

(1986) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1518 of 1985

Dr. Rajesh Malik

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-03-1986

Acts Referred:

Constitution of India, 1950 — Article 15, 226, 29

Citation : AIR 1987 MP 184 : (1987) ILR (MP) 75

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : Party in person, Y.S. Dharmadhikari, for the Appellant; Rajendra Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.—The petitioner, who is seeking admission for post graduation in Radiology in the Medical College, Jabalpur, is seeking the following reliefs (a) quashing of circular dated 27-3-1985 of the Director of Medical Education saying that the State Government does not guarantee registration of candidates for post graduate/diploma courses for the subjects for which they have given their options for house jobs, (b) commanding the respondents to follow the existing rules in the matter of admission to post graduate/diploma courses without reservation of seats; and (c) 50% of the seats be reserved for all India competition without giving any reservation to the Assistant Surgeons, private practitioners and military personnels.

2. The petitioner passed his M.B.B.S. examination held in 1984 from the Medical College, Jabalpur. He did his internship from 1st June 1984 for one year which is compulsory before getting the degree of M.B.B.S. The Dean, Medical College, Jabalpur, issued a notice inviting applications for selections of candidates to house jobs. With that notice the circular in question of the Director of Medical Education mentioned earlier was enclosed. The interview was actually held on 13-6-1985. The petitioner, who was at serial number 20 in order of merit, gave

option for house job in the specialised subject Radiology. It may be mentioned that a candidate desirous of being registered for post graduate/diploma courses are required to do house job for one year in the specialised subject for which he is seeking admission for post graduation. The petitioner was accordingly selected for the house job in the specialised subject Radiology which commenced from 16-6-1985.

3. The petitioner's case is that the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, has held that reservation on the basis of residence requirement within the State and institutional preference cannot exceed seventy per cent of open general seats and the remaining seats should be open to all India competition. In view of this decision, there can be no reservation made in favour of Assistant Surgeons, private practitioners and military personnel and after filling up of 50% of the seats on merits to the institutional candidates the remaining seats should be kept for all India competition. The State Government without framing any rules called candidates for interview for filling up the post for doing house jobs and there was great deal of confusion at that stage regarding selection of subject for the house jobs and later on if he is successful in all India competitions, he will be required to do the house job all over again in the specialised subject for which he is selected, That means he will be losing 10 months for nothing. The petitioner, therefore, represented to the Dean, Medical College to postpone the interview for selection of house jobs in order to implement the decision of the Supreme Court in the aforesaid case. The Director of Medical Education has recommended subject-wise distribution of seats as given in Ann-C, wherein reservations have been made for Assistant Surgeons, private practitioners and military personnel. Such reservation is wholly unwarranted and unjustified and is not in conformity with the decision of the Supreme Court. The new rules can only operate prospectively and not retrospectively to the candidates who have already been selected for house jobs.

4. However, before the present petition was filed, the Supreme Court in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, clarified that 30 per cent of the open seats available for admission of students on All India basis irrespective of the State or University from which they come does not mean that 30% of the total number of seats available for admission to M.B.B.S. course in a medical college should be kept free from reservation on the basis of residence requirement or institutional preference. The true import of the judgment is that after providing for reservation validly made say for example for candidates belonging to scheduled castes and scheduled tribes, whatever seats remain available for non-reserved categories. 30% of such seats at the least should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. The Supreme Court has further clarified in *Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College*, that the directions given

earlier in the above mentioned two cases are to be implemented from the academic year 1986 and not from 1985, which means that the decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, will be made applicable from the next session and not in 1985.

5. The petition was filed on 27-6-1985. The Interim Application for postponing the interviews and for staying reservation for Assistant Surgeons, private practitioners and military personnel was rejected by the Vacation Judge on 10-6-1985 but it was mentioned that the selection for house officers will be subject to final decision in this petition. It was further clarified by the Vacation Judge on 13-6-1985 that the selection for house officers and post graduation will be provisional and if the petitioner succeeds, the petitioner and other candidates will have fresh option to change the subject of post graduation, if otherwise eligible. The petition was admitted on 17-6-1985. The petitioner moved an application on 22-8-1985 that as per rule of the Medical Council of India, the post graduate candidates have a right to change their subject within three months without any loss of time and these three months would be counted in the new subject and therefore prayed for early hearing of the petition. It does not appear that this application was listed before the Court nor it was brought to its notice for necessary order, otherwise the court would have been in a position to give some relief.

The return was filed by the State on MO-1985 and it was pointed out that in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, the Supreme Court has only stated that 50% of the open seats should be filled by competition on all India basis. The reservation of seats for Assistant Surgeons, private practitioners and military personnel was not before the Supreme Court. The reservation for them has a rational basis in a big and backward State like Madhya Pradesh. The total reservations do not exceed the limit prescribed by the Supreme Court. In compliance with the decision in Pradeep Jain's case, the State Government has framed rules known as Revised Rules for Post-graduation (MD & MS) Courses, Clinical para clinical/non-clinical disciplines in Medical Colleges of the State on 31-7-1984. Appointment of House Officers is done as per revised Rules of Selection of candidates for House officers dated 12-10-1983 and does not automatically admit a student to post graduation course because there may be large number of House Officers in the same subject but the number of seats for post graduation in the subject may be less. The admission to post graduation course is made strictly on the basis of merit out of the house officers working in a particular discipline as per number of post graduation seats available in that subject.

On 13-1-1986, the petitioner moved an application that in view of the latest decision of the Supreme Court, there has to be no all India competition for 50% of seats for the year and so fresh option to change the subject be given in respect of the seats so released, as per interim order passed in the petition earlier and the petition be heard immediately. So order was passed on 15-1-1986

for early hearing of the case. Four House Officers in the subject of Surgery and another House Officer in the subject of Paediatrics filed applications on 25-1-1986 for permission to intervene in the matter saying that they having already completed House jobs in the respective subjects, they should not now be deprived to take the post graduation course in that subject. The petitioner has taken house job in Radiology on his own volition and he cannot now be permitted to change his subject and thereby create complications and prejudice others who have already done their house jobs for about nine months in the respective subjects, if their respective subjects are taken away, for no fault on their part, they will not be able to do post graduation course at all.

6, As may be seen, the petitioners based on the assumption that there can be no reservation for the Assistant Surgeons, private practitioners and military personnels, as no such reservation is permitted by the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . the only reservation permitted is for institutional candidates and residence requirements and as such 50% of the remaining seats for post graduation course be thrown open for all India competition. The assumption was clearly misconceived. There was no issue in Pradeep Jain's case as to whether there could be reservation for those categories of persons and the Supreme Court only directed that reservation on the basis of institutional preference should not exceed 50% of the open seats available for admission to post graduation course, which means that 50% of the open seats were to be thrown open for all India competition. This has been amply made clear by the Supreme Court in the first case of Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, that the true import in Pradeep Jain's case is that after providing for reservation validly made, say for example, scheduled castes and scheduled tribe candidates, whatever seats so remain available for unreserved categories. 30% such seats at the least should be left for open competition on all India basis and admission to such 30% seats should not be based on residence requirement or institutional preference.

Realising the position, the petitioner gave up his case against reservation of seats for Assistant Surgeon, private practitioners and military personnels at the stage of hearing. There is rational basis for reservation of seats for Assistant Surgeons, private practitioner and military personnel. It is well known that doctors who have been brought up and educated in urban areas and come out of Medical Colleges do not prefer to settle down in rural areas. Most of the Assistant Surgeons are posted at far flung places in Primary Health Centres. It is they who are serving the rural and backward masses, which comprise the largest section of the population of such a big State. So to provide efficient Medical service to rural areas, it is necessary to provide Assistant Surgeons with opportunities to obtain specialisation in the subjects of their aptitude thereby improving the standard of medical care in the Primary Health Centres. This will equally apply to private medical practitioners who are spread all over the State: The reservation of seats is only an encouragement to the Assistant Surgeons and private Medical

practitioners to work in rural and backward areas specially for achievement of various National Health Programmes. As such, the petition as filed, has no merit.

7. During the course of arguments, the petitioner gave up his case against reservation of posts of Assistant Surgeons, private medical practitioners and military personnel obviously in view of the clarification of the matter by the Supreme Court in the first case of Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, But the argument has been built up on the basis of the release of 50% quota of the open seats in view of the decision in the second case of Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, by the Supreme Court that the all India competition need not be held in this year and further also on the basis of the interim order of the vacation Judge dated 13-6-1985 that if the petitioner succeeds, he and others will have fresh option to change his subject. There is no such pleading though, this prayer was made in the interlocutory application, resulting in the interim order. But the interim order can be invoked only if the petitioner succeeds and if he is otherwise eligible to change his subject at this stage. Besides the interim order is dependent on the final decision in the case.

Another interlocutory application was moved on 22-8-1985 saying that under the Medical Council Rules the petitioner can change his subject within 3 months and so the petition be placed before the Court immediately. This application was neither placed nor brought to the notice of the Court at that time so that something could have been done at that stage. The Dean of the Medical College invited applications for house jobs and made it clear that the subject once chosen will not be allowed to be changed under any circumstances. There are 65 posts of house jobs but only 36 seats for post graduation for institutional candidates in the Medical College, Jabalpur. The selection for post graduations are made strictly on merit, The petitioner was at 20 in the order of merit list. In view of the Supreme Court decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, 15 seats were kept for all India competition, so 18 seats remained for institutional candidates. The petitioner in order to ensure a seat in post graduation opted for "Radiology" and not for any major disciplines like Medicine, Surgery, Paediatrics, Obstetrics and Gynaecology, ophthalmology and Orthopaedics.

With the result the petitioner is No. 1 in the subject "Radiology" and he is assured of admission in post graduate course in Radiology. Others including less meritorious students took a risk and opted for the major disciplines and they have now completed 9 months of house jobs in their respective subjects. If all the 36 seats were available for institutional candidates in the beginning the petitioner might have opted for any one of the major disciplines as he had better chances in that event of getting admission in any of such disciplines. Now, if it is permissible to change the house, jobs after nine months, still we cannot grant any relief to the petitioner because (i) he has not given his option of the subject to which he wants to change now; (ii) he has not joined those persons who

would be adversely affected by the change of the subject, though they may be less meritorious and their 9 months of house jobs will go waste and will be deprived of a seat in post graduate course. The petitioner ought to have realised while giving option that for all India competition also, he could only compete in the subject for which he will be doing house job.

8. Under Medical Council Regulations, the criteria for selection of candidates for post graduate course, is that the candidate must do one year's housemanship prior to admission in the same subject in which he is seeking admission or at least six months housemanship in the same subject and remaining six months in allied subject. So six months housemanship in the subject is a must. The Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, has held that the Regulations of the Medical Council which lay down the conditions or qualifications for admission into Medical course is mandatory. Therefore, it is not open to this Court to relax the condition. The next post graduation course will start from July 1986 and only 3 1/2 months are left. So the petitioner cannot now do housemanship for six months in another subject before getting admission in that subject for post graduate course. The rules of the State Government are more stringent. Rule 11 of the Revised Rules for selection of candidates for appointment as House Officers in Medical Colleges dated 12-10-1983 is that choice of subject exercised by the candidate before the College and Hospital council will not be allowed to be changed afterwards. Under Rule 12 the tenure of appointment shall be for a period of one year in the same subject and a change from one department to another shall not be allowed under any circumstances. The Dean shall ensure that the new batch of House Officers is appointed by the time the previous batch is to finish their House job, so that continuity of service is maintained, and hospital work does not suffer.

A candidate who has done paid house job against a vacant post in a subject for at least 6 months, could be permitted to complete the house job in that subject for a total period of one year if he or she give an undertaking that during the rest of the period, the candidate is willing to do the house job in a honorary capacity. These Rules have not been challenged in this petition. Therefore if, at this stage, the petitioners and others are given fresh option to change their subjects, this would be opening the pandoras box and creating more problems than solving one. Therefore, we are unable to give any relief to the petitioner. The matter might have been different if immediately after the Supreme Court decision in the second case of *Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College*, the petitioner had insisted on hearing the petition, so that the petitioner could still exercise his option to change the subject as more than six months were left for completing house job in another subject.

9. With the result the petition fails and it is dismissed. There shall be no order as to costs. The outstanding amount of security be refunded to the petitioner.