

(2006) 04 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) No's. 5565-66 of 2006

Dr. Anand Ramamurthy and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2006) 129 DLT 777 : (2006) 88 DRJ 686

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sanjay Bhat, Atul Sharma and Vrinda Bajaj, for the Appellant; Rajiv Mehra and Rakesh Gosain, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The last date for filing applications for appearing in the notified Examinations is 24th April 2006. The matter was heard in detail on 5.4.2006, 19.4.2006 as well as today.

2. The Petitioners are Doctors who have already qualified as Masters of Surgery (MS). They had enrolled with the National Board of Examinations for the Diplomate of National Board (DNB) in June, 2003. The Training shall be completed in June, 2006 as per the three year schedule. At the time when they had enrolled in the Training as per the Bulletin of Information And Application Form, it had been stated in the General Information that - Examinations are held twice a year: (a) the written examination for primary will be held on Sunday following Second Saturday of June and December and Final on Second Saturday and Sunday at the specified centres

3. Learned counsel for the Respondent relies on Clause 2 of Points to Remembrance in that very Bulletin which states that instructions in the Booklet are liable to changes based on decisions taken by the Board from time to time. Candidates are requested to refer to the Latest Bulletin or Corrigendum that may

be issued to incorporate these changes. Instructions can also be read on the Website.

4. Since the Petitioners have completed their training in Surgical Gastroenterology, they were legitimately expecting to appear in the Examinations which till now had been held twice a year, that is, they were expecting to appear in June, 2006. They have stated that they came to learn of the Policy change only on 26.3.2006 when their discipline was not included in the Examination Notification published in the Times of India on that date.

5. The contention on behalf of the Respondents is that they have maintained very high standards by ensuring that the services of the best and most qualified Examiners in the field are engaged. For these reasons, conducting the Examinations has proved to be a costly exercise. Training is imparted in as many as 54 disciplines. Since in 27 disciplines there is a large enrolment and, Therefore, the Examination Fee is sufficient to cover expenses; hence Examinations in these 27 disciplines are held twice a year. Keeping in view the fact that it was non-remunerative to hold Examination twice a year for the remaining 27 disciplines also, the Board had taken a decision in December, 2005 to hold Examinations in the latter disciplines only once a year in December. Reliance is sought to be placed on statements in the Bulletin of Information similar to those in Clause 2 of Points to Remembrance in the Centralised Entrance Test, June, 2006 which are to the effect that instructions in the Booklet are liable to changes based on decisions taken by the Board from time to time. Clause 2.11 states that - Instructions in the bulletin are liable to changes based on decisions taken by the Governing Body from time to time. However candidates will be governed by the Information of Bulletin vide which they were registered for determining the eligibility. So far the theory & practical examinations are concerned they will be governed by the information bulletin vide which they apply for the theory examinations. A further contention is made on behalf of the Respondents that the Petitioners are only trainees and are drawing a stipend. Since they are already post-graduates nothing precluded them from starting practice or applying for full-time jobs.

6. The Petitioners shall be governed not by the terms of the Bulletin of Information Cum Application form, June 2006, but indubitably by the Bulletin 2003 under which they commenced their Training. This stands clarified by the 2006 Bulletin itself.

7. Learned counsel for the Petitioners has relied heavily on information derived from the website of the Respondents to the effect that the Budget allocations of the Respondent for the year 2004-2005 was Rs. 902 lacs, whereas expenditure was only Rs. 444; for the year 2005-2006 Budget allocation was Rs. 1649 lacs, whereas expenditure was Rs. 669 lacs. It is contended by learned Counsel for the Petitioners that since there is a huge surplus, the argument of paucity of funds is wholly unfounded. In respect of the Current Year it has been stated that the Financial Results of Respondent No. 2 of the National Board of Examination (NBE)

for the Year 2005-2006 are under preparation. As against the Budget Allocation of Rs. 1649 lacs, NBE has only received Rs. 20 lacs as grant-in-aid.

8. In Reply thereto learned Counsel for the Respondent has stated that the word "allocation" is a misnomer and should be read as "projection". I am unable to accept this argument as these are terms of art/accounting. Learned counsel for the Respondent next contends that for the year 2004-2005 a sum of Rs. 444 lacs was spent on salaries and allowances, pension and gratuity of employees, and Examination expenses; and as against this expenditure, the only receipts were grant-in-aid received from Respondent No. 1 of Rs. 20 lacs, and amounts received from registration and examination fees from the candidates was Rs. 425 lacs, thereby aggregating Rs. 445 lacs. It is at once evident that even if these figures are taken to be correct, there is an excess of income over expenditure, even if marginal. This excess should ensure to the benefit of the student community for whom the DNB owes its very existence.

9. Learned counsel for the Respondent has further contended that it would not be fair or proper to expect candidates from 27 disciplines to subsidise or fund the examination expenses of the trainees from the remaining disciplines. This argument, though attractive, is meritless. The Training Programme culminating in the Examination must be taken as a whole and fragmenting it in a monetary manner does not behave the DNB, which has gained global respect.

10. It is also contended that since the shift in the Policy has been taken for bona fide reasons, this Court ought not to interfere in it under Article 226 of the Constitution of India. In other words, since the Policy has not been altered for reasons inimical towards the Petitioner or any other persons similarly placed, no scope for interference under Article 226 would arise.

11. So far as the changed Policy is concerned it has been clarified that for the present Year, if there are 20 candidates and above Examination would be held twice a year, whereas in the following years Examinations will be held twice a year if there are 100 candidates in any discipline.

12. Courts are always reluctant and slow in interfering with a policy devised by the Government unless it is wholly unreasonable in the Wednesbury sense, and/or the policy violates the equality principles enshrined in Article 14 of the Constitution, or the policy infringes any of the other Fundamental Rights. In BALCO Employees Union (Regd.) Vs. Union of India and Others, the Apex Court made these observations:

45. In Narmada Bachao Andolan v. Union of India there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows : (SCC para 229)

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to

be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

46. It is evident from the above that is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestments is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so vocative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to trial and error as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

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92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or

change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

13. In similar vein, the Hon'ble Supreme Court has opined in *State of Orissa v. Gopinath Dash JT 2005 (10) 484* that--The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decision or exercise of discretion by the Government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government

14. The question that arises, Therefore, is whether the decision to change the Policy at the time when the Petitioners are coming to the end of their Training is unreasonable in the *Wednesbury* sense. In order to decide this issue one would have to revert back to the date when the Petitioners joined their Training, that is, June 2003 and thereafter assess what they could legitimately expect at the end of their Training. Learned counsel for the Respondent has contended that there is no certainty that the Petitioners would be successful in their Examinations, but this speculation is not relevant at all. From the perspective of the Petitioners they had joined Training with DNB three years ago, with the assumption that at the culmination of their Training they would appear in an Examination straightaway. They had decided, even after having attained post-graduate status, to submit to further specialised training in order to improve their future prospects, if not for the wider goal of advancement of medical knowledge and expertise. Finances or money constraints in such matters would not be relevant, at least so far as the holding of the first examination is concerned.

15. It is commonplace that research in medicine is an expensive and time consuming enterprise. It is also common knowledge that specialised and super-specialised studies almost always require heavy financial investments made by persons other than those who are undertaking the study. Rather than fight or petition for release of the shortfall in budgetary funds which were allocated to the Respondents, they have chosen instead to defer an Examination which they had promised to held three years ago, at the point of the entry of the Petitioners

in the Training Programme. An argument, which I can only see as specious, is that the Petitioners are working on a stipend and would not be at any disadvantage if the Examination is held six months later in view of the fact that there is no certainty that they will pass it. I need say no more. The period of six months in the life of a Doctor who has spent three further years in Speciality Training far outweighs commercially conducive considerations of Institutions such as DNB. It is unreasonable in the Wednesbury sense to change a policy to the detriment of a student merely because, at the end of his Three Year Training, it would be non remunerative to hold an Examination as per schedule.

16. Having heard this Petition in great detail I am of the opinion that the shift in the Policy smacks of Wednesbury unreasonableness. As has already been observed above, the DNB has a surplus of income over expenditure for the previous year and there is no statement that for the present year the situation will change adversely. Even if this were to happen, the proper approach, so far as the present petitioners are concerned, who can claim a contractual arrangement in their favor and can certainly plead Promissory Estoppel at the very least, is that the funds can be drawn from other enterprises of the NBE in which the income exceeds the expenditure. There is no public interest involved in postponing the Examinations merely because only two students have enrolled, that too three long years ago. If this argument is extended further the DNB may decline to hold any examination for only two students. Every instrumentality of the State must not act arbitrarily or in breach of solemn assurances, especially in the field of education and medicine, found to be inconvenient because some financial outlay may be required.

17. As far as the Policy matter is concerned it can be altered, no doubt in the wisdom of the Board, but for the succeeding years only. The Board would be free to change their Policy for future years.

18. At the end of the Affidavit as well as these hearings, it has now been stated that there may not be sufficient time to conduct the Examination within a short time of 4-5 weeks. This is not an unsurmountable task if the Respondents choose to abide by and honour the Curriculum publicly held out by them as far back as in June, 2003. An individual ought not to be sacrificed for financial consideration alone, that too because it would be more profitable for the Respondents to do so.

19. In these circumstances the Writ Petition is allowed and the Respondents are directed to hold Examinations in respect of the Petitioners as per the Schedule projected in the Bulletin of Information And Application Form for DNB June, 2003/ August, 2003.

20. There shall be no orders as to costs.

21. A copy of this Order be given dusty under the signatures of the Court Master.