

(2002) 05 OHC CK 0019

In the Orissa High Court

Case No : O.J.C. No's. 12568, 13722 and 13755 of 2001

Dr. Dillip Kumar Das and Others, Dr. Gudla Siva Prasad and Others and Dr. Nanda Kishore Sahoo and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Indian Medical Council Regulations, 2000 — Regulation 9, 9(1), 9(2)

Citation : (2002) 2 OLR 25

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : Jagannath Patnaik and A.A. Das, R. Rath, B. Mohanty, T.K. Patnaik, S. Das, P.K. Nayak and S. Patnayak in OJC No. 12568/2001, R.K. Dash, R.C. Mohapatra and B.K. Jena in OJC No. 13755/2001 and S.K. Pattanaik, U.C. Mohanty and R. Ray, in OJC No. 13722/2001, for the Appellant; Additional Government Advocate for opp. party Nos. 1 to 5 in OJC No. 12568/2001, opp. party Nos. 1 to 3 in OJC No. 13755/2001 and opp. party Nos. 1 to 4 in OJC No. 13722/2001, G. Mukherji, P. Mukherji, S. Patnaik. M.K. Mazumdar, A.C. Panda and A. Pradhan for opp. party No. 6 in OJC No. 12568/2001 and R.C. Mohanty, T. Mishra and B.K. Misra for opp. party No. 7 in OJC No. 12568/2001, opp. party No. 6 in OJC No. 13722/2001 and opp. party No. 4 in OJC No. 13755/2001, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—These writ petitions challenge the decision taken by the Health and Family Welfare Department of the Government of Orissa in the form of a Resolution dated 31.8.2001 and the Prospectus for admission to Post-Graduate (Medical) Courses, 2002 in the Government Medical Colleges of Orissa, though in O.J.C. Nos. 13722 of 2001 and 13755 of 2001 the prayer is confined to the quashing of the Resolution. The petitioners in these writ petitions are described as "in-service" candidates in the sense that they are serving under the Government of Orissa either in the Government Hospitals or in Orissa

Government Undertakings. By Annexure-1 Resolution, the Government decided that the common entrance examination which was being conducted for all candidates aspiring to join the Post-Graduate (Medical) Courses should not be insisted upon for the "in-service" candidates since according to the State, the in-service candidates were not able to fill the quota of seats set apart for them by competing in the entrance examination. According to the Government, this resulted in the seats set apart for them reverting to general candidates who were writing the entrance examination and to ensure availability of Doctors for rural services in the State, it was necessary to devise a means of ensuring seats for the in-service candidates and the method to achieve it was to dispense with the necessity for entrance examination for those in-service candidates. It was this decision of the Government that was carried forward in the Prospectus. We shall now refer to the relevant clauses of the Prospectus.

2. Clause 4 of the Prospectus enumerates the seats available for the Post-Graduate (Medical) Courses in the three Government Medical Colleges of Orissa. The total number of seats available is shown to be 183. Ninety-four seats are set apart for in-service candidates including those reserved for Scheduled Tribes and Scheduled Castes and the Physically Handicapped, Eighty-nine seats are set apart for admission direct by way of entrance examination, inclusive of the seats reserved for Scheduled Tribes and Scheduled Castes, Physically Handicapped and the descendants of defence personnel.

Clause 5 lays down the eligibility criteria of the candidates.

Clause 6 deals with category of candidates. Clause 6.1 says that an eligible candidate would be treated as in-service who at the time of application is in the employment of Government of Orissa or Undertakings of Government of Orissa, and who, by 31.3.2002 would complete not less than three years of service in undivided Koraput-Balangir-Kalahandi districts and districts of Boudh, Gajapati, Kandhamal or not less than five years in rural areas or not less than seven years of service in all other areas. It is also provided that in-service doctors who at the time of application are in employment of the Government of Orissa or Undertakings of the Government of Orissa and had only rendered two years of service in undivided Koraput-Balangir-Kalahandi districts including Kandhamal, Gajapati and Boudh or four years in rural areas or six years in other areas are eligible to appear in the entrance examination as direct candidates meaning that they were eligible to take the Entrance Examination.

3. It is provided in Clause 6.3 that doctors working under the State Government/ Government of Orissa Undertakings not coming under Clauses 6.1 and 6.2 will not be eligible to appear either as an in-service or as a direct candidate. In other words, doctors in service who have not put in the period of service as referred to in Clause 6 would not be entitled to compete for admission at all to the Post-Graduate (Medical) Courses. But as per Clause 6.4, a candidate who fulfils the criteria of in-service candidate, if so desires, can apply as a direct candidate forgoing his/her claim as an in-service candidate by a declaration as per

Appendix No. V. The declaration is to the effect that the person at present serving at a particular institution or place in a particular district in the State of Orissa was opting to appear as direct candidate forgoing his claim as an in-service candidate. This also keeps out a candidate in service of the Government if he is not an "in-service" candidate as defined by the Prospectus.

4. Clause 9 deals with methods of selection of candidates. It is provided in Clause 9.1.1 that in-service candidates of Post-Graduate (Medical) Courses shall be selected only on the basis of their individual cumulative performance at the first, second, third and final M.B.B.S. Examinations as applicable University-wise. It is then provided that the in-service candidates should submit their applications only for the seats allocated to the Medical College/University from which they have graduated. In other words, the in-service candidates can aspire to join the Post-Graduate (Medical) Courses only in what can be called his Home University, namely, the University from which he took his M.B.B.S. degree. It is also provided that in-service candidates who have graduated from medical colleges or universities outside the State, but who were residents of Orissa are to be treated as direct candidates and they will have to take the entrance examination against the direct category of seats in the three Medical Colleges of the State. A candidate who is desirous of taking admission in a discipline which is not available in the Medical College from which he has graduated, but which is available in any other Medical College, could appear as a direct candidate. Direct candidates were to be selected through the entrance examination. The effect of Clause 9 thus is that an in-service candidate was to get admission on the basis of his performance in the M.B.B.S. degree course and his admission was confined to the University or College from which he had qualified as a doctor, provided that subject he chose for his Post-Graduate (Medical) Course was available in that University or College. Only in a case where the course he wanted to pursue was not available, he can appear as a direct candidate and take the entrance examination, take his chance of getting admitted to the other two medical colleges or Universities in the State. Clause 14 provides that in-service candidates were to be selected University-wise and selection of direct candidates shall be a combined one and not University-wise.

5. It is somewhat ironical that it is the in-service candidates who have come forward with these writ petitions challenging the relevant clause in the Prospectus which enables them to seek admission to the Post-Graduate (Medical) Courses merely on the basis of their performances in the M.B.B.S. courses, but confined to their own Universities in case the course they wanted to pursue was available in that University. According to them, the concerned provisions are bad, because the eligibility to appear excludes some of them totally, that they would also be excluded from taking the entrance examination unless they gave up their rights as those in service, and that their selection or admission is confined to the University from which they had qualified and that only in a case where the subject is not available in that University they can take the entrance examination and seek admission in any other University thereby losing the privilege as in-

service candidate who need not otherwise take the entrance examination. They submit that it has now been well settled by decisions that the mode of admission by a common entrance test was the most fair and legally permissible mode and the best method of providing an even platform to the aspirants and in that situation, to provide for admission to a set of candidates without appearing in the entrance examination was constitutionally impermissible. They also submit that the keeping out of medical graduates entitled to seek admission to the Post-Graduate courses merely because they were in Government service on the ground that they have not put in the requisite number of years in service was discriminatory and bad in law and Clause 6.2 was liable to be struck down. They also contend that the method of selection of in-service candidates provided by the Resolution and carried forward by the Prospectus was clearly against the prescription of the Medical Council of India with particular reference to Regulation No. 9 of the Medical Council Regulations.

6. The case of the petitioners and their challenge to the mode of selection of the in-service candidates is sought to be met by the State only on the ground that the State wanted to ensure that the seats reserved for in-service candidates do not go abegging in view of the inability of the in-service candidates to compete equally with the direct candidates since it was found that in-service candidates serving in rural areas were less equipped to meet the challenge of the entrance examination and it was necessary to make a special provision for such candidates who could not compete with the other talented applicants for admission. Though Regulation No. 9 of the Medical Council Regulations is accepted as the beacon light, it is sought to be submitted that the method of prescription by the State for admission of in-service candidates could be justified with reference to Regulation No. 9 (2) (iii) and (iv) of the Regulations.

The Medical Council on the other hand has clearly taken the stand in its counter affidavit that the method adopted by the State militates against Regulation No. 9 of the Medical Council Regulations and that dispensing with entrance examination for the in-service candidates was not sustainable. An intervenor, an in-service candidate, has sought to support the stand of the Government and has also sought to rely on a letter said to have been written by the Deputy Secretary of the Medical Council of India stating that it appeared to him from the letter of that candidate that the State Government intended to apply the criteria at sl. No. 2 (iii) and if that was so, the same would be in consonance with the Medical Council Regulations. Learned counsel wants us to understand this communication as giving a go-by to the stand adopted by the Medical Council in the counter affidavit filed by it before this Court.

7. Thus, the question that falls for decision is whether the prescription that in-service candidates, that too only some of them could get admitted to the Post-Graduate (Medical) Courses even without writing entrance examination is valid constitutionally in the light of the position settled by the decisions of the Supreme Court and of this Court, whether keeping out a set of candidates who

possess the requisite qualification to take the entrance examination is valid and whether even otherwise, the mode could be considered valid in the light of the Medical Council Regulations which admittedly control and regulate admissions to the Post-Graduate (Medical) Courses.

8. On an earlier occasion, with the avowed object as now projected, the State provided for a weightage for in-service candidates working in rural areas in the matter of admission to Post-Graduate (Medical) Courses. That prescription was challenged before this Court. A Full Bench of this Court by the decision reported in *Salil Kumar Nayak v. State of Orissa*, represented by the Secretary, Health and another: 1988 (1) OLR 301 held that the prescription for weightage for working in rural areas was violative of the mandate of Article 14 of the Constitution. Relying on the decisions of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, ; *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, and *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, the Full Bench held that in the matter of admission to Post-Graduate courses in medical colleges, merit should be the dominant consideration and the rural experience of the candidates had no nexus to the object of selection of the meritorious and that the prescription of a weightage to the extent of 15% was constitutionally impermissible. Even while this decision holds the field, the State has gone one step further and has dispensed with the entrance examination altogether to the in-service candidates totally doing away with the requirement to compete with others for getting admission to Post-Graduate (Medical) Courses. In view of the ratio of the decision of the Full Bench referred to above, it appears to us that the present provision for admission of in-service candidates must be held to be unconstitutional and consequently invalid.

9. A Constitution Bench of the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, has clearly laid down that the common entrance test is the most legal and equitable way of selecting students for admission to Post-Graduate Courses. Their Lordships have stated :

"This argument ignores the reasons underlying the need for a common entrance examination for post-graduate medical courses in a State. There may be several universities in a State which conduct M.B.B.S. courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the M.B.B.S. examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance is required for getting the passing marks in the M.B.B.S. examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the M.B.B.S. examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different

universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the M.B.B.S. examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the M.B.B.S. examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such common entrance examination is not merely to grade candidate for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore; also take into account the possibility that the M.B.B.S. examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised education and the need to provide for some room for the backward even at the stage of specialised post-graduate education which is one step below the super specialities."

10. The passage quoted above was relied on by the subsequent decision of the Supreme Court in Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehar and Others etc., The said decision in paragraph 24 set out the principles emerging from the various decisions of the Supreme Court thus :

- (a) A provision for reservation must be within reasonable limits.
- (b) There can be a reasonable classification based on intelligible differentia for the purpose of Articles 15(1), 15(4) and 29(2).
- (c) There can be reservation for persons belonging to areas which are socially and educationally backward.
- (d) A rural area is not a class by itself and cannot be considered to be socially and educationally backward merely because it is a rural area.
- (e) Admission to post-graduate courses should be strictly based on merit.
- (f) The merits of the candidates seeking admission to higher educational courses shall be judged by uniform standard and for that purpose holding an entrance examination is the best method.
- (g) There shall be no dilution of standards in higher educational courses and in particular, post-graduate courses.

11. We think that the propositions (e), (f) and (g) squarely apply to the facts of the present case. If those are applied, it is clear that for the avowed reason of

making available doctors for rural service, the State cannot devise a method of admission to Post-Graduate (Medical) courses to enable some of the candidates to secure seats even without competing in an entrance examination and proving their comparative merit.

12. In the light of the principles which are settled by the Full Bench decision of this Court and the two decisions of the Supreme Court referred to above, we do not think that it is necessary to further consider the said aspect. We think that the ratio of those decisions justify a conclusion that the provision for admission to Post-Graduate (Medical) Courses for in-service candidates without compelling them to take the entrance examination is per se illegal and unconstitutional and is violative of Article 14 of the Constitution of India.

13. We also find it strange that some of the candidates in Government service, who are otherwise eligible but are not "in-service" as defined, are totally excluded and some of the defined in-service candidates are excluded and from the entrance examination unless they give a declaration in terms of Clause 6.4 of the Prospectus giving up their claim as the in-service candidates. Normally, it is left to the candidate to decide whether he wants to rely on a reservation or wants to claim a seat only in a particular quota, or whether he wants to compete generally and get a seat on merit with the consequent advantages flowing therefrom. There is no reason for restricting his right to apply as a general candidate and excluding him from the process of selection by way of entrance examination and confining him only to the rights available to an in-service candidate. There is also no rationale in keeping out a set of candidates who have entered service but are not in-service candidates as postulated by the Prospectus. In this context, the other provision of the Prospectus that an in-service candidate can get admission to the Post-Graduate course only in the University from which he secured his qualifying degree, namely, M.B.B.S. also becomes relevant. This keeps him out of aspiring for getting a seat in a College of his choice or a University which in his estimation is the better one. Of course, in a case where the particular speciality which he wants to pursue is not available in the University at the Post-Graduate level, he is given the opportunity to write the entrance examination, and to take his chance of getting his seat in any other University. We see no rhyme or logic in confining a candidate only to the University in which he studied. After all, we must remember that it is a Post-Graduate (Medical) Course, and the Universities differ in standards and the facilities for higher education. Why an in-service candidate should be confined to his University or assigned the position of a "KUPA MANDUKA" is not possible to appreciate. The only explanation can be that the Government is conscious that the standards in the three Universities are not the same. Whatever it be, it appears to be an undue restriction even on the right of an in-service candidate in the matter of admission to a Post-Graduate course. Similar is the situation regarding candidates that are excluded altogether since they have joined Government service. This discrimination between the two sets of aspirants within the class of in-service candidates, itself is seen to be violative of Article 14 of the

Constitution of India. The further clarification does not appear to have any nexus to the object sought to be achieved. Further, we also do not find that it is based on any intelligible differentia.

14. The fallacy in prescribing the criteria for in-service candidates, i.e., service in K.B.K. or other districts, the posting being controlled by the Government is unjustified. An in-service candidate has no choice and it may so happen that advertently or inadvertently he had never been posted in K.B.K. and other districts, thus making him ineligible for taking admission to Post-Graduate (Medical) Courses for no rhyme or reason.

15. It was argued on behalf of the in-service candidates that they were being unduly confined to the marks they obtained in the M.B.B.S. examination and they were not given the liberty to establish their credentials for a seat in the Post-Graduate courses by competing with others in the entrance examination. There is merit in this contention. A student who might not have done so well in the M.B.B.S. examination for some reason or other and might have only passed the examination, is deprived of an opportunity of showing that he is second to none by competing in the entrance examination and for seeking a seat in a coveted course in a coveted medical college. Thus, confining him to marks obtained in the M.B.B.S., examination for the purpose of admission has also to be held to be arbitrary especially in the context of the fact that we have three Universities in the State and obviously the three Universities have different standards in the matter of teaching, conducting of examinations, in valuing the answer papers and also in evaluating the candidates, as has been graphically described by the Supreme Court in the decisions quoted above.

16. The learned Additional Government Advocate and counsel appearing on behalf of the intervenors sought to contend that the prescription that the in-service candidates need not take the entrance examination and their M.B.B.S. marks can be taken into consideration for evaluating their merit can be sustained with the reference to Regulation 9 (2) (iii) of the Medical Council Regulations. We have already noticed that the Indian Medical Council has taken the stand that consistent with its Regulations, the State is obliged to select the candidates subject to reservations only on the basis of an entrance examination. What is relied on by the learned Additional Government Advocate and the learned counsel appearing for the intervenors is Clause (iii) of Regulation 9 (2) which reads ".....on the basis of individual cumulative performance at the first, second, third and final M.B.B.S. medical examinations, if such examinations have been passed from the same university". Regulation 9(1) provides that the students for Post-Graduate (Medical) Courses shall be selected directly on the basis of their comparative merit.

17. The learned counsel for the petitioners and the learned counsel for the Indian Medical Council were quick to point out that in the State of Orissa, there are three different Universities and the intending candidates should all have passed their qualifying examinations from the same university to satisfy the condition for

application of Regulation 9(2)(iii) of the Regulations. The learned Additional Government Advocate did not dispute that there are three different universities in the State. Nor did he venture to dispute that the standards of education imparted in the three different universities are different. But what is submitted is that since the admissions are being confined to the same university in respect of in-service candidates, as far as the candidates to be selected for a particular university are concerned, the examinations have been conducted by the same university and the candidates have passed the M.B.B.S. examination from the same university, the procedure could be sustained. We are afraid that we cannot accede to this submission. First of all, in the light of Regulation 9(1) the selection should be strictly on the basis academic merit. Sub-regulation (2) of Regulation 9 indicates the mode of determining the academic merit and the procedure that can be adopted. Clause (i) thereof provides for evaluation as determined by the competitive test conducted by the State Government and the other authorities referred to therein. Clause (ii) contemplates an assessment of merit as determined by a centralised competitive test held at the national level. Clause (iii) provides for admission to a Post-Graduate course in the Staff if the qualifying examinations have been passed by all the candidates from the same university. It is also open to the State to adopt the combination of Clauses (i) and (iii). Read in the context of the various clauses in Regulation 9 of the Medical Council Regulations, we are of the view that Regulation 9(2)(iii) can have application only in a case where the State has only one university and the same or common pattern of examination in M.B.B.S. is adopted by that university, and the candidates seeking admission to Post-Graduate (Medical) Courses are persons who are qualified from the same university. Here, obviously, the candidates are derived from three separate universities, and in such a situation, it is not open to the State to dispense with the holding of a centralised competitive test for the purpose of selection to the Post-Graduate (Medical) Courses. We have, therefore, no hesitation in holding that the method adopted by the State Government is violative of Regulation 9 of the Medical Council Regulations.

18. Thus, on both these grounds the Resolution marked Annexure - 1 in O.J.C. No. 12568 of 2001 and the relevant clauses of the Prospectus, namely, Clauses 6.1, 6.1.1, 6.1.2, 6.1.3, 6.2, 6.4, and 9.1 in its entirety and Clause 14 providing for university-wise selection of in-service candidates are liable to be struck down as unconstitutional. We, therefore, strike down those provisions and declare that the admission to the Post-Graduate (Medical) Courses could be had only on the basis of the performance of the candidates in the common entrance examination and assessment of merit of the candidates thereby, subject to the other reservations provided in the Prospectus. Considering that the entrance examination will be held shortly, we also direct the State of Orissa, the Director of Medical Education and the Principals of the three Medical Colleges, impleaded as opp. party Nos. 3 to 5 in O.J.C. No. 12568 of 2001, to permit all the in-service candidates, who have applied for admission to Post-Graduate (Medical) Courses to take the entrance examination along with the direct candidates as prescribed

in the Prospectus. The opposite parties are also directed to grant a time of ten days for other eligible candidates in the service of the Government to apply for the entrance examination and thereafter hold the common entrance examination for all the applicants.

19. The writ petitions are allowed with the above directions.

Naidu, J.

20. I agree,