

(1986) 08 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 496 of 1986

Charudatta Pingle

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-08-1986

Acts Referred:

Admission to Medical Colleges Rules, 1984 — Rule 85
Admission to Medical Colleges Rules, 1985 — Rule 86
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 115

Citation : (1986) 3 BomCR 734 : (1986) MhLj 907

Hon'ble Judges : M.S. Deshpande, J; M.M. Qazi, J

Bench : Division Bench

Advocate : K.H. Deshpande, for the Appellant; B.P. Jaiswal, A.G.P. for respondents 1 and 2, for the Respondent

Judgement

M.S. Deshpande, J.—By this petition, the petitioner seeks a writ under Article 226 of the Constitution for withholding Rule F(vi) of the Rules for admission for the year 1985-86 and to consider him for admission under pre-existing Rule 6-B(vii) of the rules for admission for 1984-85.

2. There is no dispute that the petitioner passed the XII Standard examination in the year 1984-85 and obtained 253 marks out of 300 in the Science subjects. He had rendered voluntary health service on five occasions, each of fifteen days duration, under the Rules as had existed prior to the coming into force of the new Rules on December 21, 1984 and was entitled to get additional 5 marks on that count. Respondent No. 3 Vandana Rastogi, who had obtained only 257 marks out of 300 was admitted to the Government Medical College on February 14, 1986. The Petitioner, under the Rules dated December 21, 1984, which applied for the year 1985-86 was held entitled under Rule F(vi) to only a maximum 3 marks calculated on the basis of one additional mark for the work of 30 days each and on that basis, his total marks were calculated at only 256.

3. The petitioner's contention is that the Rules which came into force by virtue of the Annexure to the Government Resolution, Medical Education and Drugs Department No. M.E.D. 1084/75/MED-4 dated the 21st December, 1984, did not apply to him, as he had rendered voluntary health services on the faith of the old rules which were in force since the academic year 1982-83. He had rendered the first assignment under the Voluntary Health Services Scheme from 15th to 30th April, 1984; the second from 2nd to 16th May, 1984; the third from 21st October, 1984 to 4th November, 1984; the fourth from 26th April, 1985 to 10th May, 1985 and the fifth from 16th to 30th May, 1985. In the return submitted by the second respondent, the Dean, Government Medical College, Nagpur it is admitted that the petitioner had rendered total voluntary health service of 76 days. There is no dispute that if the petitioner's case is governed by the old Rules, he would secure 258 marks, i.e. one mark more than those secured by respondent No. 3, and he would be entitled to admission in preference to respondent No. 3.

4. Shri B.P. Jaiswal, the learned Assistant Government Pleader, urged that the pre-existing Rules awarding additional marks were not Rules of eligibility but only a concession and there was no such representation which can found an estoppel against the respondents. It was also urged that there was adequate notice of the changed rules, dated December 21, 1984. The rules had been changing from time to time and so there was no representation that the rules would not be changed. It was urged that in any event the maximum marks allottable for voluntary health service were reduced only from 5 to 3, and the change being very insignificant cannot be said to have worked to the detriment of the petitioner.

5. Under the rules, which were in force for the years 1983-84 and 1984-85 a weightage of three marks was given for sports and cultural activities specified in rule No. 4-C(x) & (xi) to a student who had represented his college and actually played in an inter-collegiate tournament arranged by the University, the State Government or a National Sports Organization, during the period between his passing S.S.C. (or equivalent) examination and qualifying examination as defined in Rule 3(ii) and attained the standards as specified in Rule 4-C(x) & (xi), or had represented his college during the aforementioned period in inter-collegiate debates, elocution competitions or dramatic competitions singing, dancing, organised by the University, the State Government or the National Authorised Organisation. Rule 6-B(vii) was that the students of (10+2) 12th Standard examination in the Science faculty, who offered their services during their vacation under Voluntary Health Services shall be entitled to one additional mark for the work of 15 days limited to a maximum of 5 marks. These services had to be rendered by the students of Standards XI and XII during the October and summer vacations occurring in the respective academic year. A change was brought about in these rules by the rules for admission prescribed on December 21, 1984, in respect of the candidate claiming the benefit of representing his institute and actually participating in an inter-institutional tournament/

competition organised at State/National Level during the period between his passing S.S.C. (or equivalent) examination and the qualifying examination in any of the games mentioned in rule F(iii). Three additional marks were to be available to each of the members of the team that participated in the tournament and won the finals; for the winner of the championship in games where there is individual participation; and for representative participating in debates or elocution competitions, dramatic competitions at State/National Level. Clause (vi) of the said rule, which is relevant in the present case is as follows :

"The candidates of H.S.C. (10+2) 12th standard examination in the Science faculty, who offer their services during their vacation under Voluntary Health Services shall be entitled to one additional mark for the work of 30 days limited to a maximum three marks. These services will be rendered by the students of Standard XI and XII during October and Summer vacations occurring in the respective academic years."

6. The changes so effected came for consideration before a Division Bench at Bombay in Writ Petition No. 1419 of 1985 decided on August 22, 1985 Mr. Fall P. Pancha v. State of Maharashtra and others. The petitioner therein claimed additional 3 marks for participating in an intercollegiate water-polo tournament conducted by Y.M.C.A. Under the Rules framed by the Bombay Municipal Corporation, a weightage of 2.5 marks was available for participation in sports. As the Medical Colleges of the State Government did not give the additional marks for participation in the tournaments, it was claimed that such weightage should have been given. While dealing with this aspect, the Division Bench while referring to the decision in Madhuvanti Purushottam Thatte Vs. State of Maharashtra and Others, , observed that the students to a Junior College cannot participate at the University level at all and that those who participated in Inter-Collegiate tournaments for Junior Colleges organised by private bodies did not fall within the Rule for sports weightage. It was, therefore, held that the petitioner there could not get any additional mark for taking part in inter-collegiate water-polo tournaments even on the footing that previous Rules constitute a promise. The decision in that case turned on the position that the though the Rules of admission did constitute a representation, conduct, which was contrary to the Rules, cannot give rise to promissory estopped and the petitioner was not covered by the representation in the Rule. It was held that so far as the Rules regarding participation in sports and the other competitions were concerned, there was a reasonable notice before the change in the Rules governing those items was brought about.

7. In Writ Petition No. 1545 of 1985, Pankil Ashokkumar Patel v. State of Maharashtra and others, which was decided by the same Bench on August 23, 1985, the position regarding the change in the Rules awarding additional marks in respect of elocution competitions was considered. The learned Judges held that it could not be said that the petitioner altered his position relying upon the representation contained in the earlier Rules and must have participated in the

elocution competitions because he was good in elocution and with the hope of winning some prizes and not merely with a view to get some additional weightage marks. It is obvious that the position with regard to the participation in sports and the elocution competitions would be materially different from participation in Voluntary Health Scheme, spread over a long period and it would not be reasonable to expect that a student participating in such activity would do so merely for altruistic reasons.

8. In Writ Petition No. 1241 of 1985, *Arati Bhaskarrao Band v. State of Maharashtra*, decided on July 11, 1985, this Court had to consider the total bar brought about by the change in the Rule which previously permitted a candidate to take the examination in all the subjects at one and the same time or space the examination in some subjects conveniently at intervals of six months, by substituting it by another Rule under which a candidate for admission against the open seats to Medical course must have obtained not less than 50% of the total marks in the Science subjects taken together in one and the same attempt in the qualifying examination, in this context, this Court observed that if a change in the system is predicated upon experience gained by the working of the system in the past., surely no one would come in the way of change and Government cannot be faulted for introducing a different norm for regulating the admissions to this much coveted course. The Court further observed that the unreasonableness was writ large upon the face of new Rule C(4) which did not take care of the cases of the petitioners therein, and a change of policy of vital nature if it operates retroactively to the detriment of the citizens will require adequate notice and publicity.

9. Rule F(vi) come to be considered by a Division Bench of this Court in Writ Petition No. 2065 of 1985, *Ku Swati v. The State of Maharashtra*, decided on November 7, 1985, and it was observed as follows :---

"However, where a particular policy has been adopted and notified year after year one cannot lose sight of the fact that the students appearing for the XII standard examination and aspiring to achieve the ambition of joining the medical course are planning their strategy of securing highest marks right from their entry into the XI standard. Undisputedly, the Rule of 5 additional marks for 90 days of voluntary work in the voluntary health service scheme has been in vogue since many years. The students finding that such 5 additional marks are available with certainly if they were to sacrifice 90 days of their academic year, then, they also plan their strategy and activities in such a way that on the remaining number of days, they devote all their energies to the academic course for excellence. Moreover, this sacrificing of 90 days for offering service to the health scheme is spread over two academic years..... Even if, technically speaking, the rules for admission are published in the year and are applicable to that particular year, it may be argued that it does not amount to promissory estoppel because they apply to the prospective academic year. But we find without hesitation that in equity, if a rule has been in vogue since many

academic years consecutively, to change it so as to affect retroactively would take the case into one of equitable estoppel.....".

The Court found that there was a nexus of these additional marks with the qualifying examination for admission to Medical College and further that the amended rule acting retroactively, materially affects the position of the petitioner and is hit by equitable estoppel.

10. Shri Jaiswal, Assistant Government Pleader, however, referred to another decision of a Division Bench of this Court in Writ Petition No. 3042 of 1985, Sandipt Y. Shilahr v. State of Maharashtra at Bombay, where while dismissing the petition in limine, the following order was passed :--

"Heard both sides. The rule is not a rule of eligibility. The rules relate to concession. There is no representation that the rule will not be changed at any time. Further assuming that there was some representation, the petitioner has not changed his position to his prejudice. In view of this, the principle of promissory estoppel cannot apply to such a position. Hence writ petition rejected."

The Counsel submitted that a conflicting view has been taken in this case and, therefore, the matter should, now, be referred to a Full Bench. We have carefully considered the contents of the brief but speaking order. There cannot be any dispute that Rule F(vi) is not a rule of eligibility, because the eligibility depends on passing the qualifying examination, and that the rule relates to a concession. Equally, there can be no dispute that there was no representation that the Rules will not be changed at any time, as the rules have been changed quite often. The view of this Court has been consistently that the rules amount to representation and no contrary view has been taken by the learned Judges in the above order. The observations are that "further assuming that there was some representation, the petitioner has not changed his position to his prejudice." This clearly was an observation regarding the facts of the particular case before the learned Judges and it was in view of this that they concluded that the principles of promissory estoppel cannot apply to such a position. We see no conflict in the view expressed by the learned Judges with the one that is being consistently taken by this Court. The two other decisions to which we have referred in Writ Petition Nos. 1419 of 1985 and 1545 of 1985 do not lay down that the principles of promissory estoppel would not apply to a candidate acting upon the representation made in the rules, in the absence of adequate notice, and come to be dismissed because the conduct of the candidate was not in conformity with the requirement of the rules. They obviously cannot be an authority for the proposition which is being canvassed by the learned Assistant Government Pleader.

11. We were referred to another decision of this Court in Ku. Anupama Kapilnarayan Agrawal. v. The State of Maharashtra, Writ Petition No. 2526 of 1985, decided on June 24, 1986, where the learned Judges observed that it was

not necessary to go into the question whether constitution of the Full Bench was necessary. There, the decision turned on an entirely different point and it was not necessary to go into the question of the alleged conflict between the views expressed by different Benches of this Court. Since we see no conflict in the decisions so far rendered, we are bound by the ratio of the decision in *Ku. Swati Madanlal Biyani v. State of Maharashtra*, Writ Petition No. 2065 of 1985.

12. The view taken in *Swati Biyani's* case is fortified by the approach of Their Lordships of the Supreme Court in paras 10 & 11 in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, to the effect that admissions purported to be made on the basis of the new principles laid down "in the Courts judgment dated 22nd June, 1984" would result in prejudicing the chances of the petitioners since the house jobs had been started by them prior to the delivery of the earlier judgment, as they would have been able to secure admission as falling within the 75% quota which was previously available. It was observed in para-11 as follows :--

"But we are not inclined to strike down the admissions which have already been made. There are two reasons why we do not wish to disturb these admissions. In the first place, the students who have already been admitted are not parties to the present writ petition and it would not be right to make any order striking down their admissions without giving them an opportunity of being heard. Secondly, the admissions have been made as far back as January 1985 pursuant to an order of the High Court and the students who have been admitted have been prosecuting their studies since the last about three months and it would cause them immense hardship if their admissions were none (now?) to be disturbed. We do not, therefore, propose to strike down the admissions already made to the post graduate courses for the academic year 1985-86. But at the same time we must not allow any injustice to be perpetrated on the petitioners. It would in our opinion be fair and just that the petitioners should be able to get admission to the post of post graduate courses in the Motilal Nehru Medical College being the institution in which they did their M.B.B.S. course, the reason being that if the old rules had been applied they would have been able to secure such admission."

We, therefore, hold that the petitioner was entitled to admission in preference to respondent No. 3 who had secured one mark less.

13. Shri. Jaiswal urged that the petition become infructuous as the academic year 1985-86 has come to an end. We must point out that in similar circumstances, the Supreme Court observed in *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, as under :---

"The petitioner was eligible for admission in the subject of General Medicines for M.D. degree in the year 1981 according to qualifications and other requirement set out in the advertisement. The sands of time have run out which is inevitable in judicial process. What relief can the Court grant to person unjustifiably refused

admission. Post-Graduate qualification in Medical discipline is highly coveted. We must, therefore, find a fresh answer.

Mr. Altaf Ahmed told us that the new academic year is to commence some time in September. We accordingly direct that the petitioner shall be admitted in the subject of General Medicine for M.D. degree without any further test or selection during the current academic year which will commence not later than middle of September, 1983."

14. It, therefore, follows that the petitioner was wrongly denied the weightage of 5 additional marks to which he was entitled under the pre-existing rules for rendering voluntary health services. He was entitled to be preferred to respondent No. 3---Vandana Rastogi. No fault, however could be found with the respondent No. 3 who was admitted on the basis of the marks obtained by her in ignorance of the petitioner's claim and her admission need not now be disturbed. We, therefore, direct respondent Nos. 1 and 2 to admit the petitioner to the M.B.B.S. course commencing from the academic year 1986-87, without any further test or selection. There will be no order as to the costs of this petition.