
(2007) 05 MP CK 0042
In the Madhya Pradesh High Court

Dr. Arvind Bhatia

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2007 MP 196 : (2007) ILR (MP) 921

Hon'ble Judges : A.K. Patnaik, C.J;S.L. Jain, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—In this writ petition under Article 226 of the Constitution, the petitioner has challenged the vires of Rules 10 (2), 10(3) and 20(9) of the Madhya Pradesh Medical and Dental Post Graduate Course Entrance Examination Rules, 2007 (for short "the Rules").

2. The facts briefly are that the petitioner, after passing MBBS Degree, was selected and appointed as an Insurance Medical Officer Class II in ESI Service under the Department of Labour, Government of Madhya Pradesh on 4-7-2000. After completing the period of probation of two years, he was confirmed as Insurance Medical Officer Class II on 15-4-2004.

3. For admission to Post Graduate Medical Degree and Diploma Courses, the State Government has framed the rules u/s 10 of the Madhya Pradesh Chikitsa Shiksha Sanstha Niyamtran Adhiniyam, 1973. Under the rules, a common entrance examination for admission to Post Graduate Medical Degree/Diploma courses is to be held for both in-service candidates and open candidates but the merit lists of in-service and open candidates but the merit lists of in-service and open candidates are to be prepared separately. Rule 10(1) of the Rules provides that the in-service candidates will have to secure minimum qualifying marks in the Pre-PG Entrance Examination and the Professional Examination Board will prepare and declare separate merit list of selected in-service candidates. Rule 10(1) further provides that total marks for the examination for in-service candidates shall be 200 and in-service candidates declared successful will be

considered for final merit list by addition of marks calculated on the basis indicated in Rules 10(2) and 10(3) of the Rules. In Rule 10(2), it is provided that inter se merit of the selected in-service candidates shall be fixed up by adding marks of weightage for their services rendered in rural areas and the candidates serving in rural areas will get maximum of 50 mark allotted in the manner provided in Clauses (a), (b), (c) and (d) of Rule 10(2) of the Rules. Rule 10(3) provides that a Demonstrator will be given 10 marks for each year of service after 5 years of minimum regular service rendered and the maximum limit of such marks shall be 50 for 5 years.

4. The grievance of the petitioner in the writ petition is that candidates who have served in rural areas and candidates who have worked as Demonstrators have been given marks up to maximum of 50 out of 200 marks in accordance with Rules 10(2) and 10(3) of the Rules. As a consequence, although the petitioner, who has not served any rural area and is not a Demonstrator, has secured higher marks than such candidates who have served in rural areas and a Demonstrator, in the Common Entrance Examination, his position in the final merit list has gone substantially down. The petitioner therefore has prayed that the provisions of Rules 10(2) and 10(3) of the Rules be declared as ultra vires Article 14 of the Constitution. The further grievance of the petitioner in the writ petition is that in Rule 20(9) of the Rules, it is proved that counselling of in-service candidates will be done first and category-wise in the sequence provided therein, i.e., (A) ST category, (B) SC category, (C) OBC category and (D) Unreserved category, but it is also provided in Rule 20(9) of the Rules that seats remaining vacant after category-wise counselling will be made available unchanged to the open category (non-service) candidate of same category and thus seats of a particular reserved category remaining vacant after counselling of in-service candidates of that particular category are not made available to in-service candidates of un-reserved category and the petitioner, who belongs to un-reserved category, suffers discrimination in the process. Hence, the petitioner has also prayed for declaring Rule 20(9) of the Rules as ultra vires Article 14 of the Constitution.

5. Mr. Ajay Mishra, learned Senior Counsel for the petitioner submitted that in Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , the Supreme Court has observed that it may be eminently desirable that some incentive should be given to doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected but such incentive should not go to the length of giving a weightage of 15 per cent of the total marks obtained by a candidate. He also cited the decision in Dr. Snehelata Patnaik and Others Vs. State of Orissa and Others, , in which the Supreme Court has taken a view that the authorities might well consider giving weightage upto a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. He submitted that the maximum weightage of 5 per cent could have been granted in favour of in-service candidates who have done rural service of 5 years or more, but under Rule 10(2) of the Rules, a maximum weightage of 25% is sought to be

given to candidates who have served in rural areas. He submitted that as a result of such high weightage of 25% given to candidates who have served in rural areas, the petitioner is being denied admission in Medical Post Graduate Degree and Diploma courses on the basis of his merit as determined in the Common Entrance Examination and candidates with much lesser merit as determined in the Common Entrance Examination are being given a better chance for admission to Medical Post Graduate Degree and Diploma Courses by adding marks up to 50 out of 200 equivalent to 25%.

6. Mr. Kumaresh Pathak, learned Deputy Advocate General, on the other hand, relying on the return filed on behalf of the respondents, submitted that the long experience of the State has been that Medical Officers do not undertake to serve in rural areas and when they are posted in rural areas, they go on long leave and also remain absent without leave. He submitted that considering this experience of the State of M.P., the rule making authority has considered it necessary to provide in Rule 10(2) of the Rules for giving weightage to candidates serving in rural areas up to a maximum of 50 out of 200 marks depending upon the number of years and area in which the candidate has served. He explained that it is not that every candidate who has served in a rural area gets a weightage of 25% and that the exact marks up to 50 out of 200 marks are given in the manner provided in Rule 10(2) of the Rules. Mr. Pathak cited the decision of the Supreme Court in *State of M.P. and Ors. v. Gopal D. Tirthani and Ors.* 2003 AIR SC 3636, in which the Supreme Court has held that in the set up of Health Services in the State of M.P. and the geographical distribution of population, no fault can be found with the principle of assigning weightage of service rendered in rural and tribal areas while finalizing the merit list of successful in-service candidates for admission to Post Graduate Medical courses but the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis. He submitted that considering the peculiar experience in the State of Madhya Pradesh of doctors not willing to serve in rural areas, the rule making authority has considered it fit to give weightage of marks up to a maximum of 50 out of 200 as provided in Rule 10(2) of the Rules and hence Rule 10(2) of the Rules is reasonable and rational and cannot be held to be ultra vires Article 14 of the Constitution.

7. We have considered the submissions of learned Counsel for parties and we find that in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* (supra), cited by Mr. Mishra, the Supreme Court took note of the suggestion of Government of India under the scheme of examination of Post Graduate Medical Courses that weightage of 15 marks obtained by a candidate in the All India Entrance Examination should be given after he has put in a minimum of 3 years of rural service and observed that while it is eminently desirable that some weightage should be given to doctors who go to rural areas, such incentive should not go to the length of giving weightage of 15% of the total marks obtained by them. The Supreme Court was of the view that when selection of candidates should be made on all India basis, no factor other than

merit should be allowed to tilt the balance in favour of a candidate. The reason given by the Supreme Court for not permitting weightage of 15 per cent to a doctor with 3 years rural service are quoted herein below:

...We are of the view that when selection of candidates is being made for admission on an all India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to post-graduate courses and if we want to produce doctors who are MD or MS, particularly surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merits....

Thus, the real reason given by the Supreme Court in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (supra)*, was that while regulating admissions to Post Graduate Medical Courses, such as MD and MS, selection should be based on merit and no compromise should be made with merit in such selection when surgeons who are going to operate human beings were being produced through such courses.

8. In *Snehelata Patnaik v. State of Orissa (supra)*, the observations of Supreme Court in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (supra)*, that merely by offering a weightage of 15 per cent to a doctor who has done 3 years rural service, it will not be possible to bring about a migration of doctors from urban to rural areas was cited and the Supreme Court said:

In our opinion, this observation certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with All India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities....

In the aforesaid case of *Snehelata Patnaik v. State of Orissa (supra)*, therefore, the Supreme Court also suggested to the authorities for their consideration that some preference might be given to in-service candidates who have done 5 years rural service and the reason given is that it is possible that the facilities for keeping up with the latest medical literature might not be available to such in-service candidates and looking to the nature of their work, its difficult for them to acquire knowledge about very recent medical research which the candidates who have come after freshly passing their graduate degree might have and this might act as an incentive to doctors who had done their graduation to do rural service for some time. In the year 1992 when the judgment was delivered in *Dr.*

Snehelata Patnaik v. State of Orissa (supra), the Supreme Court of the view that weightage up to 5 per cent of marks in favour of in-service candidates who had done rural service for 5 years or more should be given but the Supreme Court made it clear that the actual percentage will have to be left to the authorities.

9. After more of experience since 1992 and taking into account the experience of the State of Madhya Pradesh, the Supreme Court in the case of *State of M.P. v. Gopal D. Tirthani (supra)*, the Supreme Court held that in the set up of health services in the State of M.P. and the geographical distribution of population, no fault can be found with the principle of assigning weightage for the service rendered in rural/tribal areas while finalising the merit list of successful in-service candidates for admission to PG courses of studies but the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis. The relevant portion of the judgment of the Supreme Court in the case of *State of M.P. v. Gopal D. Tirthani (supra)*, is quoted hereunder:

...We find merit and such substance in the submissions of the learned Advocate General for the State of Madhya Pradesh that Assistant Surgeons (i.e., Medical Graduates entering the State Services) are not temperamentally inclined to go to and live in villages so as to make available their services to the rural population; they have a temptation for staying in cities on account of better conditions, better facilities and better quality of life available not only to them but also to their family members as also better educational facilities in elite schools which are to be found only in cities. In-service doctors being told in advance and knowing that by rendering service in rural/tribal areas they can capture better prospects of earning higher professional qualifications, and consequently eligibility for promotion, acts as motivating factor and provides incentive to young in-service doctors to opt for service in rural/tribal areas. In the set up of health services in the State of Madhya Pradesh and the geographical distribution of population, no fault can be found with the principle of assigning weightage for the service rendered in rural/tribal areas while finalising the merit list of successful in-service candidates for admission to PG course of studies. Had it been a reservation, considerations would have differed. There is no specific challenge to the quantum of weightage and in the absence of any material being available on record, we cannot find fault with the rule of weightage as framed. We hasten to add that while recasting and reframing the rules, the State Government shall take care to see that the weightage assigned is reasonable and is worked out on a rational basis.

10. In the aforesaid case of *State of M.P. v. Gopal D. Tirthani (supra)*, yet another question which came up for consideration was whether a Common Entrance Examination could be dispensed with in the case of in-service candidates and the Supreme Court held that a Common Entrance Examination or in-service candidates could not be dispensed with for various reasons. Paragraph 25 of the judgment of the Supreme Court which contains the reasons is extracted herein below:

The eligibility test, called the entrance test or the Pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit inter-se of the candidates which is of vital significance at the counselling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-bye. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

It will be clear from the aforesaid Paragraph 25 of the judgment that the Common Entrance Examination or the Pre-PG test is conducted not only for the purpose of assessing the merit inter-se of a candidate but also to ensure that the candidates who are admitted to the Post Graduate Medical Courses, have the minimum standard for such admission to Post Graduate Medical courses and have obtained minimum qualifying percentage required for such admission.

11. In accordance with the said judgment of the Supreme Court in *State of M.P. v. Gopal D. Tirthani* (supra), we find that Rule 10(1) of the Rules provides that in-service candidates shall have to secure minimum qualifying marks as prescribed, in the Pre-PG Entrance Examination. The said Rule 10(1) of the Rules is quoted hereinbelow:

10. Examination and Merit List : (In-service candidates).

(1) There will be one common entrance examination for Post Graduate entrance conducted by Professional Examination Board. The in-service candidates will be selected on the basis of the same entrance examination. The in-service candidates shall have to secure minimum qualifying marks in the Pre-PG Entrance Examination. As prescribed in those rules for admission. The Professional Examination Board will prepare and declare separate merit list of selected in-service candidates. Total marks for the examination for in-service candidates shall be 200. Such in- service candidates, declared successful will be considered for final merit list by addition of marks calculated on the following basis.

Thus, the apprehension of the Supreme Court in *Dinesh Kumar* (supra), that if additional marks up to 15% are given to candidates who serve in rural areas, then candidates of poor quality may get admission in Post Graduate courses, has been taken care of by providing that every in-service candidate has to secure the minimum qualifying marks in the common Entrance Examination.

12. Moreover, a reading of Rule 10(1) of the Rules quoted above would show that it is not that every in-service candidate who has served in rural area gets 50 marks out of 200 marks, equivalent to 25%. Depending upon the number of

years and the area in which the in-service candidates has served, he will get marks as mentioned in Clauses (a), (b) and (c) of Rule 10(2). Rule 10(2) is quoted herein below:

(2) Medical Officer.-- The inter se merit of the selected in-service candidate shall be fixed up by adding marks of weightage for their services rendered in rural areas. The candidates serving in rural area will get maximum of 50 marks, allotted on the following basis:

(a) For Government service of one year duration while posted in rural area a weightage of maximum 06 marks will be given. For the service in rural area, the maximum gain of marks will be 30 or 20 as per following marks for one year each, for five years.

If the regular services are rendered in Primary Health Centre or Community Health Centre situated in rural area, then 06 marks will be given for one year and if regular services are rendered in Primary Health Centre or Community Health Centre in Nagar Panchayat area, which has been formed under the "Municipalities Act, 1961" then 04 marks will be given for one year.

(b) For every year of regular service, 04 additional marks will be given, if the rural area comes under tribal sub-plan. If such services are rendered in Primary Health Center the candidate will get maximum 20 additional marks at the rate of 04 additional marks per year for five years and for rendering such regular services at community health center, the candidate will get total additional 10 marks at the rate of 02 marks per year for five years.

(c) For the purpose of this rule, the period of service of candidate, while posted in rural area or Nagar Panchayat area of tribal area and if he /she was on unauthorised absence from duty/any dies non period/any period of leave without pay/any period on training exceeding 3 months/ attachment in urban area during the tenure of rural service will not be counted for the purpose of calculation of marks for weightage of rural service.

(d) The final merit of in-service candidates will be prepared by Professional Examination Board for counselling on the basis of marks obtained in entrance examination (equivalent to 200 marks) and marks secured for weightage of rural/ tribal area service (equivalent to maximum 50 marks) thus a total of 250 marks.

(e) In case of two or more candidates obtaining equal marks, the inter se merit will be decided as per procedure described in Sub-rule (2) of Rule 19.

(f) The counselling of in-service candidates will be done by the Medical Education Department.

A reading of Clauses (a), (b) and (c) of Rule 10(2) of the Rules, quoted above, would further show that marks are sought to be given taking into consideration the actual service rendered by an in-service candidate in rural areas and tribal

areas. If the rule making authority, in its wisdom, has thought it necessary to give such additional marks to in-service candidates serving in rural area up to a maximum of 25% for the purpose of ensuring that in-service candidates actually serve in rural and tribal areas of the State of M.P., we cannot, in exercise of our powers of judicial review under Article 226 of the Constitution, substitute our own wisdom for that of rule making authority and take a view that maximum of 25% marks sought to be added in the case of in-service candidates who have served in rural or tribal area is excessive and was not necessary. We are also of the considered opinion that considering the peculiar experience of the State of M.P., the weightage of marks to in-service candidates upto the ceiling of 25% for service in rural and tribal areas in Madhya Pradesh is not unreasonable or irrational and is not ultra vires Article 14 of the Constitution.

13. Mr. Mishra next submitted that Rule 10(3) of the Rules also gives weightage of marks to a Demonstrator up to maximum of 50 marks for 5 years and this provision is clearly violative of Article 14 of the Constitution inasmuch there is no rationale whatsoever in giving weightage of marks to Demonstrators and placing them above the other in-service candidates in the merit list for admission to Post Graduate Medical courses.

14. Mr. Pathak, learned Dy. A.G. relying on the return filed on behalf of the respondents submitted that Demonstrators have been given this benefit because there are no career prospects for Demonstrators and the Demonstrators have been treated as a separate class altogether from other in-service candidates. He further submitted that in Rule 9.2 of the Rules, a restriction was put that a Demonstrator will not be eligible to opt for a seat other than a seat in the subject in which he was working, but the Court has declared such restriction to be ultra vires Art. 14 of the Constitution in the judgment delivered in the case of Dr. Shailendra Patne v. State of M.P. and Ors. in W.P. No. 5056 of 2007 on 16-5-2007.

15. Rule 10(3) of the Rules which provides for weightage of marks to Demonstrators is quoted below:

(2) Demonstrator.-- Demonstrator will be given 10 marks for each year of service after 5 years of minimum regular service rendered, whose maximum limit shall be 50 marks for 5 years. The marks will be allotted by the Dean of the concerned College.

The aforesaid Rule 10(3) of the Rules thus provides that a Demonstrator will be given 10 marks for each year of service after 5 years of minimum regular service rendered whose maximum limit shall be 50 marks for 5 years. The reason given in the return for this rule is that there are no career prospects for Demonstrators. We fail to appreciate this reason given in the return. If the Demonstrator is admitted to Post Graduate Medical Course and he completes his Post Graduate course, he can be promoted to the post of Lecturer, Reader and thereafter Professor, as contended by Mr. Mishra, learned Senior Counsel. Moreover, the restriction put in Rule 9.2 of the Rules that a Demonstrator can

only opt for a seat in the subject in which he is working has already been declared by the Court to be ultra vires Art. 14 of the Constitution. Hence, the Demonstrator as an in-service candidate can now opt for seats in subjects other than the subject in which he is working in the same manner as other Medical Officers. Our judgment declaring the restriction in Rule 9.2 of the Rules as ultra vires Article 14 of the Constitution has now further opened up the career prospects of Demonstrators. They can undertake Post Graduate Medical Courses in any subject other than those in which they are working and after they secure Post Graduate Degree or Diploma, they can go in for better medical career. Mr. Pathak, learned Dy. Advocate General has not brought to our notice any judgment of the Apex Court or of this Court to show that such a weightage in favour of Demonstrators has been held to be reasonable and rational and not violative of Article 14 of the Constitution. We, therefore, declare the provisions of Rule 10(3) of the Rules as ultra vires Article 14 of the Constitution.

16. Coming now to the challenge to Rule 20(9) of the Rules, Mr. Mishra, learned Senior Counsel for the petitioner, submitted that the Proviso to Rule 20(9) of the Rules provides that the seats remaining vacant after category wise counselling will be made available unchanged to the open category (non-service) candidate of same category. This is in contrast to the provision in Rule 20(11) of the Rules which provides that seats remaining vacant after category wise counselling for open candidates will be filled up by unreserved category candidates.

17. Mr. Pathak, learned Deputy Advocate General on the other hand submitted that this provision has been made in Rule 20(9) of the Rules to ensure that the percentage of reservations for reserved category candidates belonging to ST, SC and Other Backward Classes (OBC) is maintained.

18. Rule 20(9) of the Rules is quoted hereinbelow:

20. Counselling.

*** ** (9) Counselling of in-service candidates will be done first and category wise in the following sequence:

- A. ST Category.
- B. SC Category.
- C. OBC Category.
- D. Unreserved Category.

A candidate will only be eligible to opt a seat from his/her own category.

Seats remaining vacant after category wise counselling will be made available unchanged to the open category (non-service) candidate of same category.

The last limb of Rule 20(9) of the Rules provides that the seats remaining vacant after category wise counselling will be made available unchanged to the open category (non-service) candidate of same category. Such a provision has been

made to ensure that the provision in Rule 8 of the Rules that 20% seats are reserved for candidates belonging to ST, 16% seats are reserved for candidates belonging to SC and 14% seats are reserved for candidates belonging to OBCs, is not affected. In case, as suggested by Mr. Mishra, seats remaining vacant after category wise counselling is made available to un-reserved in-service candidates, then seats which were reserved for ST, SC and OBCs would be filled up by in-service unreserved candidates and the consequence would be that the reservation of 20%, 16% and 14% of the total seats for ST, SC and OBC candidates respectively would be affected. Rule 20(11) provides for counselling for open (non- service) candidates. If candidates are not available from amongst ST, SC and OBC categories, obviously the seats have to be filled up from open unreserved category. In such an event, the percentage of reservation for ST, SC and OBC categories is affected because of non-availability of candidates of ST, SC and OBC categories and not by a provision in the Rules. Obviously, if in the counselling for open categories, after the counselling for in-service candidates, ST, SC and OBC category candidates are not available for remaining seats reserved for ST, SC and OBC categories, such seats cannot go waste and will have to be filled up from open unreserved category candidates. We, therefore, do not find that the provision in Rule 20(9) of the Rules, in so far as it is different from Rule 20(11) of the Rules is discriminatory and violative of Article 14 of the Constitution of India.

19. In the result, the challenge to Rules 10(2) and Rule 20(9) of the Rules in this writ petition fails, but the challenge to Rule 10(3) of the Rules succeeds and we declare Rule 10(3) of the Rules as ultra vires Article 14 of the Constitution of India. The counselling will be conducted accordingly.