

(1998) 08 GAU CK 0034
In the Gauhati High Court
Case No : Civil Rule No. 3662 of 1997

Junior Doctor's Association and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997 — Rule 5
Constitution of India, 1950 — Article 14

Citation : (1998) 3 GLT 502

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N. Dutta, K.P. Pathak, M. Singh and N. Sailo, for the Appellant; H.N. Sarma, for the Respondent

Judgement

A.K. Patnaik, J.—The validity of Rule 5 of the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997 is in question in this writ petition.

2. The relevant facts are that the Petitioner No. 1 is an association of Junior Doctors of the Assam Medical College and Hospital at Dibrugarh. Petitioner No. 2 is the General Secretary of the Said Association. The Petitioners have interest in the admission to the Post Graduate and Diploma Courses in the different medical colleges of Assam. The procedure for such admission has been laid down by a set of executive instructions issued by the Govt. of Assam, known as the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 1997, (for short the 1997 Rules)". Rule 5(i) of the 1997 rules provides that an examination shall be conducted for the purpose of admission to the Post Graduate Degree and Diploma Courses in the Medical Colleges of Assam by the Gauhati University. Rule 5(ii) further provides that the University authorities will prepare a merit list based on the sum total of the marks obtained in the entrance examination and the percentage of marks obtained in all the three MBBS examinations by each candidate and publish the same in the leading newspapers

in the State. It is from such merit list that candidates are to be selected for different categories of seats for Post Graduate and diploma courses. The case of the Petitioners is that such merit list based on the sum total of marks obtained not only in the entrance examination but also on the percentage of marks obtained in all the three MBBS examinations by each candidate cannot control reflect the relative merits of the candidates. According to the Petitioners, a merit list should only be prepared on the basis of the marks obtained by the candidates in the entrance examination and the marks obtained by the candidates in the three MBBS examinations should be excluded because the MBBS examinations are conducted not by one University but by different Universities and the standards for evaluation of the marks in the said MBBS examinations by different Universities are different.

3. At the hearing, Mr. N. Dutta, learned counsel for the Petitioners referred to the recommendation of the Medical Council of India to the effect that admission to Post Graduate courses can be made on the basis of academic merit as determined from the performance of the candidates at the MBBS examinations provided they all come from the one University. Mr. Dutta explained that where all the candidates seeking admission to Post Graduate Courses have taken MBBS examination of one University, then only the performance of the candidates in such MBBS examination can be taken into consideration for the purpose of determining their merit for their selection for Post Graduate Courses. But where candidates seeking admission to the post Graduate Courses came from different Universities and have taken MBBS examinations conducted by different universities, their performance in the MBBS. Examinations should not be taken into consideration at all for the purpose of determining their interese merit and selection for post Graduate Courses. Mr. Dutta also referred to paragraph- 7 of the writ petition in which it has been stated that in the year 1994 the candidates who stood 1st, 2nd and 3rd position in the final MBBS examination from Gauhati University secured 1374, 1371 and 1367 marks in aggregate respectively, whereas the candidates who stood 1st, 2nd and 3rd in the final MBBS examination from the Dibrugarh University could secure only 1187, 1185, 1180 marks in aggregate respectively. Mr. Dutta explained that the aforesaid figures would show different standards adopted by the Gauhati University and the Dibrugarh University in evaluating the performance of candidates in the MBBS examinations and in the absence of any common standard of evaluation it is discriminatory and violative of Article 14 of the Constitution to judge the merit of candidates coming from different Universities on the basis of their performance in the MBBS examinations conducted by the different Universities. Mr. Dutta relied on the observation of the Supreme Court in the case of Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, to the effect that the standard of judging at different qualifying examinations held by different Universities is not uniform and that some Universities may be liberal in marking and while others very strict and therefore there will be no common standard on the basis of which the relative merits of the candidates can be judged. In the

said judgment, the Apex Court further held that it would be wholly unjust to grant admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same qualifying examination but at different qualifying examinations held by different State Governments or Universities and any selection based on such different qualifying examinations would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution.

4. Mr. H.N. Sarma, learned Additional Senior Govt. Advocate, on the other hand, submitted that the MBBS examinations in the State of Assam are conducted by the Gauhati University and Dibrugarh University and since the teaching staff at the three Medical Colleges of Assam under the Gauhati and Dibrugarh Universities are common, the standards of evaluation of the MBBS examinations conducted by the Gauhati and Dibrugarh Universities are one and the same. He further submitted that the 1997 Rules including Rule 5 thereof have been framed pursuant to the policy decision of the Govt. and that the Govt. is within its powers to lay down such policy as it may deem fit and proper relating to admission to Post Graduate and Diploma Courses in the different Medical Colleges of the State of Assam.

5. While the power of the Government to lay down the policy relating to admission to Post Graduate and Diploma Courses in the Medical Colleges of Assam cannot be questioned, such power can only be exercised consistent with the constitutional rights guaranteed under Part III of the Constitution. Thus the Court will have to examine and find out as to whether such policy decision taken by the Government affects any fundamental right of a person guaranteed in Part III of the Constitution where a grievance before the Court by any person that his fundamental right has been affected. In the instant case, the Petitioners have made a grievance that their right guaranteed under Article 14 of the Constitution has been affected by a provision in the 1997 rules that selection for admission to Post Graduate and Diploma Courses in the Medical Colleges of Assam will be based on not only the marks obtained by the candidates in the common entrance examination but also on the marks obtained in the three MBBS examination conducted by different Universities having different standards of evaluation. The Court, therefore, will have to examine and find out as to whether such a provision contained in the 1997 rules affects the rights of the candidates guaranteed under Article 14 of the Constitution.

6. A reading of Rule 5(iii) of the 1997 Rules indicates that for taking admission to the Post Graduate Courses, a candidate is required to possess MBBS degree. Such MBBS degree can be obtained by a candidate not only from the Gauhati University and the Dibrugarh University but from any other University and therefore the argument of Mr. Sarma that the MBBS examinations conducted by the Gauhati University and Dibrugarh University have a common standard of evaluation has no relevance. That apart from the mere fact that the teaching staff of the three medical Colleges in Assam under the Dibrugarh University and

Gauhati University are the same, it cannot be inferred that the standards of evaluation adopted in the MBBS examinations conducted by the Gauhati University and the Dibrugarh University are the same. It appears from the averments made in paragraph- 7 of the writ petition that the candidates with 1st, 2nd and 3rd positions in the MBBS examinations of the Gauhati University have secured 1374, 1371 and 1367 marks in aggregate whereas the candidates with 1st, 2nd and 3rd positions in the MBBS examinations of the very same year of the Dibrugarh University have secured 1187, 1185 and 1180 marks. There is thus a wide gap in the marks obtained between the first three candidates of the Dibrugarh University and the Gauhati University. Such difference of marks are bound to have a lot of difference to the candidates in the selection for admission to post Graduate Courses and the Diploma Courses in the Medical Colleges of Assam considering the fact that the competition between the candidates is close and neck and neck. I am therefore, of the considered opinion that the marks obtained by the candidates in different MBBS examinations conducted by different Universities in the State of Assam and outside the State of Assam should not be taken into consideration at all for the purpose of determining their merit and selection for admission to the Post Graduate Degree or Diploma Course in the Medical Colleges of Assam and that the selection for such admission should be based on the basis of merit of the candidates determined in the common entrance examination. I am further of the opinion that if such marks of MBBS examination conducted by different Universities are taken into consideration, the selection of candidates to Post Graduate Degree and Diploma courses is likely to be discriminative and violative of Article 14 of the Constitution, as has been held by the Supreme Court in the case of Dr. Dinesh Kumar and Ors. v. Motial Medical Colleges, Allahabad and Ors. (Supra).

7. In the result, Rule 5(ii) of the 1997 Rules in so far as it provides that the marks secured by each candidate in all the three MBBS examinations will be added for the purpose of preparing the merit list of candidates is declared as Ultra Vires of Article 14 of the Constitution. The authorities of the Gauhati University will now prepare a merit list based on sum total of marks obtained by the candidates only in the common entrance examination said to have been conducted by the said University under Rule 5(i) of the 1997 Rules on 10.7.97 and publish the same in the leading newspapers of the state in accordance with the 1997 rules. On the basis of such merit list, the Director of Medical Education, Assam will select the candidates and grant them admission to the Post Graduate and Diploma Course in the Medical Colleges of Assam. Since more than a year has lapsed since the aforesaid common entrance examination was conducted and the entire process of selection and admission of candidates to the aforesaid courses has been held up, the Respondents will comply with the aforesaid directions as soon as possible preferably within a period of one month from the date of receipt of the certified/true copy of this judgment from the Petitioners.

8. This writ petition is allowed to the extent indicated above. Considering, however, the entire facts and circumstances, the parties shall bear their own

costs.