

(2018) 07 RAJ CK 0247
In the Rajasthan High Court
Case No : Civil Writ Petition No.12686 of 2018

Dr. Vikas Bhardwaj @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 31-07-2018

Acts Referred:

Indian Medical Council Act, 1956 — Section 11(2)
Maharashtra Medical Council Act, 1965 — Section 28, 38
Income Tax Act, 1961 — Section 140A(3)
Constitution of India, 1950 — Article 14

Citation : (2018) 07 RAJ CK 0247

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Vigyan Shah, B.L Chaudhary, Rajendra Prasad, MS Shiromani,
Kamlakar Sharma, Siddharth Bapna, Harsh Sharma

Final Decision : Dismissed

Judgement

Excluded from the provisional merit list of 11-6-2018 for admissions in Rajasthan by the college of Physicians and Surgeons (CPS) to its 2 year

diploma courses, 2017 the petitioners have filed this petition praying that it be held that they are eligible and hence be considered for admission to CPS-

PG diploma courses 2017 in order of their merit on the about 100 vacancies admittedly obtaining for in-service candidates, as they admittedly are.

The State of Rajasthan through the Director, Medical and Health Services entered into a Memorandum of Understanding (MOU) with CPS Mumbai

on 23-12-2015 to facilitate MBBS graduates registered with the Medical Council of Rajasthan to acquire additional qualifications of Post Graduate

Diplomas recognized by the Medical Council of India (MCI). As per condition No.5 of the MOU 50% of the admissions to various diploma courses

were to be filled in from amongst in-service doctors and the remainder from private MBBS doctors. The diploma awarded by CPS were to be

included in the schedule appended to the Rajasthan Medical Council Act, 1952 (hereafter `the Act of 1952').

The Ministry of Health and Family Welfare, Department of Health & Family Welfare, Government of India issued a notification dated 17-10-2017 in

the exercise of powers conferred by subsection 2 of Section 11 of the Indian Medical Council Act, 1956 (hereafter `the Act of 1956') stating that the

Central Government under consultation with the MCI had included by way of amendment in the first schedule of the Act of 1956 several broad

Specialty Diploma Courses (two years courses at the post MBBS level) granted by the CPS Note-1 to the Notification specified that all admissions to

CPS-PG-diplomas would be through NEET-PG-2017, centralized counseling and as per Government policy from time to time. It was thus universal

knowledge that without NEET-PG-2017, which was only a ranking and qualifying examination, admissions to CPS PG Diploma courses were not

permissible.

Pursuant to the MOU dated 23-12-2015, CPS on its part issued an advertisement also dated 11-10-2017 for admission to its various two year diplomas

and three year Fellowship Arrangements in the State of Rajasthan. Clause 3 of the admission brochure set out the eligibility criteria. Clause 3.3

thereof provided that "Selection shall be based strictly on NEET-PG-2017 score." Clause 7.1 inter alia provided that the general merit list "shall

be prepared on the basis of NEET-PG-2017 score".

The Information booklet for NEET PG 2017 under clause 3 clearly states it to be only a qualifying-cum-ranking examination which would create no

automatic right to secure admission to a post graduate medical course, degree or diploma. It states that admissions would be subject to fulfilling

admission criterion prescribed for particular courses by the respective university, medical institutions, State/ Central Governments. Results of NEET-

PG-2017 were declared. On 13-1-2017 the qualifying percentile as per information bulletin for the general category candidate was declared as 50 and

the corresponding cut off for admission to MD/ MS courses at 705.9194. Subsequently vide notification dated 25-5-2017 issued by the National Board

of Examination, the Examining Body for NEET-PG-2017, it was revised to 42.5 qualifying percentile for general category students, with a

corresponding cut off mark of 667.4111.

The petitioners admittedly have not qualified the NEET-PG2017 and as per their mark-sheet of the said examination they have not been ranked and have categorically been stated to be "not eligible". Yet they having applied for admission to CPS PG Diploma courses pursuant to CPS notification also dated 17-10-2017 did not find a place in the provisional merit list dated 11-6-2018. Hence they have approached this Court with prayers recorded in the opening of this judgment.

Mr. Vigyan Shah, counsel for the petitioners submitted that the petitioners having written the NEET-PG-2017, secured 646.7582, 589.7384 and 484.2113 marks there at have indeed not been ranked and also declared not eligible for admission to MD/ MS Diplomas. His contention however is that not being eligible in the NEET-PG-2017 would not oust the petitioners from consideration to CPS's two year PG diploma courses. Mr. Vigyan

Shah submitted that such was not a pre-condition for admission to the CPS PG Diploma courses. Writing the NEET-PG-2017 and having a score therein sufficed, as the instructions for admission to CPS PG 2017 speak of NEET-PG-2017 score not NEET-PG-2017 qualified/ eligible. Mr. Vigyan

Shah emphasized the word "score" both in clauses 3.3 and 7.1 of the instructions issued by CPS for admission to its 2 year Post Graduate

Diploma. Counsel submitted that the petitioners have a reasonably high NEET-PG-2017 score, yet only 33 of the 133 seats in CPS PG 2017 Diploma

courses in the quota for in-service candidates, to which the petitioners belong, in Rajasthan State have been filled. The petitioners have been wrongly

left out of the provisional merit list, while on their comparative merit based on NEET-PG-2017 score, they were entitled to be admitted to the

remainder seats. Counsel submitted that the exclusion of the petitioners from the provisional merit list, despite the availability of vacancies for CPS-PG

(Diploma/ Fellowship) 2017 courses in the State of Rajasthan, is based on a misdirection rendering it wholly illegal and arbitrary.

Mr. Vigyan Shah then submitted that while the petitioners have been excluded by the CPS Mumbai from admission to its two year Post Graduate

Diploma courses on the purported ground of not having qualified and not found eligible at the NEET-PG-2017 examination, adopting a different

yardsticks in the State of Maharashtra for the very same two year post graduate diploma courses, CPS-Mumbai has admitted Maharashtra in-service

candidates with marks as low 8/ 9 as against the petitioners 646.7582, 589.7384 and 484.2113 marks at NEET-PG-2017. That, Mr. Vigyan Shah

submitted, indicates that CPS itself admits to qualifying marks/ ranking eligibility in NEET-PG-2017 not to be relevant for admission to its two year PG

diploma courses. Mr. Vigyan Shah submitted, that the petitioners thus aside of being subjected to illegality and arbitrariness, in being denied admissions

to CPS PG 2 year diploma course have also been invidiously discriminated against.

Reply to petition has been filed by the State of Rajasthan and CPS.

Mr. Rajendra Prasad appearing with Mr. M.S. Shiromani for the State has submitted that clause 3.3 of the instructions issued for admission into CPS-

PG (Diploma/ Fellowship) courses clearly states that selection would strictly be based on NEET-PG-2017 score. Mr. Rajendra Prasad submitted

that the words "NEET-PG-2017 score" cannot be mechanically construed without context. He submitted that NEET-PG-2017 held in early 2017

was avowedly a qualifying/ ranking examination only. Score without a ranking and being declared eligible at the said examination was of little

relevance. Mr. Rajendra Prasad submitted that as the petitioners admittedly failed to qualify the NEET-PG-2017 with the requisite percentile, they

were neither ranked nor declared eligible. Their NEET-PG-2017 score was redundant for all purposes. They were ineligible for admission both to

MD/ MS and diploma courses and cannot be treated differently from those who did not at all write the NEET-PG-2017 examination. In fact the

notification dated 17-10-2017 by the Ministry of Health and Family Welfare, Department of Health and Family Welfare, Central Government whereby

CPS PG Diploma courses were recognized under Section 11(2) of the Act of 1956 and included in the schedule thereto states that NEET-PG-2017

was the foundation of the recognition of CPS PG Diploma courses in issue. As per note-1 thereto, constructively understood, one who did not have a

NEET-PG-2017 certificate of eligibility could not be considered for admission in the two year diploma course of CPS. Contextually, clause 3.3 being a

sub part of clause 3 relating to eligibility, such has to be the construction of clause 3.3 of the Instructions relating to admission to CPS PG diploma

courses. The word "score" in clause 3.3 has to be read with the word "eligibility" to which clause 3 on the whole relates, and so read

warrants a score at NEET-PG-2017 making the candidate eligible with references to the declared qualifying percentile. Mr. Rajendra Prasad

submitted that clauses 7.1 of the instructions thereafter concerns itself only with drawing of merit list amongst those who were declared on the basis

of their score, eligible at NEET-PG-2017. The petitioners admittedly not having qualified NEET-PG-2017 examination were not entitled to admission

into CPS-PG (Diploma/ Fellowship) courses.Â

With regard to the example of the State of Maharashtra, where those not qualified, ranked and declared eligible NEET PG 2017, were yet admitted in

the PG diploma courses by CPS, Mr. Rajendra Prasad submitted that such admissions were under instructions of the State of Maharashtra confined to

the said State and without relevance to the MOU between CPS and State of Rajasthan for admissions in the State of Rajasthan. He submitted that

such admissions can have no relevance to the merit of the petitioners' case, as obviously the State of Rajasthan and State of Maharashtra are

independent entities and any directives of the State of Maharashtra to CPS with which it may have rightly or wrongly felt bound under Section 38 of

the Maharashtra Medical Council Act cannot be foisted on the State of Rajasthan. He further submitted that admissions of those not found eligible in

NEET-PG-2017 to CPS PG diploma courses in Rajasthan would entail lowering of standards of medical education in the State to the detriment of the

health of the public in State of Rajasthan.

Mr. Kamlakar Sharma, Senior Advocate appearing with Mr. Siddhartha Bapna for CPS submitted that certain CPS-PG (Diploma/ Fellowship)

courses offered by the college stand recognized and included in the schedule appended to the Act of 1956 under notification issued on 17-10-2017 by

the Ministry of Health and Family Welfare, Department of Health and Family Welfare under Section 11(2) of the Act of 1956. Mr. Kamlakar Sharma

submitted that CPS has MOUs with various State Governments including that of Maharashtra, Gujarat and Rajasthan amongst others where under its

diploma courses are also included in the respective State Medical Council Acts. The CPS PG diploma courses are conducted at the hospitals in the

respective states. Admissions toÂ CPS-PG (Diploma/ Fellowship) courses/ programme, are thus considered in a state inter alia on the eligibility of the

candidate being registered as a Medical Practitioners in the concerned State. The

admissions are state wise and not all India basis. Mr. Kamlakar Sharma submitted that the admission notice for CPS-PG-2017 diploma courses were open to those with eligible NEET-PG-2017 score. He referred to clause 3 of the notice for admissions to CPS PG 2017, which deals with eligibility as also to clause 3.3 thereof. Mr. Kamlakar Sharma submitted that the NEET-PG-2017 eligibility for the general category was 42.5 percentile and the corresponding cut off 667.4111 as notified on 22-1-2018. That was thus the eligibility of CPS-PG-2017. Mr. Kamlakar Sharma submitted that the petitioners have not been included in the provisional merit list for admission to CPS-PG-2017 for reason of their not having the qualifying percentile at the NEET-PG-2017 examination i.e. percentile of 42.5 and more and corresponding cut off 667.4111 and more. He pointed out that the notice for admission into CPS-PG (Diploma/ Fellowship) courses and the instructions circulated therefore did not in any way state that all 133 vacancies for in-service candidates in the State of Rajasthan in the CPS-PG-2017 would be filled up irrespective of the eligibility of the candidates and despite their failure to be ranked and declared eligible at NEET-PG-2017 examination. It was submitted that the two year diploma courses offered by CPS-PG are not inferior to MD/ MS but only different and there is no conceivable reason to hold that those not qualified/ eligible for MD/ MS admissions have a right to be yet considered for admission to CPS-PG without the concerned State Government lowering the qualifying percentile as was done by the State of Maharashtra for admission in that particular state. As far as the issue of admission into CPS-PG (Diploma/ Fellowship) courses in the college with marks lower than the qualifying percentile declared for NEET-PG-2017 in the State of Maharashtra is concerned, Mr. Kamlakar Sharma submitted that in the exercise of its power under Section 28 of the Maharashtra Medical Council Act, the State of Maharashtra decided not to leave any in-service seats in the State for CPS-PG-2017 vacant. It therefore vide its letter dated 10-10-2017 required CPS to admit, to the extent of CPS-PG-2017 seats for the State of Maharashtra, students thereto with reference to their comparative merit at the NEET-PG-2017 examination without consideration of the qualifying percentile or eligibility at the said examination. The State of Rajasthan contrarily expressed concern at the deterioration of quality of medical education, if the qualifying percentile for

NEET-PG-2017 was compromised and diluted leading to admission to CPS-PG-2017 diploma courses for Rajasthan state without reference to

eligibility under NEET-PG-2017.

Heard. Considered.

The Ministry of Health and Family Welfare, Department of Health and Family Welfare, Central Government issued notification dated 17-10-2017

(amended 22-1-2018) under Section 11(2) of the Act of 1956 after consultation with the Medical Council of India and amended the first schedule to

the Act of 1956 including therein certain broad specialty diploma courses (two years courses at the post MBBS level) granted by CPS Mumbai. The

said notification at note-1 clearly provided that admissions to the 2 year PG diploma courses of CPS be made on basis of NEET-PG. What do the

words "NEET-PG" in the notification of 17-10-2017 under Section 11(2) of the Act of 1956 issued by the Ministry of Health and Family Welfare

signify? This notification is central to the recognition and validity of the two year diploma courses conducted by CPS Mumbai as without it such

courses would be of no avail. I am of the considered view that as the admissions have been made subject to NEET-PG, it has to necessarily entail, on

the principle of a bonam partem construction, a situation of the candidates being NEET-PG qualified, ranked and declared eligible at the said

examinations. Any other interpretation would render the requirement of NEET-PG for admission to CPS PG diploma courses wholly redundant. The

information bulletin for NEET-PG-2017 categorically states that it is a qualifying-cumranking examination. It is thus inconceivable that while admission

to CPS-PG diploma courses were made by the Central Government subject to NEET-PG, such admissions could be available to candidates who had

not qualified at the said NEET-PG examination, were not ranked there at and specifically declared not to be eligible. For this reason and construction

bonam partem referred to above, I would hold the requirement of NEET-PG-2017 score in clause 3.3 of the notice for admission for PG diploma and

Fellowship courses of CPS (2017) in the State of Rajasthan, which is part of clause 3 dealing with eligibility, to mean a NEET-PG-2017 valid score.

The principle of the construction bonam partem is that where an Act refers to a thing being done, it has to be taken as reference to a thing being

lawfully done. Reference can be made, for the application of the maxim of bonam

partem to the case of Gaurav Sondhi Manbir Sondhi vs. Income

Tax Officer [(1991) 38 ITD 129 (Delhi)] where the words "on the basis of any return" in Section 140 A(3) of the Income Tax Act, 1961 were

construed as "on the basis of any valid return". Further in UOI Vs. Kurukundu Balakrishnaiah [II(2004) ACC 591] the Larger Bench of the

Andhra Pradesh High Court reiterated that it is a basic principle of legal policy that law should serve the public interest and on this principle the courts

have evolved the technique of construction in bonam partem i.e. in good faith (to come to a lawful and rightful interpretation). And where a statutory

benefit has been given on specified condition having been satisfied it presumes that the legislators intended the benefit to operate only when the

required act was performed in a lawful manner"and I would add, validly. Further if a contrary interpretation is taken, as argued by Mr. Vigyan

Shah, that the word "score" in clause 3.3 has to mean raw score without consideration of it being at or above the qualifying percentile of 42.5

(667.4111) at NEET-PG-2017, it would entail a clear absurdity as on that interpretation a score of 1 or even 0 in NEET-PG would render a MBBS

graduate seeking admission to CPS-PG two year diploma course eligible.

The petitioners admittedly not having secured 42.5 percentile and corresponding score of 667.4111 at NEET-PG-2017, declared not eligible and not

even ranked at the said examination were thus rightly excluded by CPS from the provisional merit list for admission in PG Diploma courses in the

general category in the State of Rajasthan. They were not eligible under clause 3.3 of the notice for admission to CPS-PG-2017 as the clause has

been construed hereinabove. It would be resultantly appropriate to here state that clause 7.1 of the admission notice to CPS PG diploma courses in the

State of Rajasthan would only be relevant to drawing the merit list as per NEET-PG score but only amongst those eligible"having secured 42.5

percentile"667.4111 marks at the NEET-PG-2017, ranked and declared eligible by the National Board of Examination.

The other argument of Mr. Vigyan Shah is based on admission to CPS-PG diploma courses 2017 in the State of Maharashtra without the threshold

eligibility of the concerned students having secured the qualifying percentile of 42.5"cut off marks of 667.4111 at the NEET-PG-2017. Mr. Vigyan

Shah submitted that such admission of in-service doctors in the State of

Maharashtra with as low as 8 marks in NEET-PG-2017 and exclusion of petitioners from admission to the same course despite their securing marks 646.7582, 589.7384 and 484.2113 at the NEET-PG-2017 is wholly discriminatory. Mr. Vigyan Shah submitted that such admission in the State of Maharashtra also entail CPS's accepting that qualifying percentile of 42.5 and corresponding cutoff marks of 667.4111 at the NEET-PG-2017 was not the immutable criterion and eligibility, for if it were so how could the candidate in Maharashtra without the above alleged requisite eligibility be admitted. The submissions of Mr. Vigyan Shah has no merit. For one admissions to CPS-PG two year diploma are state wise and not on all India basis. They are based of independent MOUs signed by CPS with different State Governments. And where the State of Maharashtra required CPS Mumbai to overlook the qualifying percentile requirements of NEET-PG-2017 for admissions to CPS in the State of Maharashtra it did so in its wisdom and understanding of law and so did CPS accept. But it cannot bind the admissions to CPS PG diploma courses in the State of Rajasthan. CPS's case as recorded above is that it was advised by State of Maharashtra and that advice was binding on it under Section 28 of the Maharashtra Medical Council Act. That may or may not be the correct legal position but that question is not in issue in this petition. and in any event this court would lack territorial jurisdiction to address the legality and validity of State of Maharashtra's directive to CPS situate at Mumbai. And further the State of Maharashtra is not a party in this petition. Suffice to state that as a respondent in this petition, the State of Rajasthan has not issued any similar directive. Contrarily, CPS states, and that has not been denied, that the State of Rajasthan expressed concerns with the lowering and dilution of standards in Medical education. Besides it has been earlier held in the judgment that the recognition of the 2 year broad specialty diplomas of CPS as notified by the Central Government in the Ministry of Health and Family Welfare on 17-10-2017 is premised "as indicated in note-I thereof" on admissions being based on NEET-PG. and that requirement has been construed as NEET-PG qualified/ eligible. It needs no further repetition that an argument based on parity/ equality has to be founded upon a legal right and not on a demand for court's mechanical reiteration of earlier instances in the exercise of executive powers or even judicial

determination. It having been held that admission to CPS-PG two year diploma courses 2017 can be open only to those who are found eligible in

NEET-PG-2017, I would reject Mr. Vigyan Shah's contention based on Article 14 of the Constitution of India.

What however now remains to be addressed is Mr. Vigyan Shah's contention based on clause 38 of the MOU dated 23-12-2015, between State of

Rajasthan and CPS Mumbai which reads under:-

"Any additional qualification acquired from CPS from any other recognized state prior to signing of this MOU or henceforth shall not be barred as

valid qualification and shall be registered with the Rajasthan Medical Council as per the rules prescribed by Government of Rajasthan for the

purpose."

Mr. Vigyan Shah submitted that admittedly admissions to the two year PG diploma courses with CPS in the State of Maharashtra are being made

despite qualifying percentile declared for NEET-PG2017 not having been secured by various candidates. He submitted that such candidates after

securing the diplomas will be allowed to offer them as valid qualification in the State of Rajasthan and be registered with the Rajasthan Medical

Council. This Mr. Vigyan Shah submitted creates an anomaly to the petitioner's detriment. That be equalized and ironed out, he submitted, by

creating a level playing field as would be mandated by Article 14 of the Constitution of India and directing that the petitioners with much better marks

at NEET-PG-2017 than the Maharashtra state in-service doctors be admitted on the strength of their merit on the vacant in-service seats for

Rajasthan in the CPS PG two year diploma courses. The argument is liable to be rejected as it again is based on parity and has earlier been dealt with

and held against the petitioners. Indeed the MOU as it presently stands, would require the State of Rajasthan to treat additional qualification of two

year diploma from CPS obtained by the in-service doctors of the State of Maharashtra "including those admitted without being eligible in NEET-PG-

2017, yet it is a peculiar situation which has obtained subsequent to signing of the MOU on 23-12-2015 between the State of Rajasthan and CPS. The

State of Rajasthan in the newly created circumstances directed to revisit clause 38 of the MOU dated 23-12-2015 with CPC and any other clause

therein that puts MBBS graduates in-service doctors in Rajasthan to a

disadvantage vis-à-vis MBBS graduates in Maharashtra for admission to

CPS-PG- two year diploma and make requisite rectification in the MOU within a period of six months" well before next round of admissions to

CPS PG Diploma courses.

The upshot of the above discussion is that the petitioners have not been able to make out any contravention of their legal or fundamental rights. Finding

no merit in the petition, it is liable to be dismissed. So dismissed.