

(1987) 02 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.P. No. 1820 of 1986

Dr. Nirmal Lakhotiya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-02-1987

Acts Referred:

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

Citation : AIR 1987 MP 167

Hon'ble Judges : R.K. Varma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Bagadia, G.M. Chaphekar and Mr. Kokje, for the Appellant; S. Kulshreshtha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sohani, J.—This is a petition under Article 226 of the Constitution.

2. The material facts giving rise to this petition, briefly, are as follows :

In response to the advertisement (annexure "A") issued on 15th May, 1986, by the Dean, M.G.M. Medical College, Indore inviting applications from medical graduates for admission to full time diploma course in the subjects mentioned in the advertisement, the petitioner, who had passed M. B. B. S. examination from the M. G. M. Medical College, Indore, submitted the application for admission to diploma course in Radiology (D. M. R. D.). The petitioner contends that he has completed one year's house job in the subject concerned in the hospital of the Bhilai Steel Plant at Bhilai, recognised to be at par with the D. K. Hospital, Raipur, which is treated as the hospital of the Medical College, Raipur, for internship and house job, and hence the petitioner is entitled to secure admission to the Diploma Course. The petitioner has further averred that as he has done house job in the subject concerned from the Medical College of M, P., he is entitled to admission in preference to those who have completed one year house job in Medicine or Surgery in the M. G. M. College, Indore. The petitioner

contends that on 21-11-1986. a list of successful candidates who had secured admission to diploma courses was published by the respondents but the name of the petitioner was omitted in that list. The petitioner has, therefore, filed this petition.

3. In the return filed on behalf of the respondents, it is contended that as prescribed by the rules framed by the State Government for admission to Post-graduate Diploma Course, the petitioner is not eligible for admission as he has not completed house job in the concerned subject in any Medical College in the State; that only those candidates, who were selected by the Dean, Medical College, Raipur, to complete the house job at the Bhilai Steel Plant hospital, could claim to have completed house job in the concerned subject in a Medical College and that as the petitioner was not selected by the Dean, Medical College, Raipur, for completion of house job from the Bhilai Steel Plant hospital, he is not eligible for admission under the rules. It is further contended that in accordance with the priority prescribed by the rules, the petitioner is not entitled to get preference over candidates, who had done house job in an allied subject from the M. G. M. Medical College, Indore.

4. Dr. Agrawal, an applicant seeking admission to the Diploma Course in Radiology, was permitted to intervene. Shri S. C. Bagadia, learned counsel for the intervener, contended that the Court had no power to re-write the rules; that the rules framed for selection of candidates for admission to Post-graduate Courses did not admit of any ambiguity and that the petitioner was neither eligible for admission nor was he entitled to get preference over the intervener, who had completed house job in an allied subject from the M. G. M. Medical College, Indore.

5. Two questions arise for consideration in this case : (1) whether house job in the hospital of the Bhilai Steel Plant at Bhilai can be considered to be a house job in the Medical College, Raipur; and (2) whether the applicant, who has completed one year house job in the subject concerned in the Bhilai Steel Plant hospital, is entitled to get preference over candidate, who has done house job in an allied subject from the M. G. M. Medical College, Indore.

6. Now as regards the first question, the matter came up for consideration before a Division Bench of this Court in *Rajendra Kumar v. The State of M. P.* (Misc. Petn. No. 911 of 1981 Jabalpur). In that case, the petitioner, who had done his house job in D.K. Hospital, which is a Government hospital at Raipur, assailed the admission granted to the respondent to the post-graduate course at the Medical College, Raipur, on the ground that the said respondent was not qualified for selection in preference to the petitioner as the said respondent had not done house job in the same Medical College. This Court, after noting that the Raipur Medical College has no hospital of its own, observed as follows :

"The Medical College, Raipur, is affiliated to the Raipur University. A Committee headed by the Dean of the Medical College was constituted by the University for

recommending whether the housemanship undergone in the Bhilai Steel Plant Hospital should be recognised as housemanship in the Departments of Medicine, Surgery etc. of the Medical College, Raipur. This Committee submitted its report on 18th March 1975 (annexure R-7), recommending the recognition of the house job done in the said hospital. This recommendation was accepted by the University on 31st July 1975. The Medical Council has also recognised the hospital of the Bhilai Steel Plant. This is clear from the communication dated 5-1-1980, received from the Medical Council by the Raipur University."

This Court then proceeded to hold as follows :

"Having regard to the aforesaid facts and circumstances, we are not prepared to take the view that the College Council did not properly construe Rule 3.1 in treating the Bhilai Steel Plant Hospital at par with the D. K. Hospital, Raipur. In our opinion, they were right in treating the house job done in the Bhilai Steel Plant Hospital as house job done in the same medical college within the meaning of the said rule."

Our attention has not been drawn to any other decision taking a view contrary to that taken in Misc. Petn. No. 911 of 1981 (supra). The learned Government Advocate informed us that the College Council of the M. G. M. Medical College, Indore has also not taken any decision that the house job in Bhilai Steel Plant Hospital cannot be treated at par with the house job done in a Medical College Hospital. We should have, therefore, thought that the decision in Misc. Petn. No. 911 of 1981 (supra) holds the field but it is, however, urged on behalf of the respondents that only those candidates, who were selected by the Dean, Medical College, Raipur, to complete the house job at the Bhilai Steel Plant Hospital can be held to have completed house job in the Medical College, Raipur. There is, however, nothing in the judgment in Misc. Petn. No. 911 of 1981 to indicate that house job done in Bhilai Steel Plant Hospital can be held to be at par with the house job done in the Medical College, Raipur only if the candidate concerned had been selected by the Dean, Medical College, Raipur for doing house job in the Bhilai Steel Plant Hospital. We asked the learned Government Advocate to produce before us the paper-book in that case to ascertain the stand taken by the respondent State in that case. The learned Government Advocate accordingly produced that paper-book. The material portion of the Return filed by the respondent State in that case is as follows :

"That the number of posts of House officers depends on the number of beds available in the hospital. To provide more opportunities of training for houseman, a well-equipped hospital, run by Bhilai Steel Plant, was recognised by the Ravi Shankar University for purposes of housemanship, vide its decision dated 17-6-75, annexed hereto and marked as ANNEXURE R-VII. Before recognition, a team of medical experts from the College was sent to inspect the Bhilai Main Hospital by the University. The faculty of Medicine considered the said inspection report and recommended to the Academic Council for the grant of recognition to the said hospital for housemanship, which in turn recommended the matter for

decision to the Executive Council. Thus, the housemanship done in D. K. Hospital and Bhilai Steel Plant Hospital are treated as done in the same Medical College for compliance of 3.1 of the Rules of Guidance. Subsequently, the Medical Council of India also recognized the Main Hospital of Bhilai as hospital for Housemanship, - which is a qualification requisite for registration for post-graduation. The order so issued of recognition dated 5-1-80 by the Medical Council of India is filed herewith as ANNEXURE R-VII."

The respondent State has in that case further averred as follows :

"That the Housemanship completed at D. K. Hospital or at Bhilai Steel Plant Hospital, Bhilai, are treated at par for purposes of selecting candidates for post-graduation. This has been the practice in the College in the past years."

"It is submitted that the College at Raipur had only one hospital D. K. Hospital, affiliated to it for purposes of Housemanship till June 1975. Thereafter, the Main Hospital, Bhilai was also recognised by the Ravi Shankar University, Raipur for House-manship. Since then, the students of the College are also doing their Housemanship at the said Bhilai Hospital, This arrangement was done because the number of seats of Housemanship at D. K. Hospital was limited. The number of seats for House Officers are dependent on the bed strength of the hospital. The recognition of Housemanship done at Bhilai Hospital by the Ravishankar University Raipur provided more students of the College the opportunities to complete the House-manship, thereby becoming eligible for post-graduation at the College. The Selection Committee for Housemanship at Bhilai Hospital included in its membership the Dean of the Medical College, Raipur and Dean of Faculty of Medicines of the University. Since July 1975 the students of the College, who have completed their housemanship at Bhilai Hospital were treated by the College at par with the candidates, who had done the same at D. K. Hospital, Raipur."

It was on account of the unambiguous stand taken by the respondent State in Misc. Petn. No. 911 of 1981 (supra) that this Court held that house job in the Bhilai Steel Plant Hospital can be considered to be house job in the Medical College, Raipur and the decision in Misc. Petn. No. 911 of 1981 did not turn on the question as to whether selection for the house job in the Bhilai Steel Plant Hospital was or was not done by the Dean, Medical College, Raipur. Having given our anxious consideration to the matter, we see no valid reason to differ from the view taken in Misc. Petn. No. 911 of 1981 (supra). It must, therefore, be held that the petitioner having done house job in the concerned subject from the Bhilai Steel Plant Hospital must be held to have done house job from the Raipur Medical College.

7. The next question that arises for consideration is whether the petitioner, who has done house job in Radiology from Bhilai Steel Plant Hospital and would, therefore, be considered to have done house job from the Medical College, Raipur is entitled to preference over a candidate, who has done house job in

Medicine or Surgery from the M. G. M. Medical College, Indore. Now in the advertisement annexure "A", inviting applications for the post-graduate diploma course, the condition as regards eligibility is as follows :

"Candidates must have completed one year's house job in the subject concerned. For D.A. & D.M.R.D. course, house job of Medicine or Surgery can be considered, if suitable candidates having done house job in Anaesthesia or Radiology are not available."

As regards priority, it is provided as follows : "Priority :

(a) Admission to a Diploma Course for a period of one year :

(i) Candidates, who have completed one year house job in subject concerned from this College or will be completing the same in the calendar year.

(ii) Candidates, who have completed one year house job in the subject concerned from the Medical College of Madhya Pradesh or complete in the calendar year."

(c) Admission to a Diploma Course for a period of one year:

(V) Candidates, who have completed one year's house job in the subject concerned from the college situated outside of M. P."

Reading the two provisions together, it is amply clear that a candidate, who has done house job in the subject concerned from the M. G. M. Medical College, Indore, is to get preference over a candidate, who has done house job in the subject concerned from some other Medical College of Madhya Pradesh and that if no suitable candidate, who has done house job in the subject concerned from any Medical College is available, then a candidate, who has completed house job in Medicine or Surgery can be considered. The terms of the advertisement are in conformity with the recommendations on Post-graduate Medical Education approved as Regulations u/s 33, Medical Council Act, 1956. The relevant recommendation is as follows :

"Criteria for the selection of candidates :

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

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

(c) They must subsequently have done one year's housemanship prior to admission to the post-graduate degree or diploma course. Housemanship should preferably be for one year in the same subject or at least six months in the same department and the remaining six months in an allied department. Provided that in departments like Radiology/ Anaesthesiology/Physical Medicine &

Rehabilitation, where suitable candidates, who have done housemanship in the respective subject for the respective speciality are not available, then the housemanship in Medicine and/or in Surgery may be considered as sufficient."

It was contended on behalf of the intervener that the recommendations of the Medical Council are merely directory and reliance was placed on the decision of the Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, . Now if the criteria for selection, as laid down in the advertisement inviting applications for post-graduate diploma course happens to be in conformity with the recommendations of the Medical Council, we fail to appreciate as to how there can be any justification for ignoring the criteria for selection laid down in the advertisement on the ground that it is in conformity with the recommendation of the Medical Council, which is merely directory. Our attention was also invited to the executive instructions issued by the State Government providing for rules for admission to post-graduate diploma courses in Medical Colleges in Madhya Pradesh. The priority for admission, as provided therein is as follows :

"The priority for admission to diploma courses for merit candidates would be as under:

(i) The candidates completing house job in the concerned subject and in the same Medical College. For diploma in Anaesthesia (D.A.) and Diploma in Radiology (DMRD) if a candidate with house job in Anaesthesia/Radiology is not available, then a candidate, who has done house job in Medicine or Surgery would be considered. Similarly for diploma in Forensic Medicine (DFM) and Clinical Pathology (DCP) candidates having done house job in Medicine or Surgery would be preferred.

(ii) The candidates completing house job in the concerned subject and in other Medical College in the State.

Now the aforesaid executive instructions have to be read along with the advertisement because it was never suggested that in issuing the advertisement annexure "A" there was any error. In this connection, we may usefully refer to the following observations of the Supreme Court in *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, : -

"But can it be urged that advertisement was issued ignoring Government instruction, if any, relevant to the subject. In any event, such a vague direction that the selection of candidates will be made strictly in accordance with the instructions issued by the Government, in the face of advertisement, leaves us cold because any such instruction must be in conformity with some rules and if there be rules, the same must be in conformity with the Regulations framed by Indian Medical Council if its jurisdiction extends to Jammu and Kashmir. It was never suggested at any point of time that in issuing the advertisement there was any error. If that be so, the College authority including Principal issuing advertisement and inviting applications for admission must be held bound by it

unless shown otherwise."

The requirement as regards eligibility and the provisions regarding priority are set out in the advertisement in unambiguous terms and as already pointed out, are in conformity with the Regulations framed by the Medical Council. According to the terms of the advertisement, a candidate, who has done house job in Medicine or Surgery can be held to be eligible for admission to diploma course in Radiology only if suitable candidate having done house job in Radiology is not available. It, therefore, follows that a candidate having done house job in Radiology in a Medical College is to get preference over a candidate who has done house job in Medicine or Surgery from the Medical College, where admission to the post-graduate Diploma Course is sought. Our attention was invited to the letter annexure R-I written by respondent 2, the Dean Medical College, Indore, to respondent 3, the Director, Medical Education, communicating the recommendation of the College Council in its meeting held on 9-10-1986, that the priority should be so fixed as to give preference to the candidate, who has done house job in allied subject in the parent College over a candidate, who has done house job in the concerned subject in some other Medical College. This recommendation is subsequent to the advertisement annexure "A" issued in May 1986 and cannot have, therefore, the effect of altering the conditions for admission set out in the advertisement. As held by the Supreme Court in *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, , the authorities issuing advertisement and inviting applications for admission must be held bound by it unless it is shown that in issuing the advertisement, there was any error. Recommendations made by the College Council for refixing the criteria for selection subsequent to and contrary to the advertisement issued in that behalf, cannot provide the basis for selection of candidates for the post-graduate Diploma Courses. The requirements set out in the advertisement annexure "A" should, as held by the Supreme Court in *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, , provide the basis for selection and eligibility for admission to the post-graduate diploma courses.

8. For all these reasons, this petition is allowed. It is admitted that a seat in the postgraduate diploma course in Radiology in the M. G. M. Medical College, Indore is vacant. It is directed that the petitioner shall be held to be eligible for admission to the postgraduate diploma course in Radiology and shall be entitled to preference over a candidate, who has done house job from the M. G. M. Medical College, Indore in Medicine or Surgery. Selection of the candidate to fill the vacant seat in the postgraduate diploma course in Radiology shall accordingly be made by the respondents in the light of the aforesaid direction. In the circumstances of the case, parties shall bear their own costs of this petition. Security amount, if any, be refunded to the petitioner.