

(1998) 05 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule No. 3493 of 1997

Dr. Pankaj Kr. Lahkar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997 — Rule 11, 12, 18, 3, 4
Constitution of India, 1950 — Article 14, 166, 226
General Clauses Act, 1897 — Section 21

Citation : (1998) 2 GLT 364

Hon'ble Judges : V.D. Gyani, Acting C.J.; D. Biswas, J

Bench : Division Bench

Advocate : N.N. Saikia and G. Deka, for the Appellant; P.G. Baruah, A.G. and H.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, Actg. C.J.

1. By this petition under Article 226 of the Constitution, the Petitioners who are all MBBS having completed their internship, seek to challenge the Assam Medical Colleges (Regulation of Admission to the Post Graduate Courses) Rules, 1997 (for short "the Rules") and pray for a declaration that Rules 4(ii) and 4(vii) are ultra-vires of the Constitution. These Rules have been filed as Annexure-3 to the petition. Rules 4, 5 and 8(7) which are under challenge as ultra-vires and unconstitutional are reproduced hereunder for ready reference:

4 (RESERVATION IN SEATS:

(i) All India Quota seats: 25% of the total seats, as referred to in Rule 3 shall be reserved for the candidates recommended by the Central Government on the basis of all India Entrance Examination.

(ii) N.E.C. Quota Seats: Two seats in degree and two seats in diploma courses

shall be reserved for the candidates recommended by the North Eastern Council.

(iii) Teachers Quota Seats: six seats shall be reserved for those teachers who are appointed on a regular basis on the recommendation of the commission, in any of the Medical Colleges of Assam and who had at least 3 years teaching experience after regular appointment in the subject/discipline for which the seats is available provided that the requirement of teaching experience may be relaxed by a maximum of 1 year in case of pre and para clinical subjects, by the Government.

(iv) State Health Service Quota Seats: Twenty seats shall be reserved for the doctors appointed in the State Health Services on a regular basis on the recommendation of the commission and who have worked for at least five years on a regular basis in any Health Centre/Institution which is not situated in a municipal area.

(v) Following percentage of the seats available after excluding the seats reserved as referred to in (i), (ii), (iii) and (iv) above shall be reserved for scheduled castes, scheduled tribes and OBC/MOBC candidates:

S.C. - 7% S.T. (P) - 10% S.T. (H)- 5% OBC/MOBC - 15%

(vi) On the date of commencement of these rules, the number of total seats in different disciplines in different colleges and their break up among the reserved categories as mentioned in Sub-rule (i), (iv) and above shall be as in Appendix-1, changes, if any, in this regard shall be notified at the time of advertisement for admission by the Government.

Provided that the seats shown in the Appendix-1 as pool seats for post-Graduate Degree/Diploma courses shall be distributed among the different categories every year by the Government.

Provided further that the seats referred to in Sub-rules (ii) and (iii) above shall be provided by the Government from year to year basis from out of the remaining seats after excluding the reserved category of seats as mentioned in Sub-rules (i), (iv) and (v) above. However, the seats reserved under Sub-rule (ii) shall be provided by the Government of North Eastern Council and the allotment of subject shall be decided by the Government.

5. ENTRANCE EXAMINATION AND ELIGIBILITY THEREOF:

(i) An examination shall be conducted for the purpose of admission to the post-Graduate Degree and Diploma courses in the Medical Colleges of Assam by the Gauhati University as per the scheme given at Appendix-II. Provided that the candidates referred to in Sub-rules (i), (ii), (iii) and (iv) of Rule 4 shall be required to appear in the entrance Examination.

(ii) The University authorities shall prepare a merit list based on the sum total of the marks obtained in all the three MBBS examinations by each candidate and publish the same in the leading Newspapers in the State.

(iii) For appearing in the examination a candidate must:

(a) be a citizen of India.

be a permanent resident of Assam and must furnish a certificate to this effect.

(c) have an MBBS degree and permanent registration with the State Medical Council.

(d) not be under going any post-Graduate (Degree or Diploma course in any of the Medical Colleges of Assam.

8) VACANT SEATS:

i)

ii)

iii)

iv)

v)

vi)

(vii) Any seat lying vacant under the category referred to Rule 4(i) shall be filled up by the Director, Medical Education with the approval of the Government in accordance with the procedure of Rules 8(i) and 8(v) and after informing the Government of India of such vacancy.

Rule 4 deals with reservation in seat, while Rule 5 provides for entrance examination and the conditions of eligibility thereon. Rule 8(vii) makes provisions in any seat lying vacant under the category for a vacant seat. The main thrust of Petitioners' challenge is that the rules under challenge are unguided and unprincipled arbitrary power. The Respondent's action in challenging the Rules have been dubbed and denounced as most arbitrary. The earlier Rules of 1994 as framed were in consonance with the Medical Council of India. Whereas some of the Rules of 1997 are clearly violative of the recommendations made by the Medical Council and the Constitutional provisions. In framing of Rules of 1997 the Respondents have taken an arbitrary decision adversely affecting the Petitioner's rights as candidates eligible for admission to post-graduate courses. The Respondent State denying the allegations made by the writ Petitioners have in their affidavit-in-opposition while admitting the framing of Rules for regulating admission to the post-graduate courses in the Medical College of Assam vide Notification No. HLB 32/96/60 dt. 6.6.97 have further averred that in these rules some inadvertent printing mistakes crept in. Admittedly printing copies of these Rules were circulated amongst the intending candidates, also contained inadvertent printing mistakes which according to the Respondents were inadvertent in nature. The correct version of Rule 5(ii) as quoted in the affidavit-in-opposition reads as follows:

The University authorities shall prepare a merit list passed on the sum total of the marks obtained in the Entrance Examination and % of marks obtain in all the 3 (three) MBBS examination by each candidate and publish the same in the leading newspaper in the State.

2. Similarly, Rule 5(i) as it appears in the printing copy of rules also contained some printing mistakes, as averred by the Respondents. In the last but one line a printing mistake has crept in, the word "not" has been omitted between the words "shall" and "be". The Rules as approved by the Govt. of Assam excludes candidates covered by Sub-rules (i), (ii) and (iii) of Rule 4 from appearing at the entrance examination.

3. Although, strictly speaking, these Rules are noting but instructions issued under Article 166 of the Constitution of India, they cannot be termed as statutory rules, While Ae writ Petitioners challenged that the Rule 5(ii) as notified by way of corrigendum issued by the Director of Medical Education, Respondent No. 3 on 11.7.97, while doing so, the Assam Rule of executive Business, particularly Rules 11 and 12 of Part-I and II thereof had not been followed. As such this corrigendum has been denounced as invalid. The Respondent however have denied any contravention of the Rules of Executive Business. The other ground of challenge to Rule 5(ii) is that the Rule, as it originally stood, did not stipulate the marks obtained in the common entrance examination as the basis for selection of candidates, as according to them the selection of candidates as provided in Rule 6(1)(b) of the Rules was to be based on merit list prepared by the Gauhati University for selection of candidates for different categories of seats for Post-Graduate Course. The Respondents again have sought shelter behind the "printing mistakes". According to the Respondents the marks obtained at the MBBS examination since the only criteria for finalising the merit list for admission into the Post-Graduate Courses, it is to be considered along with the marks obtained in the Joint examination. So far as the reservation of seats as provided for under Rule 4, the Respondents have defended the reservation of two seats in favour of N.E.C. (North Eastern Council) quota on the ground that Assam being the largest State amongst the seven north eastern States, having the maximum facilities for Post-Graduate Courses in Medicine, it is the responsibility of the State of Assam to assist the neighbouring State in strengthening their manpower in medicare and medicine facilities. It was for this reason that the Govt. of Assam had to agree two seats each in Degree and Diploma Courses in the three Medical Colleges in Assam on a regular basis. These seats are to be filled up from the nominees of the North Eastern Council from amongst the candidates of North Eastern States excluding Assam. As for the reversion of seats under Rule 18(vii) which has been challenged by the Petitioners, the Respondents have taken the plea that All bdia seat remaining unutilised at times revert back to the State College. Therefore, the Govt. of Assam keeping in mind ttie interests of the neighbouring State had decided that in case of demand for more seats then what is provided under Rule 4 from the neighbouring States, the said demand will be consideted on first priority basis for allotment from the unutilised seats of the

Central Govt. quota. It is contended that there is no irregularity in making such a provision. As for reservation of seats in teachers quota, the Respondents' case is that in view of the difficulty faced, the teachers' quota has been included along with the general seats. The Petitioner's contention that there is bound to be a difference of standards in judging the candidates.

4. Before we come to the specific grounds of attack as regards reservation of seats, we would like to dispose of the ground relating to the corrigendum, Annexure-6 as issued by the Director, Respondent No. 3. The Respondents have come out with an over-simplified and somewhat misleading defence, seeking shelter behind "printers devil" in publication of the Rules, 1997, Annexure-3. The writ Petitioners have also tried to make the most such an error, little realising that equitable reliefs of writs cannot be claimed on such grounds. Harping on the "printers devil" is nothing but chasing the shadow leaving aside the substance.

5. There is one point of substance made out by the Petitioner. It is non-compliance of Rules 11 and 12 of the Part-I and II of the Assam Rules of Executive Business. A specific plea has been taken by Petitioners in this behalf in paragraphs 18 and 19 of the writ petition, which the Respondents have miserably failed to meet with in their affidavit-in-opposition. Relevant para 14 and 15 of their affidavit are re-product below:

That the statements made in para 18 of the writ petition relates to Article 166 of the Constitution of India and the Rules of executive business framed by the Govt. of Assam and the deponent craves the indulgence of your Lordships to refer and rely those matters at the time of hearing if it need be.

That the statements made in para 19 of the writ petition are not correct and the deponent denies the same. The corrigendum issued by the Director of Medical Education is not at all against the Rules approved by the State Government. The deponent craves the leave of your Lordships to produce the copy of the rules approved by the State Government at the time of hearing.

6. A very substantive point of law has been raised by the Petitioners. If a notification containing rules has been issued and promulgated in the name of the Governor of the State, duly so authenticated, it cannot be varied rescinded or amended by any subordinate authority, if it needs to be amended, it must be done in accordance with the procedure as contained in the Rules of Business particularly Rules 11 and 12. The same having not been or shown to have been done, it cannot be held that the corrigendum, Annexure-6 was duly so issued in accordance with law. Section 21 of the General Clauses Act is very clear on this point.

7. Secondly, if the Respondents were in fact in possession of the rules as approved by the State Govt. what prevented them from placing the same on record. The Supreme Court had occasion to deal with this aspect of the matter in *Bharat Singh and Others Vs. State of Haryana and Others*, , as follows:

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ Petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the Respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

8. Following the same it cannot be said that the Rules, Annexure-3 were duly amended as required by law, nothing has been placed on record, to take a different view, yet we proceed to consider the other points as regards reservation of seats and entrance examination.

9. The first ground of attack is the reservation of seats in favour of North Eastern Council, in all four seats have been reserved (two each for degree and diploma course). The relevant Rule 4(ii) is quoted below:

N.E.C. Quota Seats: Two seats in degree and two seats in diploma courses shall be reserved for the candidates recommended by the North Eastern Council.

10. A mere glance at the Rule would go to show that four seats have been reserved for candidates recommended by the North Eastern Council. What is the basis for recommendation? A wide uncanalised, unprincipled discretion has been conferred on the council. The justification advanced by the Respondents is to be found in paragraph 18 of the affidavit-in-opposition filed by them. It reads as follows:

That with regard to the statements made in paragraphs 24, 25, 26, 27, 28, 29 and 30 of the writ petition, the deponent begs to state that the North Eastern Council (NEC) supports the developmental programmes in all the 7 (seven) North Eastern States which include the development of facilities for medical education. Since the State of Assam has the largest facility for post Graduate in the medical discipline, it is the responsibility of the State to provide assistance to the neighbouring States in the development of their medical man power. In consultation with the North Eastern Council, it has been agreed by the Govt. of Assam to provide 2 (two) seats each in Degree and Diploma courses in the 3 (three) Medical Colleges in Assam on regular basis. The seats will be filled up from the nominees of the North Eastern council who will make selection from amongst the candidates of all the North Eastern States other than Assam and there is no illegality or irregularity in it.

11. We go by the stand as taken by the Respondents who are the fortunate nominees of the council, what are the guidelines for such nomination, either in

the Rules or in the stand taken by the Respondents. Vesting discretionary power is one of the commonest ways of implementing Rules in Administrative Law, but this conferment of discretionary power is a trust, it cannot be an unfettered absolute discretion, vesting in an authority or body and courts have refused to countenance such conferment of unfettered discretionary power. All power has legal limits, but in the instant case it is limitless. Such arbitrary unprincipled, unfettered discretion offers the most fertile soil for growth of all sorts of injustices, resulting from abuse and misuse of power as Dicey propounded in his celebrated commentary Law of the Constitution, that wide discretionary power was incompatible with the rule of law.

12. The Supreme Court in *State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others*, had occasion to deal with a similar situation, albeit with slight difference in respect of body, organisation or council. It was a case of trust having donated Rs. 15 lakhs and reservation of seats made in favour of the donor. Reiterating its earlier view in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, the Supreme Court held that where an individual or organisation which helps in establishing or running a medical college that individual or organisation helping in establishing or running a medical college is not entitled to admit students of its own or in its discretion. It is inconceivable that a person or body which has assisted in setting up a medical college cannot be permitted to have a quota of its own to which it can nominate students of its choice. There is no room in such an arrangement in law. J.P. Unnikrishnan has again been reiterated and reaffirmed in a very recent judgment as reported in *Thappa Institute of Engineering v. State of Punjab 1997 (1) Supreme*.

13. The different grounds of attack as contained in paragraphs 25 to 30 and part of 31 of the writ petition have not been even attempted to be met with by the Respondents whose cumulative reply has already been quoted above.

14. In view of the foregoing discussion Rule 4(ii) relating to N.E.C. Quota Seats, as it now stands, cannot be allowed, it is liable to be struck down as arbitrary and unfettered and accordingly struck down.

15. What holds good in case of Rule 4(ii) also holds good in relation to Rule 8(vii) providing for filling of vacant seats under Rule 4(i), the same principle of unguided, uncanalised unfettered discretion applies here as well.

16. Six seats have been reserved under Rule 4(iii) as teachers quota, which the Petitioners have challenged as lacking in guidelines. The writ Petitioner's pleaded case as contained in paragraph 32(A) of the petition and the Respondents reply thereto, are reproduced hereunder to facilitate better appreciation of the rival contention.

That the Petitioners beg to state in regard to the reservation of seats in teachers quota no guidelines is provided in 1997 Rules. In 1994 Rules 5 seats reserved for teachers quota are shown separately. But in 1997 rules the seats reserved for

teachers quota are included in general seats. Whereby some genuine and eligible candidates of general stream will be deprived from getting seats. Hence the Petitioners have reason to believe that the Respondents authorities have made such type of anomalies in reservation of seats with some ulterior motive, for benefit of some interested persons.

That the statements made in para 32A of the writ petition, the deponent begs to state that the demand in respect of upgrading the skills of the teachers of the Medical Colleges varies in the matters of medical discipline concerned from year to year. It is difficult to reserve seats in particular discipline in view of this difficulty, the teacher's quota has been included along with the general seats and at the time of selection, the State Govt. would finalise the subjects in which it is necessary to provide seats for the teachers of the medical colleges.

Apart from the above reservation of six seats in teachers quota twenty seats have been reserved for State Health Services and the same has also been challenged by the Petitioners.

17. As a result of above reservations and how adversely they operate, against the interest of the Petitioners in general quota can be seen from the break up of total number of seats available in the State for post-graduate courses as given in Annexure-3.

Subject	Total Seats	Central Quota	State Health Service	ST(P)	SC	ST(H)	OBC
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Degree	164	40	13	10	4	4	12	70	11
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Diploma	64	16	7	4	3	-	4	20	10
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Even almost 14 years after Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, case wherein the Supreme Court so far as admission to post Graduate Courses is concerned has clearly and categorically held as follows:

We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the

same manner as directed by us in the case of admission to the MBBS course. But, even in regard to admissions to the post-graduate course we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.

18. It is really surprising that reservations not Constitutionally provided are still being perpetuated. Learned senior counsel Mr. Saikia appearing for the Petitioners strenuously urged that merit, at the Post Graduate level is only the consideration for admission subject to the Constitutional reservations. As regards allotments of seats, he submitted if any vacancy arises in that case also the merit shall have to be taken into account and merit means the merit of the persons who have already been selected as well as the students who are in the waiting list.

19. Pradeep Jain has all along been followed and holds the fields, merit being the sole criteria for admission to Post-graduate courses has been upheld by the Supreme Court in one of its very recent judgment as reported in Dr. Sadhna Devi and others Vs. State of U.P. and others, The Supreme Court in the case of Dr. Sadhana v. State of U.P. has expressed its doubt about the reservation being made even in respect of Scheduled Caste and Scheduled Tribes in post-graduate level quoting the following passage from Dr. Jagadish Saran and Others Vs. Union of India (UOI), the Supreme Court has held:

The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.D. MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in in-making is a national loss, the considerations we have expanded upon as important loss their potency... We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

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.

20. Now let us analyse the reservations made by the Respondents-State Government in respect of teachers and members of State Health Services. There was no such reservation under Rules of 1994, Annexure-2 so far as the reservation for State Health Services quota is concerned. Now 20 seats have been reserved under the Rules 1997, Annexure-3. It is also significant to note that Rule 4(iv) provides for reservation of seats for members of the State Health Services who have worked for at least five years on regular basis in any Health Centre/Institution which is not situated in Municipal area (emphasis supplied). It is well known in these days, many of the Health Centres and Institutions are

situated in the outskirts of the cities either the capital cities or the District Headquarters and may not be covered within Municipal areas or Corporation areas, but the (sic) cannot at the same time be considered as runreas, (sic) they are integral part of the city as thought (sic) within the Municipal area. It is not as if the reservation (sic) Doctors made in case of such Doctors who (sic) rendered services in remote rural areas and what is the rational behind such reservations, is it going to improve the medical services rather the Primary Health Centres in remote villages are that well equipped and furnished so as to utilize the services of a highly qualified post-graduate Doctor? or a Specialist? What they really need is nor Specialist or super-Specialist, but the basic medical facilities or para-medical services. Providing for reservation for admission to Post-graduate courses on this count has hardly any justification or rational. It is not a case to provide some incentives to Doctors who have rendered rural services for some time. The provision made is not positive in the sense that those who have rendered services in remote areas, but it is negative in that sense that the Health Centre is not within the municipal limits. This aspect of the matter was considered in Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, where the following observations have been made:

It is, of course, eminently desirable that some incentive should be given to our doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. But we do not think that such incentive should go to the length of giving a weightage of 15 per cent of the total marks obtained by a candidate. There are several reasons why our Doctors are not persuaded to go to the rural areas in order to serve the rural masses who are badly in need of medical assistance. Some of the reasons are attraction of urban life, the prospect of building up a lucrative practice which may be possible only in urban cities, lack of proper facilities and inadequate supply of necessary medicines and above all absence of social commitment and lack of desire to serve the poor and the disadvantaged. These are some of the difficulties which have to be overcome if we want doctors to move to the rural areas. We do not think that by merely offering a weightage of 15 per cent to a doctor for three years rural service we shall be able to bring about a migration of doctors from the urban to the rural areas. We are of the view that when selection of candidates is being made for admission on an all India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to post-graduate courses and if we want to produce doctors who are MD or MS, particularly surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. Moreover, we are extremely doubtful if a candidate who has rendered three years rural service for the purpose of getting a weightage of 15 per cent would go back to the rural area after he has got MD or MS degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post-

graduate courses are concerned. Even if an undertaking is taken from such a candidate that after obtaining MD or MS degree he will settle down in a rural area and serve the rural masses, it would in all probability serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc., it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community.

21. The case at hand not even rendering services in the rural areas. Instead of making a positive emphatic assertion of rendering services in rural areas, the Rules 1997 in force merely provide for having worked for five years on a regular basis in Health Centre or institution which is not situated in Municipal area and see the benefit conferred on such Doctors, they are exempted from the entrance examination. Although the Petitioners have challenged this exemption from entrance examination as notified in the corrigendum, Annexure-6 granted to candidates in the reserve NEC quota, teachers quota and Health Services quota as it is and without keeping aside the question of legality of the corrigendum, and taking the exemption from entrance examination as it is, the reservation itself being violative of Article 14 of the Constitution cannot be sustained in law and liable to be quashed in view of the discussions aforesaid. It is accordingly quashed.

22. What is expected of the State is to work towards the elimination of discrimination and to promote equality of opportunity, by reserving seats in Post-Graduate Medical Courses for certain categories or groups, as enumerated under Sub-rules (ii), (iii) and (iv) of Rule 4 of the Rules, 1997 (Annexure-3) and further exempting them from appearance at the Entrance Examination. The State Govt. has not only made a departure from the principle, merit being the sole criteria for admission to postgraduate medical courses, but have also violated the norms laid down by the Medical Council of India as contained in Clause IV-A of Recommendation on Post Graduate Medical Education as adopted by the Medical Council of India in January, 1992. Annexure-1 (which is revised upto April, 1993). These norms are:

IV. SELECTION OF STUDENTS AND PERIOD OF TRAINING

A. SELECTION OF POSTGRADUATE STUDENTS

Students for postgraduate training shall be selected strictly on the basis of their academic merit.

For determining the academic merit, the University/Institution may adopt any one of the following procedure both for degree and diploma courses:

(i) On the basis of merit as determined by a competitive test conducted by the University/Group of Universities.

(ii) On the basis of merit as determined by a centralised competitive test held at

the National level.

(iii) On the basis of their performance at the MBBS examinations provided they all come from the one University.

(iv) Combination of (i) and (iii).

23. A circular issued by the Govt. of U.P. making concession and in favour of candidates belonging to certain category as specified in the circular, and exempting them from test examination. The circular was struck down as invalid and quashed by the Supreme Court in *Dr. Sadhna Devi and others Vs. State of U.P. and others*,

24. The Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, having discussed the possibility that in highly urbanised areas, there may be a surfeit of doctors, considered the large tracts of rural areas throughout the country where competent and adequate medical services are not available concluded in paragraph 10:

But as the position stands today, there is considerable paucity of seats in Medical Colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the Medical Colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, this has burning relevance to our times when the country is gradually being broken up into fragments by narrow domestic wall, by surrender to narrow parochial loyalties.

In this very judgment, the Supreme Court further explained in paragraph 11 as under:

The object of selection can only be to secure the best possible material for admission to colleges subject - the provision for socially and educationally backward classes. Further, whether selection is from the socially and educationally backward classes. Further whether selection from the socially and educational backward classes or from the general pool, the object of selection must be to secure the best possible talent from the two sources.

The Supreme Court in paragraph 11 further explained and observed:

The fact, however, that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved.

Proceeding further the Supreme Court in paragraph 13, further observed and pointed out:

Obviously, such departure can be justified only on equality oriented grounds, for

whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality.

25. In the same case, Pradeep Jain (*supra*), the Supreme Court has in categorical and plain terms denounced the reservation on the basis of institutional preference for admission to Post-Graduate Courses, such as M.D., M.S. and the like, and this is what the Apex Court has said:

There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation.

The Court quoted with approval what Krishna Iyer, J. had said in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, A few excerpts emphasising merit are reproduced below:

Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk.

Merit must be the test when choosing the best, according to this rules or equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses.

To devalue merit at the summit is to temporise with the country's development in the vital areas of professional exercise.

In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims in the long run, may be the people themselves.

Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or post-doctoral courses in specialised subjects.

To sympathise mawkishly with the weaker sections by selecting sub-standard candidates to punish society as a whole by denying the prospect of excellence, say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not hunderd second-rates.

26. The emphasis the Supreme Court has laid on merits, is clearly and unmistakably brought out by the above passages.

27. The issue again cropped up before the Apex Court in *Dinesh Kumar* (AIR 1986 SC 1877). It was a case of weightage of 15% of total marks being given to candidates who have put a minimum of three years of rural service. The case at hand, as already noted above, is not a case of rendering rural services for a

period of 3 years or 5 years. It is only confined to services not within the municipal limits but that does not necessarily mean service in rural areas. The Supreme Court did not favour the weightage of 15% of total marks being given to such candidates and discarded the optimism that by giving such weightage migration of doctors from urban to rural areas would be feasible. Here again the Supreme Court reiterated the view that when selection of candidate is being made on All India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. The highest Court further cautioned that we must remember that what we are regulating are admission to Post-graduate courses and if we want to produce doctors who are M.D. or M.S., particularly Surgeons, who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. The Court further expressed its doubt that if a candidate who has rendered 3 years rural service for the purpose of getting weightage of 15% would go to the rural area after obtaining his Post-graduate degree, even if an undertaking is taken from him that he will settle down in rural areas and serve the rural masses, such weightage was not to be given. Explaining the reason for its views, the Supreme Court observed that it would in all probability serve no useful purpose because in the absence of the requisite facilities such a hospital, medical and surgical equipment, nursing etc., it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community. The reservation made under Rule 1997, Annexure-III, is wholly unjustified.

28. Reiterating its earlier view as pronounced in *Chander Chinar Bada Akhara Udasin Society and Others and Yasar Shaff and Others etc. Vs. State of J. and K. and Others etc.*, the Supreme Court in its very recent judgment as reported in *Ravindra Kumar Rai Vs. State of Maharashtra and Others*, has once again emphasised the need for common entrance test and merit being the sole criteria of admission. Of course, it was a case relating to the graduate course but it applies with more force to admission to postgraduate courses.

29. In view of the foregoing discussion reservation as provided for admission to postgraduate medical courses cannot be sustained. Merit being the sole criteria for such courses, subject of course to Constitutional reservation, these petitions deserve to be allowed, they are accordingly allowed. However, considering the facts and circumstances of the case no orders to cost is passed.