

(1999) 07 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No"s. 33 and 85 of 1999 and Civil Spl.
Appeal No"s. 122 and 272 of 1999

Dr. Bajrang Soni and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1999 Raj 365 : (2000) 2 RLW 1061 : (2000) 1 WLC 467

Hon'ble Judges : Shivraj V. Patil, C.J;P.K. Tewari, J

Bench : Division Bench

Advocate : A.K. Bhandari, K.K. Sharma, Kamla Jain and S.M. Jain, for the Appellant; M. Rafiq, A.A.G., Ajay Rastogi, A.K. Sharma and P.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Shivraj V. Patil, C.J.—These appeals are filed by the State of Rajasthan and in-service candidates aggrieved by the common order dated 22-12-1998 passed by the learned single Judge of this Court in S.B. Civil Writ Petitions Nos. 4546/98 and 5224/98 (reported in Dr. Vineet Singh and Others Vs. State of Rajasthan and Others, only so far as it relates to quashing of the impugned order increasing reservation of seats from 25% to 50% for in-service candidates.

2. For convenience, in this judgment, we shall refer to the parties as arrayed in the writ petition.

3. Briefly stated the facts leading to the filing of the writ petition are the following :--

The petitioners having passed their M.B.B.S. Examination and completed the internship, are eligible for admission to various Post-Graduate Courses in different disciplines of Medical Science in different Medical Colleges in the State of Rajasthan. They are aggrieved in regard to increase of reservation of seats for

in-service candidates from 25% to 50% and decreasing of the qualifying marks for being selected to P.G. Course from 50% to 33% in the Pre-P.G. Entrance Examination in the year 1998 for admission to M.DVM.S./Diploma Course.

4. The University of Rajasthan (for short "the University") had laid down the eligibility conditions for the said Entrance Test as contained in Ordinance 278-E to 278-G. Certain reservations were mentioned there in (i) 25% of the total seats (irrespective of other reservations made thereunder) were to be filled up as per the allocations made by the Director General of Health Service, Government of India and (ii) 50% of the seats after excluding the seats to be filled in as per the allocations made by the Director General of Health Services, Government of India, were reserved for in-service candidates. The examinations were to be held on 6-9-1998. The minimum pass marks for qualifying to take the Pre-P.G. Test were mentioned as 33%. Hence, the petitioners aggrieved by the impugned communications dated 18-6-1998 and 10-7-1998 issued by the State Government and the consequential Resolutions passed by the Syndicate in the meeting held on 11-7-1998 insofar as they bring about reduction in the minimum qualifying marks from 50% to 33% for admission to Pre-P.G. Test in the Medical Science Colleges in the State of Rajasthan and also so far as they relate to enhancement of existing reservation from 25% to 50% seats in P.G. Courses for in-service candidates, filed the writ petition before this Court.

5. The learned single Judge by the common order under appeal held that prescribing of qualifying marks to be 33% for Pre-P.G. Examination, 1998 for admission to P.G. Courses was within the jurisdiction of the State of Rajasthan and that could not be interfered with. He rejected the prayer of the petitioners in this regard upholding that the State Government could reduce the qualifying marks from 50% to 33% for Pre-P.G. Examination.

6. However, the learned single Judge held that enhancement of existing quota of reservation from 25% to 50% for in-service candidates was excessive. He, therefore, set aside the impugned order to the extent of increasing existing quota of reservation from 25% to 50% for in-service candidates and maintained the reservation only up to 25% for in-service candidates. Hence, the appeals are filed, as already stated above, aggrieved by this part of the order of the learned single Judge.

7. The only point that arises for consideration in these appeals is whether the authorities were competent to enhance the reservation from 25% to 50% for in-service candidates. In this view, we do not think it necessary to refer to the pleadings of the parties and the contentions raised so far as they relate to reduction of qualifying marks from 50% to 33%.

8. The petitioners contended that there was no circumstances and grounds for increasing the existing quota of reservation from 25% to 50% for in-service candidates. The learned single Judge referred to various decisions of the Apex Court that the reservation could be up to 50%, but he was of the opinion that

there was no basis or grounds in these cases for enhancing the reservation for in-service candidates from 25% to 50%. According to him, the increase of reservation from 25% to 50% for in-service doctors was excessive and without any rational basis and material.

9. The respondents No. 1- State of Rajasthan and No. 4-Central P.G. Admission Board have filed reply resisting the claim of the petitioner in the writ petition. In regard to increase of reservation from 25% to 50% for in-service candidates, it is their stand that the State Government after deliberations at different levels decided to provide reservation of 50% for in-service candidates, as they felt that the doctors after acquiring qualification of M.B.B.S. and after being selected did not serve in the rural areas and due to the same, the State Government was facing difficulty in providing minimum medical facilities to the rural people; it is well-known that more than 90% population of the State of Rajasthan live in the rural areas and their medical care is the prime duty of the State Government; the State Government further felt that there were various posts of Junior Specialist lying vacant in rural areas and the persons having P.G. degree"were not available; the in-service candidates who have served the Government of Rajasthan for more than three years in the rural area of the State, are eligible and competent to acquire more specialised knowledge; the State Government in order to improve and make easy availability of competent doctors in rural areas, decided to enhance the quota of in-service doctors from 25% to 50%; the State Government consciously took the said policy decision to achieve two results : (i) that when more P.G. doctors who were already in Government service will be available in the rural areas; they will be easily available to the villagers and the people/patients of rural areas will not be required to go to the District and Divisional Headquarters; and (ii) that by giving increased quota to the in-service candidates, the doctors with MB.B.S. degree will be encouraged to join in the rural areas because they will have the benefit of doing P.O. after rendering minimum service of three years in the rural areas. The said policy decision was approved in the Cabinet Meeting-and it was examined at all levels; the policy decision so taken was in the public interest and that the State Government was fully competent to lake such a decision; enhancement of reservation from 25% to 50% for in-service candidates, considering the total circumstances, was quite justified; in-service candidates were allowed to participate in the Pre-P.G. Entrance Examination along with other candidates; 50% reservation in favour of in-service candidates, under the circumstances, was just and proper.

10. The learned Counsel for both the parties, before us, in their arguments more or less reiterated the same submissions that were made before the learned single Judge. They relied on few decisions in support of their respective contentions.

11. The learned Counsel for the respondent-State of Rajasthan emphasised that the learned single Judge was not right in interfering with the policy decision taken by the State Government and the competent authorities; it cannot be

disputed that the reservation for a particular category could be up to 50%; the learned single Judge committed an error in expecting the material to be placed before the Court by the respondents, although the respondents clearly stated in their reply the grounds and the reasons for enhancing the reservation quota from 25% to 50% for in-service candidates; it was for the writ petitioners to show how the policy decision taken by the Government was without any rational basis; it cannot be said that there was no nexus in enhancing the reservation for in-service candidates from 25% to 50%, to the objects sought to be achieved; the policy decision was taken in the public interest, particularly in the interest Of rural areas.

12. The learned single Judge dealing with this point relating to enhancement of reservation quota from 25% to 50% for in-service candidates, has observed that after excluding 25% seats reserved for Central quota, out of the remaining 75% seats, 50% seats have been reserved for in-service candidates; the fresh graduates have been left with a very small portion of seats. We fail to understand how the fresh graduates are left with a very small portion of seats. The fresh graduates could also compete for 25% seats reserved for the Central quota and out of the remaining 75% seats, they are also eligible for 50% seats; in other words, equal to that of in-service candidates. Hence, the observation of the learned single Judge that the fresh graduates have been left with a very small portion of seats, is not correct. The following break-up will show the number of seats available to in-service candidates as well as the fresh graduates :--

Total	Seats	409	_____
_____		25% Central Quota	In Service General Quota 98
155	156	(If calculated as 50% of State	(If calculated as 50% if State Seats
		after excluding Central	PG Seats) PG Seats)

When there was 25% reservation for in-service candidates, only 79 seats could be available for in-service candidates as against the total 409 seats.

13. As can be seen from the table given above, the fresh graduates get equal number of seats, rather one more. They are also eligible to compete for 25% seats reserved for Central quota.

14. The learned single Judge has observed that nothing was brought on record except the impugned order to show under what date or what circumstances, the Government was feeling handicapped in continuance of the earlier decision of 25% reservation for in-service candidates, nor it was brought on record that any vacancies were lying vacant for want of availability of PG doctors, who were willing to serve in the rural areas; there was truth in the contention of the counsel for the petitioners that in Rajasthan, many doctors are waiting appointments, rather the posts are not being filled up; the counsel for the State has also not been able to bring on record any document to show that after completing the PG Courses, the Government doctor is put under any obligation to serve in the rural area. This approach of the learned single Judge, in our view,

was erroneous. When the State Government has taken a policy decision on examination of all relevant aspects, it was for the petitioners to establish that the policy decision was perverse or had no object or purpose to serve, particularly when the State Government has specifically stated in the reply as to the reasons and basis for enhancement of reservation for in-service candidates from 25% to 50%, as already extracted above. Merely because no express obligation was put on the Government doctor to, serve in the rural area after acquiring the qualifications, that itself cannot make the policy decision bad, particularly so when the conditions were already put such as they must serve in rural areas for a minimum period of three years out of five years, before they become eligible to apply for Pre-PG Test.

15. The another reason given by the learned single Judge is that 25% reservation for the doctors, who served in the rural areas for three years out of the minimum five years, was perfect and justified and that increase of reservation from 25% to 50% for in-service doctors was excessive reservation, according to the learned single Judge. We are unable to agree with" this reason of the learned single Judge also. Again, the learned single Judge has stated that no justification has been given by the State of Rajasthan for increasing the reservation from 25% to 50% for in-service candidates; even in the record produced by the Department, neither there was any discussion nor particulars showing the necessity to increase the reservation for in-service candidates. He has further stated mat even though in the given circumstances, if any case is made out, the reservation for in-service candidates can be varied according to the necessity, if so felt, but in the present case, no circumstances had been brought out by the Government. In our view, in view of the clear stand taken by the State of Rajasthan in the reply extracted above, the learned single Judge was not right in saying that no circumstances had been brought out by the Government. We also do not find any basis for the conclusion arrived at by the learned single Judge that enhancement of reservation of in-service candidates from 25% to 50% was excessive. The learned single Judge has held that 50% reservation made for in-service candidates could not be sustained as excessive. Having regard to the break-up shown in the table given above and in the light of the stand of the respondents, we cannot accept that there was an excessive reservation for in-service candidates.

16. In D.N. Chanchala Ors. Vs. The State of Mysore and Others, the Hon"ble Supreme Court at para 17 of the judgment has stated as under:--

"Since the Government has set up these colleges and maintains them, it has prima facie the power to regulate admission in its own institutions. Counsel for the petitioner pointed out to us no provision from the University Acts which deprives the Government of the power of making rules for admission in its own colleges. That being so, it cannot be said that the Government has no power to regulate admission in its own colleges or that because a student is eligible for admission under the University Ordinance, he automatically gets a right to

admission which he can enforce in a Court of law."

In the cases on hand, all the Medical Colleges in the State of Rajasthan are set up and maintained by "the State Government, in para 22 of the same judgment, it is again stated that "further, the Government which bears the financial burden of running the Government Colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and areasonable connection with the object of the rules. In the cases on hand, 50% seats are reserved for in-service candidates, that is the bource and in the light of the stand of the State Government, it cannot be said that either the classification was arbitrai or that there was no rational basis and reasonable connection with the object sought to be achieved. In para 23 of the same judgment, it is stated, that the Government is entitled to lay down sources from which selection for admission would be made and that a provision laying down such sources is strictly speaking not a reservation, as understood by Article 15 of the Constitution of India.

17. In M.P. Oil Extraction and Another Vs. State of M.P. and Others, the Hon"ble Supreme Court in para 41 of the judgment has held as under :--

"After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned Counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not out step its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate

the need for mutual respect and supremacy in their respective fields."

18. In our view, the learned single Judge was not right in interfering with the policy decision of the State Government in increasing reservation from 25% to 50% for in-service candidates for admission to P.O. Courses in the Medical Colleges of the State. The learned single Judge having held that the State Government had such a power to make reservation, was not right in interfering with the policy decision of the State Government, particularly when the policy decision was based on reasons and which had nexus with the object sought to be achieved.

19. There was some controversy at the Bar that whether the increase of seats from 25% to 50% for in-service candidates is a reservation under Article 15(4) of the Constitution of India or only a source specified. But, having regard to the facts and circumstances of the case and the conclusions arrived at by us, it may not be necessary for us to examine whether the increase of seats from 25% to 50% for in-service candidates is a reservation or a source.

20. In view of the conclusions arrived at by us, having regard to the facts and circumstances of the case, we do not think it necessary to refer to other decisions relied on by the learned Counsel for the parties.

21. While admitting D.B. Civil Special Appeals Nos. 33/99 and 85/99 on 201-1-1999, this Court has passed the following interim order:--

"Heard on stay.

The admission given to the post graduate studies in medical colleges in State of Rajas than for the year 1998-99 as per the directions given by the learned single Judge vide its judgment dated Dec. 22, 1998 shall be subject to the decision of this appeal. The admission given to the candidates from the general category as the result of the reduction of the quota from 50% to 25% by the learned single Judge will not create any equitable right in their favour. It is further directed that if the judgment of the learned single Judge is reverted and the quota fixed by the Government for the in-service candidates is upheld and as a result thereof the candidates who have been given admission are to vacate their seats they shall be liable to refund the stipend paid to them by the State Government during the period of their admission."

22. It appears that even the orders by which such candidates were admitted, contained the terms of the interim order aforementioned.

23. In the result, for the reasons stated, these appeals are allowed and the order of the learned single Judge dated 22-12-1998 passed in S.B. Civil Writ Petition No. 4546/98 so far as it relates to setting aside the increase of reservation of seats from 25% to 50% for in-service candidates as excessive, is set aside. In other words, the increase of reservation of seats from 25% to 50% for in-service candidates is upheld. Consequently, the writ petition is dismissed.