

(1997) 05 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1084 of 1997 (J)

Dr. Bibhuti Prassan Sinha and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 21

Citation : (1999) 2 MPJR 146

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : Rajendra Tiwari and Mr. V.K. Tankha, for the Appellant; S.L. Saxena, Advocate General, For respondent no. 1, Mr. Ravindra Shrivastava, Advocate, For respondent no. 4, Mr. S.K. Mukherjee, S.K. Seth, P. Diwakar and Mr. Rakesh Pandey, Advocates, For interveners, for the Respondent

Final Decision : Allowed

Judgement

Petitioners by this writ petition have prayed to declare by appropriate writ or order or direction that the State Government has no power to waive or dispense with the requirement of obtaining minimum qualifying marks in the Competitive Post Graduate Entrance Examination for admission to the Post Graduate Course (MD/MS). They have also prayed that the respondents be directed to consider the cases of only those candidates for admission to Post Graduate Course (MD/MS) who have secured minimum fifty percent marks in the Competitive Post Graduate Entrance Examination conducted by the Professional Examination Board irrespective of the fact whether they belong to reserved category or not.

The petitioners are students who have passed MBBS examination. They have sought admission to the Post Graduate Medical Courses in MD/MS and Post Graduate Dental Course. The State of Madhya Pradesh invited applications for admission to the aforementioned course under the rules known as Madhya Pradesh State Entrance Examination Rules 1997 vide advertisement dated 14th November 1996 in the Rojgar Nirman. Certain seats are reserved for General

category candidates and for Scheduled Castes, Scheduled Tribes O.B.C. and in-service candidates. It is not necessary for us to go into the matter of distribution of seats and other related matters because the only controversy which arises in this petition is that the State Government while issuing the rules regulating admissions to these Post Graduate courses, known as "Madhya Pradesh Medical and Dental Postgraduate Entrance Examination Rules 1997" has not laid down any minimum qualification for admission either for general category or for the reserved categories. In the present petition, we are not concerned with General Category because there is no challenge to this. However, challenge is that by virtue of not laying down minimum qualification for admissions against reserved seats, a great discrimination has been caused and it is in complete violation of the law laid down by Hon"ble Supreme Court in the case of Dr. Sadhna Devi and others Vs. State of U.P. and others, .

Admission to Post Graduate courses is governed by the Rules of 1997. Though these Rules of 1997 were subsequently brought into force, however it was mentioned therein that they will govern admissions to the Post Graduate Medical courses after the approval by the Government and publication of the same in the gazette. The rules of 1997 published in the gazette on 17th April 1997. In pursuance of the said rules, the examinations were conducted and on 24th Jan., 1997 written test was held and now the counselling is in progress. During this process, the present writ petition was filed which came before the learned single Judge. Learned Single Judge passed an interim order and thereafter, on hearing the arguments, referred the matter to the Division Bench and as such it has come before this Court for final disposal.

It is an admitted position that in the Rules of 1997 and the earlier Rules of 1995, there was no provision prescribing minimum marks for admission to the Post-graduate Medical Courses either for General Category or for the reserved categories. The admissions were taking place in terms of the aforesaid Rules in the State of M.P. but the difficulty has arisen on account of recent decision given by the Hon"ble Supreme Court in the case of Dr. Sadhna Devi and others (supra) dated 19.2.1997 wherein the notification issued by the State of U.P. dispensing with the minimum qualifying marks for admission to Post Graduate Medical Courses has been struck down by the Hon"ble Supreme Court. Hon"ble Supreme Court observed that minimum qualifying marks should be laid down for admissions to Post-graduate Medical Course. We will refer the above decision at appropriate place. However, so far as the present case is concerned, in order to dispose of the controversy before us, it is confined to four categories namely, Scheduled Castes, Scheduled Tribes and Other Backward Classes and the seats reserved for in-service candidates.

In the present examination in question, number of seats reserved for S.C., ST., OBCs and in-service candidates is as under -

Scheduled Castes -

33

Scheduled Tribes -

46

OBCs -

30

In-service candidates -

35

For these aforementioned categories including general category, no minimum qualifying marks has been prescribed for purposes of obtaining admissions to the Post-graduate Medical courses. A chart has also been placed before us by the learned Advocate General wherein it has been pointed out that candidates to the extent of 28% marks have been selected for admission to these courses. 244 candidates were called for counselling against 122 seats for general category quota. The highest marks secured by candidates are 733 and the lowest mark secured by candidates 573 out of 900 marks.

Against 33 seats of Scheduled Castes quota, 74 candidates are called and highest marks obtained by candidates are 527 and the lowest marks against which candidate has been called for counselling are 240 out of 900 marks.

In the case of Scheduled Tribes quota, for 46 seats, 110 candidates have been called for counselling and the highest marks obtained are 439 and the lowest marks obtained by candidate are 106 only out of 900 marks.

Against the OBCs quota of 30 seats, only 66 candidates were called for counselling and the highest marks obtained by candidates are 572 and the lowest marks are 373.

Against the quota for in-service candidates which is 35 seats (Assistant Surgeon/ Gen.), 35 candidates are called for counselling and the highest marks obtained by candidate are 519 and the lowest marks are 266. This is given in order to show that so far as the reserved category candidates are concerned, candidates with very very poor percentage of marks have been called for interview and counselling.

It is contended on behalf of the petitioners that it was incumbent on the part of the State Government to have laid down a minimum standard or qualifying marks for admission to the Post-graduate Medical courses as they require candidates of higher merit and greater skill. The learned counsel for the petitioners has specially pressed into service a decision of Hon. Supreme Court in the case of Dr. Sadhna Devi & others (supra).

As against this, Shri Saxena, Advocate General, Shri Ravindra Shrivastava, Shri Seth, Shri Mukerjee and Shri Rakesh Pandey, counsel for interveners have

strenuously urged that it is not necessary for the State to lay down any standard for admissions to Post-graduate Medical Courses. They submitted that since the candidates who have appeared in the examination for admission have already qualified with minimum 50% marks at the MBBS level, therefore it is not necessary to further lay down the minimum standard for admission purposes. It was also submitted by the respondents that since the process for admission has started on the basis of guidelines which were issued, this selection process should be permitted to be continued as per the provisions of Rules of 1997 and the decision given by the Hon''ble Supreme Court in the case of Dr. Sadhna Devi and others (supra) may regulate future selections.

The argument of learned counsel for respondents appears to be justified that once the process of selection has commenced, it should be allowed to be continued in terms of guidelines issued, but there are certain glaring facts which have come to our notice and which need immediate attention. Admission to Post-graduate Medical courses is a very serious matter which involves public health. It would not be proper to induct such candidates in the Post-graduate Medical Courses who are not meritorious to play with the life of citizens. Hence it is necessary that some minimum standard is laid down for admissions to these courses. There are large number of decisions of Hon''ble Supreme Court given from time to time wherein this aspect has been emphasised and we need not to over-burden this judgment with the said judgments except to say that in pursuance of the direction given by Hon''ble Supreme Court, the All India Institute of Medical Sciences has already laid down the guidelines. In these guidelines, it is laid down as under -

Candidates securing less than 50% marks in the competitive entrance examination will not be considered for admission and their names will not be included in the merit list. For candidates belonging to Scheduled Caste/Scheduled Tribe category, this shall be forty percent marks.

Hence, these guidelines which have come out after series of judgments of Hon''ble Supreme Court, are contained in the form of "All India Competitive Entrance Examination for Admission to Postgraduate Medical Courses (MD/MS/ Diplomas) and Dental Courses (MDS) on Open Merit". These guidelines are prescribed by the All India Institute of Medical Sciences. Though these guidelines are confined to All India Competition but these are by and large the guidelines which should govern admissions to the Medical Colleges all over the country because the All India Institute of Medical Sciences is the highest body which has laid down these guidelines for governance of all Medical Colleges, be it All India Competitive Examination or be it State level competitive examination. These guidelines by and large should be adhered to as far as possible.

Viewing the present matter in light of guidelines aforesaid, it will be proper to examine whether non-fixation of any minimum standard for admission to Post-graduate Medical Courses thereby opening the flood-gate for all kinds of people for admission to these professional courses is justified or not. In our opinion that

will not be correct approach. After all, admission to the Medical Colleges is a very serious matter involving life of citizens and there cannot be any compromise with the merits. Though, time and again, their Lordships of Supreme Court have left this discretion to the State Governments that they may issue guidelines; but at the same time, the States also cannot ignore the general guidelines laid down by the All India Institute of Medical Sciences the medical education all over the country. These guidelines have come after number of judgments given by the Hon'ble Supreme Court and they should be normally respected as they have come from a very professional and competent body. However, we leave it to the State Government to give due regard to the said guidelines as ultimately, it is the State which is competent to lay down the guidelines.

The matter was recently again brought to the notice of Hon'ble Supreme Court in the case of Dr. Sadhna Devi and others (supra) where the question was that the State of UP. issued order/circular dated 31.8.1995 for admissions to Post-graduate Medical courses. The examinations were held in January 1996. Thereafter a petition was filed under Art. 32 of the Constitution before the Hon'ble Supreme Court challenging the circular issued by the Govt. of UP. waiving minimum qualifying marks i.e. 35% for admissions in Post-Graduate Medical courses such as MD/MS on the ground of it being violative of Arts. 14, 15 and 21 of the Constitution of India. In that context, their Lordships of Supreme Court, after examining the matter and after referring the earlier decisions given in the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , and Ajay Kumar Singh and Others Vs. State of Bihar and Others, , observed that the circular of the State of UP. whereby the minimum requirement of securing 35% marks in the written-examination for admission to P.G. course was dispensed with was not correct and consequently, the circular was quashed. Their Lordships observed as under -

20. In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to the special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them.

This court had occasion to go into this question in the case of Ajay Kumar Singh and Others Vs. State of Bihar and Others, in which once of us (BP. Jeevan Reddy, J.) was a member. It was held in that case, after considering the judgment of this Court in the case of State of MP. v. Kumari Nivedita Jain (supra), that the State will regulate the admission policy and at the same time adhere to the standards determined by the Indian Medical Council. It was further observed in that case that the impugned provisions of State of Bihar provided a uniform eligibility criterion of 50 percent for general candidates and for candidates belonging to "other backward classes" and 40 per cent for members of Scheduled Castes and

Scheduled Tribes. Only when students in requisite number were not available, the said criterion was reduced to 40 and 30 per cent respectively. The small distinction in eligibility criteria can, by no stretch of imagination, be said to impinge upon the determination or co-ordination of standards in institutions of higher learning.

There can be no doubt that the State may, if it feels necessary to do so, encourage the backward classes by reserving seats at the under-graduate level for persons belonging to Scheduled Castes, Scheduled Tribes and other backward classes. We have some reservation as to whether this policy of reservation can be extended to the post-graduate level. It was held in the case of *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, , that -

The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of specially where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.d., M.D. or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss, the considerations we have expanded upon as important lose their potency.....We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration;

Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the universities.

The importance of merit being the only criterion for admission to post-graduate medical courses viz, MD, MS and the like was also emphasised in the case of *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, .

Thus, their Lordships have emphasised that the merit criteria for admissions to Post-graduate courses in Medical Colleges, specially in MD/MS cannot be taken lightly and relaxing qualification of minimum 35% marks for reserved categories has been held to be bad and consequently it has been struck down.

In the present case, peculiarly enough, no minimum qualifying marks either for general category or for special categories like S.C., S.T., OBCs and for in-service candidates -Assistant Surgeons, has been laid down. There is vast different between two categories of candidates. Candidates securing minimum 65% marks are being admitted from the general category while candidates belonging to special categories like S.C., S.T., OBCs and in-service candidates who have secured marks upto the extent of 28% are being given admission. This kind of vast fluctuation in the marks between two categories of candidates is a very sad commentary and it is not proper to permit this kind of candidates who do not secure minimum pass marks to seek admission in such highly professionalized courses. It should not mean to give a wrong signal that we are not conscious of the peculiar problems of the State of M. P. We are aware that large number of

S.C., ST. and OBCs candidates need a proper encouragement for advancement in the field of medical education. At the same time, we can not completely sacrifice the merit because these candidates are ultimately going in the field to look after the health of citizens. The candidates who cannot secure minimum percentage of marks for admission can do no good to the public at large. Therefore, we do not think it safe to permit total meritless admission to these professional courses.

Since admissions to these medical courses have to be completed before the end of July 1997 as per the direction given by the Hon. Supreme Court, we deem it proper not to disturb the process of selection to the extent that all the candidates of general category quota may be permitted to have counselling because no candidate in the general category quota possessing less than 50% marks has been called for counselling.

Coming to the rest of the categories i.e. S.C., S.T., OBCs and in-service candidates out of Assistant Surgeons quota, counselling may proceed in respect of those S.C. and ST. candidates who have secured 40% marks as per the guidelines prescribed by the All India Institute of Medical Sciences for admission to post-graduate medical courses. So far as candidates belonging to OBCs are concerned, no guidelines have been laid down by the Medical Council of India. Therefore, the candidates belonging to OBCs who have secured 50% marks may be permitted for counselling and admitted to the post-graduate medical courses. Likewise, in-service candidates i.e. from the Assistant Surgeons' quota who have secured 50% of marks may be processed for counselling and admission. After filling up the vacancies from these candidates, if some of the seats remain to be filled, then the State Government shall lay down the minimum percentage of marks for admission to these categories of candidates and thereafter, it may proceed with the selection process. This course for admission is being adopted because of the peculiar situation which has arisen on account of decision given by the Hon'ble Supreme Court in the case of Dr. Sadhna Sevi and others (supra). But this order should not be taken to be a precedent, it is temporary arrangement as ultimately it is the State Government which has to decide the minimum qualifying marks for all the four categories of candidates including the general category candidates in view of Dr. Sadhna Devi case (supra). This is only being worked out for the time being as the matter is litigating before this Court and if the students are not admitted in the post-graduate medical courses in time, they will suffer.

Before parting with this case, we may also record the submissions made by Shri Ravindra Shrivastava, counsel for respondent no. 4 that Dr. Sadhna Devi and others' case is distinguishable on facts as it is not in terms of all the three earlier decisions of the Hon. Supreme Court given in the cases of Ajay Kumar Singh and Others Vs. State of Bihar and Others, , State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, and Aarti Gupta and Others Vs. State of Punjab and Others, . It is submitted by the learned counsel that all these judgments are by larger Bench. Suffice it to say that so far as Ajai Kumar Singh's case (supra)

is concerned, it was considered by their Lordships in the case of Dr. Sadhna Devi and others (supra). The case of Ku. Nivedita Jain (supra) was also considered by their Lordships of the Supreme Court in the judgment in the case of Dr. Sadhna Devi. Therefore, the submission of the learned counsel cannot be accepted as their Lordships of Supreme Court have considered all the three decisions and after considering them, judgment has been given and it is binding on this court.

Consequently, the petition is allowed to the limited extent as indicated above in paragraphs 11 and 12. It is hoped and trusted that the State Government will proceed to lay down minimum qualifying marks for admission to the post-graduate medical courses for candidates belonging to S.C., ST., OBCs and in-service candidates and thereafter will proceed for counselling and admissions of these candidates. However, for other categories which are not affected by this judgment, counselling may proceed forthwith as the matter has already got delayed and it cannot be further delayed.