
(2004) 04 GAU CK 0036
In the Gauhati High Court

Case No : WP (C) No's. 1792, 2022 to 2025, 2193 to 2195 and 2391 of 2004

Dr. Surjit Giri and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1994 — Rule 6, 9

Citation : AIR 2005 Guw 46 : (2004) 3 GLR 367 : (2004) 3 GLT 8

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.C. Borbora, M.K. Choudhury, R. De, A.K. Goswami, S. Banik, N. Bora, M. Dutta, R. Islam, N. Mitra and A. Dekka, for the Appellant; P.K. Mushahary, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—All these 9(Nine) Writ petitions were heard analogously and are being disposed of by this common order.

2. Heard Mr. M.K. Choudhury and Mr. A.K. Goswami, learned counsel for the petitioners and Mr. P.K. Mushahary, learned sr. Govt. advocate, Assam.

3. The writ petitioners before us are all qualified Doctors, having M.B.B.S. Degree, and are presently undergoing P.O. Diploma Course/ Degree Courses in various disciplines in the three Medical Colleges of Assam. The Director of Medical Education, Assam had invited application for admission into the Post-Graduate Courses in the Medical Colleges of Assam for the Sessions 2001-02, 2002-03, 2003-04 and 2004. The Entrance Examination is schedule to be held from 9th April, 2004. The petitioners are aggrieved by Clause 6(iv) of the Assam Medical Colleges (Regulation of Admission to Post-Graduate Courses) Rules, 2004, hereinafter preferred to as "the Rules". Clause 6(iv) of the Rules reads as follows :

"6. Eligibility for Entrance Examination :

For appearance in the entrance examination, a candidate must

(i)

(ii)

(iii)

(iv) have permanent registration with State Medical Council or Medical Council of India, and he has not been undergoing a Post-Graduate Degree/Diploma Course in any Medical Collages at the time of application and who shall submit an undertaking in this regard."

4. The grievance of the petitioners is that as they were successful in their earlier Entrance Examination, they were offered seats in Degree/ Diploma Courses but these were not as per their choice. Previously, there was scope/opportunity for moving to another course through counselling the same has been stopped now in view of the decision of the Apex Court which has provided that there will be single counselling only. The petitioners desire to abandon or forego their present seat in Diploma Course/Decree Courses in the event of being selected for P.G. Degree Courses in the subject of their choice. This used to be the common practice and many students used to change their subjects whenever they are selected, for better course. Rule 6(iv) has put unnecessary embargo on such desire of the petitioners. The petitioners have therefore prayed for quashing of the said Rule as ultra vires.

5. Shri Choudhury and Sri Goswami have submitted that the Rules of the Medical Council of India nowhere provides for such embargo and, as such, the State of Assam had no jurisdiction to provide for such a provision, in the Rules. Learned counsel have placed reliance on the observation of the Apex Court in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, The Constitution Bench of the Apex Court has held :

"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 or its delegate."

6. In the present case, we find that the Medical Council of India has nowhere stated that the candidates undergoing P.G Degree Course or Diploma Course shall be eligible to seek fresh admission in other streams while they are undergoing their studies. Shri Choudhury was fair enough to submit that Medical Council of India Rules are altogether silent on the point. Thus, we find that the State has provided or adopted the above Rule, Rule 6 (iv) over a grey field to achieve certain objectives.

7. The respondent-State has filed an affidavit in opposition justifying their action in the following words :

"If students are allowed to apply for admission in P.G. Courses of subsequent sessions large number of seats may be wasted and it would deprive the students aspiring to study in those courses (surrendered courses). Moreover, Govt. of Assam, pay a monthly stipend (1st Year Rs. 6,950 P.M., 2nd Year Rs. 7,100 P.M. 3rd Year Rs 7,250 P.M.) to the P G students to complete their courses. In the events of switching over to subsequent Session and before completion of the original P G Course, would result in waste of public exchequer."

8. The respondent-State has further submitted that in view of the directions of Apex Court, the Medical Council of India has issued Guidance for admission and there will be no mid-stream admission into any course and the counselling for admission in the Post-Graduate Courses will be restricted to one only. The Rule made by the Medical Council of India further provided that there will be no mid-stream migration or transfer from one Medical College to another Medical College. According to the respondent all these steps have been taken to regularise the admission/education in Post-Graduate Courses and to avoid wastage of public resources and finance and manpower by allowing the shifting from one course to another in mid-stream. The Rule 6(iv) merely prohibits continuation in two courses simultaneously but it does not prohibit from applying from admission into the subsequent batch or Session after completion of the course. Moreover, there is no complete bar and the petitioner can take recourse to Rule 9 of the Rules of 2004. Rule 9 reads as follows :

"9. Resignation from a session surrendering of a seat -- In case a candidate resign from a particular session after admission and he/she applies for allotment of seats on subsequent batch, he/she shall

(1) return the stipend if already drawn to the principal of the Collage.

(2) pay a penalty of a Rs 25,000 (Rupees twenty-five thousand only) by way of Bank draft payable to the Director of Medical Education, Assam at S.B.I., Guwahati, Dispur Branch

(3) be eligible to get back the original certificates deposited with the Principal only on the fulfilment of the provision of Sub-rules (1) and (2) above."

9. Sri Choudhary has submitted that under the- Rules, petitioners resigning may apply for admission afresh as per Rule 9. However, in view of the provision of Rule 6(iv), while the petitioners are undergoing studies in Diploma/Degree Courses, they are debated from making application itself. It is therefore, submitted that both the Rules may be harmoniously construed so that the petitioners may be allowed to sit in the Entrance Examination, and if they turn out successful, they may resign their seats and this will not affect any one, either the Govt. or the public at large.

10. There cannot be any denial of the fact that everyone is entitled in seek green pastures. If the petitioners want to improve their lot and change from Diploma Courses to Degree Course or from one discipline in degree course to another

discipline, generally speaking, there should not be any provision or bar to that. However, the Higher Medical Education stands altogether on a different footing, as lot of Govt. resources, public finance is involved. It also affects other candidates, who have been deprived from getting a seat in Diploma or Degree Course as they were taken by the disgruntled lot. There is another aspect of the matter also. Previously, there used to be 2/3 counselling and a student was given opportunity on the basis of his merit to shift from one discipline to other discipline, but, now the same has been stopped. The Apex Court has gone to the extent providing that even if a seat remains vacant, it should not be filled up in the mid-stream by way of transfer etc. All these measure have been taken so that there will be a smooth sailing and the candidates remain concentrated on their discipline and there is no unnecessary disturbance to the structure; otherwise, a question will arise time and again, as to who should fill up the vacancy, if any, arising in the mid-stream? We, therefore, find that by Rule 9 a stiff penalty has been imposed for resignation, even along with the condition for return of the stipend etc. The real purpose for providing such stiff provision is to discourage students, undergoing the studies, from submitting resignation and to concentrate in their respective field further we find on reading Clause 6(iv) and Clause 9 tiha there is ho complete prohibition if the petitioners have the confidence or will to sacrifice the present seat, they can always put in their papers as provided under Rule 9 and try their luck by becoming a free bird.

11. Learned Govt. Advocate has referred to the similar provision in the pospectus issued by the All India Institute of Medical Sciences for Admission in P G/Post Doctoral Courses for the Sessions January 2004, which provides :

IMPORTANT

"Please note that the candidates who have already done are doing MD/ MS/MDS in any subject at the time of applying shall not be considered for admission to MD/MS/MDS courses. If it is found at a later stage that the candidate has given false undertaking at the time of counselling, His/her candidature registration will be cancelled."

12. We thus, find that asper the above, even if candidate, who has already completed his MD or MS, is not eligible for consideration for admission whereas there is no such bar in the matter of admission into the Assam Medical Colleges.

13. In view of he above, we find no merit in the writ petitions. The provisions of Rule 6(iv) cannot be termed as arbitrary, discriminatory or illegal and writ petitions stand dismissed.

14. As per the interim order of this Court, the respondent authorities were directed to accept the application form of the petitioners: subject to further orders. The respondent authorities may now act in accordance with the rules and interim orders stands vacated.