

(1994) 10 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No"s. 619 and 1662 of 1994

Dr. Rahul Mahajan and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Indian Medical Council Act, 1956 — Section 11, 17, 18, 19, 25

Citation : (1995) 97 BOMLR 600

Hon'ble Judges : S.G. Mutalik, J;A.A. Halbe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.A. Halbe, J.—Both these writ petitions are disposed of by this common judgment as they relate to quashing of the advertisement, dated 31st January, 1994, issued by the Office of Dean, Medical College, Aurangabad, inviting applications for post-graduate courses from medical graduates who have passed their final M, B. B. S examinations from Medical Colleges at Aurangabad and Ambajogai. Writ Petition No, 619/1994 is aimed at quashing the said notification on the ground that the medical graduates from other colleges namely. Government College Nanded are being excluded from this notification, and that there is hostile discrimination. Writ Petition No. 1662/ 1994 has been filed only to support this notification and for challenging the accommodation of Respondent No. 4 Dr. Sheikh Mohd. Ajaz in the post graduate course in Paediatrics in terms of the interim order passed in Writ Petition No. 619/1994 They are thus interrelated. If the petitioners in Writ Petition No: 619/1994 succeed, the petitioners in Writ Petition No. 1662/ 1994 must fail and in the event of first writ petition failing the second should succeed.

2. The petitioners in Writ Petition No. 619/1994 have passed M.B.B. S. examination from Marathwada University in the year 1993. They went through M.B.B.S. course in Government Medical College, Nanded and they were

legitimately expecting admission to post graduate medical courses on the basis of merit. However, on 31st January, 1994, the Dean, Medical College, Aurangabad, issued the advertisement for applications for post graduate courses from the medical graduates from the two Medical Colleges at Aurangabad and Ambajogai and thus impliedly excluded the claim of the petitioners who did their M. B. B. S. from Government College Nanded. It is contended that as per the rules framed for post graduate admissions there is nothing indicated that the graduates from Nanded college would not be eligible for admission to post graduate courses. According to the petitioners they have also been denied registration by the Maharashtra Medical Council and this was clearly in breach of the rules for admission. The petitioners further claim that the claim of the respondents that the M. B. B. S. students from the recognized college were only eligible for admission to post graduate courses conducted by the Marathwada University at the above Government Medical Colleges is discriminatory, unjust and violative of Article 14 of the Constitution. According to the petitioners, this was, therefore, hostile discrimination.

3. It is next contended that on the pleas made by Interveners 1 to 14 the further facts appear that since the Medical Colleges at Aurangabad and Ambajogai are recognized by the Medical Council of India under the Indian Medical Council Act and that Government College at Nanded is not recognized such notification came to be issued. This was not within the knowledge of the petitioners when they took their admission in 1988. Had they been aware of this fact, they would have sought admission to the Government Medical Colleges at above two places. According to the petitioners, they appeared for the same examination, they wrote the same papers which have been prescribed for the medical graduates appearing from the above colleges. The petitioners faced the same standards of valuation laid down by the university and it is evident that their performance has been superior to the interveners. This conduct on the part of the respondents was, therefore, violative of Article 14 of the Constitution of India. The State Medical Council has wrongly denied the registration. It seems that during the pendency of this writ petition, the petitioners have been given provisional registration by the Maharashtra Medical Council u/s 16(3) of the Maharashtra Medical Council Act, 1965. The petitioners claim that as soon as this registration was granted the petitioners are eligible for admission to the post graduate medical courses.

4. The interveners relying on the contention raised in Writ Petition No. 1662/1994 have contended that there is full justification for issuing the above notification. The classification based on the recognized institutions and non-recognized institutions by the Medical Council of India is rather the mandate and that the same has not been satisfied by Nanded College and for that purpose the learned Counsel for interveners has placed reliance on the observations of the Executive Committee for investigating the affairs of the Nanded Government College appointed under the above Indian Medical Council Act. The same is dated 18-3-1993 and is produced on record. The Executive Committee strongly

opposed the approval of Medical College, Nanded for award of M. B. B S. degrees. It rather recommended that the concerned authorities may be directed to stop admissions to this college at Nanded with immediate effect. It was found that the teaching staff was wholly inadequate and hence there was strong opposition to the recognition of this college by the Medical Council of India. It is also contended that prescriptions made by the Medical Council of India have to be strictly followed and there is ratio by the Supreme Court in that behalf, to which we shall come later. Reliance is also placed on the recommendations of graduate medical education by an expert body of Medical Council of India referred in the case of Shirish Govind Prabhudesai Vs. State of Maharashtra and others, .

5. The petitioners, on the other hand, have contended that they had legitimate expectation for the post graduate medical courses when they took admission in the year 1988. The same has been denied and to this the interveners have contended that the doctrine of estoppel or legitimate expectation cannot be invoked when admission to the higher medical courses is sought and their contention is fortified in the Full Bench judgment of this Court in 1991 Mah. L.J 336 , in the case of Ashwin Prafulla Pimpalwar v. State of Maharashtra. It, therefore, becomes imperative for us to examine these rival arguments. In the first place, the learned Counsel for the petitioners in Writ Petition No. 619/1994 has contended that as per the rules of admission dated 24-10-1991 the petitioners are eligible as they are medical graduates from the Government College. The said notification does not distinguish between the recognized college or non-recognized college by the Medical Council of India, They have appeared for the same examination and hence they cannot be discriminated in the matter of admission to the post graduate courses. There is sought institutional preference which has been struck down by the Supreme Court of India in the case of Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, . The Supreme Court observed that:

There is no intelligible differentia for the classification by way of college wise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification or college wise institutional preference, merit has been sacrificed, far less it has been preferred. When the university is the same for all these colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 14. So, the impugned rules are discriminatory and do not satisfy the tests of reasonable classification and, as such, cannot be sustained.

The same ratio, therefore, should be passed into service while adjudicating upon this matter.

6. Incidentally we may refer to the defence on behalf of the State. Although no return has been filed by the respondent/State the learned Government Pleader has drawn our attention to the defence which the State has been consistently taking since long and the same is in Para 20 of the judgment reported in the case of Ganesh Kishanrao Lande v. State of Maharashtra and another, (1993) Mah. L. J. 939. According to the respondents, the candidates from non-recognized college including the Nanded College are not eligible for admission to post graduate courses in the above two colleges because no recognition has been granted by the Medical Council of India and that the matter of recognition is still pending with the Medical Council of India. It would be thus abundantly clear that the defence of the State in that the petitioners cannot seek admission because they have not cleared their graduation from the recognised college. It does not seem to be in dispute that Government College Nanded is not as yet recognized by the Medical Council of India and that would be evident from the remarks of the Executive Committee referred above.

7. The important question which crops up for our determination whether such a classification between the two institutions can be raised by the respondents. The respondents and the interveners have heavily relied on the judgment of the Supreme Court reported in Shirish Govind Prabhudesai Vs. State of Maharashtra and others, , (Prabhudesai's case, cited supra. In that case, the Court found that the rule is prescribed by Medical Council of India based on the report of the Medical Council on Graduate Medical Education and according to that report the migration of a candidate from non-recognized medical college to recognized medical college was not permissible. The said rule was held to be valid and the Supreme Court observed on the argument on behalf of the petitioners that although the differentiation is not based on the examination but it is based on other considerations namely the facilities, experience available at the recognized institutions. The Supreme Court observed in the following words. The qualitative difference between the non-recognized medical colleges generally as compared to the medical colleges recognized by the Medical Council of India, the recognition being based on certain objective standards relating to medical education, and the competitive merit forming the basis for admission to a recognized medical college justify as reasonable such a restriction for grant of permission for migration/transfer from one medical college to another. There being no inherent right in a student admitted to a non-recognized medical college to claim such migration/ transfer, this restriction for migration/transfer imposed by the recognized medical colleges on the basis of the recommendations adopted by the Medical Council of India, there is no foundation for the claim for such migration/transfer made by the students of non-recognized medical colleges." It would be evident that the matter relates to this State and this State has accepted the recommendations on graduate medical education. The Supreme Court, therefore, found that such restriction was permissible and that such

restriction could well meet the argument that differentiation between the students of non-recognized medical colleges and recognized medical colleges for the purposes of migration or transfer when the degree of M. B. B. S. awarded to the students of both the categories of medical colleges is recognized by the University to which they are affiliated is discriminatory and arbitrary.

8. The learned Counsel for the interveners has also drawn our attention to another Judgment of the Supreme Court in Bar Council of India and another Vs. Aparna Basu Mallick and others, , in the case of Bar Council of India and another v. Aparna Basu. Mallick and others. In that matter students who had passed L. L. B. Examination were not registered as Advocates because they had not satisfied other conditions of attendance in classes, moot Courts, etc. In that Case, the emphasis was on attendance. The common examination at L. L. B. degree was not regarded as a ground for hostile discrimination. The Supreme Court observed. "The policy underlying the provisions of the rules makes it clear that considerable emphasis is laid on regular attendance at the law classes." Such a rule could not be struck down as arbitrary or discriminatory. From this ratio it would be clear that the examination does not form the sole criteria. The experience, the nature of institution, the nature of equipment constitute the basis for this classification. In Medical Council of India Vs. Silas Nelson and others, , in the case of Medical Council of India v. Silas Nelson and others, practically the same ratio has been laid down. The Supreme Court observed, "migration from unrecognized institution to recognized institution could be prohibited under the authority of Medical Council of India, if such migration is from unrecognized institution to the recognized medical college. This would mean that classification can be based on equipment, instructions, staff, etc. even though examination and curriculum for recognized and non-recognized colleges are same and common. We may here point out that in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the Supreme Court has observed that, "the right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide higher education is subject to the limits of its economic capacity and development of the State. A citizen has a right to call upon the State to provide education facilities to him within the limits of its economic capacity and development. The limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State." This observation has clearly laid down that right to higher education cannot be equated with the right to free education before the age of 14 years as enshrined in Article 19(1)(g) of the Constitution of India. It is subject to economic capacity of the State. Here we find that the petitioners claim admission to post graduate medical courses. The merit and the equipment with which they derive their degrees are material and it has been pointed out above that their education through the recognized institutions is most material.

9. It has been a matter of common knowledge that there has been a proliferation of medical colleges since 1988 in the State of Maharashtra. In the State of

Maharashtra, only 16 institutions i. e. Medical Colleges are recognized by the Medical Council of India. For this purpose the learned Counsel for the interveners has relied on application form and Bulletin for All India Entrance Examination for M. D. & M. S. Appendix X. Out of them, Medical College at Aurangabad and S. R, T. R. medical college at Ambajogai are the only recognized colleges, whereas Medical Government College, Nanded and M. G. Mission Medical College at Aurangabad are not recognized. It is stated by the learned Government Pleader that Nanded College is about to be recognized as compliance has been made of the requirements suggested by the Medical Council of India. But the fact is that the said college is not recognized till today. It may be recognized in the near future.

10. The Supreme Court has been consistently critical of the students from recognized institutions being allowed to appear for examination and then seeking admission to the recognized institutions. In *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, , in the case of *State of Maharashtra v. Vikas Sahebrao Roundale and others* the Supreme Court did not approve of the judgment of this Court permitting the students from unrecognized institutions for appearing to B. Ed. examination and further seeking admission after the results to recognized institutions for further study.

11. As indicated above, these are only two recognized colleges in the Marathwada area and as per Sections 11(1), 17, 18 and 19 of the Indian Medical Council Act, the unrecognized colleges have not been approved by the Medical Council of India because the formalities contemplated under these provisions have not been completed. It is indeed a fact that M. B. B, S. degree of Marathwada University is mentioned in first schedule to the Indian Medical Council Act. The decree by the Marathwada University is recognized degree but it has been pointed out that the Medical Council of India has not been satisfied with the standards of instruction, equipment, accommodation and staff provided in Nanded Medical College. There is, therefore, no recognition and u/s 19(4), the Medical Council can prescribe as to when the M. B. B. S. degree could be legally conferred to the students of recognized institutions. Under the above provisions, the Medical Council of India is authorised to appoint the Committee and also appoint the number of visitors to the medical colleges, etc. They have to report about the staff equipment, accommodation, training and other facilities prescribed for giving medical education or the sufficiency of every examination. This is for the purposes of granting recognition to the medical colleges. If the standards are below the prescribed standards, the Medical Council has to report to the Central Government which in turn has to seek explanation from the State Government in regard to the inadequacy in the requirements of the college. It is only thereafter that the Central Government can authorize issuing of qualifying degrees to students of a specified college. It is nowhere in evidence that such an enquiry was carried out in regard to the Nanded Government Medical College. On the other hand, the report to which we have referred above clearly shows that there is a strong opposition to approval by the Medical Council of India, so far as

Nanded Government Medical College is concerned. It is also clear that for All India Competitive Entrance Examination for post graduate Medical Courses the eligible candidates are only those who have obtained M.B.B.S. degree from the recognized medical college. It is clearly stated that the candidates who have obtained M. B. B. S. degree from the medical colleges which are not recognized by the Medical Council of India shall not be eligible for appearing at the above All India Competitive Entrance Examination for admission to post graduate medical courses.

12. In *U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others*, in the case of *P. Junior Doctor's Action Committee and others v. Dr. B. Sheetal Nandwani and others* it has laid down that prescriptions made by the Medical Council of India for admission to post graduate courses should be strictly observed. We have indicated in the case of *Prabhudesai (supra)* that the State of Maharashtra has adopted the recommendations of graduate medical education accepted by the Medical Council of India.

13. The learned Counsel for the petitioners has contended that during the course of pendency of this writ petition, the petitioners have been given provisional registration under the requirement of the impugned notification. The petitioners are supposed to have permanent registration by the Maharashtra Medical Council. The provisional medical registration is prescribed u/s 25 of the Indian Medical Council Act and that is for enabling the candidate for undergoing practical training in an approved institution. That by itself does not amount to permanent registration.

14. On the doctrine of legitimate expectation, the same can be answered by referring to the Full Bench judgment of this Court reported in 1991 Mah. L. J. 1336, in the case of *Ashwin Prafulla Pimpalwar v. State of Maharashtra*. The Court observed : "The Doctrine of Promissory Estoppel will have no application in relation to admissions to post graduate Courses for higher specialised studies in Medical Colleges run by or under the Control of State Government. One of the essential requirements of Doctrine of Promissory Estoppel is that one party by his word or conduct made to the other makes a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future...having regard to the dealings which have taken place between the parties it is difficult to posit such a situation in relation to a student prosecuting his studies in the Medical College. He will strive for coming out in the best colours in the ensuing examination. That is irrespective of the availability or otherwise of further educational prospects. If the Government of the day decides for justifiable reasons to discontinue or suspend post graduate Courses in the institutions run by it, no student prosecuting studies in those institutions could legitimately say that he had, by studying in or writing M.B.B.S. examination from those institutions, altered his condition to his prejudice with the consequent result that the Government is precluded from doing away with the post graduate study facilities which were obtaining at the time of his

admission to or when he was studying for the medical course. The Government which has the competence to issue rules or regulations, has, as a corollary, powers to amend or alter or even repeal and reissue such rules and regulations. It would be unrealistic to posit a theory of promisor estoppel based on the elusive concept of the preparation time for the qualifying examination. In the sphere of higher educations in professional courses, a static and stagnant continuity of rules once formulated would be totally inappropriate and dangerously counter-productive. A theory of promissory estoppel cannot be countenanced in such situations."

In view of this, we feel that the classification made in the above notification permitting only the M. B. B. S. graduates from Ambajogai and Aurangabad colleges is sustainable.

15. However, the learned Counsel for the petitioners has contended that the Petitioner Nos. 1, 3 and 4 are already accommodated in the post graduate medical courses under the above orders dated 16-2-1994. They need not be disturbed. Petitioner No. 2- Dr. Govind s/o Ramkaran Varma is being considered for the seat which has been surrendered from the quota of All India Competitive Examination. The respondent may consider the case of this Petitioner No. 2 on merits.

16. The learned Counsel for the interveners has contended that the Interveners Nos. 1 to 14 do not press their claim and that they seek to withdraw from this intervention. However, he has urged that the petitioner in Writ Petition No. 1662/94, namely, Dr. Khan Feroz Ashfaq is entitled to admission in view of his having obtained M. B. B. S. degree from Aurangabad College. He was selected for the M. D. Paediatrics but as Respondent No. 4 - Dr. Shaikh Mohd. Ajaz who was having higher marks was accommodated under the above interim orders. However, he had obtained M. B. B. S. degree from Nanded College. Since we have decided to maintain the notification dated 31-1-1994 issued by the Dean the claim of the petitioner in this writ petition must succeed. However, the learned Counsel for the Respondent No. 4 has contended that he has been accommodated under the orders of February, 1994 and that he belongs to S. T. category and that one post may be created for him. We consulted the learned Government Pleader in this behalf. He did not approve of our suggestion but also felt that this was the case of S.T. candidate and that only one seat was being asked for in the circumstances of the case, we feel that since Respondent No. 4 who is already accommodated he may be continued in the same course by creating additional seat in the said faculty. For the above reasons, we feel that the following order would be proper.

17. Writ Petition No. 619/1994 is dismissed. Rule discharged. However, the Petitioner Nos. 1, 3 and 4 shall be accommodated in the seats already allotted to them in terms of the interim order passed by the previous Bench on 16.2.1994. The case of Petitioner No. 2 Dr. Govind s/o Ramkaran Varma be considered by respondents in the seat surrendered from All India quota.

Writ Petition No. 1662/1994 succeeds. Rule made absolute. The petitioner shall be given admission by the respondents. However, respondents shall accommodate Respondent No. 4 Dr. Sheikh Mohd. Ajaz, who has been given seat in terms of the interim order passed by this Court, by creating one additional seat. There shall be, however, no order as to costs.