

(1975) 10 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 959 of 1975

Dr. Lalit K. Sharma

APPELLANT

Vs

Principal and Controller S.M.S. Medical College attached
Hospitals and Others

RESPONDENT

Date of Decision : 08-10-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 19A, 20, 33

Citation : AIR 1976 Raj 34 : (1976) RLW 162 : (1975) WLN 577

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Advocate : C.K. Garg, M.D. Purohit, for the Appellant; V.S. Dave, (for No. 3) and N.M. Kasliwal, (for No. 5), for the Respondent

Final Decision : Dismissed

Judgement

M.L. Joshi, J.—This petition, under Article 226 of the Constitution of India seeks by appropriate writ, direction or order quashing of the notice Annexure 5 of the Principal and Controller of S. M. S. Medical College dated 15th of May. 1975, and as a consequence it is prayed that the respondents Nos. 1 and 2 be directed to hold selection of the students to the postgraduate medical training in accordance with the criteria laid down in the regulation framed u/s 33 of the Indian Medical Council Act hereinafter called the Act,

2. Certain facts giving the background of this petition deserve to be noticed to understand the nature of the relief and the circumstances in which it is being asked for.

3. The petitioner passed his final M.B.B.S. Examination from S. M. S. Medical College, Jaipur in May, 1974. Thereafter he completed one year of compulsory rotating internship training which was completed on 14th of May. 1975 and obtained full registration with the Medical Council The Principal S. M. S: Medical College, non-petitioner No. 1. notified a scheme on 18th of April, 1975,

containing guidelines on which the admissions were to be made for selection and appointment of Resident House Officers, Registrars, C.M.Os., Assistant Pathology, Junior Demonstrators and full time past-graduates. Under the aforesaid scheme, selection for the post of Resident House Officer was to be made strictly according to the merit on the basis of aggregate marks secured in all the three University M.B.B.S. Examinations. Some students raised objections to the scheme dated 18th of April, 1975, as it was a departure from the long established practice adopted by the medical colleges of the Rajas than and the State Government consulted all the Principals of five Medical Colleges in Rajasthan and after obtaining information from various colleges outside the State in regard to the criteria for admission to the post-graduate training decided to switch back to the criteria which have hitherto been followed in the matter of selection to the post-graduate training --a fact which has not been controverted by the petitioner.

According to the criteria hitherto followed the selections to the post-graduate training were to be made on the merits judged on the basis of aggregate marks in the final M.B.B.S. Examination. Accordingly under the directions of the State Government, the non-petitioner No. 1 notified that the selections for the Resident House Officers (full paid graduates) Resident Senior House Officers etc. would be made for the year 1975 as per the practice followed in the year 1974. The applications were therefore invited calling upon the candidates to express their preferences clearly in the applications and submit the same latest by 19th of May, 1975 (vide Annexure 5).

4. The petitioner impugns the above mentioned scheme (Annexure 5) inter alia on the ground that it is in contravention of the regulation framed u/s 33 of the Act whereunder the selection of students for post-graduate training is to be made strictly on merit judged on the basis of academic record in the under-graduate course. According to the petitioner the under-graduate course comprises of the three M. B. B. S. examinations of the University. The petitioner's case is that the regulation has force of law and neither the State Government nor the non-petitioner No. 1 has any competency to act in contravention of the regulation and, therefore, the impugned scheme is bad in law. The further case of the petitioner is that as per the marks obtained in the final M.B.B.S. Examination he would rank 62nd in the class whereas according to the marks obtained in all the three examinations of the M.B.B.S. he ranks 48th in the class and, therefore, the impugned scheme works adversely against him in the matter of selection by adopting a criterion which is not in consonance with the regulation. The petitioner, therefore, prays for restraining the respondents from giving effect to the impugned Annexure 5 and further for issuance of a direction for adopting a criteria as per the regulation of the Medical Council.

5. During the pendency of the writ petition one Dr. Ajay Singh Rathore moved an application for impleading him as non-petitioner stating that he is likely to be affected by the result of the petitioner. He was, therefore, impleaded as non-petitioner No. 3. Subsequently on the objections of the non-petitioners Nos. 1

and 2 the Principals of the remaining four colleges in Rajasthan and the University of Rajasthan were also impleaded.

6. The writ petition has been opposed by the non-petitioners Nos. 1, 2 and 3. The non-petitioners Nos. 1 and 2 have submitted a joint reply to the writ petition whereas the non-petitioner No. 3 has rendered a separate reply. The main points which have been made out in the reply of the non-petitioners Nos. 1 and 2 are that (i) the applications were invited for appointment to the various stipendiary and non-stipendiary post of R.H.O., Registrar. C.M.Os. etc. and not for registration for the post-graduate courses and therefore the writ petition is premature; (ii) the criteria for selection for post-graduate training course laid down by the Medical Council of India have been interpreted by all the medical colleges of Rajasthan and various other colleges of India on the basis of merit secured in the final M.B.B.S. examination only which have never been objected to by the Medical Council of India in spite of inspections made by its officials on various occasions; (iii) the criteria laid down in Annexure 5 furnish a reasonable basis in order to judge the merit of the student in the under-graduate course and are in no way in contravention of the regulation of the Medical Council; (iv) the impugned criteria for selections to the above posts are in conformity with the criteria laid down by the Medical Council; (v) the guidelines published in Annexure 1 were only of administrative character and had no force of law and could be reviewed by the non-petitioners Nos. 1 and 2.

7. On the similar lines is the reply rendered by the non-petitioner No. 3. The non-petitioner No. 3 has, however, raised some additional points mention of which is necessary. The additional points are that (i) that the Medical Council of India had only advisory jurisdiction in the matter of post-graduate studies u/s 20 of the Medical College Act and the criteria laid down by it are of advisory nature and are not at all of mandatory character; and (ii) the criteria laid down by the Medical Council of India by its regulation u/s 33 relate to the registration of the students for postgraduate study and not for the appointment of the stipendiary and non-stipendiary posts of the R.H.G., Registrar, C.M.Os. etc. and therefore the writ petition is misconceived at this stage.

8. In the rejoinder to the reply of the non-petitioners Nos. 1 and 2 the petitioner has emphatically refuted the contention that his petition is pre-mature and has further traversed the contentions raised in the reply and reiterated the stand taken in his petition.

9. Mr. Garg in support of the writ petition has advanced the following contentions:--

1. Neither the State Government nor its functionary including the non-petitioner No. 1, the Principal and Controller of S. M. S. Medical College had competence to lay down criteria contained in Annexure 5 as they relate to the higher education which subject is in the legislative sphere of the Parliament alone under entry 66 of List I of Schedule VIIth of the Constitution.

2. The criteria laid down in Annexure 5 by the non-petitioners Nos. 1 and 2 are in contravention of the regulation framed by the Medical Council of India u/s 33 of the Medical Council Act and are, therefore, invalid.

3. The non-petitioner No. 2 having laid down the criteria by his order dated 18th of April, 1975 had no jurisdiction to review and replace them by impugned criteria.

10. A preliminary point has been raised on behalf of the non-petitioners Nos. 1, 2 and 3 that the writ petition is pre-mature and is, therefore, not maintainable at this stage. The contention proceeds on the basis that the applications were invited for various stipendiary and non-stipendiary posts sanctioned by the State of Rajasthan and not for the registration of the post-graduate course. It is said that the appointment as Resident House Officer, Registrar, Full Time Post-Graduate etc. only makes the students eligible for registration to the post-graduate course for which they have to apply in a separate form. It is further submitted that there is no guarantee that all those who get stipendiary and non-stipendiary posts will be entitled to registration to the post-graduation course. On this basis it is said that the writ petition is premature at this stage.

Now the Ordinance No. 278-B of the University of Rajasthan Hand Book provides that no candidate shall be admitted to the examination for the degree of Doctor of Medicine or Master of Surgery unless he produces satisfactory evidence to the effect--that he after having obtained the M.B.B.S. degree of the University or of any other University recognised by the Medical Council of India for the purpose has been a House Physician, House Surgeon in a teaching hospital recognised by the University etc. or has obtained the M.B.B.S. degree and full registration with the Medical Council not less than three academic years previously and has registered as a post-graduate student in the University at least two academic years previously. Likewise the criteria for selection to the post-graduate training laid down in the Medical Council Regulation also, provide that the students to become eligible for registration to post-graduate course should after passing the M.B.B.S. examination and putting in one year's compulsory rotating internship has done one year's Housemanship prior to the admission to the M.D./M.S. course. From the above provisions, it will appear that the appointments to the stipendiary and non-stipendiary posts of the Resident House Officer etc. are a condition precedent to the registration of post-graduation studies. The selection to the Resident House Officers etc. is a condition precedent and gate-way to the registration in the post-graduate course. Putting it differently the selection to the stipendiary and non-stipendiary posts is an integral part of the training to the post-graduation course and is a necessary step for the registration in the post-graduation studies. Without selection to the above posts it is almost impossible to get the registration in the post-graduation course. In this view of the matter, it is futile on the part of the contesting non-petitioners to contend that the writ petition is pre-mature. The preliminary objection is accordingly turned down.

11. Now I proceed to take up each of the contentions of the petitioner on merits.

Contentions Nos. 1 and 2 are closely interlinked and they may be taken up together.

12. It has been argued that the training to post-graduate studies is a subject within the sphere of the Parliament vide Entry 66 of List I of Schedule VIIth of the Constitution. There is no doubt about this proposition and the matter is also concluded by the authority laid down in Heggade Janardhan Subbarye Vs. The State of Mysore and Another, and R. Chitralekha and Another Vs. State of Mysore and Others, The question however does not stop at that. The further question is whether the impugned criteria laid down to the non-petitioners Nos. 1 and 2 are encroachment on the legislative sphere of the Parliament. The Parliament has enacted the Indian Medical Council Act and u/s 33 of the Act. the Medical Council has been empowered to frame regulations for achieving the objects for laying down uniform standards in the under-graduate and post-graduate medical studies. The argument of Mr. V.S. Dave that the Medical Council is not empowered to frame regulations u/s 33 is misconceived when one looks to Section 20 of the Indian Medical Council Act. The question which requires to be considered is whether the non-petitioners Nos. 1 and 2 have altered the criteria laid down by the Medical Council. It will be here appropriate to reproduce the criteria laid down by the Medical Council under its regulation framed u/s 33 of the Act. The criteria read as under:--

"Criteria for the selection of candidates :

(a) Students for post-graduate training should be selected strictly on merit judged on the test of academic record in the under-graduate course.

(b) The candidates should have obtained full registration i.e. they must have completed satisfactorily one year of compulsory rotation internship after passing the final M.B.B.S. examination and must have full registration with the State Medical Council.

(c) They must subsequently have done one year's housemanship prior to admission to the M.S. course. Housemanship should be for one year in the same subject or at least six months in the same department and the reading period in an allied department. Alternatively

(i) Must have worked as a full-time post-graduate student in the department concerned before taking up the M.D./M.S./ Diploma courses in a manner equivalent to housemanship requirements.

(ii) or worked in hospitals approve by the Council for internship training for a period of three years.

(iii) or worked in State Medical Service or Armed Forces Medical Service or other equivalent service for a period of five years.

(d) Other conditions being equal weightage may be given to persons who have worked in rural areas or the Armed Forces Medical Services for at least two

years."

From the perusal of the criteria extracted above it will appear that two modes have been prescribed in the regulation for selection to the post-graduate training, According to the alternative mode the basis for selection is that the student should have worked as a Full-time Post-graduate student in the department concerned hospital approved by the Medical Council for internship training for three years or in the State Medical service or Armed Forces Medical service etc, It will thus appear that the academic record of the student in the under-graduate course is not the sole basis for selection to the post-graduate training. I am here of course concerned with the first mode of selection to the post-graduate training.

13. Controversy has been raised that the expression "under-graduate course" envisages "the aggregate marks obtained by the candidate at all the three University examinations of the M.B.B.S. and not only in the final M.B.B.S. examination. It is submitted that if this interpretation is accepted then the impugned criteria are in derogation of the regulation, of the Medical Council as the impugned criteria assess merit on the basis of academic record of students in the final M.B.B.S. examination only. In order to examine the validity of this contention it will be appropriate to make a reference to the various subjects in which the candidates have to undertake the examination, in various parts of the M.B.B.S. course, Ordinance 271 of the University Hand Book lays down that every candidate for the First M.B.B.S. Examination is to pass in the subjects--(i) Anatomy, (ii) Physiology including allied and cognate subjects. Further Ordinance 271 provides that every candidate for the second M.B.B.S. examination is to pass in the subject--(1) Pathology and Bacteriology, (2) Pharmacology including pharmacy--Therapeutics and Toxicology and (3) Forensic medicine. Further more the Ordinance No. 274 requires a candidate to pass the final M.B.B.S, examination in the subjects (1) Medicine including Therapeutics. (2) Preventive and Social Medicine, (3) Surgery including Diseases of Ear, Nose and Throat, (4) Obstetrics and Gynaecology and (5) Ophthalmology. From fee perusal of the various courses it will at once appear that the subjects prescribed in the final M.B.B.S. examination under Ordinance 274 are of comprehensive character and of wider amplitude embracing in their fold the knowledge of all the subjects prescribed for the examination of First M.B.B.S. and Second M.B.B.S. examination which have been put in the head of "Basic Sciences" in the recommendations of the Medical Council for the post-graduate course. The merit in the final M.B.B.S. examination postulates the knowledge and proficiency, and power of application of the knowledge derived from the "Basic Sciences" viz. the subjects prescribed in the First M.B.B.S. and Second M.B.B.S. examinations. The impugned criteria also assess merit on the academic record of the under-graduate course and not on other extraneous considerations. This criteria therefore cannot foe taken to be in derogation of the criteria laid down by the Medical Council and, therefore, in my view there is no substantial alteration or modification of the criteria laid down by the Medical Council by the State or its

functionaries.

14. Even assuming for a moment that there is departure from the criteria laid down by the Medical Council, the question is whether the criteria are bad in law on that account. The answer to this question depends upon the further question whether the criteria laid down under the Regulation are of a mandatory character. In this connection it will be appropriate to refer to Sections 19A and 20 of the Indian Medical Council Act. They read as under:--

"Section 19A. Minimum standards of medical education--(1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or Medical Institutions in India,

2. Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall, before submitting the regulations or amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from, the furnishing of copies aforesaid.

3. The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

"20. Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education:--(1) The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-Graduate Committee).

2. The Post-graduate Committee shall consist of nine members all of whom shall be persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.

3. Six of the members of the Postgraduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.

4. For the purpose of considering post-graduate studies in a subject, the Post-graduate Committee may co-opt. as and when necessary, one or more members qualified to assist it in that subject

5. The views and recommendations of the Post-graduate Committee on all matters shall be placed before the Council; and if the Council does not agree "with the views expressed or the recommendations made by the Post-graduate

Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision."

If we look into Section 19A it will appear that the Medkal Council has been empowered to prescribe the minimum standard of medical education required for granting recognised medical qualification other than post-graduate medical qualification by Universities or medical institutions in India. The expression "minimum standard of medical education" occurring in Section 19A is of great significance as it positively indicates the mandatory character of this section and the educational institutions are bound to observe the minimum standards as required by Section 19A. Whereas if we look to Section 20 then it will at once appear that the Medical Council is authorised to prescribe standards of post-graduate medical education for the guidance of University and for their advice, in the matter of securing uniform standards. To my mind the regulations framed by the Medical Council for the post-graduation medical education are of advisory nature and appear to be for the guidance of the educational institution. There is no mandate in Section 20 given to the educational institutions to observe the minimum standards as has been given in Section 19A. On the contrary in Section 19A, the post-graduate studies have been excluded from the criteria of minimum standards to be observed by the institutions conducting post-graduate training. On a combined reading of Section 19A and Section 20 of the Act, to my mind, the regulation regarding selection to post-graduate training is therefore not of a mandatory character. It is true that the object behind the regulation and the Indian Medical Council Act is to secure uniform standards for post-graduate education but the object, is not undermined by adopting the impugned criteria as it has not "been said that the standard of training for the Resident House Officer, Registrar etc, will be in any manner different. The impugned criteria in fact and in substance are broadly in accord with the criteria laid down by the Medical Council and it is therefore futile to impugn them as bad in law.

15. Furthermore, it is not disputed that there are five medical colleges in Rajasthan, All the five medical colleges have been judging the merit assessed on the basis of the aggregate marks obtained in the final M.B.B.S. examination. It is true that the medical colleges at Udaipur and Jodhpur have also been adding the marks of the subject concerned for which choice is given but that is a minor alteration and the real basis of the selection is merits judged on the basis of the academic record of the final M.B.B.S. examination. It is also evident from the affidavit of Mr. M.L. Gupta, the then Principal of S. M. S. Medical College (which has not been, controverted by the opposite side) that various colleges in the country--(1) The Grant Medical College, Bombay; (2) M. L. N. Medical College Allahabad; (3) C. M. C. Medical College, Ludhiyana; (4) Medical College Kanpur; (5) Medical College Meerut; and (6) R.G. Kar Medical College Calcutta have been adjudging the merit on the basis of the aggregate marks obtained at the final M.B.B.S. examination for post-graduate medical training and no objection has been ever raised by the Medical Council of India despite inspection by its officials. The regulation has been Interpreted by the various medical colleges including the

colleges of Rajasthan in the manner that the merit be judged on the basis of aggregate marks of the final M.B.B.S. examination. This interpretation cannot be ruled out as wholly unreasonable. On the other hand it is a reasonable and plausible one. Reference in this connection may be made to *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, wherein it has been laid down that where the question involved is one of interpreting a regulation framed by the statutory body the High Court should ordinarily "be reluctant to issue writ of certiorari where it is plain that the regulation in question is capable of two constructions and it would generally not be expedient for the High Court to reverse a decision of the educational body on the ground that the construction placed by such body on the relevant regulation appears to the High Court less reasonable than the alternative construction. Even assuming that the construction on the regulation suggested by the learned counsel for the petitioner may be one of the possible constructions and even more reasonable but that by itself is not sufficient for warranting this court to interfere with the decision of the educational body or the State Government who incurs the financial liability to run the educational institutions: vide *R. Chitrlekha and Another Vs. State of Mysore and Others*,

16. Moreover selection for the training to the post-graduate medical course has already been made in the four medical colleges of Rajasthan long ago on merit based on the academic record of the final M.B.B.S. examination and course of study has also commenced in those colleges. Now to issue direction to adopt a different criteria as suggested by the learned counsel will, instead of promoting uniformity of standards, would entail different standards in the colleges of the same State and may tend to upset the selections of the students in the other medical colleges of Rajasthan. That course will not at all subserve the public interest and may lead to great public inconvenience. It is well to remember that the High Court while exercising its power under Article 226 does not sit as a court of appeal to review the decisions of the administrative body. Its powers are of discretionary nature. The interpretation put on the impugned criteria is broadly in accord with the regulation of the Medical Council and appears to be a reasonable one. In this view of the matter also, it will be not expedient to interfere with the interpretation put by the medical colleges of Rajasthan on the criteria laid down in the regulation of the Medical Council.

17. Lastly it was contended that the non-petitioners Nos. 1 and 2 have no power to review their order dated 18th of April, 1975, contained in Annexure 1. Indisputably order dated 18th of April, 1975 is of an administrative character. There is no statutory prohibition against a review of the administrative order. The administrative authority has ample power to review or revise its own order in absence of any statutory restriction. The argument that the petitioner has acquired right under order dated 18th of April, 1975 is not at all acceptable to me. The petitioner has filed two application forms expressing his choice in both of them for particular subjects within the time prescribed. In one application form, the petitioner has shown his merit on the basis of aggregate marks

obtained in all the three University examinations of the M.B.B.S. In the another application form the petitioner has shown his merit on the basis of aggregate marks obtained by him in the final M.B.B.S. examination. As stated earlier both the application forms have been submitted within the time prescribed. There is, therefore, no question of prejudice or detriment to the petitioner on account of the review of the order dated 18th of April 1975. The decision in G. Latha v. B. Saroja (1970) 2 ANWR 165 is, therefore not applicable to the facts of this case and is wholly distinguishable. The petitioner has not acquired any right under order dated 18th of April, 1975 much less vested right and it is, therefore, futile on his part to raise the plea of estoppel against the non-petitioners Nos. 1 and 2 on the authority of G. Latha v. B. Saroja. (1970) 2 AnWR 165. In any event I am not at all disposed to invoke the extraordinary jurisdiction under Article 226 of the Constitution in the facts of this case.

18. In the result, there is no force in this writ petition and the same is dismissed. Looking to the particular facts and circumstances of the case the parties are left to bear their own costs.