
(2002) 11 DEL CK 0012

In the Delhi High Court

Case No : CW No. 4608 of 2002 and CM 11164 of 2002

Dr. Kunal Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Citation : (2002) 101 DLT 471

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sandeep Sethi, for the Appellant; Maninder Singh and Nishakant Pandey, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. The question arising for consideration is whether a doctor, with an M.B.B.S. degree, having deficiently of colour blindness, is to be debarred from pursuing any post graduate Medical Course? The concerned Medical College denied admission to the petitioner in M.D. (Pathology). The Director General of Health Services and the Committee of Experts opined that the petitioner being totally colour blind cannot be considered for admission in Post Graduate Course in Anaesthesiology, Psychiatry and Community Medicine.

3. Here are the facts:-

(i) Petitioner is a Doctor, who completed his M.B.B.S. from Nalanda Medical College, Patna, Bihar. Petitioner earnestly desired to pursue higher studies. Accordingly he appeared in the All India Quota, Post Graduate Entrance Examination. Results was declared in the month of February, 2002.

(ii) Petitioner qualified and ranked at No. 1308. Petitioner opted for the M.D. (Pathology) in the counselling. He was asked to report to L.L.R.M. Medical

College, Meerut. Petitioner duly appeared before the college authorities and was offered M.D. (Pathology). Petitioner was asked to undergo a medical examination. The Ophthalmology Department reported that the petitioner was colour blind in both eyes.

(iii) Petitioner was utterly dismayed. He made a representation to the Director General (Health Services) stating that if on account of their finding of colour blindness, he could not be given admission to M.D. (Pathology) Course, he be considered for other courses such as Dermatology, Orthopedics, where colour blindness was not a hindrance. Petitioner also stated that he had not experienced any such difficulty in discharging medical duties in the past. Petitioner stated that colour blindness may effect or cause hindrance in microscopic examination in pathology, but is not a hindrance for subjects other than pathology.

4. On the basis of the petitioner's representation dated 19.7.2002 and 24.7.2002, Director L.L.R.M. College was requested by the Director General (Health Services) to constitute a Board of three Doctors, who would examine the petitioner to assess whether colour blindness would be a hindrance for a post graduate study in M.D. (Pathology) or any other subject? The Medical Board of three Doctors examined the petitioner on 6.9.2002 and reported as under:-

"Dr. Kunal Kumar was found to be colour blind by the Medical Board. The Boar unanimously resolved that the case may be referred to M.C.I. for opinion and further advice."

5. In the meanwhile, show cause notice was issued in the writ petition on 6.8.2002. Vide orders dated 6.9.2002 Central Government Standing Counsel was asked to seek instructions, if petitioner could be considered for admission to Anaesthesiology, Community Medicine and Psychiatry. Further vide orders dated 24.10.2002 report on the extent of colour blindness of the petitioner was called from the L.L.R.M. College.

6. Pursuant to the orders passed by this Court, on 6.9.2002 a Committee of Professors of Ophthalmology of R.P. Centre, AIIMS, Dr. RML Hospital, Lady Harding Medical College and Secretary M.C.I. under the Chairmanship of Professor Y.N. Rao DDG(M) met on 29.10.2002 to examine whether petitioner was fit to join PG course in Anaesthesia, Psychiatry and community medicine. The Committee noted that as per report of LLRM, Medical College, petitioner was total colour blind. The Committee observed that there were no clear cut guidelines regarding colour vision by the Medical Council of India and the framing of regulations was still under consideration. The said Committee, Therefore, suggested that the opinion of the concerned subject specialists be taken.

7. Pursuant to the above recommendation another Committee consisting of experts in the specialties of anaesthesia, psychiatry and community medicine from AIIMS, Lady Harding Medical College and MAMC, was constituted to discuss the matter. The Committee held its meeting on 30.10.2002 under Dr. Y.N. Rao, Deputy Director General (Health Services) and opined as under:-

"Dr. Kunal Kumar being a total colour blind can not be considered for admission in Post Graduate course in the subjects of:

Anaesthesiology

Psychiatry

Community Medicine."

8. The above report dated 30.10.2002, did not disclose any reason as to why the petitioner could not pursue any of these three courses mentioned therein. Accordingly Dr. Y.N. Rao was also asked to be present to assist the court. Dr. Rao clarified that they had not recommended the petitioner for post graduate specialisation in Anaesthesia, Psychiatry or Community Medicine, as it was felt that while examining the patients he would not be able to distinguish the colour/pallor of the skin and notice reaction of any of drugs etc., which could be a handicap. Dr. Rao candidly recognised that the M.C.I. has not framed any rules, on the basis of which admission to a candidate on the ground of colour blindness could be denied in a Post Graduate course. He however stated that as per his impression in the States of Orissa, M.P. and Andhra Pradesh, candidates even for M.B.B.S. Course are screened for colour blindness.

9. In these circumstances the court considered it appropriate, that petitioner should be examined afresh to ascertain the extent of the colour blindness, if any. Especially since the report from the L.L.R.M. College revealed that an important and significant Edridge Green Colour Lantern test, had not been carried out due to non-availability of test equipment. Besides the Committee of Experts had proceeded on the basis that it was a case of total colour blindness. Dr. Rao informed that this would be a case falling within the field of a retina specialists. Accordingly Dr. Atul Kumar, Additional Professor, a retina specialist at R.P. Centre, AIIMS, was directed to carry out a complete and detailed examination of the petitioner and report to the court the extent of colour blindness. Further to state clearly the colours which the petitioner could see and those which he could not see and distinguish. Dr. Atul Kumar's report has since been received, to which I shall advert a little later.

10. Having noticed the factual matrix and the issues arising for consideration, let us examine whether the petitioner is entitled to the relief sought?

11. At the outset, I may notice that there is not hindrance or restriction on the petitioner, who is a duly qualified and registered medical petitioner to carry out his practice as a general physician. He is authorized to prescribe drugs and treat patients, without acquiring any further post graduate qualification. The petitioner has been found to be meritorious student. He is found to be eligible for a course in M.D. (Pathology), based on his ranking in the examination. Based on the report as received from L.L.R.M. College, regarding the colour blindness, he had been declined admission to M.D. (Pathology). There appears to be some justification for denying admission to the petitioner in Pathology. This is because

in Pathology the concerned pathologist has to examine various colour slides under a microscope. The inability to distinguish colours could be a handicap in minute examination of various bacteria and examination of different slides. However, this should not prevent the petitioner from pursuing other courses or disciplines, where colour blindness may not be a handicap.

12. Three course which the respondents were directed to consider are; psychiatry, anaesthesia and preventive community medicine.

13. Before dealing with this aspect, few words about colour blindness:-

Colour blindness is a misnomer as it refers to blindness which is normally understood as inability to see. In case of a colour blind person, the person is able to see colours, but has a reduced spectrum and there is inability or deficiency to distinguish colours. Colour blindness is a malfunction of the retina, which converts light energy that is then transmitted to the brain. This conversion is accomplished by two types of photoreceptor cells in the retina; rods and cones. The retina has about 120 million rods and about 6 million cones. Colour blindness occurs when the cones, which are used for distinguishing colours either become deficient or some of them, are non-functional. It should appropriately be called colour vision deficiently, rather than colour blindness. Colour deficient patients are not completely red or green blind. Compared to persons with normal colour vision, they have some troubles differentiating between certain colours, but the severity of the colour deficiency is variable.

14. With these few words let us consider the report from L.L.R.M. College, Meerut. The report of the Medical Board of the said college is as under:-

"Dr. Kunal Kumar was found to be colour blind by the Medical Board. The Board unanimously resolved that the case may be referred to M.C.I. for opinion and further advice."

15. The detailed report from L.L.R.M. College was also called for. Their findings based on the interpretation of the Ishihara Colour vision test was:-

"Dr. Kunal Kumar has been found to be totally colour blind".

16. LLRM College Meerut sent further details regarding the Ishihara colour vision test platewise.

"On one plate the grading was 12, while on the second to fifteenth plates the grading was X i.e. nil."

The Ishihara colour vision test is for determining colour saturation. It is a quick screening test and is based on colour brightness. The test uses pseudoisochromatic plates. It is carried out by asking the patient to decipher numerical numbers amidst the pattern of colours on the pages of a booklet which are turned over. The test is conducted manually and can have variations based on how fast the pages are turned etc.

17. Edridge Green colour lantern test is a precise and accurate scientific test carried out with equipment. This test to assess the colour saturation and colour hues. It determines the individual colours and also has different colour hues which can be tested through different apertures 1.3m to 13mm. Lastly, the Nagels Anamalscope colour test is to determine the colour brightness and assess the colour saturation. The patient views a split screen mixing varying amounts of red and green colours to match standard yellow light.

18. The L.L.R.M. College, had not conducted the Edridge Green Colour Lantern test because of non-availability of equipment in the Hospital. The report of Professor Atul Kumar of the R.P. Centre, AIIMS, is a detailed and comprehensive one. Prof. Atul Kumar reported that the vision of the petitioner is perfect having 6/6. Findus was normal with pink discs. The visual fields were found normal. Prof Atul Kumar carried out all above three tests, the Edridge Colour Green Lantern test, Ishihara test using Pseudoisochromatic colour plates and Nagels Anamalscope Colour test. Prof. Atul Kumar has found based on Edridge-Green Lantern test, that the petitioner could distinguish all colours, including the three basic colours namely red, blue and green. As regards the Ishihara Pseudoisochromatic colour test, the same revealed mild deuteranomaly (i.e. mild green colour deficit picked up) and all other plates were read correctly. This finding is in conflict with finding of the Meerut Hospital. The Nagels Anamalscope colour test was also found to be correct except slight colour anomaly. Prof. Atul Kumar based on the above tests and examination conducted by him reported that the petitioner can perceive all colours and hues correctly, when they were checked separately using the Edridge-Green Lantern test. However, mild green colour deuteranomaly was seen on the Ishihara Pseudoisochromatic tests. He found that the petitioner could also distinguish colours and hues of various objects, of varying sizes when shown to him. Finally Dr. Atul Kumar concluded that the petitioner could take up functions involved in practically any medical post graduate study. However, since a mild green colour deficiency was present on Ishihara plates, he can very easily carry out courses in specialities like psychiatry, community medicine etc. (Emphasis supplied)

19. From the report of Prof. Atul Kumar, it would be seen that he has found the petitioner fit and able to pursue a post graduate course in disciplines such as psychiatry and community medicine. Report of Dr. Atul Kumar is comprehensive and detailed based on three tests which were carried out.

20. In case there are two conflicting reports of experts, the court certainly has the discretion to prefer one over the other based on good reasons.

Reference may be invited to a decision of the Supreme Court in *Madan Gopal Kakkad Vs. Naval Dubey and Another*, wherein it was held that the expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials, after

giving due regard to the expert's opinion. This is envisaged as the role of the court.

Reference may usefully be made to State of Haryana Vs. Bhagirath and Others, The Court in his case was considering whether injury could not have been caused by two strikes with the same weapon or with different weapons of the same type. There was a conflict between the eye witness and medical evidence. The Apex Court observed as under:

"The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectively, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

21. In the light of the principle enunciated in the aforesaid judicial pronouncements, let us consider the present case. LLRM Medical College, Meerut had not carried out either the Edridge Green colour Lantern test or the Nagels Anamalascope test. The report from the R.P. Centre is a comprehensive and detailed one and based on three different testes as carried out, while at the LLRM Hospital only one test was carried out. This test has its own limitations and is performed manually, as noted earlier. More importantly, the medical experts who decided whether petitioner should be permitted to pursue post graduate course or not, proceeded on the basis of the LLRM Meerut Hospital reported that petitioner was totally colour blind. The very basis of petitioner being totally colour blind does not subsist any longer in view of the subsequent detailed examination at AIIMS. Moreover, the report dated 30.10.2002 does not indicate any tenable reason as to how the colour blindness/deficiency, even if it assumed to be correct, would post a hindrance or come in the way of petitioner pursuing a Post Graduate Course in Psychiatry.

22. I have already indicated the reasons why the report of Prof. Atul Kumar who has submitted a comprehensive report conducting three tests deserves to be preferred and given credence over the LLRM hospital report. Accordingly, we have to proceed on the basis that the petitioner has a limited deficiency with regard to green colour.

23. I am unable to either appreciate or accept the suggestion of Dr. Rao that the petitioner should not be allowed to pursue a Post Graduate Course in Psychiatry as he may not be able to decipher the drug reaction or the colour of the skin, while treating patients. Firstly, such a situation could hardly arise in the pursuit of a course in Psychiatry. The minor colour deficiency is reported with regard to

green colour. The limited deficiency is confined to appreciation of a hue of colour green which could hardly be relevant or applicable in a case of psychiatry. Moreover, we cannot lose sight of the fact that the petitioner is fully entitled to practice and prescribe drugs as a qualified MBBS doctor. The approach adopted by the Committee of Experts and as stated by Dr. Rao, during the court hearing, unfortunately falls in the category of opinion bereft of logic objectivity and pragmatism. Perhaps in the defense of the Committee the only thing that can be urged is that they proceeded on the basis of the petitioner being totally colour blind as reported by LLRM Medical College, Meerut College. It is unfortunate that the career of a young doctor could have been marred by adoption of such an approach by a Committee of Experts.

24. It was also suggested by Prof. Rao during the Court hearing, that perhaps the petitioner may after completion of a Post Graduate Course feel disheartened and disillusioned, if found medically unfit for employment by Government/Public Sector and State Government Undertakings, who may insist on higher standards of fitness. The petitioner is fully conscious of this and does not foresee this as a factor, which would come in his way of his pursuing Post Graduate studies.

25. In view of the foregoing discussion, the decision of the Committee of Experts dated 30.10.2002 denying admission to the petitioner in Post Graduate Course in the subjects of Anaesthesia, Psychiatry and community medicines is hereby quashed. Let a writ of mandamus issue to the respondents directing them to consider and grant admission to the petitioner in the Post Graduate Course for Psychiatry for which a seat is available and reserved.

The writ petition is allowed in the above terms.