
(2008) 09 GUJ CK 0027

In the Gujarat High Court

Case No : Spl. Civil Application No. 10995 of 2008

Dhrumit M. Patel and Others

APPELLANT

Vs

C.U. Shah Medical College and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(5), 19(1), 19(6)
Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Payment of Fees) Act, 2007 — Section 6, 6B
Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Payment of Fees) Rules, 2008 — Rule 1.1, 2B, 6, 7B

Citation : AIR 2009 Guj 1 : (2008) 3 GLH 431

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Mohit S. Shah, J

Bench : Division Bench

Advocate : A.J. Yagnik, for the Appellant; D.C. Dave, Sunit Shah, Govt. Pleader and Dipen Desai, Assistant Govt. Pleader, P.S. Champaneri, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, C.J.—The question that has come up for consideration is whether the district-wise reservation of seats adopted by a Charitable Trust, running an unaided medical college, violates Section 6-B of the Gujarat Act 3 of 2008, read with Rule 7-B of the Rules.

2. Saurashtra Medical Centre was established in the year 1972 as a Society under the provisions of the Societies Registration Act, 1860, and is having the status of a Public Trust under the Bombay Public Trusts Act, 1950. It was established inter alia for the purpose of undertaking activities in the field of medical and para-medical education with the area of operation spanning to Saurashtra region in the State of Gujarat. Persons of the rank and repute, predominantly hailing from Surendranagar District of the Saurashtra Region of the State of Gujarat were instrumental in setting up the said Medical Centre. With a view to fulfilling its avowed objects, Medical Centre established a self-financed medical college in the name and style of C. U. Shah Medical College, in

the year 2000, at Surendranagar, for imparting education in the discipline of medicine. The Board of trustees of the Saurashtra Medical Centre convened a meeting on 11th June, 2008 and decided that out of total ten management seats, four seats would be offered by way of preferential treatment to students who have passed the qualifying examination from any school situated in Surendranagar district, of which two seats would be for female candidates. Rest of the six management seats were offered to those students who passed qualifying examination from any school situated in the State of Gujarat. The said resolution was incorporated in the Admission procedure published by the college. Relevant portion of the Admission procedure is extracted below for easy reference:

1.1 In M.B.B.S. course, 10% of the seats will be filled in by the category of management quota by those satisfying the eligibility criteria as per Medical Council of India and Government of Gujarat. As per the resolution adopted by Saurashtra Medical Centre on 11-6-2008, these seats will be distributed as under for the current academic year:

Category	No.	of	Sr.	No.
(who have passed qualifying examination from any school situated in Gujarat)			1	All Gujarat 6
Surendranagar General seats (Those who passed qualifying examination from any school situated in Surendranagar District)			2	2
Surendranagar - Female seats (For Girls who have passed qualifying examination from any school situated in Surendranagar District)			3	2
				TOTAL 10

3. Saurashtra Medical Centre gave wide publicity to its Admission procedure inviting, application from the concerned students to fill up ten management seats. In response thereto, Medical Centre received in all 38 applications in respect of six seats out of the ten management seats to be filled up from amongst students who have passed qualifying examination from any school situated in the Gujarat State. So far as four seats earmarked for students who have passed qualifying examination from any school situated in Surendranagar District is concerned, the Medical Centre received ten applications. The college therefore, prepared two merit lists, one relating to six seats, another relating to four seats earmarked for those students who have passed qualifying examination from Surendranagar. Respondents Nos. 4 to 7 were granted admission by following Rule 1.1 of the Rules of admission, in respect of four seats earmarked to those students who have passed qualifying examination from schools situated in Surendranagar District, in that proportion. For rest of the six management seats, the college received 38 applications, and in the merit list, petitioner Nos. 1

to 3 figured at serial Nos. 23, 24 and 25 respectively. Petitioner Nos. 1 to 3 could not get admission in the six management seats available to those students who have passed qualifying examination from any of the schools situated in Gujarat State. Therefore, petitioners have approached this Court seeking a declaration that Rule 1.1 of the Rules of Admission of first respondent college providing for district-wise reservation in filling up four out of ten management seats, is in violation of Section 6 and other relevant provisions of the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and Rules framed thereunder, arbitrary, irrational, discriminatory, unreasonable, violative of Articles 14, 15, 15(5), 19(1)(g) and 6 of the Constitution of India. Petitioners have also sought for a direction to cancel admission given to respondents Nos. 4 to 7 for academic year 2007-2008, on the basis of Rule 1.1 of the Rules of Admission of the medical college, and also for the consequential reliefs.

Petitioners' contention:

4. Learned Counsel appearing for the petitioners Mr. A. J. Yagnik submitted that district-wise reservation provided in Rule 1.1 of the Rules of Admission in the first respondent college in filling up 10% management seats violates Section 6 of the Gujarat Act No. 3 of 2008, read with Rule 7-B of the Rules. Learned Counsel submitted that the above mentioned provision categorically states that 10% management seats shall be filled up as per inter se merit of the students who have applied for admission forming part of the merit list prepared by the Admission Committee for professional medical education courses. Counsel submitted that district-wise reservation created by the first respondent violates the principle laid down by the Apex Court in the cases of *Minor P. Rajendran Vs. State of Madras and Others*, and *Govind A. Mane v. State of Maharashtra* AIR 2000 SC 1576. Learned Counsel also submitted that the provisions and the Act do not confer any discretion on the management of professional unaided colleges to evolve their own admission rules in giving admission to 10% management seats. Counsel pleaded that districtwise reservation adopted by the respondent college have no reasonable nexus to the object sought to be achieved i.e. to admit meritorious students in the management quota. Learned Counsel submitted that even for filling up management quota, the unaided colleges will have to follow inter se merit amongst students who have applied for admission to the management seats. Learned Counsel submitted that petitioner Nos. 1 to 3 are more meritorious than respondent Nos. 4 to 7, but for district-wise reservation, petitioners would have got admission in the 10% management seats as per Section 6 of the Gujarat Act No. 3 of 2008.

Respondent No. 1's contention:

5. Learned Counsel appearing for first respondent Mr. Dhaval Dave submitted that C.U. Shah Medical College was established by Saurashtra Medical Centre, which is a registered Public Trust with the area of operation spanning to Saurashtra area of Gujarat State. The college was established at Surendranagar

District. The Board of Trustees of the Medical Centre held a meeting on 11th June, 2008 and passed a resolution, whereby it was decided that out of ten management seats, four seats would be offered by way of preferential treatment to the concerned students who have passed qualifying examination from any school situated in Surendranagar District, out of which two seats would be earmarked for girls students. Such a decision was taken with a view to catering to the educational needs of students of Surendranagar district, and to encourage the students to prosecute their studies in various schools in the surendranagar district is one of the avowed objects of the Trust. Learned Counsel further submitted that Rule 1.1 of the Admission Rules in no way violates Section 6 of the Act or Rule 7-B of the Rules. Learned Counsel submitted that management has got a direction to fill-up the seats in the management quota, provided the method followed is fair, transparent, non-exploitative and based on merits. In support of his contention counsel placed reliance on the decisions of the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, Reference was also made to the decisions of the Apex Court in the following cases.

1. Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others,
2. N. Vasundara Vs. State of Mysore and Another,
3. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others,
4. Gujarat University Vs. Rajiv Gopinath Bhatt and Others,

State's contention:

6. Learned Government Pleader appearing for respondent State submitted that Gujarat Act No. 3 of 2008 as such does not confer any discretion on the management to evolve its own methodology to fill up 10% management seats. Learned Counsel also submitted that the management is obliged to follow Section 6, read with Rule 7-B of the Rules.

Judicial evaluation:

7. The first and foremost aspect to be considered in this case is whether Rule 1.1 of the Admission Rules laid down by the first respondent college adopting district-wise reservation is fair, transparent, non-exploitative and based on merit. The first respondent college has been established by a registered Public Charitable Trust situated in District Surendranagar. Affidavit filed by the first respondent college would indicate that the college was established by persons of rank and repute, predominantly hailing from Surendranagar District of Saurashtra region in the State of Gujarat. The Memorandum of Association of Saurashtra Medical Centre would indicate that it's head office would be at Surendranagar and area of operation shall be Saurashtra area of Gujarat State. The aim and object of the medical centre is to establish medical institutions and other institutions with modern and upto date infrastructure facilities for giving proper medical treatment to patients and to eradicate tuberculosis in Surendranagar district. The aim of the

medical centre is to establish and run Medical and Surgical Schools, Colleges, Nursing classes. Nursing homes and to help the others for running similar activities. It is to achieve the above objectives, Saurashtra Medical Centre has established the first respondent college at Surendranagar District. The Board of Trustees, while establishing the college, felt that at least four seats should be earmarked to students who qualify from the schools situated in the district of Surendranagar, and out of the four seats earmarked, two seats should be kept apart for girl students.

8. The question is whether an unaided medical college could make such a reservation? In this connection, it would be profitable to refer some of the observations and findings recorded by the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, while reversing Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,

9. In paragraph 40 of the judgment in TMA Pai Foundation's case, the Apex Court has held as under:

Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principle of fairness.

10. Further in paragraph 53, the Apex Court opined that the private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Further, in paragraph 65, the Apex Court has observed as follows:

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test

in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

11. The Apex Court has also specifically dealt with rights of private unaided professional colleges in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and in paragraph 68 of its judgment, the Court has laid down the following proposition:

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other postgraduation non-professional colleges or institutes.

12. Later, in P.A. Inamdar's case, the Apex Court dealt with the rights of minority and non-minority educational institutions and its obligations. Referring to Kerala Education Bill AIR 1958 SC 956 and T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Apex Court held as follows:

As per our understanding, neither in the judgment of Pai Foundation, nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation.

13. Later, the Apex Court went on to say as follows:

...Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting

serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

14. Further, paragraphs 128 and 129 are also relevant for the purpose, and we extract the same for easy reference.

128. We make it clear that the observations in *Pai Foundation* in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

129. In *Pai Foundation*, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

15. The above principle laid down by the Supreme Court, in our view, would clearly indicate that fixation of percentage of quota between the management and the private unaided colleges is as a result of possible consensual arrangements and not on the basis of any sustainable legislative sanction. We have to examine the legality of Rule 1.1 of the Admission Rules in light of the law laid down by the Supreme Court in the above mentioned judgments and on the touchstone of Article 14 of the Constitution of India and whether provision made is fair, transparent, non-exploitative and based on merit.

16. Learned Counsel appearing for the petitioners also placed reliance on the judgment of the Supreme Court in *Minor P. Rajendran Vs. State of Madras and Others*, which was referred to by the Apex Court in subsequent decisions, which emphasises local and regional reservations. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , the Apex Court held as under:

We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational

hinterland of the medical colleges in the State.

17. The same question again came up for consideration in the case of Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , Anant Madaan and others Vs. State of Haryana and others, and the Apex Court held that the eligibility criteria requires that candidate should have studied 10th, 10+1 and 10+2 classes from a recognised institution in the State of Haryana is neither arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same. The Court held that if rule has been framed that out of the merit list prepared, preference should be given for admission in the super speciality courses to the students of the university in question, per se it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution.

18. Reference may also be made to the decision of the Apex Court in Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another, wherein the Supreme Court has held that preference may be given to those students who pass out from any of the High School or College situated within the Ahmedabad Urban Development Area.

19. In this connection, we may also refer the judgment of the Supreme Court in Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, wherein, referring to the decision in the case of Minor P. Rajendran Vs. State of Madras and Others, the Court held in paragraph to 10 follows:

10. ...As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g. the Central Government in the present case. In Minor P. Rajendran Vs. State of Madras and Others, it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been clarified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose.

20. The above mentioned decisions of the Supreme Court clearly indicate when residence requirement is urged for selection of candidates in educational institutions, the same has been tested in the touch-stone of Article 14 of the Constitution. If so tested, we are not prepared to say that the four seats earmarked by the respondent college for the students who have passed out from the schools situated in Surendranagar district, is illegal or arbitrary, so as to violate Article 14 of the Constitution of India.

21. The Board of Trustees of the Public Charitable Trust felt that four seats out of 10% earmarked for management quota under the Gujarat Act No. 3 of 2008 be earmarked for students who qualify from any school situated in Surendranagar district, and out of that two seats be earmarked for female students. Such a stipulation was made in the admission procedure so as to achieve the objective

of the Trust, that is to cater the educational needs of students of Surendranagar district. Further, it is seen that Medical Centre was also established with the help and assistance from various philanthropists hailing from Surendranagar district and in that situation, the Trust felt that few seats be earmarked to students who qualify from the schools situated in Surendranagar district.

Conclusion:

22. We, therefore, hold that decision taken by the Trust to earmark four seats for the students who qualify from the schools situated in Surendranagar district, is not irrational or whimsical so as to violate Article 14 of the Constitution of India. Stipulation made under Rule 1.1 of the Rules has a reasonable nexus to the objects sought to be achieved by the Trust, which is nothing but an institutional preference which is permissible, going by the decisions of the Apex Court. Such procedure, in our view is fair, transparent and non-exploitative and based on merit. Selection is made following the criteria of inter se merit of those students who fall in that category i.e. from those students who qualify from the schools situated in Surendranagar district.

23. Rest of them fall within the category of those students who qualify from the schools situated from other "district of Gujarat State. Respondent college being an unaided education institution, keeping in mind the observations made by the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, we hold that the stipulation in Rule 1.1 does not violate Section 6 of Gujarat Act No. 3 of 2008, read with Rule 7-B of the Rules. Rule 6(ii) states that management seats be filled up by the management of the respective professional educational college or institution, on the basis of inter se merit of the students to be admitted against the management seats. For admitting the students to the management seats, a criteria has been evolved by the college vide Rule 1.1 of the Admission rules and the admitted students also fall within the merit list prepared by the Admission Committee. Rule 1.1 of Rules of Admission is not violative of Articles 14, 15, 15(5), 19(1)(g) of the Constitution of India, or Section 6 of the Gujarat Act 3 of 2008 read with Rule 2-B of the Rules, and the same cannot be characterized as arbitrary and illegal.

24. For the above reasons, petition is dismissed.