

(2018) 08 CHH CK 0012

In the Chhattisgarh High Court

Case No : Writ Petition Civil No. 931 of, 1001, 1612, 3411 2017, 964, 967, 969, 970, 971, 1627 of 2018

Ku. Pratibha Sinha

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Chhattisgarh Medical, Dental, Physiotherapy Graduation Entrance Examination Rules, 2011 — Section (2), (3), (7), (10), 11 (1)

Citation : (2018) 08 CHH CK 0012

Hon'ble Judges : AJAY KUMAR TRIPATHI, CJ; PRASHANT KUMAR MISHRA, J

Bench : Division Bench

Advocate : Meena Shastri, Kapil Maini, Prafull Bharat, R.S. Marhas, Vaibhav P. Shukla

Final Decision : Dismissed

Judgement

1. Heard.

2. In these batch of Writ Petitions, the common attack is directed against Rule 11 (1), (2), (3), (7) and (10) of the Chhattisgarh Medical, Dental,

Physiotherapy Graduation Entrance Examination Rules, 2011 (in short "the Rules, 2011") as well as Chhattisgarh Medical, Dental, Physiotherapy

Graduation Entrance Examination Rules, 2012 (for short "the Rules, 2012").

3. The petitioners want the Rule to be struck down as null and void being unconstitutional, if not arbitrary.

4. We reproduce hereunder the relevant rules (both in English & Hindi version), at the very outset, to understand why so many petitioners are before

this Court and what is coming in their way after successful completion of MBBS Course :

11. Bond for the Candidate taking admission in MBBS Course to serve under State Government -(1) It shall be mandatory for the student taking

admission in MBBS Course that he/she has to serve as medical officer in Government Health Centre or in the Institution for a period of 2 years in

rural areas as notified by Government, on successful completion of graduation course. This shall be abide mandatory for other courses.

e. Bond to serve under the Government:- At the time of admission the candidate has to submit a bond in prescribed proforma that he/she is agree with

the provisions of Rule 11(1) and if he/she opts for a option not to work under government then apart from the bond amount as mentioned in Rule 11(3)

he/she will deposit the entire amount of any stipend/scholarship having paid to him/her during the period of his/her study by the State Government.

Only after the deposition of entire payable amount by him/her, the candidate shall be issued with No-objection Certificate as prescribed.

3) Amount of Bond- The amount of Bond for the Candidate of unreserved category is of Rs.5,00,000/- and for the students of reserved category and

the bond amount is Rs.3,00,000/- has to be paid.

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(7) After fulfilling the service term as per rule 11 (1) or after depositing the entire payable amount as per rule 11(3) as the case may be, (depending on

the option taken by candidate), the commissioner shall issue No-objection Certificate to the candidate that provisions of rule 11(1).

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(9) Penalty for non-compliance of Rule 11(1):- It any candidate opts to serve under the government and found guilty of non-compliance of Rule 11(1)

then apart from the entire amount of Bond as mentioned in Rule 11(3), the recovery of entire amount of any scholar ship paid to him/her during the

period of the course of his/her study by State Government or the recovery of entire amount of pay paid to him/her shall be made as dues of land-

Revenue from the candidate. The No Objection Certificate as mentioned in Rule 11(7) shall not be given to such candidate unless the entire payable

amount has been recovered.

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5. We may take note that the Rules, 2012 was notified by the State of Chhattisgarh on 09.4.2012. Rule 11 and the sub-rules thereto are in similar terms as to 2011 Rules.

6. All these petitioners had been granted admission in the MBBS Course under

the State Quota to various Medical Colleges in the State of Chhattisgarh. They have taken admission in terms of the Rules, which are in place. After completion of the MBBS Course, they want to opt out of the obligation to pay bond amount if they decide to opt out to work under the State, specially in the Rural areas, for a period of 2 years. If the petitioners want to shake off the obligation of serving the masses in the rural areas of the State, they have been obligated to pay a sum of Rs.5 lakhs in terms of the bond executed by them for unreserved category candidates and Rs.3 lakhs for reserved category candidates. Most of these petitioners have given one reason or the other as to why they are not in a position to serve the rural Health Centres and therefore, they want to be absolved of their liability, which was saddled upon them at the time of admission in the MBBS Course.

7. The lead arguments on behalf of the petitioners have been made by Mrs. Meena Shastri, Advocate, who submits that the State cannot saddle any of the petitioners with the requirement of execution of a bond because it is beyond the legislative competence of the State authorities to make such Rules, therefore, this is a good ground to strike down Rule 11 and the sub-rules in relation to execution of the bond. She submits that the terms and conditions laid down in Rule 11 is beyond the ambit of the Indian Medical Council Act, 1956 as well as it falls foul of Entry 66 of List 1 of Schedule VII of the Constitution.

8. Such submissions made on behalf of learned counsel for the petitioners are fit to be rejected on the threshold because the Rule which has been notified by the State of Chhattisgarh in relation to the guidelines for admission in MBBS Course is a composite Rule and since the entire Rules, as such, are not being challenged on the ground of legislative competence, only a part of the rule cannot become vulnerable on such a ground.

9. Even otherwise, we have examined the provisions of the Indian Medical Council Act, 1956. None of the provisions create a bar against the conditions laid down in Rule 11 of the Rules, 2011 or 2012.

10. So far as legislative competence is concerned, the State has concurrent powers to make Rules and if the State has decided to provide facilities of subsidised education in medical courses by giving preference to the students of the State and since the subsidy is of significant kind, the State's obligation for providing medical service to the masses specially in remote areas,

for which, the bond clause has been incorporated, cannot be shaken off lightly. The limited resources which the State has at its command and still the State provides in creation of manpower and competence in the field of medical education must be paid back by service to the majority of the population which lives in the villages of this State.

11. At the outset, Counsel for the State submits that they have a serious objection towards maintainability of these writ petitions for the reason that these petitioners, who were beneficiaries of the Rule and had been granted admission in the MBBS Course by the State under the State quota, cannot turn around and challenge the clause in relation to the bond which they had initially executed at the time of admission without raising any objection in relation to such clause. It is only after completion of the course and having taken advantage of the admission, such arguments are being made. They cannot approbate and reprobate at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument i.e. a person cannot say at one time that a transaction is valid and thereby obtain an advantage to which he could only be entitled on the footing that it is valid and then turn around and say it is void for purpose of securing some other advantage.

12. There could be some merit in a such a stand being taken on behalf of the respondents specially if any of these petitioners had serious objection with regard to Rule 11 or Rule 11 (2) or

(3) of the Rules, 2011 or 2012 in question, then the occasion to assail such rules was at the threshold, when they were asked to execute the bond at the time of admission and not wait for completion of their course to turn around to shake off what was obligated and was known to them when they took admission at the very first place. They cannot, therefore, take advantage of the provisions of the Rules for admission and then turn around and try to shake it off by trying to urge that these provisions are ultra vires.

13. Since none of the arguments go to touch the legislative competence of the Rules as such, therefore, such a challenge is required to be rejected.

14. Counsel for the respondents submit that similar kind of challenge was thrown before this High Court in relation to execution of bond. A Division Bench of this Court in the case of Dr. Amit Bhishamlal Vallabhani and others Vs State of Chhattisgarh and others (WPC No.586 of 2012, decided on

10.7.2012) went into the issue and answered the question in following words :

13. We are of the view that enacting of Rule 11.1 and 11.5 is valid and constitutional but at the same time, we are also of the view

that it cannot be so used, implemented and enforced against those candidates who were given admission due to their passing examination out of all

India quota entrance examination such as the writ petitioners here in so far as it relates to execution of bonds are concerned. In other words, the

Rules in question are constitutionally valid and legal but in the light of Supreme Court decision in Anan's case, it would not apply to the cases of those

candidates who have secured admission through all India entrance examination quotas in so far as it provides for execution of bonds. Need less to

observe the Rules 11.1 and 11.5 would continue to apply against other candidates, in toto.

Emphasis supplied

15. Submission of the learned Additional Advocate General for the State is that the obligation to execute bonds can be read from the rationale and

reasoning decided by the Division Bench with regard to candidates who have got admission under the State quota. The exemption has been provided

only to the persons who had gained admission through the All India Quota. The reason for exemption with regard to the All India Quota students has

been well explained by the Hon'ble Supreme Court in the case of Anand S. Biji Vs. State of Kerala and others, reported in JT 2001 (10) SC 121.

16. Analogy has also been sought to be drawn from a similar issue which arose before a Division Bench of the Mumbai High Court, which was the

case of Dr. Vinod Shankarlal Sharma and 61 others Vs. The State of Maharashtra and another (WPL No.1862 of 2012 and another connected

petition, decided on 7.11.2012), where the Division Bench presided over by Dr. D. Y. Chandrachud, J. speaking for the Bench had this to observe in

para 14:

14. As a matter of its social policy, the State Government does not charge fees commensurate with the cost of medical education from students,

who pursue their M.B.B.S. degrees or post-graduation and super-specialization in government and municipal medical colleges. Admissions to such

colleges are highly regarded because of the exposure and knowledge which students gain in the course of their medical studies in those institutions.

The State spends a considerable amount of money in providing subsidized medical education. As a condition attaching to the provision of subsidized medical education, it is legitimately open to the State to assert that upon the completion of their studies, such doctors should be required to render public service either in government or municipal medical colleges or in the defence services. The period, which is prescribed for the bond, is service for a period of one year which is not disproportionate. After the completion of service of one year, a super-specialized doctor is free for the rest of his or her professional career to serve elsewhere in the country or wherever. The condition which has been imposed by the State Government of requiring service for a period of one year cannot be regarded as arbitrary or unreasonable. Even as a matter of first principle, the State has a legitimate interest in ensuring that while on the one hand it creates an infrastructure necessary for the pursuit of medical studies especially at the super-specialized level, students who benefit from that infrastructure and its attendant resource base must contribute back to the community by rendering public service. The importance of the wider social perspective cannot be lost from purview. Patients, who come for treatment to state and municipal run medical colleges are not necessarily confined only to the State of Maharashtra and it is a matter of common knowledge that patients are drawn from within as well as outside the State. Poverty in India does not know geographical boundaries. We do not find any infirmity in the policy decision of the State Government that students who complete their medical degrees from government and municipal run medical colleges must perform public service for a stipulated period in recognition of the fact that the public exchequer bears a large burden of the expenditure incurred on their medical education. Such a requirement is based on a valid rationale and the classification meets the requirements of a reasonable classification for the purposes of Article 14 of the Constitution. â??

17. Similar view has also been taken by a Division Bench of Himachal Pradesh High Court in the case of Dr. Ramesh Kaundal Vs. State of H.P. and others and other analogous cases decided in CWP Nos.831/2017, CWP No.1251/2017, CWP No.1259/2017 and CWP No.1381/2017. The decision is dated 20.9.2017 and the relevant paragraph of the said Division Bench decision has been crystalised in para23, which reads as under:

23. Condition of furnishing a bond as also Bank Guarantee, in our considered view, cannot be said to be unreasonable, irrational, illogical and thus illegal. Simply because in the past such condition was not imposed, that fact itself cannot be a reason good enough not to review the Policy. In fact, it is only on the basis of previous experience that the Policy came to be altered and the Prospectus amended. Under the Constitution of India, State is to provide good health to all residents, in all areas, be it urban or rural. It is with this object, so to say to check the brain-drain, the condition stands imposed. State does require more and more specialists to be posted in remote/rural areas. Under these circumstances, the condition cannot be said to be violative of Articles 14 & 21 of the Constitution of India. It also cannot be said that the condition is violative of Part- III of the Constitution, as it does not restrict admission only to such of those persons, who are economically affluent. Not only the State is incurring expenditures in imparting education, but is also making payment to them in one form or the other. That apart, the Bank Guarantee is required to be furnished in phases and not in one go. Rs.3,00,000/- per annum is not a huge amount, which a specialist cannot afford to arrange for and that too for the purpose of Bank Guarantee. Yes, Bank Guarantee is furnished against some tangible security, but then a sum of Rs.3,00,000/- is also not such that no doctor can afford. In our considered view, it does not cast any unnecessary burden upon the students belonging to economically backward families. In any case, none has approached the authorities, expressing such concern. Nexus with the object sought to be achieved is very much evident and explained. There is co-relation between the imposition of condition and admission to a degree course. For after all, State is incurring huge expenditure and as already observed the endeavour is to stop brain-drain and enable the specialists to serve the residents of the State to provide benefits to the residents of the State. ??

18. Submission of the Counsel representing the University is that the Hon'ble the Supreme Court itself in various decisions has created obligation upon State Governments. As envisaged under the Constitution, since we are a welfare State, it is the duty of the State Government to secure welfare of its people which includes providing adequate medical facilities to the people. It is the duty of the Government running hospitals and Health Centres to

provide Medical Care to the persons seeking such facilities and Article 21 of the Constitution of India imposes obligation on the State to safeguard that

right to life for every person since preservation of human life is of paramount importance.

19. Highlighting such objective, the Hon'ble Supreme Court in the case of Paschim Banga Khet Mazdoor Samity and others Vs. State of W.B. and

another reported in (1996) 4 SCC 37 had this say in paragraph 16 :

16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the

constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the

context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional

obligation in that regard on account of financial constraints. [See : Khatri (II) v. State of Bihar, SCC at p. 631]. The said observations would apply

with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the

matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound

plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for

ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West

Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations

made by the Committee, the directions contained in the Memorandum of the Government of West Bengal dated August 22, 1995 and the further

directions given herein.

20. Keeping the background of the decisions which have been noticed in earlier part of the order as well as the Constitutional obligation of providing

health care to the majority which lives in the rural areas, if the State of Chhattisgarh while providing admission and providing subsidized education to

such students has decided as an objective and as a policy to take work from such candidates for a period of 2 years in the rural areas and in lieu

thereof they have imposed notional amount as a bond condition, in case a person

wants to opt out or breach the same, the same cannot be struck down on the ground of being violative of Article 14 or Article 19 (1) (g) of the Constitution of India. The paramount objective behind Rule 11 is to provide medical service to the people in the villages and Government Primary Health Centres situated in the Rural Areas by utilising the services of such MBBS Doctors. To ensure its enforcement, execution of bond has been incorporated as a condition to admission. The effort of the State was to only enforce the object and not to create any impediment in the choice of career or advantages after completion of the course of MBBS.

21. We are not impressed by the lines of arguments made on behalf of the petitioners that Rule 11 falls foul of any of the conditions under which it can be struck down as unconstitutional or ultra vires.

22. All the writ petitions, therefore, fail and are hereby dismissed.