

(2004) 11 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 43056, 43629, 43799, 43830, 44026, 44724, 44875 and 46207 of 2004

Furkhan Ali

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Graduate Medical Education (Amendment) Regulations, 2004 — Regulation 6, 6A
Indian Medical Council Act, 1956 — Section 10 A, 10 A (1), 33

Citation : (2005) 4 KarLJ 168 : (2005) 2 KCCR 86 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Ajoy Kumar Patil, in W.P. Nos. 43056, 43629 and 46207 of 2004, Mahesh R. Uppin, in W.P. No. 43830 of 2004, B.L. Sanjeev Associates in W.P. No. 44724 of 2004, C. Jagadish and G. Krishnamurthy, in W.P. No. 44026 of 2004, Jayakumar S. Patil and Associates in W.P. No. 44875 of 2004 and G.A. Vishwanatha Reddy, in W.P. No. 43799 of 2004, for the Appellant; B. Manohar, High Court Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—All these petitions are filed by students seeking a direction directing the 2nd respondent to allot seats to the petitioners in the 3rd respondent-College.

2. In W.P. No. 43830 of 2004 the prayer is slightly modified. Facts, grounds and the law in all these cases are common. Matters were heard by clubbing all these petitions by this Court and a common order is passed.

3. Facts in brief are as under.--Petitioner, Sandeep in W.P. No. 43629 of 2004 appeared for CET examination and he secured medical rank of 12777. He is qualified and eligible for admission to the MBBS course. He belongs to 3-A category. He appeared for Counselling on 14-9-2004 and on 26-9-2004. He was unsuccessful in getting admission under 60% Government quota seats in terms

of a formula evolved between the Government and the management of private medical colleges. The 3rd respondent-College was not included in seat matrix published by the 2nd respondent in view of the fact that the Medical Council of India had passed an order prohibiting admissions to the 3rd respondent-College for the academic year 2004-05. The 3rd respondent filed a writ petition in this Court and the said writ petition came to be rejected by this Court. Writ appeal was filed by respondent 3 in W.A. Nos. 2400 to 2402 of 2004. Division Bench differed in their opinion. Matter was referred to a third learned Judge. The majority view was that it is permissible for the 3rd respondent-College to make admission for the academic year 2004-05 in terms of the intake fixed by the Central Government. A writ was issued in terms of Annexure-C. The 3rd respondent-College was part of the Consortium of Medical, Engineering and Dental Colleges of Karnataka (COMED-K). Petitioner appeared for the COMED-K examination and secured rank of 4068. A telegram was given by the 3rd respondent to the petitioner to appear for Counselling for admission to the MBBS course under the Management quota. Petitioner appeared and was not give a seat under the management quota. He thereafter contacted the 2nd respondent to find out whether Counselling would be conducted for admission to the Government quota seats. He was informed that no Counselling would be conducted since the last date fixed for admission was 30-9-2004. He contacted the management of the 3rd respondent-College and was informed that in the event of CET cell allotting students under the Government quota, they will be admitted to the MBBS course and that the College is proceeding to make admissions under the management quota. Petitioner reliably learnt that the 2nd respondent would not be conducting Counselling for admission under the Government quota. Under these circumstances, directions are sought for by petitioner, Sandeep in W.P. No. 43629 of 2004.

4. Petitioner in W.P. No. 43056 of 2004, Mr. Furkhan Ali is also a candidate eligible for admission to medical course. He secured medical rank 2715. He belongs to 2BG category. He appeared for Counselling conducted for 2nd respondent in various Government and private colleges. He appeared for Counselling on 13-7-2004, 12-9-2004, 23-9-2004 and 26-9-2004. He was unsuccessful in getting admission to MBBS course under the concessional fee category in the 60% Government quota seats. He also refers to the proceedings initiated by the 3rd respondent. The further averments are same and similar in the connected case.

5. Petitioner, Kshama Hegde states in W.P. No. 43830 of 2004 that she appeared for Common Entrance Test 2004 and her ranking is 23532 G 55. She also appeared for the entrance examination and her ranking is 9318. She also refers to the proceedings. Her prayer is also same or similar though in a modified manner.

6. Facts in W.P. Nos. 44724, 44026, 44875, 43799 and 46207 of 2004 are same or similar as in the connected cases.

7. Notice was issued, respondents have entered appearance.
8. Learned Counsel for the respondent 5 filed various documents for purpose of reference to decide the matter in question. Heard the Counsel at great length.
9. A very interesting legal question involves in all these petitions.
10. Sri Ajoy Kumar Patil, learned Counsel would say that the petitioners are entitled for consideration at the hands of this Court in the peculiar circumstances of this case. He essentially argues that the 3rd respondent-College no doubt was not included in the seat matrix published by the 2nd respondent on account of a prohibitory order issued by the Medical Council of India. He says that subsequently this Court has ruled by a majority view that the Medical Council of India has no power to stop admission of students to a recognised medical college u/s 10-A of the Act for any academic year. This Court also ruled that the principles of natural justice have to be mandatorily followed before passing any order by MCI. Learned Counsel says that in the light of the Division Bench judgment the petitioners are entitled for consideration of their cases notwithstanding the last day (D-day) 30-9-2004 fixed by the Medical Council. He says that the last date has no application to the facts of these cases. He also mentions to me that the said last date can be relaxed in certain peculiar circumstances and that therefore, he wants an intervention by this Court. Even otherwise, he says that in the light of the Division Bench judgment, the last date fixed for admission by the Medical Council has no sanction in law. He strenuously relies on Rule 11(3) and on several judgments in the matter.
11. While opposing, Sri Venugopal Gowda, learned Counsel for Common Entrance Test Cell would say that apart from no locus standi for the petitioners, Rule 11 did not provide for any extension of matrix schedule. In terms of Rule 11 calendar was fixed and last date was fixed and nothing can be done in the matter. He Strenuously relies on the famous judgment in Medical Council of India Vs. Madhu Singh and Others, . Learned Counsel says that there is no legal vested right in the light of Rule 11 and in the given circumstances. He says that this Court in identical circumstances has chosen to hold in W.P. No. 17557 of 2004 that no admissions under any circumstances can be done after the last dated i.e., 30-9-2004. He wants the petitions to be dismissed.
12. Sri Ketti, learned Counsel for the Medical Council of India would argue that there are several judgments of the Apex Court which would clearly demonstrate that 30th September is the last date and no illegality as such has been committed by MCI. He says that no admission under any circumstances is possible or permissible in terms of various rulings of the Supreme Court and those rulings are binding on this Court.
13. Sri Ramesh, learned Counsel for the University would say that the University is bound by the terms to be fixed by the MCI and as on today the petitioners have no legal right to maintain these petitions.

14. Learned Government Advocate Sri Manohar invites my attention to Rule 11(1) to say that the facts of the case do not require my interference.

15. Mr. Madhusudhan R. Naik however appearing for the college invited my attention to various circumstances to say that Madhu Singh's case is not final in such cases. There may be special circumstances which warrant the Court to provide relief even after 30-9-2004. He would also say that on the day when the matrix was fixed the college had the disadvantage of prohibition and in the light of the subsequent development it can be considered in appropriate cases. He also took me through the various case-laws in the matter.

16. In the course of arguments, the learned Counsel for the respondents Sri Venugopal Gowda, Sri Ketty and Sri Manohar invited my attention to a similar petition filed by the College and the subsequent withdrawal of the same by the College. They say that what could not have been got by the College cannot be granted to the students. They also say that the petition was withdrawn unconditionally and that they affirm that no relief can be granted.

17. In reply to these legal submissions, Mr. Naik invites my attention to the findings of one learned Judge and he says that in that view of the matter, the petitioner thought fit to withdraw the petition.

18. The respondent Counsel also say that even if relief is granted, the petitioners may not have the minimum attendance and that therefore, no useful purpose would be served by considering the request of the petitioners.

19. Sri Patil, in reply apart from reiterating the earlier argument would say that there is no delay on the part of the petitioners, and the cause of action accrued to them would entitle them a relief in the light of the Division Bench judgment. He says that attendance can be considered by this Court on the special facts and circumstances of this case.

20. After hearing I am of the view that a very crucial legal issue that requires consideration by this Court is as to whether any further admission is available after the last dated 30-9-2004 fixed by the Medical Council of India in terms of its calendar of events. The following issues arise for my consideration:

(A) History

(B) Notification issued by MCI

(C) Power of MCI

(D) Relaxation

(E) Scope of Rule 11

(F) Relief

(A) History:

21. This Court has to notice the history resulting in the fixation of a time schedule by the Medical Council of India.

22. The Supreme Court in the case of Dr. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, has ruled as follows.--

"In all medical colleges/institutions to which the scheme applies, teaching for MBBS/BDS course should start on the first working day of September and even those institutions which are outside the scheme might as well-commence their academic sessions from September so that throughout the country there would be uniformity in that regard".

23. It is not necessary to refer to all the judgments cited by the Medical Council in this judgment, but this Court has to notice the famous judgment of the Supreme Court in Madhu Singh's case. In the said judgment, the Supreme Court after noticing the various aspects of the matter has ruled in para 20 notice as under:

"It is the Medical Council which is primarily responsible for fixing standard of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college".

24. The Supreme Court rules in the very same para that a medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well-equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way.

25. The Supreme Court in para 22 observed as under:

"It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual position goes to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. Though, it was pleaded by learned Counsel for respondent 1 that with the object of preventing loss to the national exchequer such admissions should be permitted, we are of the view that the same cannot be a ground to permit midstream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling the requisite number of days would be harmful to the students' physical and mental capacity to study. In fact such a suggestion was held to be grossly inappropriate in Dr. Dinesh Kumar

case".

26. Ultimately in para 23 the Supreme Court has given the following directions:

"There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

In conclusion.--

(i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, Counselling and the like have to be completed within the specified time;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI".

In the light of the directions of the Supreme Court, time schedule is fixed by the Medical Council of India.

(B) Notification:

27. In the case on hand, a notification is available dated 25th February, 2004 and the said notification provides for amendment regulation called "Graduate Medical Education (Amendment) Regulations, 2004" which provide for Universities and other authorities concerned shall organize admission process in such a way that teaching in first semester starts by 1st of August each year. It further says that time schedule indicated in the Appendix E has to be followed.--

Regulation 6-A reads as under:

"There shall be no admission of students in respect of any academic session beyond 30th September under any circumstance. The Universities shall not register any student admitted beyond the said date".

(emphasis supplied)

28. The time schedule in terms of Appendix E provide for 30th September, 2004 being the last date after which no student can be admitted due to any reason. Therefore, in terms of the law of the Supreme Court and in terms of the statutory time schedule what is clear to this Court is that the 30th day of September, 2004 seems to be the crucial day for the purpose of admissions.

29. However, what is argued before me is that 30th day of September is not so sacrosanct and the Medical Council in the light of the Division Bench judgment cannot fix a time schedule according to the petitioner. Even otherwise it is argued that 30th September can be relaxed in a given situation. Let me see whether this is possible or permissible in the case on hand.

(C) Powers of Medical Council:

30. Indian Medical Council Act is a Central Act. Medical Council of India has promulgated regulations from time to time in terms of the powers conferred by Section 33 of the Indian Medical Council Act. Supreme Court in the case of Madhu Singh has categorically ruled the necessities for specifically providing time schedule for the course and fixing the period for which admission can take place. Supreme Court in the said case in para 23(iv) has ruled that:

"MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission. There is a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course".

31. Regulations have been framed in terms of the power conferred by Section 33 of the Indian Medical Council Act. Regulation 6 provides for a time schedule. Admittedly time schedule is not challenged and admittedly regulation providing for time schedule is also not challenged. Despite that let me see as to whether this argument is available to the petitioners.

32. Petitioners, as I mentioned earlier strongly rely on a judgment of this Court in W.A. Nos. 2400 to 2402 of 2004. A reading of the said judgment would show that in the said case this Court was concerned with regard to an order passed u/s 10-A of the Act. The entire judgment revolves around the scope of Section 10-A and Explanation (2) of Sub-section (1) of Section 10-A or the regulation framed by the Medical Council in the matter of stoppage of admission of students to a recognized college. When the Medical Council in the said case has prohibited admission, this Court by a majority view ruled that MCI has no power to stop admission of students u/s 10-A of the Act for the academic year. This judgment cannot be pressed into service to the present case to say the Medical Council has no power at all in the matter of fixation of time schedule. This argument of the petitioner in the light of the regulatory power and in the light of schedule is not

available to the petitioners, particularly in the light of the finding of the Apex judgment in the case of Madhu Singh. This argument is therefore, rejected.

(D) Relaxation of last date for admissions:

33. It is no doubt true that circumstances may provide for relaxation or exercise of discretionary power in the matter. In this connection, this Court as I mentioned earlier has to notice the history of the case which has been referred to above and the judgment of the Supreme Court in Madhu Singh. Supreme Court after referring to the various aspects of the matter, has categorically ruled that no variation of the schedule so far as admission is concerned shall be allowed. It is also to be noticed at this stage this the very regulation is binding on all parties including this Court, particularly in the absence of any challenge to the same. Regulation 6-A in unmistakable terms says that there shall be no admission of students in respect of academic session beyond 30th September under any circumstances. Universities shall not register any students admitted beyond the said date.

(emphasis supplied)

34. In the light of the categorical regulation and in the light of the Supreme Court ruling it is not possible for this Court to extend the last date in a given situation. As I mentioned earlier, petitioners pressed into service the judgment in W.A. No. 938 of 2004. It is no doubt true that in W.A. No. 938 of 2004 the Division Bench of this Court noticed the approval of admission for the academic year though made in August 2002-03. This very judgment has been noticed by a subsequent Division Bench in W.A. No. 17557 of 2004. In the subsequent judgment rendered by this Court on 4th August, 2004, a Division Bench of this Court noticed in W.A. No. 17557 of 2004 various judgments including Madhu Singh and also Writ Appeal No. 938 to 971 of 2004. Thereafter, a Division Bench of this Court has ruled in para 9 as under:

"In the case of Madhu Singh, it has been clearly held that there is no scope for admitting students midstream as that would be against very spirit of statutes governing the medical education an even if, seats are unfilled that cannot be a ground for making mid sessions admissions. This is the law laid down by the Hon"ble Supreme Court in the above ruling".

This Court further ruled that :

"The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that the law by which men are governed should be fixed, definite and known, and that, when the law is declared by a Court of competent jurisdiction authorised to construe it, such declaration, in the absence of palpable mistake or error, is itself evidence of the law until changed by the Competent Authority".

This Court again ruled that:

"Therefore, in our view the law laid down by the Hon"ble Supreme Court in the

case of Madhu Singh cannot be deviated depending upon the facts and circumstances of each case and on the other hand the principles enunciated therein are to be strictly adhered to and should be followed in all such similar cases. Therefore, applying the principles laid down by the Hon''ble Supreme Court in the said ruling, we find that the admissions that were made by the first petitioner-committee beyond the scheduled date were not in accordance with law and that being so, the second respondent was quite justified in issuing the communication as per Annexure-G. Any direction as sought for by the petitioner would be in clear transgression of the law laid down by the Hon''ble Supreme Court. We cannot by our fiat direct the respondents to disobey the law laid down by the Hon''ble Supreme Court the above cited decision. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the law laid down by the Hon''ble Supreme Court. The Division Bench judgment sought sustenance by the learned Counsel for the petitioners in the matter of admission of certain MBBS students stands on a different footing and it cannot be used as a precedent to the case at hand. It is needless to point out that the earlier decision can be used as a precedent only if facts and circumstances match. However, similar the facts seem to be in a cited precedent, the case in hand should be determined on facts and circumstances of case in hand only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions in case in hand. We find that the Division Bench judgment sought to be relied upon by the learned Counsel for the petitioners does not match with the facts and circumstances of this case".

This Court again ruled as under:

"If any student is admitted after the commencement of the course, it would be against the intended objects of fixing a time schedule. There is no scope for admitting students after the scheduled date as that would be against the very spirit of statutes governing the Central Council. Even if seats are unfilled, that cannot be a ground for making admissions after the scheduled date. The directions to the respondent to disobey the law is subversive of the rule of law".

35. In the light of this clear pronouncement of law by a Division Bench after noting the earlier judgment, this Court has to follow the finding of the subsequent judgment for the purpose of this case. The subsequent Division Bench has ruled that any subsequent admissions after the scheduled days would be disobeying the law and the subversive of the rule of law. What the petitioners want is to disobey the rule of the law and this cannot be done by this Court in the case on hand. The argument of the learned Counsel in this regard requires to be rejected.

36. At this stage, I also noticed the various subsequent judgment as referred to by Sri Kitty the learned Counsel. It is unnecessary for this Court to refer to each one of the judgments. The Supreme Court in several cases has refused to extend the stay in terms of the material placed on record. However, Sri Kitty places before me a latest decision of the Supreme Court dated 1-9-2004 passed in 306

of 2004. In the said case, the Supreme Court after referring to the various aspects of the matter, has ultimately ruled as under:

"The continued second Counselling would be confined to only those, as per merit, who have not already been admitted in MBBS course in any of the Government Medical College in the country. If a student has already been admitted there would be no question of such a student being permitted Counselling again so as to change the medical college with a view to get admission in some other medical college. The students who, as a result of the Counselling already held, have taken admission in Dental Colleges would, however, be permitted to participate in the Counselling for getting a chance for admission in the MBBS on their merit position. Further, as a consequence, certain seats in Dental Colleges may fall vacant. They would be given as per merit in the ranking in the All India Quota. We make it clear that those admitted in MBBS would not be permitted to change the college. Those who have taken admission in Dental College would also not be permitted to change one Dental College to another Dental College. The information about continued Counselling would be given to all concerned by publication in electronic and print media by DGHS. The continued Counselling must be over by 8th September, 2004. The students must join by 13th September, 2004. It is necessary to adhere to this schedule so that the remaining unfilled seats can revert and be filled by the State and only bare minimum number of seats may lapse. The States shall also take timely action so that the seats to a great extent may not lapse and all the admissions and joining by students are over by 30th September, 2004.

We make it clear that under no circumstances, we are inclined to extend the date beyond 30th September, 2004. The order shall not be treated as a precedent so as to open flood-gates of litigation in other cases in the country.

To consider the issue of further directions for the next academic year, list the matter on 5th October, 2004".

(emphasis supplied)

37. The Supreme Court has made it clear under no circumstances they are inclined to extend the date beyond 30th September. In fact, in this judgment some relaxation was made and that was relied upon by the petitioners. That facility is not available to the petitioners in the light of the observation of the Supreme Court that the relaxation in the order shall not be treated as a precedent in other cases in the country. Therefore in my view, it is not possible for this Court to extend the last date despite the schedule given in terms of a statutory regulation. The argument of the petitioners is therefore, rejected.

38. Learned Counsel for the petitioners however, invited my attention to the challenge of the Division Bench judgment as referred to above dated 4th August, 2001 in SLP No. 18606 of 2004. They pointed out to me the interim order passed in the said case to say that discretion can be exercised by this Court. I am afraid that this is not possible in the given circumstances. A careful reading of the

interim order in SLP No. 18606 of 2004 would also show that in the said case the Court was concerned about the examination and further studies. The present case is of threshold entry by way of admission. Interim order does not come to the rescue of the petitioners.

E. Scope of Rule 11:

39. Sri Nayak and Sri Ajoy Kumar Patil also invited my attention to Rule 11 to contend that there is no prohibition as such is available in terms or the Rules. This argument also is not available after a careful reading of Rule 11 by the Court. Rule 11 provides for seat matrix and admission schedule. Admittedly for whatever reason, the college was not available for seat matrix. Therefore, the petitioners cannot rely on Rule 11 for the purpose of a right in their favour. In fact, petitioners try to rely upon Rule 11(3) to say that it comes to their rescue. They say that any increase in the intake or introduction of new course in any existing institution or recognition of a new institution after the commencement of the seat selection for the relevant year shall be taken into account for the purpose of allotment of seats under these rules. A careful reading again of Rule 11(3) would show that, that would be possible in a different context. A faint attempt is made by referring to Rule 17. The said rule is not available to the facts of this case. Even otherwise, it is not possible for this Court despite the statutory time schedule to direct the Government to fix a seat matrix and give a new time schedule to the petitioners after the last dated i.e., 30-9-2004. I am not inclined to exercise my discretion in the light of a statutory time table in the light of a binding judgment of the Supreme Court and the Bench judgment of this Court.

F. Relief:

40. Lastly, it was argued before me that the college filed a petition and they withdrew the said petition and thereafter, these petitions have been filed.

41. It is no doubt true that this very college filed a writ petition challenging Annexure-C an order dated 22-9-2004. In the course of the finding, Justice Kumar in the judgment dated 7-10-2004 has ruled at page 91 that the order passed on 22-9-2004 is without jurisdiction though the said order was passed at the request of the college. Probably in the light of this order, the College has withdrawn the petition. This explanation offered by Mr. Naik, learned Counsel prima facie seems to be an acceptable one. At any rate, I do not want to reject this petition on the ground of withdrawal of the petition by the Medical Council in the light of my earlier findings in terms of these orders. Under the circumstances, I am firmly of the view that the petitioners have no legal right after 30-9-2004 the time schedule fixed in terms of the law governing admission.

42. In the result, these petitions stand rejected. Parties are to bear their own costs.