

(2003) 08 DEL CK 0063
In the Delhi High Court
Case No : Civil Writ No. 5263 of 2003

Fahad Ansari

APPELLANT

Vs

All India Insititute of Medical Sciences

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 109 DLT 163 : (2004) 75 DRJ 549

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : M.C. Bhandare and M.K. Dewan, for the Appellant; K.K. Sud, Addl. Solicitor General, Mukul Gupta and Mukta Gupta for Respondents No. 1 and 2, for the Respondent

Judgement

Vikramajit Sen, J.—Rule.

2. I have heard the Counsel for the parties at length.

3. I recall the legal maxim "Ignorantia Jurisdiction non excusat". It applies even to illiterate citizens of this country and where the Respondent is an autonomous body claiming to be of national eminence and independent even of the Medical Council of India, which has been held to be the statutory authority for governing matter relating to medicine in India, this maxim applies a fortiori. The Petitioner before me claims to be physically handicapped and in this regard has produced a certificate issued from Patna. Since the Petitioner failed to gain admittance to the MBBS course in the AIIMS, he approached the Court of Chief Commissioner for Persons with Disabilities in the case No. 2757/2003. A short Reply has been filed by the AIIMS in which it has stated "that the AIIMS takes its own decisions and, Therefore, decisions of the MCI are not applicable automatically and mutates mutants. That all such decisions are taken by the Academic Committee and if need be placed before the Governing Body". This stand flies in the face of the judgment of the Hon'ble Supreme Court which recognized supremacy of the MCI in matters of Medical.

4. What is more disturbing is the following sentences pleaded by the AIIMS. "That at AIIMS there are only 50 seats for MBBS, out of which 7 are reserved for SC, 4 for ST, and 5 for foreign national nominated by the Govt. of India. That as per judgment dated 18.9.2002, of the Hon"ble Supreme Court, whereby the decision of the Delhi High Court in the case of Delhi University was reversed, however, no appeal against the judgment in the case of AIIMS, was filed and remains unchallenged. The AIIMS was never served with any notice in the matter by the Hon"ble Supreme Court. The Guidelines of the MCI communicated to the Hon"ble Supreme Court vide letter dated 25.5.2001, and duly taken note of in the judgment dated 18.9.2002, speaks of reservation in favor of only orthopedically handicapped persons and not for visually and hearing impaired persons. That on this analogy only 1% reservation would be permissible in law and according to the number of seats available at AIIMS only one seat alternate year would be eligible for reservation. That all these issues as submitted above and for considering the conditions given by the MCI and dealing with the modalities of providing minimum cut-off marks is being placed before the Academic committee in its meeting, where after the decision will be communicated to your honour".

5. Mr. Sud, learned Addl. Solicitor General has very fairly conceded that this understanding of the law is not correct and that Article 141 of the Constitution holds sway and is explicit. This proposition is well settled from the following passage in *Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others*, , which reads as follows:

"Though a large number of writ petitions were filed challenging the Act, all those writ petitions were grouped together, heard together and were disposed of by the High Court by a common judgment. No petitioner advanced any contention peculiar or individual to his petition, not common to others. To be precise, the dispute in the cause or controversy between the State and each petitioner had no personal or individual element in it or anything personal or peculiar to each petitioner. The challenge to the constitutional validity of 1979 Act proceeded on identical grounds common to all petitioners. This challenge was accepted by the High Court by a common judgment and it was this common judgment that was the subject matter of appeal before this Court in *Hansa Corporation* case. When the Supreme Court repelled the challenge and held the Act constitutionally valid, it in terms disposed of not the appeal in *Hansa Corporation* case alone, but petitions in which the High Court issued mandamus on the non-existent ground that the 1979 Act was constitutionally invalid. It is, Therefore, idle to contend that the law laid down by this Court in that judgment would bind only the *Hansa Corporation* and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. Article 141 reads as follows:

The law declared by the Supreme Court shall be binding on all Courts within the

territory of India. A mere reading of this article brings into sharp focus its expense and its all pervasive nature. In cases like this, where numerous petitions are disposed of by a common judgment and only one appeal is filed, the parties to the common judgment could very well have and should have intervened and could have requested the Court to hear them also. They cannot be heard to say that the decision was taken by this Court behind their back or profess ignorance of the fact that an appeal had been filed by the State against the common judgment. We would like to observe that, in the fitness of things, it would be desirable that the State Government also took out publication in such cases to alert parties bound by the judgment, of the fact that an appeal had been preferred before this Court by them. We do not find fault with the State for having filed only one appeal. It is, of course, an economising procedure.

The judgment in the Hansa Corporation case rendered by one of us (Desai, J.) concludes as follows:

As we are not able to uphold the contentions which found favor with the High Court in striking down the impugned Act and the notification issued there under and as we find no merit in other contentions canvassed on behalf of the respondent for sustaining the judgment of the High Court, this appeal must succeed. Accordingly, this appeal is allowed and the judgment of the High Court is quashed and set aside and the petition filed by the respondent in the High Court is dismissed with costs throughout,"

6. The pleadings of the AIIMS before the Chief Commissioner for Persons with Disabilities leave much to be desired and I shall allow the matter to rest assuming that legal advice was not taken. Mr. Sud, however, explain that the prospectus and other arrangements were not made by the AIIMS since it was not aware of the reversal judgment in Rekha Tyagi's case. It is implicit in this argument that had the judgments of the Hon'ble Supreme Court in All India Parents Association Hearing Impaired v. State of Kerala and Deputy Secretary, Department of Health v. Soachita bids was been brought to their notice reservations in line with the judgment would have been accommodated for.

7. I had occasion to deal with this very question in a bunch of Writ Petitions which was disposed of by Judgment dated August 11, 2003. The question of maintaining 3 per cent minimum reservation has been discussed in detail in that judgment. It applies in all fours to the case in hand. I have also had occasion to consider the demand for outright admission on the basis of a reservation carved out for a particular category of persons. In Civil Writ No. 5184/2003 titled as Chhavi Raj and Ors. v. The Vice Chancellor and Ors. delivered on August 26, 2003, I have implemented the decision of the Hon'ble Supreme Court in State of Madhya Pradesh and Ors. v. Gopal D. Tirthani and Ors. authored by His Lordship Justice R.C Lahoti which judgment is still unreported. In essence, it has been held that it is not permissible to traverse beyond the minimum qualification set down by the Medical Council of India. Inasmuch as it has now been stated in a communication dated 25.8.2003 addressed by AIIMS to its standing legal

Counsel that the Petitioner has obtained 39% marks, the decision in Chhavi Raj's case (supra) also applies in all fours.

8. In these circumstances, I would ordinarily have dismissed the Petition. However, Mr. Bhandare, learned Senior Counsel who appears for the Petitioner states that it would be beneficial for the Writ to be entertained in respect of Prayers 1 and 2 in the Writ Petition so that, with regard to other handicapped students, relief would be made available in the future years.

9. Insofar as no arrangements had been made by the Respondent for implementing the statutory provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the implementation of the two judgments of the Hon"ble Supreme Court, I consider it appropriate to entertain the present petition.

10. It also appears that the Respondent has maintained the practice of not declaring the results to each and every candidate but rather declaring the result of only those candidates who fall within the category of "successful candidates". While there may be some reasons justifying such a practice, every citizen or student possesses an unqualified right to know how he has fared in an examination in which he has appeared. This would not only give some satisfaction to the candidate involved, but would also ensure openness and the absence of arbitrariness.

11. Since the result has not been publicly declared the Respondents are directed to produce the answer-sheet on the next date of hearing.

12. Counter-Affidavit, if any, be filed within four weeks. Rejoinder be filed within two weeks thereafter.

13. List for final disposal on 30.10.2003. CM. No. 9233/2003:

14. No interim relief is called for, hence the application stands disposed of.