
(2012) 01 MAD CK 0247

In the Madras High Court

Case No : Writ Petition No. 25510 of 2011 and M.P. No"s. 1, 2 of 2011

Dr. Jayanth V. Kumar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 309
Indian Medical Council (Post Graduate Medical Education) Regulations, 2000 — Regulation 9

Citation : (2012) 01 MAD CK 0247

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : N.R. Chandran, for Mr. K.J. Parthasarathy, for the Appellant; A. Navaneethakrishnan, Advocate General, assisted by Mr. P. Sanjay Gandhi, Additional Government Pleader for Respondents 1 to 3 and Mr. V.P. Raman for 4th Respondent, for the Respondent

Judgement

Honorable Mr. Justice N. Paul Vasanthakumar

1. The prayer in the writ petition is to quash the Medical Council of India Post Graduate Medical Education Regulations, 2000 (Amended upto December, 2010) insofar as Clause 9(2) is concerned and the consequential Clause 46(a) of the Prospectus issued by the Secretary, Selection Committee and direct the respondents to consider the admission of the petitioner bearing entrance examination No. 41024 in M.Ch (Vascular Surgery) in the vacant seat, now available according to the merits. During the course of the arguments the learned Senior Counsel appearing for the petitioner submitted that he is not pressing the prayer as such and the petitioner is restricting the prayer to quash Clause 46(a) of the prospectus issued by the Secretary, Selection Committee, Directorate of Medical Education and direct the respondents to consider admission of the petitioner bearing entrance examination No. 41024 in M.Ch (Vascular Surgery). A memo is also filed on behalf of the petitioner on 10.11.2011. The said submission made by the learned Senior Counsel for the

petitioner followed by the memo dated 10.11.2011 is recorded and this writ petition is disposed of based on the above said submission of the learned Senior Counsel for the petitioner and the memo filed.

2. The case of the petitioner is that he passed M.B.B.S degree in the year 2006 and post graduation in General Surgery (MS) in April, 2011. He applied for Super Speciality Course (M.Ch) and appeared for the entrance examination conducted by the third respondent for selection in May, 2011 with registration No. 41024. Petitioner had opted for one of the two courses (i) Vascular Surgery, and (ii) Cardio Thoracic Surgery. Number of seats available for Vascular Surgery was 4 and for Cardio Thoracic Surgery was 16. Petitioner appeared for the entrance examination conducted on 26.6.2011 and the results were declared by the third respondent in July, 2011. He secured 48.75 marks in Vascular Surgery and 33.75 marks in Cardio Thoracic Surgery out of 90 marks. The counselling for Super Speciality courses commenced in August, 2011 and the same was completed on 21.9.2011. As per the prospectus 50% of the seats are to be filled up as open category and remaining 50% are to be filled up as service category. The open merit list would be prepared by computing the entrance examination marks and experience marks, which will be calculated to a maximum of 100 i.e., 90 marks for entrance examination and 10 marks (maximum) for experience (one mark for each year). Clause 46(a) of the Prospectus states that candidates securing less than 50% of the total marks in other communities and 40% of the total marks in reserved communities (BC, BCM, MBC, SC, SCA and ST) will not be considered for counselling (Total marks 100 = Entrance exam 90 + experience marks 10).

3. For filling up four seats in Vascular Surgery (M.Ch) -Super Speciality course, general merit list was drawn. According to the petitioner, candidates who had secured lesser marks than the petitioner were included, but petitioner's name was not included for counselling on the ground that he had obtained less than 50% of marks in the entrance examination. Therefore, petitioner has challenged Clause 46(a) of the Prospectus issued for admission to Super Speciality Course 2011-2012, which is put against the petitioner. It is the contention of the petitioner that out of four seats available in M.Ch (Vascular Surgery), only three seats are filled up and one seat remains vacant on the ground that no candidate having 50% or more marks, is available. The said clause in the prospectus is challenged in this writ petition.

4. The grounds raised in the writ petition are that Clause 46(a) of the Prospectus is contrary to the MCI Post Graduate Medical Education Regulations, 2000 (amended upto December, 2010); that when seats are available, keeping the seat as vacant merely because the candidate has not secured any mark under the category of marks allotted to experience i.e., one mark for one year to the maximum of 10 marks, is not in connection with merit; that the eligibility fixed by the MCI being 50% of the entrance mark, the State Government cannot add ten marks for experience and fixing minimum eligibility as 50 marks out of 100 is in violation of the MCI Regulations; that the petitioner having secured 48.75

marks out of 90 in the entrance examination, he is fully eligible as he is having more than 50% of the marks in the entrance examination; that the petitioner having not obtained any mark under the category of experience, he cannot be denied seat in M.Ch course in spite of non-availability of candidate having higher marks; that denial of seat to the petitioner in spite of he satisfying the MCI Regulation is discriminatory, arbitrary and violative of Article 14 and 15 of the Constitution of India; and that, the petitioner cannot be denied his right to challenge the clause in the prospectus merely because he has appeared and taken part in the selection process on the ground of Doctrine of Acquiescence. Petitioner has placed reliance on certain decisions of the Honorable Supreme Court.

5. Respondents 1 to 3 have filed counter affidavit and opposed the prayer, mainly on the ground of estoppel. It is also stated in the counter affidavit that the respondents are following MCI norms for selection and the petitioner having participated in the selection process, now he is not entitled to challenge the clause in the prospectus and the eligibility for admission having been fixed as 50% of the total marks i.e., 90 + 10 and the same being uniformly followed, the writ petition is not maintainable even though one seat is vacant due to non-availability of eligible candidates. The cut-off date for admission for Super Speciality Courses having been over as early as on 30.9.2011, the writ petition filed after the cut-off date seeking admission for the year 2011-2012 is not maintainable.

6. An additional counter affidavit was also filed by respondents 1 to 3 contending that the experience for a professional Doctor is deciding the merit of a candidate and the same cannot be treated as diluting the merit of the candidate. It is also stated in the additional counter affidavit that the Honorable Supreme Court has upheld the reservation of seats in favour of the service candidates and therefore awarding one mark for one year experience and fixing 50% of the total marks of 100 is reasonable and there is no arbitrariness.

7. The 4th respondent MCI has filed separate counter affidavit and in the said counter affidavit the notification published in the Gazette of India on 20.10.2008 viz., Clause (2) of Regulation 9 relating to selection of PG students is relied on and stated that wherever entrance test for PG admission is held by a State Government or University or any other authorised examining body, the minimum percentage of marks for eligibility for admission to PG medical course shall be 50% for general category candidate and 40% for the candidates belonging to SC, ST and OBC candidates. In paragraph 8 of the counter affidavit it is further stated that a perusal of the above regulation leaves no doubt that the admission has to be made on the basis of the academic merit determined on the basis of "competitive test". The marks provided on the basis of experience cannot be part of the competitive test. Hence the petitioner has met the eligibility norms laid down in the regulation of MCI. It is further stated in paragraph 9 that the regulations of the MCI are mandatory, binding and overrides all other

regulations, Act or circular, etc., framed by the State Government/University, which is a settled law declared in number of judgments of the Honorable Supreme Court. In paragraph 10 it is reiterated that as per MCI Regulations, minimum requirement to qualify for the entrance examination for general category candidates stands at a cut-off requirement of 50% of the marks obtained in the competitive test.

8. Mr. N.R. Chandran, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner having satisfied the eligibility norms as fixed by MCI by securing 48.75 out of 90 marks, which is more than 50% of entrance/competitive test, he is qualified for admission and adding ten marks towards experience and fixing 50 marks for 100 marks as has been done by the third respondent, is contrary to the MCI regulations. The petitioner having been found eligible as per MCI norms, he is entitled to get admission in M.Ch course either in the academic year 2011-2012 or he may be directed to be admitted during the next academic year 2012-2013. The learned Senior Counsel relied on the judgments for the proposition that for admissions, MCI regulations alone will govern and any regulation issued which is repugnant to the MCI regulations is to be declared as invalid. The learned Senior Counsel also cited few decisions in support of his contentions.

9. Mr. V.P. Raman, learned counsel appearing for the Medical Council of India submitted that the petitioner is satisfying the eligibility criteria fixed by the MCI as he has secured 48.75 marks out of 90 marks in the entrance examination. However, the petitioner is not entitled to get admission for the academic year 2011-2012 as the last date for admission fixed by MCI was over as early as on 30.9.2011. The learned counsel also submitted that the Honorable Supreme Court has fixed the cut-off date for admission to medical graduation as well as PG degrees including Super Speciality courses and if any direction is issued to give admission for 2011-2012, now the same will be contrary to the decisions of the Supreme Court.

10. Mr. A. Navaneetha Krishnan, learned Advocate General on the basis of the counter affidavit and additional counter affidavit filed by respondents 1 to 3 submitted that the petitioner has secured only 48.75 marks out of 100 marks (i.e., "48.75" marks in entrance examination + "0" marks for experience). The minimum marks prescribed as per the prospectus being 50% of total 100 marks, petitioner is not eligible to be admitted as he is ineligible as per clause 46(a) of the Prospectus. The learned Advocate General also submitted that even assuming that MCI norms fixes 50% of the 90 marks, i.e., for competitive examination/entrance examination, the State Government can fix higher norms for admission and the said power of the State Government is upheld by the Honorable Supreme Court. The learned Advocate General also submitted that the petitioner having approached the Court after the cut-off date for admission i.e., after 30.9.2011, he is not entitled to get admission for the academic year 2011-2012 and as the admission to 2012-2013 will be on different entrance test

as well as assessment of marks on the basis of experience, seeking direction to the respondents to admit the petitioner in the academic year 2012-2013 based on the present marks secured by the petitioner will affect the rights of other students, who would be appearing for future selection i.e., 2012-2013 and the petitioner has to necessarily appear in the entrance examination during the year 2012-2013 and come out on merit, if he is really interested in getting admission for the academic year 2012-2013.

11. I have considered the rival submissions made by the learned Senior Counsel appearing for the petitioner, learned Advocate General for respondents 1 to 3 and the learned Standing Counsel for the 4th respondent/Medical Council of India.

12. The points arise for consideration in this writ petition are as follows:

(1) Whether the petitioner is satisfying the eligibility norms fixed by MCI for admission to M.Ch course ?

(2) Whether the petitioner can pray for admission in M.Ch course during the academic year 2011-2012 after the last date admission and seek for admission for the year 2012-2013 based on the marks secured for selection to 2011-2012 academic year ?

13. The petitioner has passed MBBS degree in the year 2006 and PG Degree (MS) in April, 2011. He has applied for admission to Super Speciality Course M.Ch and appeared in the entrance examination conducted by the third respondent on 26.4.2011 with registration No. 41024. He was awarded 48.75 marks out of 90 marks in the entrance examination in Vascular Surgery. The total seats available for M.Ch Course (Vascular Surgery) is 4. As per the Prospectus, 50% of the seats i.e., two seats are to be filled up from among service candidates and remaining two seats are to be filled up as general category. For M.Ch course 2011-2012 session the following candidates were admitted:

(i) Dr. Balaji. M, who scored 60.25 marks out of 100 marks was selected as a private (General) candidate;

(ii) Dr. Marudhu Durai. S., who scored 54.25 out of 100 marks was selected as service candidate;

(iii) Dr. Sharmila D.N., who scored 49.75 out of 100 marks, belonging to BC category was selected under Service category. Thus, only three candidates out of 4 seats alone were admitted. The list of eligible candidates, furnished by third respondent reads as follows:

S. No

EE. No.

NAME

COM

Marks for 90

Exp. Marks

Tot. Marks

1.

41162

Dr. Ashwin Rammohan

BC

60.75

5

65.75

2.

41044

Dr. Balaji M

MBC

59.25

1

60.25

3.

41147

Dr. Thiruvarul M

MBC

54.00

5

59.00

4.

41078

Dr. Rajamahendran R

MBC

51.75

4

55.75

5.

41039

Dr. Maruthu Thurai S

BC

44.25

10

54.25

6.

41019

Dr. Moideen Abdul Kadhar J

BCM

48.75

4

52.75

7.

41118

Dr. Raj Kuma R

SC

46.50

4

50.50

8.

41137

Dr. Sharmila D.N.

BC

45.75

4

49.75

9.

41029

Dr. Muthuraman P

MBC

39.75

8

47.75

10.

41058

Dr. Sam Pon Raj D

BC

46.50

1

47.50

The list of ineligible candidates reads as follows:

S. No

EE. No.

NAME

COM

Marks for 90

Exp. Marks

Tot. Marks

1.

41024

Dr. Jayanth V. Kumar

OC

48.75

0

48.75

2.

41109

Dr. Senthil Kumar K

OC

45.75

2

47.75

3.

41020

Dr. Amar Chand D

OC

45.00

1

46.00

4.

41049

Dr. Ganesan M

OC

30.75

10

40.75

5.

41034

Dr. Alagu Muthu M

OC

37.50

3

40.50

6.

41149

Dr. Parimuthukumar R

BC

37.50

1

38.50

7.

41009

Dr. Saravanan R

MBC

31.30

1

32.50

On a perusal of the list of eligible candidates it is evident that several other candidates, who have secured more marks than the petitioner, i.e., 48.75 marks are available for selection. In fact four candidates, who had secured 59, 55.75, 52.75 and 50.50 marks are available as per the list extracted above. Petitioner is the 5th candidate having secured 48.75 marks, was chosen as ineligible candidate.

14. The learned Senior Counsel appearing for the petitioner submitted that the candidates, who secured 59, 55.75, 50.50 marks out of 100 marks have not opted for admission by attending the counselling and the petitioner is the only candidate not invited for counselling on the ground of not securing 50% of aggregate marks i.e., entrance examination + experience marks. Therefore the petitioner is entitled to be considered.

15. The learned Advocate General has not disputed the said fact during the course of the arguments. The only contention canvassed before this Court by the respondents 1 to 3 is that the petitioner having taken part in the selection process, is estopped from challenging Clause 46(a) of the Prospectus at this juncture, which clearly states that 50% marks in aggregate is the eligibility. The MCI has taken a clear stand that the petitioner is satisfying the eligibility condition. In the light of the stand taken by MCI in the counter affidavit, specifically stating that 50% marks are to be secured by a candidate in the "competitive test" and the experience gained cannot be part of competitive test, I am of the view that the petitioner cannot be treated as ineligible candidate for admission as he has secured 48.75 marks out of 90 marks.

16. The ten marks fixed for experience i.e., one mark for each year is for arriving at the rank and not for eligibility, which means if a candidate is available with experience, than the candidate without experience, the marks awarded to the experienced candidate shall be added to arrive at the ranking. In this case, as per the MCI norms, petitioner has fulfilled the norms i.e., eligibility for admission

in M.Ch course and in the ranking he has not reached the marks fixed for selection. As stated supra, three candidates were having higher marks than the petitioner. However, they have not chosen to appear for counselling i.e., they were reluctant to go for admission and they are also not claiming admission for M.Ch course in 2011-2012. Thus, the petitioner has made out a case to hold that Clause 46(a) of the Prospectus cannot override the MCI Regulation as admission to the medical courses and the examinations in all medical course are to be conducted only under the MCI Regulations and not in any other manner. The said issue is no longer res integra.

(i) In the decision reported in Medical Council of India Vs. State of Karnataka and Others, the Honorable Supreme Court held that the Medical Council Regulations have a statutory force and are mandatory. MCI is given such power to have overall vigilance to prevent sub-standard entrance qualification and the same would apply equally to PG medical courses.

(ii) In the decision reported in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, the Honorable Supreme Court held that the power to fix eligibility for admission in medical courses is vested with the Medical Council of India. Neither the State Government nor the Universities have power to fix the eligibility/norms for admission of students for conducting examination, which is contrary to the MCI regulations.

(iii) Same view is reiterated in the decisions reported in Maharashtra University of Health Sciences represented by Deputy Registrar Vs. Paryani Mukesh Jawaharlal and Others, State of Punjab Vs. Dayanand Medical College and Hospital and Others, ; The State of Madhya Pradesh and Others Vs. Gopal D. Tirthani and Others, . The Honorable Supreme Court held that any regulation made by the Universities/State Governments, which are inconsistent with the MCI regulation will not be valid to the extent of inconsistency.

(iv) The First Bench of this Court in the decision reported in 2011 (6) CTC 801 (The Tamil Nadu Dr. M.G.R. Medical University v. P. Anand) confirming the decision of P. Jyothimani, J., reported in 2011 WLR 481 (P. Anand v. The Tamil Nadu Dr. MGR Medical University) held that the University while conducting examinations, is bound to follow the norms fixed by the MCI. S.L.P.(Civil) Nos. 35070-35110/2011 filed against the said First Bench decision were dismissed by the Honorable Supreme Court on 16.12.2011. In the decision of the First Bench, the argument that the University can fix higher norms than the one prescribed by MCI, relying the judgment of the Supreme Court reported in Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, was not accepted, as it found that fixing separate minimum marks for passing orthopaedic practical in surgery paper of final M.B.B.S. Course cannot be treated as fixing higher norms by the Tamil Nadu Dr. M.G.R. Medical University.

(v) The Supreme Court in the case of State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, has upheld the right of the State Government in

fixing higher eligibility norms i.e., merit. The power of the University in fixing 40% and 45% for SC and Others as against 35% and 40% fixed by the AICTE was upheld as academic mark determines merit.

(vi) In the decision reported in *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, also the Honorable Supreme Court held that higher percentage of academic marks can be fixed for admission to professional course viz., engineering course.

17. Here in this case, the entrance examination to assess the merit of candidates was conducted for 90 marks and 50% of the said 90 marks is fixed as eligibility, which means 45 marks. Suppose the State Government is fixing 55% as the eligibility in the entrance examination, one can justify that as higher norms fixed for admission to sustain the argument based on the above two decisions of the Supreme Court. The respondents 1 to 3, instead of fixing higher percentage of marks in the entrance examination, has chosen to add ten marks on the basis of experience i.e., one mark for one completed year after registration in the Medical Council, which means, a medical graduate after passing MBBS degree gets himself registered in the Tamil Nadu Medical Council and even if he is keeping quiet without practising medicine is awarded one mark for one year upto the maximum of ten marks for ten years. The said awarding of marks cannot be treated as fixing higher marks for eligibility as stated above. Ten marks are added based on experience only for arriving at the rank of the candidates and the same cannot be treated as eligibility for admission. Awarding of marks for experience is upheld by this Court in W.P. No. 14855 of 2009 and the petitioner has also not challenged the same.

18. As rightly contended by the learned counsel for MCI as well as averments in the counter affidavit filed by the MCI, petitioner having secured more than 50% of the marks in the entrance test i.e., 48.75 out of 90, he cannot be treated as ineligible candidate for admission to M.Ch course. The petitioner having been found as eligible candidate as per the statutory regulation framed by MCI, the estoppel plea raised by respondents 1 to 3 is not applicable to the facts of this case. Similar issue was considered by the Supreme Court in the decision reported in AIR 2011 SCW 3937 (*Barot Vijaykumar Balakrishna v. Modh Vinaykumar Dasrathlal*). In the said case fixing cut-off marks for selection in written test and test though not stated in the advertisement, having been stated in the statutory rule, the Supreme Court upheld the fixing of cut-off marks in both separately and rejected the contention raised i.e., the plea of estoppel. In paragraph 31 the Supreme Court held thus,

31. ... the rules framed under Article 309 of the Constitution governing the selection process mandated that there would be minimum qualifying marks each for the written test and the oral interview, the cut-off marks for viva voce was not specified in the advertisement. In view of the omission, there were only two courses open. One, to carry on with the selection process and to complete it without fixing any cut off mark for the viva voce and to prepare the select list on

the basis of the aggregate of marks obtained by the candidates in the written test and the viva voce. That would have been clearly wrong and in violation of the statutory rule governing the selection.

Thus, the first issue framed in this writ petition is held in favour of the petitioner.

19. Insofar as the second issue i.e., regarding admission for M.Ch course for the academic year 2011-2012 after the expiry of last date, the said issue is also settled. The Honorable Supreme Court in the decision reported in Medical Council of India Vs. Madhu Singh and Others, held that no admission can be made in any of the medical courses after the expiry of cut-off date. The said position is reiterated in the decision reported in (2005) 12 SCC 563 (Christian Medical College v. State of Punjab). In the decision reported in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, (three Judge Bench) in paragraph 32 it is held as follows:

32. Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both. MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities, etc., are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admissions; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

20. The issue as to whether a candidate qualified for admission in a particular year could be admitted in the subsequent year due to expiry of the last date, came up for consideration before the Honorable Supreme Court in the decision reported in Dr. Puneet Gulati and Others Vs. State of Kerala and Others etc. etc., . In the said case, having noticed the denial of seat to the eligible candidate, as a special case, the Honorable Supreme Court gave direction to admit the candidate in the subsequent year, even though the appellant did not sit for the entrance examination for the subsequent year 2011-2012 and he was directed to be given admission on the strength of his marks in the entrance examination obtained in the year 2010-2011. The Division Bench of this Court in the decision reported in (2011) 8 MLJ 606 (M.S. Muhammad Sheik Abdullah v. Secretary, Selection Committee) considered similar issue regarding admission to MBBS course. Considering the fact that the candidate was denied admission due to the fault committed by the respondents, the Division Bench ordered to give admission to the candidate for the subsequent year based on the rank secured in the previous year. Same was the view taken by the Supreme Court in the decision reported in (2005) 12 SCC 626 (Medical Council of India v. Naina Verma). In the said case also a candidate who was denied admission for the year 2003-2004 was directed to be given admission for the year 2005-2006.

21. The petitioner having established his eligibility to get admission in M.Ch course 2011-2012, he can be considered for admission to the said course in the

academic year 2012-2013, if no other candidate secure more than 48.75 marks in general category in the academic year 2012-2013. If any candidate under the said category is having more marks than the petitioner viz., more than 48.75, the petitioner cannot be given admission as the same will be denying the right of other candidates, who are otherwise eligible/entitled to get admission as number of seats available under general category for M.Ch courses is only two. In the above referred cases, more number of seats were available and orders were passed on the facts and circumstances of those cases.

22. The learned Senior Counsel for the petitioner further argued that for the academic year 2011-2012 even though four seats are available in M.Ch course, only three candidates are admitted and continuing their course, and therefore one seat is still vacant and therefore one additional seat may be ordered to be created by the MCI for the academic year 2012-2013. The said request cannot be considered, as the Honorable Supreme Court has cautioned the High Courts not to give such directions to create seats in the decision cited supra i.e., in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, . If the respondents 1 to 3 approach the 4th respondent to that effect, the MCI can consider the said request if the same is possible and no direction as requested by the learned Senior Counsel can be ordered to that effect by this Court. In fine, taking into consideration all the above aspects, I am of the view that the writ petition can be disposed of giving direction to the respondents 1 to 3 as follows:

(a) The petitioner having secured 48.75 marks out of 90 in the entrance examination, he is eligible for admission to M.Ch course as per the MCI norms/Regulation.

(b) The cut-off date for 2011-2012 being over as early as on 30.9.2011, even though one seat is vacant in M.Ch course, no direction to admit the petitioner for the academic year 2011-2012 can be ordered now.

(c) For the year 2012-2013, if no other general candidate is available with higher marks than petitioner's marks i.e., 48.75, the petitioner shall be given admission for M.Ch (vascular surgery) course.

(d) This order will not stand in the way of the petitioner participating in the entrance examination for the academic year 2012-2013 and competing with others.

(e) There is no order as to costs.

(f) Connected miscellaneous petitions are closed.