
(2001) 10 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2363, 2375, 2555 and 3172, of 2001

Dr. Ramji Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 15, 16, 245, 246, 254
Indian Medical Council Act, 1956 — Section 33

Citation : (2002) 2 WLC 83 : (2002) 4 WLN 421

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Postgraduate Medical Regulations, 2000(for short "2000 Regulations") were made by the Medical Council of India (for short MCI) in exercise of powers conferred u/s 33 read with Section 19A of the India Medical Council Act, 1956 and on their publication in the Gazette of India on October 7, 2000 they came into force. Regulation 9 provides that students for Postgraduate Medical Courses shall be selected strictly on the basis of their academic merit and whenever entrance test for Postgraduate admissions is held by a State Government or a University or any other authorised examining body, the minimum percentage of marks for eligible for admission to post graduate medical courses shall be 50% for all the candidates.

2. For the purpose of making admission against specified number of seats in different P.G. Courses conducted at different medical colleges in the State of Rajasthan, selection exercise was set into motion on March 23, 2001 by the University of Rajasthan. The procedure and criteria for holding the selections was laid down in a document titled "Instructions for the guidance of the candidates regarding Pre-PG, entrance examination 2001 for admission to M.D/M S. Diploma Courses". Securing 33% marks in the entrance test was prescribed as minimum eligibility criteria.

3. The writ petitions bearing Nos. 2375/2001 and 2363/2001 and 3172/2001, involved a challenge to the decision of University of Rajasthan holding candidates qualified on the basis of 33% minimum pass marks for qualifying Pre-PG Entrance Test in terms of Clause 5 of the Instructions issued under Ordinance 278-E and 278-G of Rajasthan University Ordinance.

In Writ Petition No. 3172/2001 additional prayer is made to declare illegal and unconstitutional the condition of reservation of certain classes/categories incorporated in Clause (1) of the Instructions. Whereas the petitioners in Writ Petition No. 2555/2001 seek to quash the condition appearing in Ordinance 278-E and Ordinance 278-G and the Instructions for the guidance of the candidates regarding Pre-PG Entrance Examination 2001" made and issued by the University of Rajasthan providing for conversion of seats reserved in favour of the service doctors into general seats.

4. Indisputably all the petitioners have appeared in the Pre- PG Entrance Examination, 2001 (for short the Entrance Examination) held by the University of Rajasthan on April 29, 2001. The result of the said examination was declared on April 30, 2001 and all the petitioners were declared qualified. The Convenor, Central P.G. Admission Board and Principal & Controller of SMS Medical College, Jaipur issued Notification on May 5, 2001 inviting the qualified candidates for counselling.

5. Grievance of the petitioner in Writ Petition No. 2375/2001 is that no authority in the State of Rajasthan is competent to prescribe minimum pass marks less than what has been prescribed by MCI as such declaration of result and holding candidates qualified on the basis of 33% minimum pass marks for qualifying Entrance Examination in terms of Clause 5 of the Instructions issued to the candidates which has been considered to be a condition of eligibility for admission in Post Graduate Course under Ordinance 278-E and 278-G is illegal and only such candidates are entitled to be called for counselling who have secured minimum 50% pass marks in the Entrance Examination.

6. Contention of the petitioner in Writ Petition No. 2363/2001 is that she passed the Entrance Examination with 67.67% marks and was called to appear before the Central P.G. Admission Board for consideration of her candidature for admission and allotment of seat/ speciality. But due to lowering down the eligibility percentage upto 33%, several candidates in reserved category who otherwise do not qualify as per "2000 Regulations" have become eligible for filling the reserved category seats and due to which the candidates of general others category are likely to have uncalled for tough competition and would be deprived of their choice of degree course and speciality. If the rule of minimum marks of 50% is followed the infilled seats of reserved category would be available for general others category and in that situation there is every likelihood of petitioner getting her choice i.e. Degree in Gynecology as the merit number of petitioner is 114.

7. In Writ Petition No. 3172/2001 the petitioner averred that although he qualified the Entrance Examination yet on account of reservation of some seats he could not be selected. According to petitioner the counselling and granting admissions to the candidates with less than 50% marks and on the basis of reservation, is against "2000 Regulations". It is the MCI which alone is competent to determine reservation of the seats and the State of Rajasthan or University of Rajasthan or any other examining body has absolutely no jurisdiction to determine the question of reservation.

8. Writ Petition No. 2555/2001 has been filed by "All Rajasthan In-Service Doctors Association". The Association has apprehension that the seats earmarked and reserved for in-service doctors would be usurped by persons belonging to general categories. Therefore, relief to strike down the clause providing conversion seats in Ordinance 278-E and 278-G as well as the "Instructions 2001" has sought.

9. The private, respondents in their written statement submitted in Writ Petition No. 2375/2001 raised following preliminary objection to the maintainability of the writ petition-

(i) The petitioners knowing fully well the criteria for selection, themselves took a chance and participated in the selection process therefore, the petitioners by their own conduct are estopped from seeking to turn, the clock back by assailing the criterion for selection.

(ii) With the declaration of results all the successful candidates have acquired a vested right in respect of admission to the P.G. Courses. The petitioners therefore, ought to have impleaded all the successful candidates as parties in the writ petition. Thus the writ petition suffer from non-joinder of necessary parties.

(iii) The writ petition suffers from the fatal vice of misconstruction as well as suppression of material facts.

(iv) In the guise of the relief sought the petitioners have indirectly aimed to frustrate the policy decision of the State Government taken in public interest to allocate a separate quota for in service doctors.

10. I have given my thoughtful consideration to the submissions advanced before me by the learned Counsel for the parties and scanned the relevant statutory provisions and the doctrine of the Hon"ble Supreme Court indicated in the various judgments.

11. Dr Preeti Srivastava and Another Vs. State of M.P. and Others, is the basic authority on which the learned Counsel for the petitioners in Writ Petition Nos. 2375/2001, 2363/2001 and 3172/2001, have placed reliance. Analysing Schedule-VII, List-III Entry 25 and List-I Entry-66 and Articles 245, 246, 254 and 15(4) of the Constitution of India, Constitution Bench of the Hon"ble Supreme Court per majority, propounded that standards of post graduate medical education and admission criteria can be laid down by the Central Legislation. The

States competence under List-I Entry-66 and List-III Entry-25 to Control or regulate higher education is subject to the standards so laid down by Union of India. States have competence to prescribe rules for admission to post graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India. Conclusion arrived at by their Lordships have been indicated in para 62 of the judgment thus -

To conclude:

(1) We have not examined the question whether reservations are permissible at the postgraduate level of medical education.

(2) A common entrance examination envisaged under the regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

(3) Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates then there can not be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post graduate level and contrary to the public interest.

(4) At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection.

12. In *Dr. Preeti Srivastava* (supra) their Lordships had examined the issue whether it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category. The issue arose in the background of the developments in the States of U.P. and M.P. in respect of admission to post graduate degree/diploma courses in medicine through the Post graduate Medical Entrance Examination. The States reduced the minimum qualifying marks for reserved category candidates (SC, ST and other Back Ward Classes) appearing in the Entrance Examination. The Government orders, Ordinance and the Act concerned were under challenge before the Apex Court.

13. The questions that arises at this juncture is as to whether the State is justified in relaxing entry requirement for in-service candidates to render them eligible for PG courses.

14. Bench of Hon''ble two Judges of the Supreme Court in *Pre-P.G. Medical Sangarsh Committee and Another Vs. Dr. Bajarang Soni and Others*, while

considering the matter of fixing 33% marks by the Government of Rajasthan for in-service doctors to render them eligible for PG course, observed in para 8 thus --

...mere theoretical excellence or merit alone is not sufficient indicia of the qualitative merits of the candidates in the field of actual practice and application. The doctors, who are in service candidates in various medical institutions run and maintained by the Government or Government Departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the hospitals they serve gaining excellence on the practical side and in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or, open candidates.

(Underlining is mine)

15. In *State of Tamilnadu v. T. Dhilip Kumar* (1995) 5 Scale 208(2) Hon''ble Supreme Court held that the Government should appoint a highly qualified committee to determine from year to year what, in fact, should be the percentage wise reservation required for the in service and dates, having regard to these prevailing situation and that the percentage of fifty percent shall, if found appropriate, be reduced.

16. Three Judges Bench of Hon''ble Supreme Court K. Duraisamy and Another Vs. The State of Tamil Nadu and Others, indicated that the reservation for and in favour of the in service candidates, cannot be equated or treated on at par with communal reservations envisaged under Article 15(4) or 16(4).

17. K. Duraisamy (supra) was again referred in *A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others*, and it was observed in para 29 thus--

...It is to be noted that in K. Duraisamy's case in-service candidates did not belong to any weaker section of the society nor were one who deserved or needed to be protected the candidates in both the categories were medical graduates. Some of them had done graduation sometime in past and were either picked up in the Government service or had sought for joining Government service because may be, they could not get a seat in post-graduation and thereby continue their studies because of shortage of seats, in higher level of studies. On account of their having remained occupied with their service obligations they became detached or distanced from theoretical studies and therefore could not have done so well as to effectively compete with fresh medical graduates at the P.G. Entrance Examination. Permitting in service candidates to do post graduation by opening a separate channel for admittance

would enable their continuance in Government service after post graduation which would enrich health services of the nation. Candidates in open category having qualified in post graduation may not necessarily feel attracted to public services. Providing two sources of entry at the post graduation level in certain proportion between in service candidate and otherwise candidates thus achieves the laudable object of making available better doctors both in public sector and as private practitioners. The object sought to be achieved is to benefit two segments of the same society by enriching both at the end and no so much as to provide protection and encouragements to one at the entry level.

18. In para 52 of the judgment ratio of T. Dhillip Kumar (supra) was also approved and it was observed that:

...This Court left it to the appellants to appoint a highly qualified committee to determine from year to year what, in fact, is the percentage wise reservation requisite for in service candidates having regard to the then prevailing situation and that the percentage of 50% was, if found appropriate, be reduced accordingly. Questions of institutional reservation was not the one posed before the court. Needless to say, the court was dealing with a case of two sources of entry, though, called reservation.

19. The petitioners in the instant writ petition Nos. 2375/2001, 2363/2001 and 3172/2001 are admittedly do not fall into the category of in service candidates for which a separate source and quota has been fixed for the purpose of filling up of available seats in PG courses on the basis of policy decision taken by the State of Rajasthan for upgrading the level of professional skill and knowledge of doctors who have been recruited in the State Medical Services. They have rendered services in rural areas secured valuable experience and after successful completion of PG courses would be providing better medical services to the people of Rajasthan. It is because of the policy decision of the State Government that they took Government employment and spent valuable period of their lives serving in rural areas. In my considered view the in service doctors would constitute a distinct class by themselves. Having closely scanned "2000 Regulations" I find that they do not at all deal with the issue of setting apart seats in post graduate studies for the benefit of in-service doctors. Regulation 9 provides thus-

9. SELECTION OF POST GRADUATE STUDENTS:

(1) Students for post graduate medical courses shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the University/institution may adopt any one of the following procedures both for degree and diploma courses:

(i) on the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/Group of Universities in the same State; or

(ii) on the basis of merit as determined by a centralised competitive test held at the national level; or

(iii) on the basis of the individual cumulative performance at the first, second and third MBBS examination, if such examinations have been passed from the same University; or

(iv) combination of (i) and (iii):

Provided that wherever entrance test for post graduate admissions is held by a State Government or a University or any other authorised examining body, the minimum percentage of marks for eligibility for admission to post graduate medical courses shall be fifty per cent for all the candidates;

Provided further that in non-Government institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty per cent by the management of the institutions on the basis of merit.

A close look at Regulation 9 demonstrates that it is silent in regard to a serving officer of the State Government entitled to be selected against the quota of seats allocated to in service doctors. Regulation 9 applies only to the students in general category and in my opinion it cannot be made applicable to in service medical officers of the State Government. "Students in general category" and in service medical officers of the State Government" are two distinct classes and two unequals" cannot be made as "equals" by misinterpreting Regulation 9. The competence of the State Government to prescribe 33% marks as the minimum eligibility criteria for admission to P.G. Courses has already been upheld by their Lordships of the Supreme Court in Pre P.G. Medical Sangharsh Committee v. Dr. Bqjrang Soni (supra) as already noticed in the foregoing paras of this judgment. In Dr. Preeti Sriuastava (supra) the issue of "in service doctors" was not the one posed before the Constitution Bench of the Hon"ble Supreme Court. In my considered view the ratio indicated in Pre PG Medical Sangharsh Committee v. Dr. Bajrang Soni is squarely applicable in the instant cases.

20. That takes me to the other arguments advanced in regard to maintainability of the writ petitions. Undisputedly the petitioners knowing fully well the criteria for selection, themselves took a chance and participated in the selection process without any protest. The issue of estoppel was considered by their Lordships of the Supreme Court extensively in Suneeta Aggarwal Vs. State of Haryana and Others, , Union of India and Another Vs. N. Chandrasekharan and Another, , Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, and it was held that the petitioner having appeared before the selection committee without any protest and having taken a chance is estopped by conduct from challenging the selection process. It is contended on behalf of the petitioners that very process of Entrance Examination has not been assailed but the challenge is made only to the limited extent of inviting the candidates who have secured less than 50% marks therefore, principle of estoppel is not applicable in the instant cases. I do

not agree with this submission looking to the prayers made in the writ petitions. The Writ Petitions No. 2375/2001, 2363/2001 and 3172/2001 involve a challenge to the decision of holding candidates qualified on the basis of 33% minimum pass marks for qualifying Entrance Examination whereas in writ petition No. 2555/2001 condition providing for conversion of seats reserved in favour of in service candidates is under challenge. Knowing fully well the criteria for selection, the petitioners took a chance and participated in selection process without any protest therefore, they are estopped by their conduct from assailing the instructions for the Entrance Examination and the Ordinances 278-E and 278-G.

21. For the reasons aforementioned, instant writ petitions stand dismissed without any order as to costs.