
(1972) 12 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 522 of 1972

Manocha (S.P.) and another	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 09-12-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) J LJ 318

Hon'ble Judges : P.K. Tare, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : R.S. Dabir, V.S. Dabir and C.P. Namdeo, for the Appellant; J.P. Bajpai, D.A.G. and M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.—Petitioner No. 2 is the daughter of petitioner No 1. She had applied for admission to one of the Medical Colleges in the State for the M.B.B.S course commencing this year. She has not been admitted. Hence this petition claiming a writ of mandamus against the respondents to admit her to one of the Medical Colleges in the State.

2. The total number of seats to be filled this year in several Medical Colleges in the State was fixed, admittedly, at 720 in all. Later on, 10 more seats were increased in the Rewa Medical College for the sons and daughters of freedom fighters, but we are not concerned with these additional seats in the present case. A fixed percentage of seats out of the total number was reserved for some specified categories so that the final division of these 720 seats was made as follows:--

- (1) General category 441 seats.
- (2) Scheduled Castes 108 "
- (3) Scheduled Tribes 108 "

(4) Freedom Fighters 21 "

(5) Military Personnel 21 "

(6) Govt. of India nominees 21 "

Total 720 seats.

3. The petitioner No. 2 falls in the general category and could claim to be admitted only thereunder and the benefit of any of the other special categories enumerated above from items Nos. 2 to 6 was not available to her. It is also accepted that in the general category no candidate has been admitted to any of the Medical Colleges who may have obtained less marks than petitioner No. 2. The minimum aggregate marks up to which admissions have been made in the general category is 275 out of 500, whereas the petitioner No. 2 has obtained 272 marks out of 500. These are the marks obtained by the candidates for admission, in Pre-Medical test held for weeding out the surplus candidates in excess of the seats available. It is also an admitted position that none of the candidates admitted under any of the aforesaid categories is disqualified for admission, according to the qualifications prescribed by the University for admission to the M.B.B.S. course.

4. With regard to the Pre-Medical examination held this year, the State Government had prescribed a method to regulate the admissions and to ascertain the number of seats available for allocation to the aforesaid different categories of applicants. This was done by the "Madhya Pradesh Pre-Medical Examination Rules, 1972" which is Annexure "A" to the petitioner. After the Pre-Medical Examination was held, a clause in the rules initially declared, was modified with a view to provide admission to many more candidates from amongst some of the reserved categories, but strictly within the number of seats reserved for them according to the policy declared initially. The relevant provisions of the rules and the amendment shall be stated hereafter.

5. The grievance made on behalf of the petitioners is that but for the subsequent amendment in the rules, many more seats out of those which were allocated to the reserved categories would fall vacant, with the result that the total number of seats available under the general category would be further increased, and thereby many more candidates including the petitioner No. 2 would get admission. As such, the petitioners contend that the action of the Government in so amending the rule after the Pre-Medical Examination was held, was illegal and unjustified and it has the effect of depriving petitioner No. 2 of her right to be admitted in one of the Medical Colleges.

6. It is common ground that the aforesaid Madhya Pradesh Pre-Medical Examination Rules, 1972 are mere executive instructions and the appellation (Rules) used for describing them is a misnomer, since they have neither any statutory origin nor any statutory force. This being so, the so-called Rules are a mere declaration of the State Government's policy for guidance of its officers on

the basis of which the admissions were to be made this year to the several Medical Colleges in the State. As a matter of fact, except for calling upon the candidates to appear at a Pre-Medical Examination, and for this purpose apprising them of the requisite qualifications for eligibility it was not at all necessary to apprise the intending candidates of the manner in which the seats were intended to be filled or the manner in which the seats in the reserved categories were to be filled. However, all these matters relating to the policy were declared apparently for the purpose of general information.

(Tiff Missing Page No. 321 to 324) 16. The next question is whether there is a right, if any, conferred on petitioner No. 2 by virtue of the aforesaid rules. Even assuming that the said rules are capable of being interpreted in the manner suggested by Shri Dabir so that all the unfilled seats reserved for Scheduled Castes and Scheduled Tribes candidates were to be converted into seats in the general category, the question is whether the non-observance of these rules is justiciable so that a writ of mandamus can be issued to compel their enforcement. As already stated, it is common ground before us that these rules are merely executive instructions and have no statutory basis. In other words, the true character of these rules is merely of a declaration of the State Government's policy on the basis of which admission were to be made to the several medical colleges in the State. As a matter of fact, it was not even necessary to disclose to the candidates all the rules except those which lay down the necessary qualifications for eligibility as a candidate for admission. The mere fact that the entire set of rules was made public before the Pre-Medical Examination was held, would not, in our view, alter their basic character.

17. It is settled law that non-compliance with such executive instructions which have no statutory basis is not actionable. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, in para 27 their Lordships of the Supreme Court observed as follows :--

It has not been shown that in exercising its powers the appellate authority discarded any mandatory provisions of law. The utmost that has been suggested is that it has not carried out certain executive instructions.....But all these are only executive instructions which have no statutory forces. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot effect the power of the appellate authority to make its own selection, or affect the validity of the order passed by it.

In *Raman and Raman Ltd. Vs. The State of Madras and Others*, their Lordships of the Supreme Court were required to consider the effect of certain executive directions issued u/s 43-A of the Motor Vehicles (A Madras Amendment) Act, 1948, and while dealing with such executive directions also their Lordships held in para 13 as follows :--

But as we have held that the said order was not law but was only an

administrative direction, it could not effect the validity of the order of the Central Road Traffic Board.....

In *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, while dealing with certain rules which were merely executive instructions without any statutory force, their Lordships of the Supreme Court, relying on *Raman and Raman's* case (supra), held in para 12 as follows :--

That decision in our opinion governs the present case also, for it has been found by the High Court, and it is not disputed before us, that the rules are mere administrative instructions and have not the force of law as statutory rules. They therefore confer no right on the teachers of private colleges which would entitle them to maintain a writ petition under Article 226 for the enforcement of any provision of the rules.

Later on, in *G.J. Fernandez Vs. State of Mysore and Others*, , dealing with the question of disobedience of certain rules, which were mere administrative instructions and not statutory rules, contained in the Mysore Public Works Department Code, their Lordships held that no writ lies for disobedience of the rules. In para 12 of that decision their Lordships held as follows :--

The High Court has observed that the so-called rules in the Code are not framed either under statutory enactment or under any provisions of the Constitution. They are merely in the nature of administrative instructions for the guidance of the Department and have been issued under the administrative power of the State..... If they have no statutory force, they confer no right on anybody and a teacher cannot claim any rights on the basis of these administrative instructions. If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public like the tenderer to ask for a writ against Government by a petition under Art 226. The matter may be different if the instructions contained in the Code are statutory rules.....Of course, under such executive power, the state can give administrative instructions to its servants how to act in certain circumstances ; but that will not make such instructions statutory rules which are justiciable in certain circumstances.....We are, therefore, of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach, that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the appellant to come to Court for any relief based on the breach of

these instructions..... In the view we take.....we are of opinion that no claim for any relief before a Court of law can be founded by a member of the public, like the appellant, on the breach of mere administrative instructions.

In view of this string of decisions of the Supreme Court it cannot be contended with any degree of force that any breach or non-observance of the Madhya Pradesh Pre-Medical Examination Rules, with which we are concerned in this case, can confer any right either on the petitioner No. 2 or any one else to claim its enforcement through a Court of law.

18. Similar rules governing admission to Medical Colleges in this State were made the basis of claiming a right of admission in some cases in the past. The decisions in those cases are Ramchandra Vishnu Vs. State of Madhya Pradesh and Others, , Prakashchandra v. State 1962 MPLJ 327 and Vinod Sagar Sood v. State of M.P. 1967 J LJ 551 : 1967 MPLJ 194. Another case of this Court is Gokul Prasad and Others Vs. M.M. Sohani and Others, in which admission was claimed on a similar ground to a Basic Training School. All these decisions were by a Division Bench of this Court and in each of them a writ was refused on the ground that such rules were not justiciable so as to confer any right on the petitioner. In Vinod Sagar's case (supra) Dixit, C.J., who delivered the judgment of the Division Bench, held in para 5 as under :--

Having heard Learned Counsel for the parties we have reached the conclusion that this application must be dismissed. It has been held by this Court in Ramchandra Vishnu Vs. State of Madhya Pradesh and Others, and Gokul Prasad and Others Vs. M.M. Sohani and Others, that the instructions issued by the Government, regulating admission into schools and colleges, though styled as "Rules" are merely administrative or executive instructions and their breach, even if patent, cannot justify the issue of a writ of certiorari for cancelling the admission of any student or the issue of a direction to the authority concerned compelling it to admit into the institution a candidate who was refused admission.

19. From all these authorities it is clear that such rules do not confer any right on an applicant for admission, and even where an infraction of the rules is patent, it does not entitle anyone to claim their observance through a Court of law. With respect we are in agreement with this view taken by the learned Judges deciding the aforesaid cases.

20. Shri Dabir made an attempt to distinguish the aforesaid decisions of this Court on the ground that in the present case the candidates applying for admission had to appear at a Pre-Medical Examination, whereas there was no such requirement under the rules which came up for consideration in the earlier decisions. In our view, this difference in requirement now, does not in any manner alter their true character so as to make those cases distinguishable. We are of opinion that the ratio of the earlier decisions fully applies also to the present case and there is no distinction available to the petitioners to avoid the application of the principle laid down in the said earlier decisions.

21. A recent decision of the Supreme Court which throws light on the question is *Minor P. Rajendran Vs. State of Madras and Others*, . In that case similar rules framed for admission to medical colleges controlled by the Government were challenged in so far as they provided for reservation of seats for specified categories of candidates. The Supreme Court in that case struck down only the rule which permitted district wise allocation of seats, on the ground that it being discriminatory was violative of the Constitution, as it was not a permissible classification. The other grounds of challenge were negatived. However, in dealing with that question their Lordships observed in para 17 of the judgment as follows;--

So far as admission is concerned, it has to be made by those who are in control of the Colleges, in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the University as to eligibility and qualifications. This was what was done in these cases and therefore the selection cannot be challenged on the ground that it was not in accordance with the University Act and rules framed thereunder.

In the present case it is an admitted position that the rules of the University as to eligibility and qualifications have been adhered to in admitting the candidates and there is no grievance made on that account. This case also supports the view that there can be no challenge either to the rules or to their non-observance except on the ground that they violate any of the provisions of the Constitution or the rules of the University as to eligibility and qualifications for admission.

22. Another recent decision of the Supreme Court also supports the view we have taken. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, a challenge was made to certain nominations made by the Central Government and it was contended that the nominations being invalid, those seats were also available to the candidates in the general pool. Repelling such an argument, their Lordships held in para 12 as follows ;--

It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nominations to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving benefit to candidates belonging to the non-reserved seats to release them but it cannot be compelled to do so at the instance of students who have applied for admission from out of the categories for whom seats have not been reserved.

It is true that in the case before the Supreme Court there appears to have been

no such provision as rule 6 (3) (ii) in the present case. However, this distinction in facts makes no difference for the ultimate decision, in view of the nature of rules already indicated by us.

23. We are, accordingly, of the view that the aforesaid rules did not confer any right on the petitioner No. 2 as she claims.

24. There is also no merit in Shri Dabir's contention that the amendment in rules could not be made after the Pre-Medical Examination was held, so as to operate retrospectively. It being admitted that the rules were merely executive instructions, they did not confer any right, much less a vested right. The only prohibition against retrospective operation is to avoid, defeating a vested right. No such right is involved in this case.

25. A similar question was considered in *Raman and Raman Ltd. Vs. The State of Madras and Others*, In that case a transport permit having been granted, during the pendency of an appeal against that grant new restrictions were imposed which adversely affected the grantee. These new restrictions were applied on the basis of certain executive orders passed u/s 43-A of the Motor Vehicles (Madras Amendment) Act and they were taken into consideration by the appellate authority while disposing of the appeal and setting aside the grant. The contention advanced before the Supreme Court was that by virtue of the grant of permit in the first instance by the Regional Transport Authority the grantee had acquired a vested right to carry on the business of transport and the same could not be defeated by such an order made u/s 43-A of the above Act. Their Lordships of the Supreme Court held that an order issued u/s 43-A was a mere executive instruction and was not law so that there was no change brought about in the law during pendency of the appeal. In this view it was held that the validity of the order passed by the appellate authority could not be challenged on the ground that it decided the appeal on a law that was made subsequent to the issue of the permit, even after accepting the contention that there was a fundamental right to carry on motor transport business subject to reasonable restrictions upon that right by law.

26. In a later decision reported in *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, their Lordships of the Supreme Court, following *Raman and Raman's* case (*supra*), reiterated, as follows :--

We may in this connection refer to *Raman and Raman Ltd. Vs. The State of Madras and Others*, where this Court had to consider certain orders and directions issued u/s 43-A of the Motor Vehicles (Madras Amendment) Act, 1948. The question arose whether the orders issued u/s 43-A had the status of law or not. This Court held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further held that there could be no right arising out of mere executive instructions, much less a vested right, and if such instructions were changed pending any appeal, there would be no change in the law pending the appeal so

as to affect any vested right of a party.

From these decisions it is clear that there is no merit in the contention that the State Government could not amend the aforesaid rules in the manner it did after the Pre-Medical examination was actually held. Accordingly, this contention must also be rejected.

27. Shri Dabir, as a last resort, confined the petitioner's claim within the narrow limits of equitable estoppel. His argument is, that acting on the representation made by the State Government as contained in the aforesaid Rules, the petitioner No. 2 appeared in the Pre-Medical Examination and as such, it is now not open to the State Government to withdraw that representation after the petitioner No. 2 suffered the detriment of appearing in the examination. We are unable to appreciate as to how any detriment was suffered by petitioner No. 2 by her mere act of appearing in the Pre-medical Examination, which action was independent of the actual number of seats available. It is beyond question that she would have appeared in this examination in any case, and that she did not do so simply because there may have been a chance of some reserved seats remaining unfilled and thereafter being converted into seats in the general category. As it is, in all 153 seats out of those reserved for Scheduled Castes and Scheduled Tribes had remained vacant even after amendment of the rules so that these were ultimately added to the general category. This is not a case where having advertised initially for giving admission to candidates from the general category, the Government subsequently refused admission to all candidates in that category by withdrawing all the seats which were initially allocated to the general category. Therefore, it is difficult to visualize as to how any detriment was suffered by petitioner No. 2 in the present case so as to apply the principle of equitable estoppel. It is not the petitioner's case that but for the possible chance of some such additional seats being added to the seats available to the general category she would not have appeared in the Pre-Medical Examination. In view of these facts alone the principle of equitable estoppel is not attracted to this case.

28. The decision in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., is strongly relied on by Shri Dabir in support of his contention that the rule of equitable estoppel applies. That was a case in which a merchant acting on a representation made by the Government in an Export Promotion Scheme had made certain exports. That scheme promised certain benefits to such exporters and the question was whether a merchant, who, acting on those promises had made certain exports, could be denied the benefits promised under that scheme. Their Lordships of the Supreme Court held in that case that so long as the scheme was in force, the Government was estopped from going back on the representation made by it. We have already indicated that the present is not a case of that type and we are unable to appreciate that any detriment has been suffered by the petitioner No. 2 here. So long as she wanted admission to one of the seats in a medical college, she would have appeared in the Pre-Medical

Examination and this action of hers did not depend on the contents of the rules which provided for allocation of seats to different categories of candidates. We have already stated that it was not even necessary to publish the provision in these rules with regard to the manner in which the availability of the seats for the various categories was to be determined. That was only intended for guidance of the officers who had to admit the candidates. The position is not altered simply because they were in fact published and made known even to the candidates by way of general information. In fact, there was no representation made at all by these provisions to the intending candidates. Therefore, the very basis for invoking the rule of equitable estoppel is non-existent in this case.

29. We would also like to point out that the object of reserving seats for these backward classes was to ensure the availability of a minimum number of seats to them. After the Pre-Medical Examination was held, it appears that the Government, realizing that a very negligible number of candidates from that category had qualified for admission, decided to lower the qualifying marks for them. Even after this was done, in all only 63 candidates could be admitted as against the total number of 216 seats available for them. Thus, the impugned action taken by the Government was only for the purpose of achieving the object for which such reservation is permissible and has been upheld by the Courts. By acting in the manner it did, the State Government did not reduce the chances of admission in the general category from those which were available when the applications were invited and Pre-medical Examination was held. The impugned action of the Government cannot therefore be called even unjustified in these circumstances.

30. We are, therefore, of the view that there is no merit in any of the contentions advanced on behalf of the petitioners. Accordingly, we dismiss this petition. However, in the circumstances of the case, we direct the parties to bear their own costs. The outstanding amount of security deposited by the petitioners shall be refunded.