
(1992) 01 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 3673 of 1990

Dr. Rajesh Kumar Singhai

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (1992) JLJ 404 : (1992) 37 MPLJ 586 : (1992) MPLJ 586

Hon'ble Judges : S.K. Jha, C.J.; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : P.P. Naolekar, for the Appellant; P.C. Naik, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

The order passed in this petition shall also decide Misc. Petition No. 531 of 1991 (Dr. Sunil Kumar Gupta v. State of Madhya Pradesh), in which common questions of fact and law arise.

The two petitioners, in the petitions before us are employed as Assistant Surgeons in the services of the State Government. They seek admission to post-graduate (M.D./ M.S.) courses in the Medical Colleges of the State in accordance with the terms and conditions contained in the admission rules called "M. P. Selection to Post-Graduation Courses (Clinical, Para-Clinical and Non-Clinical Courses) in Medical College of M.P. Rules, 1984." (hereinafter referred to as 1984 Rules). Under Rule 9.5.(b), in addition to the total marks obtained by the candidates in the University examination of M.B.B.S., for seats available for admission against Assistant Surgeon's quota, weightages of marks are provided, amongst other extra curricular activities, for doing rural service in the scheduled areas and for conducting sterilization operations.

According to the petitioners, if these weightages of marks are added in accordance with 1984 Rules to the marks obtained by them in M.B.B.S. examinations, they have a fair chance of selection for admission to the post-graduate courses.

The grievance of the petitioners is that the respondent authorities by making amendment to the 1984 Rules, vide notification dated 14-2-1990 (Annexure P-6) deleted Rules 8.5 and 9.5 which provided weightages of marks for extra curricular activities, rural service as also for sterilization operations. According to the petitioners, since under the amended rules the weightages of marks on various extra curricular activities, rural services and sterilization operations are being withdrawn, the petitioners have lost chance of their selection to the post-graduate-courses.

Before discussing the contentions raised by the learned counsel appearing for the two petitioners, it is necessary to consider a few decisions of this Court on the question of validity of the admission rules containing the provisions for weightages of marks for extra curricular activities. A Division Bench of this Court in the case of *Dr. Asha Pratibha Khalkho v. State of M.P.*, 1989 MPU 140, upheld that validity of the rules providing for weightages of marks for extra curricular activities when the same were challenged by the doctors working in hospitals set up in urban areas under the E.S.I. Act. The contention of these doctors working in E.S.I. hospitals was that giving of such weightages for rural service and sterilization operations deprives them a fair chance of admission visa-vis Assistant Surgeon in the State services because the doctors working in E.S.I. hospitals, by virtue of their peculiar conditions of service, have no chance or occasion either to work in rural areas or to undertake sterilization operations. The Division Bench in the case of *Dr. Asha Pratibha Khalho* (supra) upheld the weightages of marks on the above factors holding that proportion of such marks for weightages to the total marks works out only to 1.7%, that is much below 15% as was the matter before the Supreme Court in the case of *Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad* AIR 1986 SC 1877 : 1987 All LJ 189. The Division Bench distinguished the case of *Dr. Dinesh Kumar* (supra) holding that weightages of marks up to 1.7% do not vitiate the selections for admission.

The 1984 Rules containing weightages of marks for second time, came for consideration when their validity was attacked in the case of *Dr. Penil Sharad Kumar Doshi and Others Vs. State of Madhya Pradesh and Others*, Indore Bench. The Division Bench in the above case, placing reliance on the decision in the case of *Dr. Dinesh Kumar* (supra) declared the provisions granting weightages of marks for extra curricular activities as invalid being an irrelevant consideration for selecting best meritorious candidates for postgraduate courses. The Division Bench (I) held that all factors, other than the academic attainments as reflected from the marks obtained in M.B.B.S. examination are irrelevant factors for judging the merit of the candidates. While disposing of the petition, the Division

Bench (I), however made the following directions:--

"81. The State would do well to suitably amend the rules so as to restore merit rather than preference, be it institutional or any other in the light of the various decisions of the Supreme Court, as discussed above. The Supreme Court by its order dated 25-9-1987, in Dr. Dinesh Kumar v. Motilal Nehru Medical College (1987) 4 SCR 459, has pronounced the necessity of having uniform practice to be evolved in the matter of admissions to P. G. Courses. The respondents have also relied upon this judgment in their return. There is no reason as to why at the State level a uniform policy as suggested by the Medical Council of India, be not evolved so as to discourage preference and restore the merit and merit alone in the matter of admissions. period of three years from now would, to our mind, be more than enough for switching over to such a practice. It would also not cause any inconvenience to the students aspiring for admission to P.G. Courses. It is, however, made clear that while following the existing pattern for selection of students from various channels, the State shall see to it that merit is not sacrificed while giving preference and weightages on considerations held to be untenable and illegal by the Supreme Court.

It is made clear that candidates already found eligible for admission to P. G. Courses for the current sessions and those candidates who may be found eligible for admission to P.G. Courses for the period of further three years, shall not be affected in any way by this order and the delay if any, caused due to the stay order passed by this Court shall not come in the way of admission or attendance of such successful candidates in the current session of P. G. Courses."

(Underlined by us)

The decision containing the above directions given by the Division Bench (I) of this Court in the case of Dr. Penil Sharad Kumar Doshi was challenged by the petitioner in that case, in the Supreme Court by Special Leave Petition. The full details of the grounds taken in the SLP are not before us. Learned counsel appearing for the State pointed out that the challenge was to the directions made by the Division Bench (II) for continuing the operation of the weightages in 1984 Rules for a further period of three years, or till the amendment of Rules. The SLP in the Supreme Court was dismissed on the short ground that the counsel appearing for the State of M. P. made a statement before the Supreme Court that although the High Court had permitted operation of the old Rules for a period of three years, the State Government had taken a decision not to operate the rules of weightages even during the above period. The concession made was that even for the future admissions, the Rule of weightages will not be given effect to and the admissions would be given strictly on merits. It is better to reproduce the contents of the order passed by the Supreme Court in SLP No. 1050/90 dated 22-2-1990 as under, because there is borne controversy between the parties regarding the real effect of the order of the Supreme Court:--

"The SLP is dismissed. Mr. Datar appearing for the State of M. P. very fairly states

that although the old rules have been permitted to operate by the High Court for a period of three years, the State Government shall not extend weightage to any of the categories during this period and separate reservation/quota to the children of the IAS/Government Officers, shall also be not operated during this period. He further states that the admissions will continue to be made during this period of three years under the old rules on the basis of academic merit and institutionwise."

The stand taken before us on behalf of the State, by Shri P.G. Naik, learned Dy. Advocate General is that since the Division Bench (I) of this Court had declared the Rules of weightages invalid, the State in all fairness immediately conceded to exclude the factor of weightages from the Rules, even for the interim period of three years, which was given as an outer limit for removing the invalid part of weightages from the Rules. As a result of the Division Bench (I) decision as approved by the Supreme Court in the aforesaid SLP the State Government issued an order on 14-2-1990 (Annexure P-6), deleting from the Rules the provisions granting weightages of marks for extra curricular activities, for rural services and sterilization operations.

Shri P.P. Naolekar, learned counsel appearing for Dr. Rajesh Kumar Singhai in this petition mainly raised two contentions. Firstly, it was contended that the Division Bench (I) in the case of Dr. Penil Sharad Kumar Doshi (supra) did not notice the decision of the Division Bench of this Court at the principal seat, in the case of Dr. Asha Pratibha Khalikho (supra), in which rules of weightages were upheld. There is thus conflict in the two Division Bench decisions of this Court which needs to be resolved by a larger Bench of this Court. In this respect it is submitted that the Indore Bench decision in the case of Dr. Penil Sharad Kumar Doshi (supra) cannot be hold to have received the seal of approval of the Supreme Court because the SLP was dismissed not on merits, but on the basis of a concession made by the State of Madhya Pradesh volunteering to amend the rules by deleting the provisions of weightages even without waiting for a grace period of three years, allowed by the High Court.

The second contention on behalf of the petitioners is that principle of estoppel can appropriately be applied against the State and its authorities in denying the benefit of weightages of marks. The argument is that an Assistant Surgeon acquires eligibility for post-graduate admission only on completion of five years of service. At the time, the petitioners commenced service, 1984 Rules containing weightages were in force. Acting on that representation contained in the Rules, the petitioners agreed to go for rural service and devoted their time for sterilization operations only to get the benefit of weightages of marks for seeking admission to post-graduate courses. The petitioners thus have acted to their detriment on the representation contained in the Rules. The authorities giving admission are, therefore, estopped from changing the rules so as to take away the weightages and deny admission.

Shri H. B. Agarwal, learned counsel appearing for the petitioner Dr. Sunil Kumar

Gupta in M.P. No. 531/91 raised an additional ground in support of his petition. His argument is that the Division Bench (I) had granted three years period as a limit for giving benefit of 1984 Rules containing the weight-ages. This was a benefit, granted not only to the respondents in that petition, but to all doctors falling in that category. It was according to him a judgment in rem and, therefore, the State of M.P. before the Supreme Court could not withdraw that benefit to all such categories of doctors by making a concession adverse to their interest. The argument, therefore, is that effect should be given to the directions of the Division Bench (I) by continuing the benefit of the Rule of weightages for a further period of three years from the date of that judgment.

Learned counsel appearing for the State and the Medical authorities supported the action of authorities in amending the rules by deleting the provisions of weightages. Submission is that effect has been given to the decision of the Supreme Court in the case of Dr. Dinesh Kumar (supra) and of the Division Bench (I) of this Court in the case of Dr. Penil Sharad Kumar Doshi (supra). No exception can, therefore, be taken to the denial of the weightages of marks to the petitioners.

We have given our thoughtful consideration to the submission made by the learned counsel appearing for the parties and have also carefully gone through the decisions of this Court and of the Supreme Court quoted above. We are of the opinion that the petitioners cannot be granted benefit of weightages of marks after the rules of weightages were struck down as invalid by the Division Bench (I) of this Court.

So far as the first contention raised by Shri P. P. Naolekar is concerned, we do not find that the so-called conflict pointed out by him in the Division Bench decision at the principal seat in the case of Dr. Asha Pratibha Khalkho and of Indore Bench in the case of Dr. Penil Sharad Kumar Doshi, needs to be resolved, because in our opinion, the matter stands concluded against the petitioners by the decision of the Supreme Court in the case of Dr. Dinesh Kumar (supra). The following observations of the Supreme Court in the case of Dr. Dinesh Kumar (supra) may be seen which are as under:--

"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 Postgraduate 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. Moreover we are extremely doubtful if a candidate who has rendered three years rural service for the purpose of getting a weightage of 15% would go back to the rural area after he has got M.D. or M.S. 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 admission to Post-graduate Courses are concerned. Even if an undertaking is taken from such a candidate that after

obtaining M.D. or M.S. Degree he will settle down in a rural area and serve the rural masses, it would in all probabilities serve no useful purpose because in the absence of 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."

From careful reading of the above judgment it appears to us that the Supreme Court disapproved in very clear language, the grant of weightages of marks for rural service as a relevant factor for judging merit of the candidates for admission. Learned counsel for the petitioner made an attempt to distinguish the above case of Dr. Dinesh Kumar (*supra*), stating that the observations should be read as restricted to All India seats. It was argued that for Assistant Surgeons' quota, rendering service in rural areas and conducting sterilization operations, is a relevant factor showing additional experience of the candidate concerned. The above argument is not acceptable. A factor which is found to be irrelevant by the Supreme Court for admission to All India seats on the same parity of reasoning, is also an irrelevant factor for admission to the seats available to the State or the institution concerned. The aim and object of giving such weightages of marks for rural service and sterilization operations is to take services of the incoming doctors in the State service as an incentive for participation in the National Health Programme. Such an incentive, however, has no obvious connection with the merit of the candidate. It is not correct to say that for Assistant Surgeons, experience of rural service is a relevant factor for judging their merits. Under the scheme of the admission Rules, it may be seen that those candidates who are unable to get admission on the basis of their marks in M.B.B.S. immediately after passing their M.B.B.S. examination, have to wait for a period of five years to seek admission in Assistant Surgeons' quota. After five years, their merit for admission is judged not on the basis of their performance in service, but on the basis of their academic attainments. The trend of the decision of the Supreme Court in the case of Dr, Dinesh Kumar (*supra*) is that for super specialities in medical education the only relevant criteria to select the best is to see their academic attainments and nothing else. It is with that view that a certain percentage of seats were directed to be filled on All India basis. That, however, did not mean that institutional seats or seats available to concerned States can be allowed to be filled on various other irrelevant factors such a rural service and conducting of sterilization operations. Incentive in any other form as suggested in the case of Dr. Penil Sharad Kumar Doshi, to lure the candidates for rural services and sterilization operations may be granted by the State, but that cannot be a ground for giving weightage of marks while admitting them to higher medical education.

We are also not impressed by the argument raised on behalf of the petitioners on the ground of estoppel. In our opinion, the principle of estoppel which is an equitable principle cannot be taken aid of by the petitioners. The rules of admission are not statutory in nature and are subject to change and amendment

from time to time. The Rules containing weightages of marks came to be deleted as a result of the decision of the Court and the State committed no error in volunteering before the Supreme Court to delete the Rule of weightage so as to bring the admissions in conformity with the directions of the High Court. The authorities under the State have thus acted on the basis of the directions of the Court and principle of estoppel cannot operate against them in such a situation.

So far as the contention raised by the learned counsel Shri H. B. Agarwal, on behalf of his petitioner is concerned, that also does not appeal to us. Bare perusal of the directions quoted in the case of Dr. Penil Sharad Kumar of the Division Bench (I) would show that three years was fixed the outer limit to amend the rules for removing the weightages. That direction did not prohibit the State from withdrawing the weightages earlier than three years. It was open to the State Government, therefore, to give effect to the directions of the High Court forthwith, when that part containing direction of three years limit was challenged by the petitioner in that case in the Supreme Court. The argument is fallacious that the judgment of the Division Bench (I) was a judgment in rem. The directions and orders made by the Division Bench (I) in that case could benefit only the parties before it and the petitioners who were not the parties to that case can derive no benefit out of it, may be that some of the directions were general in nature. When the matter went up to the Supreme Court, none of the parties present in that case objected to the concession made by the State. The petitioners, therefore, who were not the parties to that petition, even as interveners, cannot be allowed to contend that the rules which were declared invalid should have been allowed to operate for a period of three years, for the candidates waiting for admission in accordance with unamended 1984 Rules.

None of the contentions of the petitioners thus has any force. The petitions are devoid of merit and are hereby dismissed. In the circumstances of the case, however, we make no order as to costs. Amount of security, if deposited, be refunded to the petitioners.