifference to binding and lawful orders made by this Court. Where the direction is clear and arising out of default of compliance, a further direction is made clarifying the position and warning defaulting parties of serious consequences we find no scope for any justification for continued default. More so, when the State Government and its officers obliged to give effect to our directions fail to take notice of the same and exhibit a conduct of non-cooperation and callousness.

It was the obligation of the State of Uttar Pradesh in terms of the two orders referred to above to initiate action for admission in appropriate time so as to allow the commencement of the course for the year 1990 with effect from May 2, 1990. It is the respondents' stand that for the year 1990 the Entrance Examination for the remaining seats (besides 25% controlled by the AIIMS) was to be conducted by the University of Lucknow on 27th May, 1990. This itself was contrary to the scheme and exhibited the same pattern of conduct as appeared

in the Bihar case referred to above. In fact on looking at the matter from every possible angle we have not been able to appreciate the submissions of Mrs. Dixit and are of the view that the performance of the State of U.P. and its public authorities is anything short of contumacy. At one stage we were thinking of initiating contempt action against the State and the Principals of the seven Medical Colleges. Such steps for disciplining the State and the public authorities concerned would result in multiplicity of proceedings; therefore, instead of undertaking such an excise we have thought it appropriate to impose exemplary costs against the State of Uttar Pradesh as also the Principal of each of the seven Medical Colleges. We direct that the State of Uttar Pradesh shall pay costs of Rs. 20,000 (twenty thousand) while each of the Principals shall pay Rs. 500 (five hundred) by way of costs. So far as the State of Uttar Pradesh is concerned, it has of course to come from the public fund of the State. In regard to the Principals of each of seven Medical Colleges located at Lucknow, Agra, Kanpur, Jhansi Meerut, Gorakhpur and Allahabad, the amount of costs shall be recovered personally from their salary and they would not be entitled to reimbursement of the same from the State exchequer. These payments be made with the Registry of this Court by 30th of September, 1990. A copy of this order shall be made available to each of the Principals of the seven Medical Colleges for compliance.

The State of U.P. is directed to hold the Selection Examination stipulated by it for May 27, 1990, by 30th of September, 1990 and the University of Lucknow is authorised to conduct it. The result of the examination should be published within one week, that is, by 8th of October, 1990 and admissions should be completed on or before 26th of October, 1990 and classes shall commence on 1st of November, 1990. The classes shall be deemed to have commenced from 2nd May, 1990, and each of the Medical Colleges shall undertake to provide additional teaching in course of the session so as to compensate the students for the days lost on the basis that the course begun on 2nd May, 1990. Each of the Principals of the Medical Colleges shall certify to the Registry of this Court by 15th November, 1990, that this part of order has been implemented.

Before we part with the case we would like to again administer a warning to everyone associated with the scheme for implementing the directions contained in the main judgment and the subsequent orders that a future default by anyone in any part of the country shall indeed be seriously viewed and drastically dealt with. This Court has stated in the past and we would like now to reiterate that the directions of this Court are not intended to be brushed aside and overlooked or ignored. Meticulous compliance is the only way to respond to directions of this Court."

Dr. Dinesh Kumar and others Vs. Moti Lal Nehru Medical College, Allahabad and others,

5. This group of writ petitions is an off-shoot of the directions referred to above.

6. There are seven Medical Colleges in the State which are located at Agra,

Allahabad, Gorakhpur, Jhansi, Kanpur, Lucknow and Meerut. As the order of this Court dated 31.8.1990 would show the Meerut College had held its own selection examination in time and the direction, therefore, related to the remaining six colleges.

7. The Uttar Pradesh Government totally indifferent to our previous directions and oblivious of the consequences that might flow out of such indiscreet steps had in the matter of selecting the candidates for the 75% Post Graduate Seats in the Medical Colleges within the State fixed the cut-off date for completion of the internship as 31.12.1990, though it had notified the examination for 27.5.1990. By our previous order we had held that it was not open to the Uttar Pradesh Government to hold the examination on 27.5.1990 when the session for the year was to start on 2.5.1990. In that order no reference was made to the fixation of 31.12.1990 as the cut-off date for the completion of houseman ship as it was not necessary for making that order and obviously because that had already been dealt with in the Bihar matter. The order of 31.8.1990 directed the State of Uttar Pradesh to hold the examination contemplated to be held on 27.5.1990 through the Lucknow University by a particular date and called upon the Medical Colleges to complete the admission for the 1990-91 session by the date indicated in the order and to deem the commencement of the course to have been from 2.5.1990 and provide additional teaching facilities to cover up the courses.

8. In holding the examination after this Court's direction, the State Government lost sight of the fact that in the Bihar matter we had indicated that the cut-off date beyond the commencement of the session would not be tenable and thus admitted candidates who had not completed their houseman ship to the selection examination and many of them have now been found to have qualified for admission. We have, therefore, before us a set of candidates who satisfy the requisite conditions and are qualified for selection and a set of candidates who have 'taken the selection examination and have qualified though they have not finished their internship yet. There is challenge to the validity of the 50% qualifying base in the selection test.

9. Mr. Satish Chandra has contended before us that there was no cut-off remark in the original brochure which required the examination to be held on 27.5.1990 and, therefore, for the first time, it could not have been introduced in the fresh notice in purported compliance of the Court's order of 31.8.1990. He has further contended that such a provision could only be in a notification in terms of Section 28(5) of the U.P. Universities Act and in the absence of an appropriate notification it is not a binding requirement. There may be some force in the submission of learned Counsel but we do not think in the present facts and setting of events and in particular for meeting the problem which has arisen we need approve a technical stand.

10. This is a specialised study and being Post Graduate Course in the Medical Faculty, the most eligible and qualified students should have access to the courses for the ultimate social good. In the main case- Dr. Pradeep Jain and

Others Vs. Union of India (UOI) and Others, of the Reports this Court said:

The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available...

11. It is not disputed that in Uttar Pradesh the prevailing practice was a 50% base for allowing Post Graduate Study to doctors with MBBS qualifications but taking their University examination as the base without any separate selection test, it is not the case of any of the parties before us that the selection is bad for any other reason. We are of the view that it is in general interest that the 50% cut-off base as has been adopted should be sustained.

12. Section 33 of the Indian Medical Council Act contemplates of regulations and Sub-section thereof authorises regulations to be made for the courses and the period of study and practical training to be undertaken for grant of recognised medical qualifications. Section 25 of the Act provides that provisional registration and internship for a period of one year is a basic qualification necessary for acquiring the full-fledged MBBS degree. We also find that a regular registration is necessary for a candidate to get admitted into the Post Graduate Course and regular registration would not be permitted until the internship is completed. The action of the State of Uttar Pradesh in fixing the cut-off date as the end of December, 1990, and allowing the candidates undergoing internship to take the selection examination as also get admitted into the Post Graduate Courses is, therefore, contrary to the scheme of the Act and the regulations made thereunder. The prevalent arrangement in the State of Uttar Pradesh can only be classified as another indisciplined action.

13. We cannot loss sight of the fact that on account of the irregular steps taken by the State of Uttar Pradesh, a group of candidates have been invited to sit at a selection examination before they have acquired the requisite qualification and have been selected for admission. These candidates who are before us have been anxiously waiting for their admission. Similarly there is a group of students who have had the full qualification and has been selected.

14. Specialisation is the main basis of Post Graduate Study. Every candidate has indicated his or her preference in regard to specialisation. We are of the view that the admissions in respect of about 549 seats said to represent 75% of the State quota in the seven Medical Colleges for the session 1990-91 should, therefore, be completed on the basis as indicated below:

(1) Those candidates who have had the requisite qualification i.e. had become full-fledged degree-holders on or before 2.5.1990 and have been selected for

admission should be put into Category-A. Admission to them shall be given first with their preferred speciality; and

(2) Those candidates who had not completed their internship by 2.5.1990 and have, in the meantime, completed or are going to complete the same by 31.12.1990 and have been found qualified for admission in the selection examination shall be put into the second list and on the basis of availability of seats as also the preference given by them for speciality on comparative merit basis shall thereafter be admitted.

15. Keeping their respective merit in view, we have waived the requirement of completion of the internship as a condition precedent to admission into the Post Graduate Degree. We would like to make it clear that hereafter no-one shall be admitted without complying with the requirements of the Act, the Rules and the Regulations referred to above and no State Government or authority running a Medical College would be permitted to avoid compliance of the law.

16. The expectations of this Court when the order of 31.8.1990 had been made have not worked out on account of the difficulties that have been noticed now. We direct that on the basis of the present orders admission should be completed within two weeks from now and at any rate prior to 30.11.1990, so that the teaching courses of this session must, therefore, be started from 1.12.1990 but subject to the deeming provision that the same started from 2.5.1990. The actual teaching period would be hardly four to five months. We, therefore, direct that the Principals of the respective Medical Colleges shall comply with the directions indicated in the order of 31.8.1990 in the matter of providing additional teaching facilities and file the affidavit as indicated in the order by 20.12.1990 in the Registry of this Court.

17. Several writ petitions and intervention petitions have been filed but we have not referred to them separately as we thought it appropriate to indicate the principles to regulate the admission for the session and require compliance thereof so that the situation that has arisen may be properly met. It would, therefore, follow that all the writ petitions and the petitions for intervention and/or impleadment relating to admission into the Post Graduate Degrees for the 1990-91 session in the U.P. Medical Colleges are disposed of with these directions. There would be no order as to costs. But we would like to close this matter with a warning to the State of Uttar Pradesh and the Principals of the Medical College located therein that any further infraction of these directions shall be severely dealt with.