
(2020) 10 JH CK 0074
In the Jharkhand High Court
Case No : Writ Petition(C) No. 2628 of 2018

Dr. Abhishek Kumar Singh And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 19-10-2020

Acts Referred:

Admission Rules, 2017 — Rule 3(1)(c)
Constitution of India, 1950 — Article 226

Citation : (2020) 10 JH CK 0074

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Amit Kumar Das, Swati Shalini

Final Decision : Allowed

Judgement

1. The present writ petition is taken up today through Video conferencing.
2. The present writ petition has been filed for quashing the resolution as contained in Memo no.9/Chi.Maha-07-08/2014 (part-1)-179(9) dated 24th April, 2018 (hereinafter to be referred as "Resolution of 2018") and the new format of bond issued under the signature of the Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand (the respondent no.2) whereby the condition of serving in the State of Jharkhand for one year has been increased to three years and in default, the amount payable by the Postgraduate (Medical/MDS) students has been increased from Rs.15 lacs to Rs.30 lacs along with recovery of stipend as well as other allowances received by them for pursuing the P.G. course. Further, if they opt not to take admission after selection or leave the course before completion, the amount payable by the students of P.G. (medical/MDS) course has been increased from Rs.10 lacs to Rs.30 lacs along with recovery of stipend and other allowances paid to them during the course.
3. The factual matrix of the case as stated in the writ petition is that on 17th

October, 2017, the National Board of Examinations (NBE) published an advertisement for the National Eligibility-cum-Entrance Test (NEET) (Postgraduate), 2018 for admission to MD/MS/Postgraduate diploma courses, 2018. The petitioners qualified in the said entrance test and thereafter counselling process was conducted by the Medical Counselling Committee under the Director General of Health Services, Ministry of Health and Family Welfare, Government of India. After completion of counselling process of several rounds, the petitioners qualified and opted for Rajendra Institute of Medical Sciences, Ranchi (RIMS, Ranchi). The last date of admission as well as for leaving the course after completion of 2nd Round of counselling was fixed as 23rd April, 2018. As per the terms and conditions of resolution dated 22nd December, 2015 which was in vogue during the said period, the petitioners signed the required bond and submitted all the documents as well as the certificates in original before the RIMS, Ranchi at the time of admission i.e., on 23rd April, 2018 which was the last date of joining. On the next date i.e., 24th April, 2018, the impugned resolution as contained in Memo no.9/Chi.Maha-07-08/2014 (part-1)-179(9) was issued under the signature of the respondent no.2 making amendment to the earlier resolution dated 22nd December, 2015 (hereinafter to be referred as the "resolution of 2015"). According to the petitioners, as per Clause (iii) of the resolution of 2018, bonds were required to be taken from all the students of PG (medical/MDS) courses seeking admission in the Medical Colleges situated within the State of Jharkhand to the effect that an amount of Rs.30 lacs was to be recovered from those students who did not intend to take admission after selection. Further, Clause (iv) of the resolution of 2018 provided that a bond would be taken from all the students of Postgraduate (medical/M.D.S.) courses to the effect that those students who intended to leave the courses after taking admission or in the midst of academic session, they would be required to deposit Rs.30 lacs along with the amount of stipend as well as other allowances received by them during the course period in one go. As per Clause (V) of resolution of 2018, the students after completion of Postgraduate course were to compulsorily serve under the Government of Jharkhand for a period of three years, failing which an amount of Rs.30 lacs along with the amount of stipend as well as other allowances received by the students during the course was to be recovered in one go. The petitioners being aggrieved with the resolution of 2018 and under the pressure of signing the new bond in terms with the said resolution, approached the respondent no.2 on 4th May, 2018 but the said respondent was adamant to impose the new bond upon the petitioners and was not ready to consider their grievances. The petitioners also represented before various authorities on the said issue, however no decision was taken in that regard. After strong agitation by the senior postgraduate (medical/MDS) students of the RIMS, Ranchi, the respondent-authorities decided that the impugned resolution of 2018 would not be made applicable to the senior students, rather the same would be applied to the students of new session i.e., the first year postgraduate (medical/MDS) students i.e., the petitioners, the session of which was going to start from 31st May, 2018. Hence, the present writ

petition.

4. Learned counsel for the petitioners submits that the petitioners had already executed the bond as per the resolution of 2015 and the new resolution of 2018 came into force on the next date of the final date of admission in postgraduate (medical/MDS) courses and hence the same cannot be made applicable to the petitioners. It is further submitted that the respondent-authorities after completion of the selection process cannot change the conditions and requirements for admission in postgraduate courses. The respondent-authorities, in absence of any prior intimation given to the students of fresh batch cannot compel them to execute a bond for serving under the Government of Jharkhand for three years and in default of the same to deposit Rs.30 lacs in terms with the resolution of 2018, particularly keeping in view that all the formalities for admission in the postgraduate (medical/MDS) courses were already completed. Learned counsel for the petitioners also submits that the information with regard to the execution of bond by the students in terms with the resolution of 2015 was also provided in the counselling web portal of Medical Council of India as well in the official website of the RIMS, Ranchi which was one of the factors which prompted the petitioners to prefer the RIMS, Ranchi over all other colleges throughout the country. Hence, the petitioners, after taking admission cannot be compelled to execute bond in terms with the resolution of 2018 which was not in vogue till the last date of admission in the postgraduate (medical/MDS) courses.

5. Learned counsel appearing on behalf of the State of Jharkhand submits that the State Government has decided to implement the resolution no.179(9) dated 24th April, 2018 from the academic session 2018-19. It is further submitted that the said resolution does not violate the fundamental rights or statutory rights of the petitioners and as such no interference is warranted by this Court under its writ jurisdiction.

6. Learned counsel appearing on behalf of the respondent no.3 submits that the reason behind issuance of resolution of 2018 has clearly been mentioned in the very first paragraph of the said resolution itself, according to which it was to be ensured that all the medical seats meant for Undergraduate and Postgraduate Courses in the Medical Colleges situated in the State of Jharkhand should be properly filled up and the admitted students should be discouraged from leaving the courses in midway, so that the seats should not fall vacant, as was experienced in the past. A step was also taken to ensure the availability of doctors to serve the people in the State of Jharkhand which is already facing an acute shortage of doctors, especially in the rural areas. Learned counsel further submits that this Court while exercising jurisdiction under Article 226 of the Constitution of India may not interfere with the said policy decision of the State Government unless it is found arbitrary, capricious, whimsical, irrational or an outcome of colourable exercise of power. This Court also may not suggest a particular policy decision other than one taken by the State Government as it is in the domain of the political executive to see as to which decision is best suited

for the people of the State. It is also submitted that the bond executed by the petitioners in terms with the resolution of 2015 clearly provided that any change in the terms and conditions regarding the bond will be applicable as per the Government order/RIMS. Since the petitioners have signed the said bond willingly, they have also accepted the possibility of any change in the terms and conditions of the bond as per subsequent decision of the State Government. It is thus not open to the petitioners to challenge the legality and validity of certain changes made in the terms and conditions of the bond, which have been formulated keeping in view the larger interest of the State. The petitioners are otherwise under contractual obligation to accept the terms of the bond in the light of the undertaking given by them earlier. The changes in the terms and conditions made vide resolution of 2018 have been made applicable only from the current batch of postgraduate (medical/MDS) students of 2018 and not for those admitted prior to issuance of the same.

7. Heard learned counsel for the parties and perused the materials available on record. The petitioners are Junior Resident doctors of RIMS, Ranchi and have taken admission in various Postgraduate (medical/MDS) courses. At the time of taking admission, they had filled up the bonds in terms with the resolution of 2015 issued by the Department of Health, Medical Education & Family Welfare, Government of Jharkhand which was in vogue at that time. As per the said bond, refusal to take admission in the allotted medical colleges after the final round of counselling would make them ineligible for participating in the examination of the said course conducted by the NEET Undergraduate/Postgraduate or other institutions approved by the State Government for a period of one year and they would be required to deposit a sum of Rs.10 lacs as fine for leaving the seat. The petitioners also signed the bond to the effect that they would serve under the Government of Jharkhand for a period of one year after completion of PG (medical/MDS) course, failing which they would deposit a fine of Rs.15 lacs. However, on the date just next to the final date of admission in the PG (medical/MDS) courses, the State Government came out with resolution of 2018 whereby certain amendments were carried out in the earlier resolution of 2015, particularly to the extent of enhancing the amount of bond from Rs.15 lacs to Rs.30 lacs and the period of rendering services under the Government of Jharkhand was enhanced from one year to three years.

8. The petitioners, being aggrieved with the said conditions of the resolution of 2018, filed the present writ petition and a Bench of this Court vide order dated 25th May, 2018, directed the petitioners, by way of an interim measure to execute bonds pursuant to the resolution of 2018 which were to be dependent upon the result of the present writ petition. Thereafter in compliance of the order dated 25th May, 2018, the petitioners signed the new bonds under protest.

9. The main submission of learned counsel for the petitioners is that the conditions stipulated in the resolution of 2018 cannot be made applicable to the petitioners since at the time of their taking admission in the PG (medical/MDS)

courses, the resolution of 2015 was in vogue and they had opted for RIMS, Ranchi only keeping in view the existing terms and conditions of the said resolution. Learned counsel for the respondent no.3 has assiduously contended that the conditions stipulated in the resolution of 2015 have been changed by the subsequent resolution of 2018 with a purpose to discourage the PG (medical/MDS) students to leave their respective courses in midway session and also to ensure proper availability of the doctors in the State of Jharkhand which is already facing acute shortage of doctors especially in the rural areas and thus, the conditions stipulated in the resolution of 2018 are in the interest of the residents of the State of Jharkhand at large.

10. In the present writ petition, the petitioners have, however, not challenged the validity of the resolution of 2018 rather they have challenged the applicability of the same upon them as it was issued after completion of the admission process and they had already taken admission in different PG (medical/MDS) courses at RIMS, Ranchi. Thus, the only question falls for consideration of this Court is, as to whether the action of the respondents in enforcing the terms and conditions of the resolution of 2018 upon the petitioners who had already taken admission in different PG (medical/MDS) courses at RIMS, Ranchi before coming into force of the said resolution, requires interference of this Court under its writ jurisdiction on the ground of the same being arbitrary and unreasonable.

11. Learned counsel for the petitioners in support of his argument has put reliance on the judgment of the Hon'ble Supreme Court of India rendered in the case of *Parmender Kumar and Others Vs. State of Haryana and Others* reported in (2012) 1 SCC 177.

"26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the postgraduate or diploma courses in the different disciplines in medicine which had earlier been indicated in the Prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the Prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the Prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the postgraduate or diploma courses in the reserved HCMS category.

29. As has also been pointed out hereinbefore, this Court in *Rajiv Kapoor case* [(2000) 9 SCC 115] took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the

offending notification introducing a change at a later stage". (emphasis supplied) In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

12. Learned counsel for the petitioners has also put reliance on the judgment rendered by a Division Bench of Orissa High Court in the case of Dr. Himansu Sekhar Sahoo & Others Vs. State of Odisha & Others reported in 2013 SCC Online Ori 133 (W.P.(C) No.12740 of 2013), the relevant part of which reads as under :

"19. Taking into consideration of the judgments of the Hon'ble Supreme Court in the case of Secretary, A.P. Public Service Commission (supra), K. Manjusree (supra) and Mohd. Raisul Islam (supra), it is well settled principle of law that once the process of selection has started, the prescribed selection criteria cannot be changed and further that, introducing of any change into eligibility criteria after the selection process has commenced, would amount to changing the game after the game has been played. It is also further well settled that in the present case, the selection process commenced from 12th November, 2012 (i.e. the last date of making online application) and therefore, any requirement/selection has to be made on the basis of the process/policy/law existing on the said date. We are of the further considered view that while the State is at liberty to change its policy and we are not required to comment upon the justifiability and reasonability of such a change of policy. We are of the view that the impugned guidelines/policy would operate only prospectively i.e. from 27.5.2013 for future examinations that may be conducted but insofar as admission of P.G. (Medical) Course for "in-service candidates are concerned for the year 2013, Clause-F-2 of the impugned guidelines cannot be made to apply to such admissions into the seats reserved for "in-service candidates" for the year 2013-14.

20. Accordingly, all the writ petitions are allowed with directions to the opposite parties 1, 2 and 3 to only consider the candidates having five years service experience, as "in-service candidates" for admission into P.G. (Medical) Course 2013 and consequently, we declare that Clause-F-2 of the impugned guidelines dated 27.5.2013 shall not apply for admission of "in- service candidates" for P.G. (Medical) Courses for the year 2013. Since the Hon'ble Supreme Court has directed conclusion of counseling on or before 31st July, 2013, we direct opposite parties to act forthwith and complete the admission process within the period as

directed by the Hon'ble Supreme Court."

13. Learned counsel for the petitioners has further relied upon the judgment rendered by Gauhati High Court in the case of After Uddin Ahmed & Others reported in 2017 SCC Online Gau 668 . In the said case, challenge was put to Admission Rules, 2017 notified by the State Government on 11th July, 2017 which made midstream change putting impact on the eligibility criteria for admission process which had commenced six months earlier on the basis of the CBSE's notice for NEET (UG) 2017 examination and the notice dated 8th February, 2017 issued by the DME, Assam for the aspirants under the State quota seats to appear in the NEET (UG) 2017 examination. The Gauhati High Court after considering the said aspect held that when the aspirants applied for admission and appeared in the NEET (UG) 2017 examination, they had accepted their admission to be considered on the basis of norms applicable on the date when the process had commenced or at least on the date when the entrance test results were declared, however, only on the eve of starting the counselling process, new norms were notified and therefore the court would be slow to allow such retrospective application of the changed norms. Accordingly, the Gauhati High Court directed the respondents to re-determine the eligibility criteria with reference to 2015 Regulation and to allow admission of the eligible aspirants without enforcing Rule 3(1)(c) of the Admission Rules, 2017 against them. While passing the aforesaid judgment, the Gauhati High Court followed the judgment rendered by the Hon'ble Supreme Court in the case of Dolly Chhanda Vs. Chairman, JEE reported in (2005) 9 SCC 779 wherein their Lordships had observed that while applying for any course of study, the persons must possess the eligibility qualification on the last date of submission of application.

14. It is thus a trite law that any condition given in the prospectus cannot be changed by a Government order, once the process of selection of the candidates for admission in different courses have commenced.

15. In the present case, admittedly at the time of admission of the petitioners, the resolution of 2015 was in vogue and accordingly the petitioners filled up the required bond in terms with the said resolution.

The learned counsel for the respondent no.3 has put heavy reliance on the content of the format of the bond which was executed by the petitioners at the time of taking admission at RIMS, Ranchi. According to the learned counsel there was itself a stipulation in the said format which reads as under :

"If any change in terms and conditions regarding bond will be applicable as per Government order/RIMS."

16. It has thus been contended by the learned counsel for the respondent no.3 that the petitioners themselves had agreed that if any change is made in the terms and conditions by issuing government order, the same will be applicable to them.

17. I am unable to accept the said contention of the learned counsel for the respondent no.3 as the language of the said stipulation itself is not explicit to convey the meaning as suggested by him. Even if it is assumed that the aforesaid stipulation is to be understood as has been suggested by the respondent no.3, the same would be in the teeth of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments. The respondents cannot be allowed to change the condition of the bonds after those were submitted by the students and the admission process was completed so as to put prejudice to the interest of the students who executed the same. Otherwise also, admittedly, the respondents have not applied the conditions of bond in terms with the resolution of 2018 upon the students of previous batches. The respondents have also failed to show any reasonable classification between the students of the fresh batch (i.e., the petitioners) whose admission process had already been completed vis-à-vis the students of the previous batches. Thus, in my view the action of the respondents in applying the conditions of bond in terms with the resolution of 2018 only upon the petitioners is arbitrary, whimsical and un-reasonable.

18. In view of the aforesaid discussions, I am of the view that the resolution as contained in Memo No.9/Chi.Maha-07-08/2014 (part-1)- 179(9) dated 24th April, 2018 cannot be made applicable to the petitioners by enforcing it retrospectively and, as such, the bonds executed by them in terms with the resolution of 2018 are, hereby, quashed and set aside.

19. Since at the time of taking admission in the respective Postgraduate (medical/ MDS) Courses, the petitioners had executed the bond in terms with the resolution of 2015 which was in vogue at that time, they shall abide by the terms and conditions of the same.

20. The writ petition is, accordingly, allowed with aforesaid observation.