
(2013) 07 DEL CK 0446
In the Delhi High Court
Case No : Writ Petition (C) 3950 of 2013

Jitendra Singh Ors.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0446

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rakesh Tikku with Mr. T.S. Ahuja and Mr. Vivek Ojha, for the Appellant; Rajiv Mehra, ASG with Mr. Neeraj Chaudhari, CGSC and Mr. Ravjyot Singh, Advs for UOI with Dr. Srinivas, ADGME and Dr. Sherwal, Dy. DGME, Mr. Ashish Kumar, for MCI, Mr. Mohinder J.S. Rupal, for University of Delhi, Dr. Rakesh Gosain, for Respondent no. 2, Mr. Mukul Talwar and Mr. S. Mohapatra for GGSIP University, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Regulation 9 of the Postgraduate Medical Education Regulations, 2000, as amended vide Postgraduate Medical Education (Amendment) Regulations 2010, stipulated that in order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in National Eligibility-cum-Entrance Test for Postgraduate courses held for the said academic year. The said percentile was fixed at 40 in case of candidates belonging to SC/ST and OBCs, and at 45 percentile in case of candidates with the locomotors disability of lower limbs. The percentile was to be taken on the basis of highest marks scored in the All India Common Merit List in the National Eligibility-cum-Entrance Test for Postgraduate Course. The proviso to the said Regulations provided that when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post Graduate Courses, the Central Government, in consultation with Medical Council of India, may at its discretion

lower the minimum marks required for admission in Post Graduate Course, for candidates belonging to respective categories and courses each year. The aforesaid entrance test known as National Eligibility-cum-Entrance Test (NEET), and the aforesaid percentile was also notified in the prospectus issued by the said respondents. Vide letter dated 31.5.2012, the respondent no. 1, Government of India informed referring to the representation of SC/ST students received from National Commissions for Scheduled Caste stating therein that despite securing 50% or higher marks in NEET PG, 2012, they were unable to qualify the examination on account of their percentile being less than 40, informed respondent no. 2 that as per PG Medical Education Regulations, the Central Government, in consultation with MCI, had relaxed the qualifying percentile so that the students of SC/ST/OBCs who had secured 40% or above marks, PH 45% or above and UR 50% or above respectively were qualified for admission to the Post Graduate Course. The respondent no. 1 was requested to declare the result accordingly. Pursuant to the aforesaid letter, the respondent no. 2, vide communication dated 4.6.2013, revised the result of the candidates who had appeared in the said examination. Being aggrieved from the aforesaid decision of the Government and communication dated 4.6.2013 issued by the respondent no. 2, the petitioners are before this Court by way of this writ petition, primarily on the ground that (i) the Regulations framed by the MCI envisaged preparation of the qualified list on the basis of percentile and not on the basis of marks, (ii) there was no consultation between the Central Government and MCI and (iii) there was no ground to lower the percentile since sufficient numbers of candidates were available in all the categories except ST category. The petitioners are accordingly seeking quashing of the aforesaid letter dated 31.5.2013 and the circular dated 4.6.2013, with direction for taking counseling in accordance with notification dated 27.2.2012.

2. In its counter affidavit, respondent no. 1 Union of India has stated that after discovering through representations of the aspirants of reserved categories and through National Commission of Scheduled Caste that the students of reserved categories who had secured more than 40% marks in NEET-PG Course were not eligible for PG Counseling, the Ministry examined the result and exercising its discretion in consultation with MCI, in accordance with the proviso to Clause 4 of Amended PG Regulations relaxing the qualifying percentile so that students of SC/ST/OBCs who had 40% or above marks, UR/PH 45% or above and UR 50% respectively are qualified for admission to Post Graduate Course. According to the respondent no. 1, the reduced percentile of marks if converted into percentile comes to 26.2074, 18.8936, 18.8958 and 18.908 respectively for un-reserved, OBC, SC and ST respectively.

3. In its counter affidavit, the respondent no. 3 MCI has stated that the Central Government before issuance of the impugned letter dated 31.5.2013 has consulted the Board of Governors, constituted in supersession of Medical Council of India.

4. The private respondents who are the candidates belonging to OBCs/SC/ST categories and have passed their MBBS course from IP University have in their counter affidavit pointed out that the notification dated 15.2.2012 issued by the Medical Council of India has already been quashed by Supreme Court in TC (C) 98 of 2012, Christian Medical College, Vellore & others holding the said notification to be unconstitutional. It is also pointed out in their counter affidavit that the merit list for All India Quota also was prepared on the same criteria i.e. 50% marks for general category candidates and 40% for SC/ST candidates and if the relief sought by the petitioners is granted it would result to a situation where eligibility for admission in All India Quota seats would be different from eligibility for admission in the State Quota.

5. In its short affidavit, the respondent no. 3 IP University has given a breakup of the total number of seats to be filled up in the said university under State Quota, the number of candidates who qualified as per un-revised score and the number of candidates who qualified as per revised score of NEET. The said details are as under:

6. Following three questions primarily arose for consideration in this case.

(i) Whether the government could have changed the qualifying criteria from percentile basis to percentage basis.

(ii) Whether there was effective consultation between MCI and the Government

(iii) Whether there were grounds available to the Government for lowering the percentage/percentile as far as the candidates seeking admission against State Quota seats under the SC/ST/OBCs categories are concerned.

7. In Christian Medical College, Vellore (*supra*), the Apex Court while allowing the transfer cases and the writ petitions and quashing the notification issued by the Medical Council of India on 21.12.2010 and the notification dated 31.5.2012 by Dental Council of India, held that this would not affect the action so far taken under the amended Regulation including admission already given on the basis of NEET conducted by MCI, Dental Council of India and other medical institutions and the same shall be valid for other purposes. It is not in dispute that the admission against All India Quota as well as State Quota in IP University are sought to be made on the basis of NEET, 2013 conducted in terms of Regulations Quashed by the Apex Court. In fact, even the impugned decision of the Court is in exercise of the powers conferred upon it by the very same Regulations. Therefore, for the purpose of present writ petition, challenge to the decision taken by the Government has to be examined in terms of the aforesaid Regulation which also stands incorporated in the brochure issued by the respondent no. 2.

8. It is evident from a perusal of the aforesaid Regulation that the eligibility for admission to the Post Graduate Course is to be taken in terms of percentile and not percentage of the candidates in the said entrance test. The percentage of

marks has no role to play in determining the eligibility of the candidates for the purpose of admission to the Post Graduate Medical Course. The proviso to the said Regulation has to be read along with the Regulation and cannot be read in isolation. Therefore, despite use of the words "lower minimum marks", the government, in consultation with MCI could only have lowered the percentile for candidates belonging to those categories in which sufficient number of candidates had failed to secure minimum percentile prescribed in the Regulation. In other words, if sufficient number of candidates in SC/ST/OBCs categories had failed to secure the minimum percentile as prescribed in Regulations, the government could have reduced the percentile for the candidates belonging to such categories. Though the Government vide letter dated 31.5.2013, instead of reducing the percentile chose to stipulate the percentage of 50% for un-reserved candidates and 40% for SC/ST/OBCs candidates, a perusal of the counter affidavit filed by respondent no. 1-Union of India, would show that the said percentage is capable of being converted into percentile, and converted accordingly, the percentile for un-reserved category candidates comes to 26.2074, whereas it comes to 18.8936, 18.8958 and 18.908 for OBCs/SC/ST candidates respectively. Since the percentage specified by the government in its letter dated 31.5.2013 is capable of being converted into percentile, the said letter cannot be quashed on the ground that instead of percentile it had specified percentage. Therefore, challenge to the said letter on the first ground fails.

9. Coming to the consultation with MCI, it can hardly be emphasized that the consultation needs to be meaningful and effective and the entire relevant material needs to be considered by the authority which is consulted. A perusal of the documents filed by respondent no. 1, Union of India and respondent-MCI would show that on receipt of representation from candidates belonging to SC/ST categories, who had failed to secure the requisite percentile of 40 despite having obtained 40% marks, the concerned Joint Secretary discussed the matter with the Board of Governors of MCI and requested him to convey his no objection so that appropriate decision could be taken immediately. In reply to the said communication, a note was prepared in the office of MCI, proposing to convey no objection to the Ministry in the interest of students, to avoid seats being left vacant for admission to MBBS Course, if any. The said note was approved by the Secretary of MCI after discussion with the Chairman of the Governing Board. It is quite evident from perusal of these documents that there was no meaningful and effective consultation by the government with MCI before the letter dated 31.5.2013 was issued. Consultation with MCI implies consultation with Board of Governor since the Council stands superseded by the said Board and consultation with the Secretary or even Chairman of the Board of Governors cannot be termed as consultation with Medical Council of India. Though there are certain errors in the letter sent by the government to MCI as well as in the note approved by the Secretary of MCI, since it is stated in the letter sent by the government that the result for PG Medical Course had been declared by NBE-AIIMS, which is entirely incorrect, the result having been declared only by NBE

and in the note approved by the Secretary, there is a reference to seats being left vacant for admission to MBBS course, though the issue was admission to Post Graduate Course, these mistakes have no bearing on the issues involved in this petition.

10. However, during the course of hearing, the respondent-MCI placed before the Court a copy of the Resolution passed by its Board of Governors in its meeting held on 25.7.2013 and the said resolution to the extent it is relevant reads as under:

I am directed to inform you that the Board of Governor has perused the letter of Central Government dated 31.5.2013 and also carefully gone through the reasons recorded therein and has also taken note of consent given by Chairperson, Board of Governors to the proposal of Central Government to reduce the marks so as ensure that post graduates seat should not go waste and has also taken note of various materials including representations in this regard and decided to ratify the decision of Council communicated earlier. However, percentile so reduced shall not be less than percentage as provided in the un-amended Postgraduates Medical Education Regulation relating to admission to post graduate medical course for General Category, Scheduled Caste, Scheduled Tribes, Other Backward Classes and physically challenged persons.

It would be seen from the aforesaid resolution that the decision of the government to reduce marks/percentile has been duly ratified by the Board of Governors and the ratification was done after taking into consideration all the material relevant for this purpose. In view of the aforesaid ratification by the Board of Governors of MCI, the plea that there was no consultation between the Government and MCI loses its significance and cannot be a ground to quash the letter dated 31.5.2013 and the circular dated 4.6.2013.

11. Coming to the question whether the government had reasonable grounds to lower the percentile for the candidates in all the categories, the main issue which arises for consideration is as to whether, for the purpose of deciding whether sufficient number of candidates in the respective categories had failed to secure the minimum marks/percentile as prescribed in NEET, 2013, the government was required to look into the entire result of the said examination as a whole and then find out whether it was possible to fill up the seats in each category i.e. General/OBC/SC/ST without lowering the percentile or even if the government found that only the seats in the State Quota could not be filled by the candidates belong to respective categories, without lowering the percentile, it was competent to exercise its discretion under the Proviso to Regulation 9, in consultation with the Medical Council of India.

Admittedly, if the result as a whole is seen, sufficient qualified candidates, were available, in all the categories except ST category, even without lowering the qualifying criteria. The very purpose of dividing the seats in various universities/ colleges into All India Quota and State Quota is to ensure that the students who

pass out from a university/college in a particular State are given some preference in admission to the PG Medical Course in the university/college situated in the State from which they have passed out the qualifying examination. In other words, as far as possible, the attempt has to be to ensure that the seats in the State Quota go only to the candidates who have passed out their qualifying examination from the university/college situated in the concerned State. Therefore, in my view, if the government found that out of the seats in State Quota, it was not possible to fill up the seats in one or more categories i.e. General/OBCs/SC/ST, without lowering the percentile initially prescribed for the respective categories, it was fully justified in exercising the power conferred upon it by Proviso to Regulation 9 by lowering the percentile for such categories. It is only fair and reasonable that every category should get its due share out of the seats allocated to the State Quota. So long as the concept of State Quota exists, the attempt should be to avoid transfer of the seats from State Quota to All India Quota, which would become inevitable in case enough candidates do not qualify for admission against the seats earmarked for that quota. Even within the State Quota, attempt has to be that the candidates of each category get their due share and there is no need to transfer the seats within the State Quota from one category to another. Therefore, in my view, if the government finds that qualified candidates in adequate numbers are not available in one or more categories, to fill up their respective share in the State Quota it would be eminently justified in lowering the percentile for the categories in which the number of qualified candidates without lowering the percentile falls short of the number of the seats available in that category, in the State Quota. Any other interpretation of the proviso is likely to result in the candidates belonging to one category getting advantage at the cost of the candidates belonging to another category.

12. It transpired during the course of arguments that applying the initial prescribed percentile, enough qualified candidates were not available to fill-up the seats earmarked for OBCs/SC/ST candidates in the State Quota. A perusal of the additional affidavit filed by IP University on 26.7.2013 would show that as against 20 seats to be filled up from amongst SC candidates in State Quota, only 5 candidates qualified as per the initial prescribed percentile. The number of such candidates was 4 in ST category as against 10 seats to be filled up from amongst the candidates of that category. There are 37 seats in the State Quota to be filled up from amongst OBCs candidates and the number of qualified candidates, without lowering the percentile comes to 24. Even after lowering the percentile, the number of qualified candidates in SC category comes to 11 whereas the number of qualified candidates in ST category comes to 7, meaning thereby that even after lowering the percentile, 9 seats in SC category and 3 seats in ST category cannot be filled by the candidates belonging to the respective categories. As regards General category, the number of candidates who qualified as per the un-revised percentile comes to be 60 through the seats available for General Category candidates are 67. Therefore, there was shortfall of qualified candidates in each category. The need to lower the prescribed percentile,

therefore, became imperative for the government. The decision taken by the government was endorsed by the Apex Expert Body i.e. The Governing Board of the Medical Council of India. Primarily, it is for the Medical Council of India to ensure that the standards of medical education in the country do not come down to an unacceptable level. The said Board did not have any such apprehension as is evident from its ratification of the decision taken by the government, initially in consultation with its Chairman. The Court, therefore, will not be justified in interfering with the decision taken by the Government, for the benefit of the candidates belonging to OBCs/SC/ST categories to lower the percentile.

13. It is not known whether in Delhi University enough candidates in each category were available to fill up the seats fall to their respective share in the State Quota or not. Assuming, however, that there was no such shortfall of qualified candidates in Delhi University that would make no difference since both, IP University and Delhi University being situated in the same State/Territory i.e. NCT of Delhi, any shortfall of qualified candidates in IP University would lead to an overall shortfall in the respective categories in the State Quota as a whole. For example, if there are say 50 seats in Delhi University and 50 seats in IP University coming to the share of SC candidates in the State Quota, there is no shortfall of qualified SC candidates in any of the categories in Delhi University, but there are say 40 qualified SC candidates, meaning thereby 9 short fall of 10 such candidates in IP University, that would necessarily mean overall shortfall in the share of SC candidates in the State Quota taken as a whole. For the reasons stated hereinabove, no valid ground for quashing the letter dated 31.5.2013 sent by the Government of India to NBE and the consequent circular dated 4.6.2013 issued by NBE is made out. The writ petition is accordingly dismissed. No order as to cost.