

(1990) 10 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No"s. 18167 to 18170 of 1985

Dr. S.C. Patil

APPELLANT

Vs

Karnataka University

RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Indian Medical Council Act, 1956 — Section 20, 33

Citation : (1990) ILR (Kar) 3638 : (1990) 3 KarLJ 108

Hon'ble Judges : Mohan, C.J.;Shivaprakash, J

Bench : Division Bench

Advocate : K.R.D. Karanth, for the Appellant; N.B. Bhat, for R-1, N. Devadas, Government Advocate for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—All these Writ Petitions can be dealt with under common Judgment since the relief that is prayed for, is one and the same,

2. The petitioners in W.Ps. Nos. 18167, 18168 and 18169 of 1985, Dr. S.C. Patil, Dr. S.M. Banakar and Dr. Vijaya Sangama Deva, are Assistant Surgeons in the State Medical Service who have put in over 5 years of service. Dr. M. Mahabaleshwar the petitioner in W.P. No. 18170 of 1985 is a Medical Officer in the Karnataka Power Corporation. He has also similarly put in over 5 years of service.

AM these petitioners were admitted to the Post Graduate Medical Courses by the State Government-respondent-2 as in-service candidates. They were allotted to the Karnataka Medical College affiliated to the Karnataka University from out of the quota of 50 per cent seats reserved for Doctors serving in the Department of Medical Education and Health and Family Welfare Services and Government Corporations. The selection of the in-service candidates was made by the order dated 30th January 1985 in respect of first of the three petitioners. Similar order was also made in respect of the 4th petitioner. Though originally the 4th

petitioner was allotted to the Bangalore Medical College, he sought for transfer to the Karnataka Medical College after two months.

The Medical Council of India, incorporated under the Indian Medical Council Act, 1956 (hereinafter referred to as the Act), is empowered to prescribe standards of Post Graduate Medical Education in order to secure and maintain uniform standards to Post Graduate medical education throughout India. It has the power u/s 33 of the Act to make regulations. With regard to Post Graduate courses, regulations have been made for establishing Post Graduate teaching centre. The period prescribed by the Medical Council for Post Graduate Diploma and Degree courses is one and two years respectively followed by an examination after one year house job or equivalent thereof. As regards persons who had served in the State Medical Services or other equivalent services of public undertakings, local bodies as well, for a period of five years after full registration the same shall be considered as equivalent to one year's housemanship.

The 1st respondent-University issued a notification on the 1st of March 1984 stating that the Ordinance governing eligibility criteria for admission to the Post Graduate courses with regard to 1983-84 would be as stated therein. Inter alia it has been stated that exemption for one year would be allowed only in cases of those students who had (1) completed one year of senior housemanship in the subject or (2) held a teaching job in the subject for one year or (3) completed Diploma course in that subject. All other Universities except the Karnataka University have regulations which provide for exemption as set out by the Medical Council. For instance, the Universities of Mysore, Bangalore and Mangalore have granted exemption of one year to Post Graduate students who have completed five years of service or as prescribed by the regulations of the Medical Council. The petitioners had prayed for necessary exemption on the strength of having put in five years and more service in the Karnataka State Medical Service.

By the communication dated 12-11-1985 the 1st respondent wrote to the Principal of Karnataka Medical College listing out the names of persons to whom exemptions have been granted. However, the petitioners have not been granted exemption. Aggrieved by the failure to grant exemption, these writ Petitions had come to be preferred.

3. Mr. K.R.D. Karanth, learned Counsel for the petitioners, urges that the regulations made by the Indian Medical Council are statutory in character. When such a high powered body which is incharge of prescribing the standards of Post Graduate medical education in order to secure uniform standards had chosen to recommend that five years medical service would be equivalent to one year of housemanship or Doctorship, there is absolutely no justification whatever to deny the benefit of such a provision by the 1st respondent in favour of the petitioners. Having regard to the terms of Section 33 it must be considered to be mandatory in nature. More so, when it is read in the light of Section 20 of the Act. However, the Karnataka University alone refuses to treat the five years of

service as equivalent to one year of housemanship, as a result the petitioners are put to great prejudice. It is only the State of Karnataka which makes the allocation to various Universities. If, for example, one happens to be allotted to say Bangalore or Mangalore University, he gets the benefit of one year exemption, whereas such an exemption is denied in favour of the petitioners who have all been allocated to the Karnataka University. This would also constitute discrimination, within the meaning of Article 14 of the Constitution.

If really these regulations as laid down in *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, are statutory in character, there is no justification for the University to by-pass the statutory instructions and then refuse to recognise a regulation which is made not only in the interest of the provisions of the Act but also to maintain the standards of Post Graduate Medical Education. These are the only submissions made before us.

4. In opposition to this, the University contends that it is an autonomous body. It is incharge of prescribing qualifications, method of selection and the grant of exemption with regard to the duration or for any other purpose. The object of the Medical Council of India is totally different. That will have no say either through regulations or through executive orders as to in what manner the University will have to conform to the standards. It is one thing to say that certain syllabus will have to be followed and it is another thing to say as to when exemption should be granted by the University.

The Ordinance of the University in no unmistakable terms says that exemption will be granted only to persons who had one year of housemanship or Doctorship etc. It had deliberately chosen to omit the service rendered in the State Medical Service. Under those circumstances, merely because the Medical Council of India is empowered to make regulations even though they are statutory in character, those regulations cannot be held to be binding at all on the University which as submitted above is an autonomous body. Admittedly those regulations will have only recommendatory value and cannot be binding on the University for any disobedience of the regulations even assuming there are regulations; cannot make the University liable in any manner.

It might be true the other Universities like Bangalore or Mysore or Mangalore might have granted exemption. That does not mean the Karnataka University must grant such an exemption.

Lastly it is submitted that by no command the Court could ever direct an exemption to be granted on the so-called violation of Article 14 of the Constitution because firstly, there is no violation of Article 14 at all and secondly, each University can prescribe within the frame work of the statute its own Ordinance for the purpose of maintaining excellence in Education. One cannot compare one University with another and make out a case of discrimination. That is not warranted in law.

5. We will take up first the question of discrimination and dispose it of. Each

University can make its own Ordinance with regard to the selection to the course and the duration of the course. One cannot compare one University with another and seek to make out a case of discrimination. Each University is an entity by itself governed by the statute and its own Ordinance. With this background, we will consider the question as to what is the effect of the regulations made by the Medical Council of India.

6. But before that, it is necessary to refer to the Ordinance in question. The relevant portion which is at page 32 reads as follows:

"Duration of course:

The duration of course shall be three (3) years for degree courses and two (2) years for Diploma courses. However, not less than and not more than one year exemption in the duration of the course be allowed for having done/possessed.

i. One year (12 months) of senior Housemanship in the subject or six months of Senior Housemanship in the subject and six months in allied subjects. The Senior Housemanship should have been done in a Teaching Hospital or in an institution specially recognised for such concession by the University or Medical Council of India."

A careful reading of the above clearly shows that one year exemption is granted to persons who had undergone senior housemanship (1) in a teaching Hospital or (2) in an institution specially recognised for such concession by (a) the University, or (b) the Medical Council of India.

No doubt in the Regulations made by the Medical Council of India it is stated thus:

"Criteria for the selection of candidates:

(a) Students for post-graduate training should be selected strictly on merit judged on the basis of academic recorded in the under-graduate course. All selection for post graduate studies should be conducted by the Universities.

(b) The candidates should have obtained full registration i.e., they must have completed satisfactorily one year of compulsory rotating internship after passing the final M.B.B.S. examination and must have full registration with State Medical Council.

(c) They must subsequently have done one year's housemanship prior to admission to the post graduate degree or diploma course. Housemanship should preferably be for one year in the same subject or atleast six months in the same department and the remaining six months in an allied department. Provided that in departments like Radiology/Anesthesiology/ Physical Medicine and Rehabilitation where suitable candidates who have done housemanship in the respective subject for the respective speciality are not available then the housemanship in Medicine and/or in Surgery may be considered as sufficient.

Work done by the District Epidemiologists in the P.Falciparum containment programme (PFCP) for a period of one year may be considered at par with the requirements of house jobs required for admission to post graduate course in Social and Prevention Medicine.

Alternatively

(i) Must have worked as a full-time post graduate student in a manner equivalent to housemanship requirements, in the department concerned before taking up the post graduate courses.

(ii) or worked in State Medical Services, Armed Forces Medical Services or other equivalent services of public undertakings, local bodies, etc., for a period of three years after full registration provided that one year of these three years is spent in a hospital which is approved for purposes of undertaking the compulsory rotating internship or in a command hospital, failing which the aforesaid period of three years would be increased to five years.

The question is whether it can be denied that these are statutory in character. As a matter of fact, in K.P. Ganguly v. University of Lucknow in paragraph-15 it is stated thus:

"15. The candidates consist of students who had not been admitted to the medical courses and they have assailed the refusal of their admission as being violative of Article 14 of the Constitution and to the statutory orders passed and rules framed by the Government from time to time. In some cases, the Government Order referred to above has also been challenged as being arbitrary and outside the scope of Article 14."

Then again in paragraph 9 it has been observed as follows:

"9. This now brings us to the relevant provisions of the Rules framed by the Medical Council of India on the recommendations of Post Graduate Medical Education which were adopted in February 1971, i.e., long before the present Writ Petitions were filed in the High Court. The relevant portions of the Rules may be extracted thus:

(1) For M.D./M.S. degree in clinical subjects, there shall be proper training in basic medical sciences related to the disciplines concerned as well as paper in these subjects at the examination. In the case of M.D. and M.S. in basic medical sciences there should be training in applied aspects of the subject and a paper on the subject.

(2) Thesis should be a part of the examination in the degree courses as this gives training in research methodology.

(3) The student-teacher ratio should be such that the number of post-graduate teachers to the number of post graduate students admitted per year be maintained at 1:1.

For the proper training of the post graduate students, there should be a limit to the number of students admitted per year. For this purpose every unit should consist of at least 3 full time post graduate teachers and can admit not more than 3 students for post graduate training per year. If the number of post graduate teachers in the unit is more than three then the number of students can be increased proportionately. For this purpose one student should associate with one post graduate teacher,

Where the number of post-graduate teachers is less than 3 per unit then the number of students should be reduced so as to keep the ratio to one student-teacher per year."

We are not for a moment stating that these are non-statutory in character. But does it have any binding force on the University? For this it is necessary for us to note that the Indian Medical Council Act, 1956 is an Act to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith. Section 20 of the Act throws an obligation on the Central Government to constitute from among the members of the Council a Post Graduate Medical Education Committee. The object of the Committee is to prescribe standards of post graduate medical education for the guidance of Universities. The prescription of these standards is with an object of advising Universities in the matter of securing uniform standards for post graduate medical education throughout India. From this it does not follow that such prescription of standards could ever have the statutory character or a binding force whatever.

Now we go on to Section 33 of the Act. This is an enabling provision where powers is conferred on the Medical Council to make regulations. It cannot be gainsaid that these regulations are statutory in character because Section 33 specially empowers the Medical Council to do so. Clause (j) of Section 33 is necessary for our purpose. It reads

"(j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications."

Here again we are not persuaded to hold that they could be binding on the University. This is why we set out the object of the establishment of the Medical Council of India. Supposing any one of the statutory regulations is violated, can the University be taken to task? Our answer should be in the negative because the University is an autonomous body and incharge of academic matters governed by a statute and under the statute it has power to make Ordinance. The Ordinance in question does not admit of any relaxation or exemption in favour of in-service candidates however laudable such a provision may be from the point of view of Medical Council of India. If the Karnataka University had thought fit not to grant such an exemption, we do not think we could persuade

ourselves to issue a command (in the nature of mandamus) to direct the University to grant such an exemption. That power may not be available to us under Article 226 of the Constitution. If an exemption has been granted to A by the University and if such an exemption has been denied to B and on that score if a "discrimination is made out, then it is totally different. But where the exemption is not at all conferred under the Ordinance, the Court cannot, on the ground that the Medical Council of India had made recommendations, direct the University to do so.

7. Cases are not wanting to hold that the regulations are directory in nature. The first case we can usefully refer to (SIC) be *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, That was a case in which Regulation II of the Regulations made u/s 33 of the Act prescribed the minimum qualifying marks for selection of candidates to Medical Colleges. The executive order of the Government clearly relaxed this condition for Scheduled Caste and Scheduled Tribe candidates. Reversing the Judgment of the Madhya Pradesh High Court, their Lordships of the Supreme Court held that Regulation II made u/s 33 of the Act was directory in nature and it would not be invalid or unconstitutional if - that Regulation is relaxed.

8. Then again in *Dr. VIKRAM K. SHAH v. STATE* (1983) 24 GujLR 554 it was held as follows:

"The Regulation of the Medical Council that all selection for post graduate studies should be conducted by the University cannot be put on the pedestal of a statutory regulation firstly for the reason that selection is not within the purview of the Medical Council and secondly on the ground that this particular directive is only recommendatory in character and not mandatory in application."

9. Then again in *Preethi Srinath Vs. The Selection Committee for admission to the first M.B.B.S. Course Govt. and Pvt. Medical Colleges*, it was held as follows:

"Where the selection committee had not made any reservation for outstanding sportsman as in the past who were seeking admission in First Year M.B.B.S. for academic year 1980-81, the selection committee could not be said to have contravened Clause II of Regulations framed by Medical Council of India u/s 33 called "Minimum recommendations of the Medical Council of India on Under-graduate Medical Education made by the Council of India" as Clause II stipulating the criteria or method of selection cannot be said to be mandatory. The Regulations or the Act under which they are made, do not operate as binding statutory directions on the selection committee to be given effect to by it, in absence of a provision made thereto by the State Government. If the State Government were to make provisions for the same, then only it would be binding on the selection committee and not otherwise.

Further, in such a case, the Government had not made reservations to sportsman under the Karnataka Medical College Rules of 1980 only in respect of admission to Medical Colleges could not be characterised as arbitrary, whimsical and as

such violative of Article 14 of the Constitution. It could not also be said that the Government was bound to provide for such reservation according to principle of promissory estoppel."

Therefore, we have not the slightest hesitation in holding that these recommendations made by the Medical Council of India are merely directory and not mandatory. This should be enough to dispose of the Writ Petitions.

10. However, Mr. Karanth, learned Counsel for the petitioners, appeals to us stating that these Writ Petitions have been pending from the year 1985. The petitioners have taken the examination and some of them have passed the examination as well. All that is required is that they must be conferred with the Diploma but that has been withheld by the order of this Court subject to the result of the Writ Petitions. He has further submitted that when the allocation of the candidates to the various Universities is not in the hands of the petitioners but it is only the Government which does it, they should not be penalised for this unhappy situation in which they are obliged to be. Further, the 1st respondent - University may also be directed to consider the revision of the Ordinance in the light of the recommendations made by the Medical Council of India on Post Graduate Medical Education. This all the more would be so in view of the fact that other Universities like Bangalore, Mysore or Mangalore granted such an exemption accepting the recommendations of the Post Graduate Medical Education.

11. Without going into the merits of the submission of the learned Counsel for the petitioners, all that we are constrained to remark is the Government and the University may have a second look with reference to this prayer and consider whether it is worthwhile to grant exemption to those candidates who are in Karnataka Medical Service or any other equivalent service who have out in five years or more service treating them on a par with those candidates who had undergone one year of housemanship. In any event, if they decide to grant the exemption, certainly that exemption must be made available to these petitioners as well. But we make it clear that we are not expressing any opinion as to what the University should do in this regard and it is entirely free to decide the matter as it feels just and proper.

12. Writ Petitions are dismissed subject to the above observations. No costs.