
(1996) 05 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No. 7565 of 1996

Gujarat University

APPELLANT

Vs

Rajiv Gopinath Bhatt and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 4 AD 541 : AIR 1996 SC 2066 : (1996) 5 JT 333 : (1996) 4 SCALE 305 : (1996) 4 SCC 60 : (1996) 2 SCR 184 Supp : (1996) 3 UPLBEC 2119 : (1996) 3 UPLBEC 1551

Hon'ble Judges : A. M. Ahmadii, C.J.;N. P. Singh, J;B. N. Kirpal, J

Bench : Full Bench

Advocate : R.R. Kumar and P.H. Parekh, for the Appellant; Kiran for Vineet Kumar, Yashank Adhyaru for R. Sasiprbhu for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—Leave granted.

2. This appeal has been filed on behalf of the Gujarat University (hereinafter referred to as the university) for setting aside an order dated 30.9.1991, passed by the Court directing the appellant-university to grant admission to the respondent No. 1 (hereinafter referred to as the respondent) in the super speciality course of M.Ch. (Master of Chirurgiae) in Once surgery, in the session which commenced from 1.7.1991.

3. It appears that the appellant-university invited applications for admission to two years' super speciality courses of D.M. and M.Ch. commencing from 1.7.1991. An entrance examination was also conducted to select the students for admission in the aforesaid courses. The number of seats in the super speciality courses are very limited, because of in which the rule framed by the appellant-university it has been provided that the first preference shall be given to the students of the appellant-university. The students from other universities are not

denied admission but they have to rank next to the students of the appellant-university. As the respondent aforesaid was denied admission on the ground that he was not a student of the appellant-university, a writ petition was filed on his behalf, before the High Court, which as already stated above was allowed by the impugned order.

4. When the appeal was taken up for hearing, counsel appearing for the parties, informed the Court that this appeal has become infructuous, because on basis of the order passed by the High Court, the respondent was allowed to join the course and he has already completed the course. In this background, this Court is not actually required to examine the grievance made on behalf of the appellant-university in respect of the directions given by the High Court. However, the learned counsel, appearing for the university drew the attention of the Court to the relevant rule for selection of the candidates for admission in the super speciality courses :

O.M.S. - 16: Selection for super-specialties courses (i.e. M.Ch and D.M.).

1. First preference will be given to candidates from Gujarat University. Second preference will be given to candidates from other Universities of Gujarat State. Any vacancy remaining after this shall remain unfilled.

2. Post-graduate degree qualification i.e. M.D. or M.S. is essential.

3. The Vice-Chancellor will arrange thereby examination for the candidates, preferably objective. No practicals will be held. The result of this examination will be sole criterion for admission and decision of the Vice-Chancellor will be final.

The stand of the university in the affidavit in reply filed before the High Court, was that the basis of the admission is merit; only preference is to be given to the students of the appellant-university. The High Court has pointed out that students who have passed M.D./M.S. examination either from the appellant-university or from any other university recognised by the appellant-university are eligible for being admitted to the super speciality courses in question, and the clause saying that preference will be given to the student of the appellant-university was violative of Article 14 of the Constitution of India. In this connection reference was made by the High Court to the judgments of this Court in the cases of Dr. Jagadish Saran and Others Vs. Union of India (UOI), and Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, where it has been observed that the court cannot allow excellence to be compromised for any other consideration.

5. Without examining that question in detail it may be pointed out that the aforesaid judgments were not in connection with the admission in super speciality course. At the same time, we reiterate that object of any institution while selecting applicants for admission is to select the best amongst the applicants, regional and other considerations which do not satisfy the test of Article 14 of the Constitution should not affect the merit criteria. But from time to

time, this Court taking into consideration the local and regional compulsions have been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super speciality courses arises, in which the seats are limited in number. In the case of *Pradeep Jain v. Union of India* (supra) this Court has observed :

We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State....

The same question was again examined in the case of *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, . Recently, in the case of *Anant Madaan and others Vs. State of Haryana and others*, , it was said :

The eligibility condition, therefore, which requires that the candidate should have studied 10th, 10 + 1 and 10 + 2 classes from a recognised institution in the State of Haryana is neither arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same.

Therefore, if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the university in question *per se* it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution.

6. The learned counsel, appearing for the appellant-university, could not explain the object and purpose of part of the impugned rule which provides "any vacancy remaining after this shall remain unfilled". This part of the rule cannot be held to be rational. It is only just and proper that the university should examine and give a fresh look to the said rule making provision for filling up even such vacancies which are not filled for one reason or the other; of course within the time schedule prescribed for the super speciality courses.

7. The appeal is accordingly allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no orders as to cost.