

(1991) 02 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 321 of 1991 along with Writ Petns. No"s. 360/91, 497/91, 406/91, 522/91 and 742/91

Dr. Prita Subodh Patgaonkar and others

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1991 Bom 381 : (1991) 2 BomCR 474 : (1991) 2 MhLj 965

Hon'ble Judges : Sujata Manohar, J;Patankar, J

Bench : Division Bench

Advocate : I.M. Chhagla with G.E. Vahanvati, Janak Dwarkadas and P.D. Gandhi, instructed by Avinish Shivade, Ajit P. Shah, S.S. Kshirsagar, Anil V. Antorker and R.M. Bhagalia, for the Appellant; Mrs. Kiran Bhagalia, Asst. Govt. Pleader, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—All these writ petitions are filed by students who have passed their final M.B.B.S. Examination from the Pune University and the Shivaji University in December 1989/January 1990 and who are seeking admissions to the Post-Graduate Courses commencing in January 1991 in the Medical Colleges run by the State Government in the State of Maharashtra. Writ Petitions Nos.321/91, 360/91, 497/91 and 522/91 are filed by a large number of students of the Pune University; Writ Petition No. 406/91 is filed by 6 students of the Shivaji University who have passed their Final M.B.B.S. Examination either from Dr. V. M. Medical College, Solapur or the Government Medical College, Miraj -- both these Colleges being affiliated to the Shivaji University. Writ Petition No. 742/91 is filed by 3 students who have also passed the Final M.B.B.S. Examination from the Shivaji University. The 3 students in Writ Petition No. 742/91, however, have taken a stand which is contrary to the stand taken by the 6 students in Writ Petition No. 406/91. This petition was filed after we passed interim orders in the other petitions. The other writ petitions were admitted and interim orders have been passed in these 5 writ petitions on 28th January 1991.

These petitions were kept for final hearing on 8th February 1991 in view of the urgency of these matters. They have accordingly been heard. At the time when these petitions came up for final hearing on 8th February 1991, Mr. Bhagalia, learned advocate appearing for the petitioners in writ petition No. 742/91 (then unnumbered) applied for being heard before any decision was given in the above 5 writ petitions. Accordingly we have heard the petitioners in writ petition No. 742/91 which has been kept for admission along with the above 5 writ petitions,

2. All these writ petitions are before us on account of the repeated changes which have been made by the State Government in the merit criteria for admission to the Post Graduate courses in Medicine conducted in the colleges run by the State Government or under its control in the State of Maharashtra. In a short period of a year and half between July 1989 and January 1991 the State Government has changed its merit criteria for admission to the Post Graduate Courses as many as 5 times. Each time changes which have been made soon to be ad hoc and without any rationale for the change. We have not been given any explanation by the State Government for these repeated changes which have been made, which appear to be without any justification. One Ganesh Damodar Jadhav, an Administrative Officer in the Directorate of Medical Education, Bombay has filed an affidavit on behalf of the State Government in all these writ petitions, in which he has not made any attempt to explain the reason for these repeated changes. Mrs. Bhagalia who appears before us on behalf of the State Government attempted to explain these changes orally by saying that every time the State Government received a representation from any student or students, rules were changed. Although she made this submission with some vehemence, she is not able to explain why no thought was given to the welfare of students or to the implications of the proposed changes before they were made. To say the least, this conduct shows a lack of understanding of what the Government itself was proposing (as will become apparent later) and a lack of responsibility on the part of the officers concerned in making these changes which admittedly affect the future career of a large number of meritorious students. This is bound to raise a considerable doubt about the reasons for such changes.

3. Prior to 10th July 1989 admissions to the Post Graduate Courses in Medicine in the colleges run by or controlled by the State Government was on the basis of Government Resolution dated 25th June 1971 under which the basis for admission was marks obtained in the Final M.B.B.S. Examination in the subject which was allied to the subject in which admission was sought in the Post Graduate Course.

4. Under Government Resolution dated 10th July 1989 several changes were made in the merit criteria for securing admission to the Post Graduate Courses. As per this Government Resolution, the final aim of the change proposed was to provide for admission to the Post Graduate Courses on the basis of total marks which a student could obtain in the First, Second and Final M.B.B.S. Examinations. In order to introduce this change gradually, it was however laid

down in the proviso to clause (8) of the Government Resolution that "... the present method of merit evaluation for admission by Government Resolution dated 26-6-1971 to be the basis for admission made upto the end of calendar year 1989 and during the calendar year 1990 admission would be made on the basis of total Final IIIrd M.B.B.S. marks and subject marks as phased out below :

The following time table shall be followed for smooth introduction of the new scheme :

July 1989 Old rules, but common merit for university area. January and List universitywise total of final July 1990 M.B.B.S. marks and additional admissions for those who would have got as per old rules of concerned subject marks (left outs). January and Total Final M.B.B.S. marks July 1991 university wise. 1992 Total IInd and Final M.B.B.S. marks university wise. 1993 Total of First, IInd & Final M.B.B.S. marks, university- wise."

As per this Government Resolution, therefore, admission to the Post Graduate courses in January 1991 was to be on the basis of total marks obtained at the Final M.B.B.S. Examination university wise.

5. To this Government Resolution, within less than a month, there was an amendment of 1st August 1989. This amendment, however, does not have any bearing on the merit criteria for selection. Again, within a few days, there was an Addendum to this Government Resolution. This Addendum is dated 9th August 1989. Under cl. 3 of this Addendum, changes were made in the proviso to cl. 8 of the original Government Resolution of 10th July 1989. It substituted a new time table for the introduction of changes in the merit criteria. As per this new time table, for the Post Graduate Courses commencing in January and July 1990 as also in January and July 1991 the basis for selection was the same. The prescribed criterion was, "List university wise total of final M.B.B.S. marks and additional admission for those who would have got as per old rules of concerned subject marks (left outs)." Thus, the criteria for admission to January and July 1990 Post Graduate Courses remained the same as in the Government Resolution of 10th July 1989. But the merit criteria for selection to the January and July 1991 batches were altered. While admission to these batches was to be granted on the basis of total marks obtained at the Final M.B.B.S. Examination as per the Government Resolution of 10th July 1989, additional admissions were also to be provided in these two batches for those who would have got admission as per old rules of concerned subject marks but whose names did not figure in the main merit list prepared on the basis of total marks in the Final M.B.B.S. Examination.

6. Once again in January 1990, in less than 6 months of the last addendum, the basis for selection to the Post Graduate Courses in January 1991 was changed by a Government Resolution dated 6th January 1990. As a result of this Government Resolution, once again, "in order to ensure smooth introduction of the new method of calculation of merit and to give reasonable notice to graduate

medical students", the Government made changes in the method of determining merit. This time, for January and July 1990 batches, selection on the basis of total Final M.B.B.S. marks was scrapped. Additional admissions on the basis of subject marks were also scrapped. Instead, the old rules for calculation of merit subjectwise was restored. For January and July 1991 batches, the only criterion for admission now retained was total marks obtained at the Final M.B.B.S. Examination university wise. The provision for additional admissions on the basis of subject marks was deleted i.e. for the January 1991 batch, the position prevailing under the Government Resolution of 10th July 1989 was restored. In 1992 the total of Second and Final M.B.B.S. Examination was to be taken into account while in 1993 the total of First, Second and Third M.B.B.S. Examination marks was to be taken into account university wise.

7. These rules remained unchanged for a whole year. Once again on 7th January 1991 a few days before the admissions opened for the Post Graduate Courses in January 1991, there was a change in the criterion for admission to these Post Graduate Courses. Now, instead of total marks obtained at the Final M.B.B.S. Examination, the basis for selection for the Post Graduate Courses in January 1991 was changed to subject marks as per the old rules.

8. It is this Final Government Resolution of 7th January 1991 which is challenged before us by the students in all these writ petitions, (except Writ Petition No. 742/91) who are seeking admission to the Post Graduate Courses commencing in January 1991. All these students appeared for their Final M.B.B.S. Examination in October, November or December 1989. After passing the Final M.B.B.S. Examination they were required to do one year of internship. On completion of internship, these students who appeared for the Final M.B.B.S. Examination at the end of 1989 have become eligible for the first time to apply for admission to the Post Graduate Courses in January 1991. They are, therefore, vitally affected by the changes which have taken place in the criteria of selection to the Post Graduate Courses between July 1989 and January 1991.

9. When one looks at Government Resolutions which have been in force from July 1989 upto January 1991, it is clear that tight from July 1989 up to 6th January 1991, there was a uniform merit criterion which was prescribed for admission to the Post Graduate Course in January 1991. This criterion was total marks obtained in the Final M.B.B.S. Examination. This was so set out in the Government Resolution of 10th July 1989, also in the Addendum of 9th August 1989 and also in the Government Resolution of 6th January 1990. In the Addendum of 9th August 1989, in addition to the total marks obtained at the Final M.B.B.S. Examination, the Government Resolution stated that additional admissions would be given to students on the basis of their subjectwise marks for admission to the Post Graduate Courses in January 1991. This provision for additional admissions was retracted on 6th January 1990 when once again the basis of total marks obtained at the Final M.B.B.S. Examination was restored for the January 1991 batch. Therefore, throughout this period there was a clear

representation made to all the students who appeared for the Final M. B. B. S. Examination in October/November/December 1989 that the criteria for admission to Post Graduate Courses for them in January 1991 would be total marks obtained at the Final M.B.B.S. Examination.

10. We have not been told why, during the short period from August to December 1989, the Government Resolution was amended to provide for additional admissions for students who would have qualified for admission to the Post Graduate Courses on the basis of their subject marks. It seems from the affidavit now filed on behalf of the State Governments that not much thought was given to this provision for additional seats. In the first place, the language of this part of the Addendum is far from clear. It provides for additional admissions. This, presumably means that extra seats are to be created. These seats are for those who would have got admissions on the basis of concerned subject marks. The words following thereafter in brackets "left outs", are said to refer to those students whose names do not find a place in the merit list prepared on the basis of total marks in the Final M.B.B.S. Examination, but who would have been on the merit list prepared on the basis of subjectwise marks. For such students, additional seats were proposed in the Addendum of 9th August 1989. This is how the State Government has interpreted its own Addendum of 9th August 1989 in its affidavit; and we accept it for the purpose of these petitions. From the affidavit which is now filed by Jadhav, it is quite clear that before framing the Addendum of 9th August 1989, or for that matter, even the Government Resolution of 10th July 1989 in so far as it pertained to admissions in January and July 1990, the Government had not bothered to consider the consequences of its own rules. The Government had not made any estimate of the number of additional seats that would be required to be so provided; nor had the Government taken the permission of the Medical Council of India for creating such seats before framing the Rules. Nor had the Government consulted the universities concerned for permission to create such additional seats before these Government Resolutions were passed. In his affidavit Jadhav has very casually stated that the Government thought that only a few additional seats would be required! Surely, the Government had the mark sheet of several previous final M.B.B.S. Examinations available to it. It could have, on that basis, estimated properly the responsibility it understood of providing additional seats. Nothing necessary for discharging this responsibility was done by the Government before framing the Rules. Jadhav, in his affidavit which he has filed on behalf of the State Government, has now stated before us for the first time that the Government is finding it impossible to provide these additional seats to students on the basis of their subject marks. Even this realization has come because under our interim order of 28th January 1991, we directed the Government to comply with the Addendum of 9th August 1989. As a result, now they have prepared a list of students who are required to be given such additional seats, They have at last discovered that there would be an immense increase of almost 50% in the number of seats for the Post-Graduate courses if additional seats

have to be created for students who would have got admission on the basis of their subject marks but who do not get admission on the basis of their total Final M.B.B.S. marks. We fail to understand why the Government did not do any basic ground work of estimating the number of additional seats which would have to be created when it framed the Government Resolutions of 10th July, 1989 and the Addendum of 9th August, 1989. The State Government has also now discovered that it would not be able to fulfil the recommendations made by the Medical Council of India as to the minimum requirements for Post-Graduate leaching if they are to create these additional seats. They would not have an adequate number of teachers nor would they have adequate number of facilities. They have also set out that the Medical Council of India has now refused to give permission for such additional seats. The affidavit also points out the difficulties which the universities concerned would face if they have to accept these excess admissions. We only wish that this exercise had been done before framing the Government Resolutions of 1989. It would have saved considerable trouble to a large number of students. The Government has thereafter withdrawn the provision for additional seats for all the batches concerned by its Government Resolution dated 6th January, 1990. But in January, 1991 the Government retracted even from the consistent representation which the Government has made throughout this period that admission in January, 1991 would be given on the basis of total marks obtained at the Final M.B.B.S. Examination. It now deleted this provision and provided that the subjectwise marks would be the criterion for admission to the Post-Graduate Courses in January, 1991.

11. In this situation, we have to consider the position of students who appeared for their Final M.B.B.S. Examination in end October/November 1989, who have now become eligible for the first time to apply for admission to the Post-Graduate courses in January, 1991. We have to bear in mind that at the time when these students appeared for their Final M.B.B.S. Examination, they were aware that as per the Government Resolution dated 10th July, 1989 they would get admission to the Post-Graduate Courses on the basis of total marks obtained by them at the Final M.B.B.S. Examination. They were also told from August, 1989 that additional seats would be created for students who would have got admission on the basis of concerned subject marks. During their internship, in the year 1990, they were aware that they would get admission only on the basis of total marks obtained by them at the Final M.B.B.S. Examination. The students when they appeared for the Final M.B.B.S. Examination were, therefore, told that (1) they would get admission to Post-Graduate Courses on the basis of their total marks in the Final M.B.B.S. Examination; (2) that additional seats would be created for those who would have secured admission on the basis of concerned subject marks, but were left out. Normally we would have held the State Government bound by both these representations. In fact, the directions given by us in the interim order were based on both these representations. But in view of the difficulties which have now been pointed out to us by the State Government in its affidavit about implementing the second representation regarding additional

seats, implementation of this second representation is wholly impractical. In these special circumstances the State Government cannot be compelled to carry out a thoughtless and irresponsible representation made by it which would damage the quality of medical education, and which it was not in a position, at any time, to give effect to. This, however, cannot absolve the State Government of its responsibility to give effect to its first and main representation that admission to Post-Graduate Courses in January, 1991 would be on the basis of total marks in the Final M.B.B.S. Examination. This main representation remained in force throughout, from July, 1989 till 6th January, 1991. In fact from January 1990, the provision for additional seats for the January and July, 1990 batches as also for the January and July, 1991 batches had been deleted. Looking to all these circumstances, in our view, the Government is bound to implement its main representation that for the January, 1991 Post-Graduate Courses admission would be granted on the basis of total marks obtained by the students in the Final M.B.B.S. Examination. It is not open to the Government to change this basis of admission by framing the Government Resolution of 7th January, 1991, long after the students concerned appeared for and passed the Final M.B.B.S. Examination.

12. On behalf of the three students of the Shivaji University in Writ Petition No. 742 of 1991 it has been pointed out to us that the students of the Shivaji University are required to appear for the Final M.B.B.S. Examination in two parts. In the present case, Part 1 of the Examination, which consists of only 200 marks and two subjects, was held in April, 1989 i.e. before the Government Resolution of 10th July, 1989 was framed. The second and more substantial part of the Final M.B.B.S. Examination, which consists of 1200 marks, was held in November, 1989 i.e. when the Government Resolutions of 10th July and 9th August, 1989 were in force. As we have set out in our interim order, in this situation where different representations were made to students at the time when they appeared for Part I of the Final M.B.B.S. Examination and Part II of the Final M.B.B.S. Examination, we have to bear in mind that the more important part of the examination is the second part of the Final M.B.B.S. Examination which consists of 1200 marks as against only 200 marks allotted to Part 1 of the Final M.B.B.S. Examination. Therefore, the representation which ought to be given effect to, in the interest of students, would be the representation in force when the more substantial part of the examination, namely, Part II, was held. A different case, therefore, cannot be made out for the students of the Shivaji University only on the ground that Part I of the Final M.B.B.S. Examination was held in April, 1989.

13. It is also sought to be urged by Mr. Bhagalia who appears for the petitioners in Writ Petition No. 721 of 1991, and by Mrs. Bhagalia, who appears for the State, that the students have studied for their medical course right from the time they enrolled for the First M.B.B.S. Examination. They were throughout under the impression that they would get admission to Post-Graduate Courses on the basis of their marks in the concerned subject as per the old Government Resolution of 1971. Therefore, we should look only to the old Government Resolution which

prevailed during all these earlier years. In our view, this contention cannot be accepted. We have to bear in mind our own examination system and the fact that most students start preparing for their Final examination a few months before the examination. Undoubtedly, some students may concentrate on their studies throughout the year. But the final and more important preparation, which is likely to secure for them good marks in the examination, commences two or three months prior to the examination. Therefore, what we have to consider from a practical point of view is the criterion held out to the students at the time when they prepared for the Final M.B.B.S. Examination. The rules for selection had been changed in July 1989, in good time before the Final M.B.B.S. Examination was held. What is more important, when the criterion for selection was changed in July 1989, the students who appeared in the final M.B.B.S. Examination in November, 1989 could never have held the belief that they would secure admission to the Post-Graduate Courses on the basis of the old Government Resolution of 1971.

14. In this connection our attention has been drawn to a decision of a learned single Judge of this Court (M. L. Dudhat, J.) dated 17th December, 1990 in Writ Petition No. 3519 of 1990. In this writ petition the students of Municipal Medical Colleges in Bombay had challenged the new Rules for Admission to Post-Graduate Courses in Municipal Colleges (for the courses commencing, inter alia, in January 1991.) which had been framed by the Bombay Municipal Corporation on 14th July, 1990. Unlike the Government Resolution of the State Government which came into force on 10th July, 1989, and which introduced total number of marks in the Final M.B.B.S. Examination as the criterion for selection to the Post-Graduate Courses, the Bombay Municipal Corporation did not change its rules for admission till a year thereafter. It was only on 14th June, 1990 that the Bombay Municipal Corporation also changed its Rules for Admission to the Post-Graduate Courses by prescribing the total marks in the final M.B.B.S. Examination as criterion for selection. In view of the fact that the Rules for Admission to Post-Graduate Courses commencing in January, 1991 had been changed only on 14th July 1990, long after the students concerned had appeared for their Final M.B.B.S. Examination, the learned single Judge held that the changed rules cannot be enforced while granting admissions to these students for the Post-Graduate Courses commencing in January, 1991 in the Municipal Medical Colleges. The learned single Judge, therefore, held that for admissions to Post-Graduate Courses in January, 1991 in the colleges run by the Bombay Municipal Corporation, the criterion for selection would be the old criterion of marks obtained in the relevant subject and not the new rules which came into force on 14th July, 1990. However, the learned single Judge, in the course of his judgment, also referred to the Rules framed by the State Government for admission to its Medical Colleges and the Government Resolution of 10th July, 1989. He made an observation to the effect that admission to the Post-Graduate Courses in January, 1991 in Colleges run by the State Government would also be on the basis of the marks obtained by the students in the subject concerned. The

learned single Judge was clearly in error in so holding. In the first place, the rules framed by the State Government were not the subject matter of that writ petition. Moreover, the learned single Judge seems to have gathered an impression that as per the Government Resolution dated 10th July 1989, the criterion for admission to Post-Graduate Courses in January, 1991 was total marks obtained by the candidates in First, Second and Final M.B.B.S. Examinations. Hence he seems to have felt that this Government Resolution of July, 1989 should not be given effect to for admission to Post-Graduate Courses in January, 1991. Learned Judge was clearly in error in believing that as per the Government Resolution of July, 1989 marks of all the three M.B.B.S. Examinations have to be taken into account for granting admission to the Post-Graduate Courses commencing in January, 1991. The observations of the learned Judge therefore in so far as they pertain to admission to colleges run by the State Government, are based on a misconception. Moreover, in the petition before him, he was only called upon to decide the basis for admission to the Post-Graduate Courses in colleges run by the Bombay Municipal Corporation. These colleges are governed by their own Rules of admission. The learned Judge was, therefore, concerned with the new Rules of admission framed by the Bombay Municipal Corporation on 14th June, 1990. In our view, the part of his decision dealing with admissions in State Government run colleges is clearly erroneous.

15. It was submitted by Mrs. Bhagalia on behalf of the State Government as also by Mr. Bhagalia on behalf of the 3 students in Writ Petition No. 721 of 1991 that there cannot be different rules for admission to colleges run by the Bombay Municipal Corporation and colleges run by the State Government. This admission has no merit. The colleges run by the Bombay Municipal Corporation have throughout had their own rules of admission, just as colleges run by the State Government have their own rules of admission. So long as these rules do not discriminate between students and apply a uniform criterion for admission to all, we do not see any reason why they should be faulted. Reliance was placed by Mrs. Bhagalia on a decision of the Supreme Court in the case of Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, . This judgment of the Supreme Court deals, inter alia, with college wise institutional preference given to students for admission to Post-Graduate Courses. The Supreme Court has struck down such collegewise institutional preference as violative of Art, 14 of the Constitution of India. This judgment has no bearing on the question before us.

16. We can also examine the question before us from a slightly different angle. The clear thrust of all Government Resolutions from 1989 onwards, despite the chopping and changing which has taken place, is towards introducing ultimately, the total marks obtained in all the three M.B.B.S. Examinations as a criterion for selection for the Post-Graduate Courses. All these Government Resolutions have also laid emphasis on introducing this change in a phased manner. Hence in the year 1991 only the total marks for the Final M.B.B.S. Examination have been considered as relevant. In the next year 1992, the Government Resolutions

provide for admission on the basis of second and final M.B.B.S. Examination marks and in the year after that, on the basis of marks obtained in the First, Second and Third M.B.B.S. Examinations. Looking to this phased manner in which the rules are sought to be changed, the Government Resolution of 7th January, 1991 is a retrograde step in so far as it seeks to revert to old rules for admission to Post-Graduate Courses in January, 1991. Looking to all these circumstances, we do not see any reason why the students who had prepared for and appeared for the Final M.B.B.S. Examination in 1989 on the basis of the Government Resolutions of July, 1989 and August, 1989 can be now heard to say that despite these Government Resolutions they should be given admission on the basis of the old rules.

17. There is one more factor which goes against the students in Writ Petition No. 721 of 1991. At least in January, 1990, it was made quite clear that for admission to January, 1991 Post-Graduate Courses, the only criterion for selection would be total marks obtained at the Final M.B.B.S. Examination. If these students had any grievance on this score, they should have moved the Court immediately thereafter in January, 1990. Quite clearly these students were aware of the fact that they would be seeking admissions to Post-Graduate Courses in January, 1991, and that the basis for selection would be total marks obtained at the Final M.B.B.S. Examination as per the Government Resolution dated 6th January, 1990. However, for a whole year they took no steps to challenge the Government Resolution of 6th January, 1990. They could not have anticipated that after another year a new Government Resolution would come to their rescue. It is only now, after our interim order, that Mr. Bhagalia has filed the present writ petition on behalf of the three students of the Shivaji University challenging the criterion of selection which has been prescribed as far back as July 1989, and again, in any case, very clearly, by the Government Resolution of 6th January, 1990.

18. In the premises, the Government Resolution of 7th January 1991, in so far as it prescribes subject marks as per old rules as a criterion for selection to Post-Graduate Courses in January, 1991 (Rule 6(f)(i) is set aside. The Respondents are directed to grant admission to the students in Post-Graduate Medical Courses conducted by the colleges run by or under the control of the State Government commencing in January/ February, 1991 on the basis of total marks obtained by the students in the Final M.B.B.S. Examination. By our interim order dated 28th January, 1991 we have already directed the respondents to permit students to give a fresh choice of preferences on or before 4th February, 1991. As per the interim order the final selection list is required to be announced on 18th February, 1991. We extend the date for announcing the final list of selected candidates up to 22nd February, 1991.

19. In order that mindless changes in admission rules may be avoided, we further direct that in future the State Government shall not ordinarily alter rules for admission without consulting the universities concerned and the Medical

Council of India and that the rules, if they are changed, shall be published extensively at least three months before the students appear for the examination or examinations in which their performance is considered as relevant as per new rules for seeking admission to courses of further study.

20. Rule is made absolute accordingly in writ petitions Nos. 321/91, 360/91, 406/91, 497/91 and 522/91. Writ Petition No. 742/91 is dismissed.

21. In the circumstances there will be no order as to costs.

22. Mr. Bhagalia applies for stay of the operation, of our order for a period of four weeks.

Application rejected.

Rule made absolute.