
(2013) 05 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil Writ Petition No. 57 of 2013

Akshanjali Morya

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Indian Medical Council Act, 1956 — Section 19A, 33

Citation : (2013) 05 RAJ CK 0111

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Manoj Bhardwaj, for the Appellant;

Final Decision : Dismissed

Judgement

Veerendr Singh Siradhana, J.—Heard the learned counsel for the petitioner. When the matter was listed before the learned single judge on 26 April 2013, the counsel for the petitioner referring to the prayer in the writ petition submitted that since the petitioner is seeking a declaration of Regulation 4.1 of the Graduate Medical Education Regulations, 1997 as Ultra vires to the mandate of Article 14 of the Constitution of India, the matter needs to be placed before the Division Bench and accordingly an order was made directing the registry to place the matter before the Division Bench. The prayer clause in the writ petition reads thus:-

It is, therefore, most humbly prayed that this Hon''ble Court may kindly be pleased to accept and allow this writ petition and be further pleased to call for the entire record relating to the case of the petitioner and after perusing the same passed such appropriate writ, order or direction:-

(i) To declare ultra-vires the regulation No. 4.1 so far as prescribing the minimum age limit of 17 years for getting admission in M.B.B.S.;

(ii) To declare unconstitutional the Condition No. II of advertisement dated

01.12.2012 in the head of Eligibility Criteria;

(iii) To direct the respondents to allow the petitioner to appear in the examination of the Pre-Medical Test being held by the respondents on 05.05.2013;

(iv) To pass any other appropriate writ, order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of the present case in favour of the petitioner.

2. This writ petition has been preferred by the petitioner, Akshanjali Morya, stating that her date of birth is 12th of February, 1997 and she passed her Secondary examination, scoring 9.2 Grade points in the month of June, 2011. Thereafter she appeared for the examination in the session 2011-2012 for class XI and secured 891 marks out of 1000, as is evident from the statement of marks issued by the school in the result sheet dated 28 March 2012.

3. It has been further stated that the petitioner submitted her online application for admission to M.B.B.S. course, for the academic session 2013-2014, to the third respondent i.e. the Joint Secretary, Central Board of Secondary Education (CBSE), New Delhi. The online application of the petitioner was declined in view of condition number (ii) of the advertisement dated 1st of December 2012, which stipulated a condition, under the Eligibility Criteria, to the effect that the candidate applying for pre-medical test must have completed the age of 17 years on or before 31st of December of examination year. In the instant case at hand the examination year is 2013 and the examination is scheduled to be held on 5th of May 2013 and the petitioner would complete 17 years of age on 2nd of February, 2014.

4. Since there is no minimum age prescribed by the Board of Secondary Education for Senior Higher Secondary Examination and the petitioner being qualified in all respects to participate in the pre-medical test for the M.B.B.S. Course for the academic session 2013-2014, declining her online application in response to the advertisement dated 1st of December 2012 in view of Condition number (ii) of the advertisement is arbitrary, irrational and has no nexus with the object sought to be achieved. Therefore, it offends Article 14 of the Constitution of India, as there is discrimination amongst the equally qualified candidates, who are seeking admission to the M.B.B.S. course through the pre-medical test in pursuance to the advertisement in question.

5. The learned counsel further submitted that since the petitioner is only short of one month and 2 days, to meet the age requirement, she must be considered for admission to the M.B.B.S. course, for the academic session 2013-2014. Moreover, there is no minimum age prescribed by the Central Board of Secondary Education or any of the examining body, the petitioner cannot be restrained from appearing at pre-medical test, even though she was one month and 2 days short of the prescribed age limit. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution

of India.

6. The Medical Council of India, the 2nd respondent herein, has enacted the "Graduate Medical Education Regulations, 1997" (hereinafter, "Regulation of 1997", for short), and as per regulation number 4.1 the minimum age has been prescribed by the Medical Council of India for admission to Medical Course as 17 years on or before 31st December of the examination year. Section 19A of the Indian Medical Council Act, 1956 (hereinafter, "Act of 1956", for short), which empowers The Medical Council of India to prescribe the minimum standards of medical education, reads thus:

19A. Minimum standards of medical education.-- (1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall, before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

7. According to Section 33 of the Act of 1956, the Council may make regulations, generally, to carry out the purposes of the Act of 1956. In exercise of the powers conferred by Section 33 of the Act, 1956, the Medical Council of India, with the previous sanction of the Central Government made the "Regulations on Graduate Medical Education, 1997". The minimum age limit of 17 years, fixed for admission to M.B.B.S./B.D.S. Courses, is in accordance with the provisions of "The Indian Medical Council Act, 1956" and "Regulations on Graduate Medical Education, 1997". The relevant Regulation 4 as well as Regulation 5 under Chapter II of the Regulations of 1997, reads thus:-

CHAPTER II

ADMISSION, SELECTION, MIGRATION & TRAINING:-

4. Admission to the Medical Course-Eligibility Criteria:

No Candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

(1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course.

(2) He/she has passed qualifying examination as under:

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges.

or

(b) The Intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.

or

(c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination,

or

the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry & Biology and also English as a compulsory subject.

or

(d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course.

or

(e) B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects-Physics, Chemistry, Biology and English.

or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking

Physics, Chemistry and Biology including practical test in each of these subjects and English.

Note: The pre-medical course may be conducted either at Medical College or a Science College.

Marks obtained in mathematics are not to be considered for admission to MBBS course. After the 10+2 course is introduced, the integrated courses should be abolished.

5. Selection to Students:

The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:

(1) In states, having only one Medical College and one university/board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character.

5 Procedure for selection to MBBS course shall be as follows:-

i) In case of admission on the basis of qualifying examination under Clause(1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause(2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition

must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfills the eligibility criteria under Regulation 4.

8. Thus, a bare perusal of the Regulations extracted hereinabove would reveal that in fact, the age limit of 17 years has been fixed by an expert committee consisting of experts in the medical field and other related fields and we are afraid that the subject matter would, if at all, fall for consideration of this Court under Article 226 of the Constitution of India, within the ambit of judicial review.

9. By now it is well settled that it is not the function of the Courts to go into the question of prescription of age, unless, it seems to be so absurd and unreasonable that a man of ordinary prudence would not accept such a prescription. Even otherwise, the Courts are not equipped with any expertise to come to a conclusion as to what would be the proper age for a student to enter the M.B.B.S. Course. It is for the policy makers to consider the various factors which are relevant to the issue, before fixing the age limit for admission to the medical courses.

10. Further, there is a rationale behind the fixing of the date on which a candidate must attain the age of 17 years. It is intended to apply uniformly throughout the country. The Medical Council of India has chosen to fix the date as 31st of December of the concerned year, in which a candidate is admitted to the M.B.B.S. Course. The qualifying examinations are conducted by the various Boards, Universities etc., at different points of time in a year. Similarly, the entrance examinations for the admission to M.B.B.S. Course are conducted on different dates.

11. Moreover, the first year M.B.B.S. Course may commence at different points of time in a year. Therefore, with a view to have uniformity, the Medical Council has chosen 31st of December of the examination, as the date on which the candidate should attain the age of 17 years, in the year in which the admission to the M.B.B.S. Course is made. In the existing pattern of education in the country, normally, a candidate passes the qualifying the examination at the age of 16 or 17 years of age. The Medical Council in its wisdom had come to the conclusion that, for proper understanding and comprehension of medical education, a candidate must possess certain level of maturity, which comes with age. The

prescription of the minimum age is on account of studied deliberations made by the Medical Council and is a manifestation of an informed decision taken by the Medical Council in association with the Central Government, for prescribing the minimum standards and qualifications. The said decision has been taken in pursuance of the discussions, consultations and deliberations, made by an expert academic body and is made for the furtherance and maintenance of minimum standards for medical education. Therefore, such a regulation cannot be characterised as arbitrary.

12. It has also been submitted that though Section 33 of the Act of 1956 empowers the Medical Council of India to fix the standard of education, but prescription of minimum age by the Medical Council of India cannot be construed to be within the power. We fail to understand how and on what grounds, such powers can be ousted from the ambit of powers conferred by virtue Section 33 of the Act of 1956. Even if the candidate concerned had been permitted to write the 10th standard and the plus two examinations by granting an exemption, with regard to the minimum required age of the candidate, it cannot be a good reason for the granting of such an exemption, in respect of the age limit fixed, under Condition Number (ii) of the Eligibility Criterion of the prospectus/admission form, issued by the third respondent, for the M.B.B.S./B.D.S. admissions, for the academic session 2013-2014. Except for the fact that Section 33 of the Act, 1956 empowers the Medical Council of India to fix the standard of education, no apparent arbitrariness, illegality, irrationality or unreasonableness, in the stipulation for minimum age of 17 years, which must have been attained by a candidate on or before 31st December of the concerned year, is discernible to characterize the same as unconstitutional or ultra-vires of Article 14 of the Constitution of India. Therefore, the relief(s) sought for by the petitioner in the present writ petition is devoid of merits.

13. In view of the submissions made by the learned counsel appearing on behalf of the petitioner, and on a perusal of the records available, this Court is of the considered view that the reliefs sought for by the petitioner in the present writ petition, cannot be granted. Condition Number (ii) of the Eligibility Criterion of the prospectus/admission form issued by the third respondent for admission to M.B.B.S./B.D.S. Courses, for the academic session 2013-2014, is in accordance with the "Regulations on Graduate Medical Education, 1997", and the provisions of the Indian Medical Council Act, 1956. Section 19A of the Indian Medical Council Act, 1956, provides that the Medical Council of India, may prescribe the minimum standards of medical education for granting recognised medical qualifications by the Universities and the Medical Institutions in India, make regulations to carry out the purposes of the Act of 1956. It is not the case of the petitioner that the relevant provisions of the Indian Medical Council Act, 1956, and the "Regulations on Graduate Medical Education, 1997", are inapplicable to the present case. As such, it would not be open to the petitioner to challenge Condition Number (ii) of the Eligibility Criterion of the prospectus/admission form issued by the third respondent, for admission to M.B.B.S./B.D.S. Courses, for the

academic session 2013-2014, stating that it is arbitrary, irrational and contrary to Article 14 of the Constitution of India.

14. Since the petitioner would not be completing 17 years of age, on or before 31.12.2013, she is not qualified to apply for the M.B.B.S./B.D.S. Courses, for the academic session 2013-2014. Merely for the reason that the petitioner had been permitted to write the 10th standard and the plus two examinations, it cannot be a ground for granting the exemption in favour of the petitioner, in respect of the age limit prescribed under Condition Number (ii) of the Eligibility Criterion of the prospectus/admission form issued by the third respondent (CBSE).

15. Wisdom is the quality of being wise or the capability of taking wise decisions. Wisdom is something which generally comes with experience and old age. An elderly person is supposed to be more wise and mature when it comes to taking decisions. People possessing a great sense of wisdom are sagacious people, who are skilled and experts when it comes to making and executing their plans and decisions. According to Moliere, "A wise man is superior to any insults which can be put upon him, and the best reply to unseemly behaviour is patience and moderation." Expecting someone young to have the capability of making wise and just decisions is quite foolhardy. Wisdom is a quality that comes with several experiences in life and is associated generally with people who have come off age. Wisdom tooth appears at the age of 18 in mature adults. Confucius, "By three methods we may learn wisdom: First, by reflection, which is noblest; second, by imitation, which is easiest; and third by experience, which is the bitterest."

16. The purpose of the "Regulations on Graduate Medical Education, 1997" is to ensure uniform standards for medical courses in view of the nature of the studies which are undertaken for such courses. The essential qualifications are even fixed for admission to M.B.B.S./B.D.S. Courses by CBSE. The relevant provisions for eligibility for entrance examination to the M.B.B.S./B.D.S.- Courses as stipulated under condition Number (ii) of the Eligibility Criterion of the prospectus/admission form, issued by the third respondent, including others, is as follows:

(ii) He/she has attained or will attain the age of seventeen (17) years as on 31st December of the year of the admission to the MBBS/BDS-Courses.

17. Hence, the candidates attaining seventeen years on 1st January 2014 or latter will not be eligible to appear at the competitive entrance examination. The Courts of law ought to be reluctant to interfere in matters relating to education, especially, when certain conditions of admission to medical courses are prescribed by the experts in the medical and its allied fields. In such view of the matter, this Court is not inclined to grant the relief(s), as prayed for by the petitioner. As the writ petition is devoid of merits, it stands dismissed. Consequently, the stay application is also closed. No costs.