

(2009) 09 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17162 of 2009

Master Alli Sai Deepak

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 3
Andhra Pradesh State Council of Higher Education Act, 1988 — Section 24
Constitution of India, 1950 — Article 14
Indian Medical Council Act, 1956 — Section 19A, 20, 33, 33(j)

Citation : (2013) 4 ALT 643

Hon'ble Judges : Nooty Ramamohana Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : P. Srinivas, for the Appellant; B. Ashok Kumar, Counsel for Respondent No. 2, Mr. K. Rathangapani Reddy for Respondent No. 3, Mr. D.V. Nagarjuna Babu for Respondent No. 4-University and Mr. S. Niranjan Reddy for M.C.I., for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The petitioner, who is seeking admission into 1 year M.B.B.S. course in one of the medical colleges in the State of Andhra Pradesh, challenges the validity of Regulation No. 4 of Graduate Medical Education Regulations, 1997 (for short "1997 Regulations") stipulating that the candidate should have completed the age of 17 years on or before 31st December, prescribed by the Medical Council of India, so also Rule 4(3)(b)(i) of the A.P. Professional Educational Institutions (Regulation of Admission into Under-graduate Professional Courses through Common Entrance Test) Rules, 1993 (for short "1993 Rules"). The petitioner alternatively seeks direction to respondents 3 to 5 to follow G.O.Rt. No. 545 dated 23-7-2009 issued by the first respondent and permit the petitioner to participate in the counseling for admission to medical stream in BC-D category.

2. The core issue that arises for consideration in this writ petition is the power and jurisdiction of the Medical Council of India to fix the minimum age regulating the admission process to the Medical Colleges.

3. The factual matrix relevant for deciding the issue may be stated thus: The petitioner had passed SSC examination held in March, 2007 and was placed in first division and he had also finished Intermediate course with science subjects and secured "A" grade. He had appeared for the EAMCET-2009, which is a Common Entrance Test for admission into Medical, Engineering and other allied courses in the State of Andhra Pradesh, and obtained rank No. 938. While so, the petitioner's date of birth being 23-3-1993, he has fallen short of 2 months 23 days for completion of 17 years by 31-12-2009, which is the minimum age limit fixed by the State Government for admission into a medical course after Intermediate. Therefore, the petitioner was informed during the counselling for admission into medical stream that he is not eligible for admission in view of shortage of age. Then, the petitioner moved this Court by way of W.P. No. 14725 of 2009 for correction of age and the said writ petition was dismissed by order 22-7-2009 leaving it open to him to approach the authority concerned. He had approached the first respondent-State Government for relaxation of age and the first respondent passed orders in G.O.Rt. No. 545, Higher Education (EC-2) Department, dated 23-07-2009 condoning the shortfall of his age in order to secure admission into 1 year medical stream for the academic year 2009-2010. It is averred that respondents No. 3 and 4 had still refused to permit the petitioner to attend for the counselling and thus, he filed writ petition being W.P. No. 14965 of 2009, which is said to be pending. Hence, the present writ petition.

4. Heard Sri P. Sreenivas, learned counsel for the petitioner and learned Government Pleader for Higher Education for first respondent, Sri B. Ashok Kumar, learned counsel for second respondent, Sri K. Rathangapani Reddy, standing counsel for the third respondent, Sri D.V. Nagarjuna Babu, standing counsel for Dr. NTR University of Health Sciences and Sri S. Niranjan Reddy, standing counsel for Medical Council of India, and also perused the material available on record.

5. Learned counsel for the petitioner has drawn our attention to the provisions of the Indian Medical Council Act, 1956 and 1997 Regulations made thereunder, and contended that Medical Council is assigned the task of maintenance of all-India register of medical practitioners and to prescribe the standards for the post-graduate medical education throughout India but it is not empowered to deal with the prescription of minimum age. He further contended that the fixation of age for regulating admission to educational institutions is within the domain of the State Legislature, for which purposes it has enacted Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983). Learned counsel also contended that the State Government in exercise of power conferred u/s 24 of the Andhra Pradesh State Council of Higher Education Act, 1988, had relaxed and condoned the shortfall of

age and the said decision is binding on the 3rd, 4th and 5th respondents.

6. Learned counsel for the petitioner further contended that in respect of admission to engineering course, the minimum age of 16 years is prescribed, whereas a candidate seeking admission to MBBS course has to complete 17 years of age, therefore it amounts to discrimination especially when candidates write the same qualifying as well as competitive examinations. He also contended that u/s 33(j) of the Indian Medical Council Act, the Council is empowered to prescribe the courses, period of study, practical training to be undertaken, subjects and standards of proficiency therein to be obtained only, but it does not deal with the prescription of age for admission to a course of study.

7. Learned Government Pleader for Higher Education contended that the Rules are framed in terms of Section 15 of Act 5 of 1983 and the minimum age of completion of 17 years is prescribed, which is not inconsistent and it is in pari materia with the minimum age stipulated by the Medical Council of India. He further supported the GO granting relaxation in view of the peculiar fact situation, to encourage an otherwise meritorious student.

8. Learned counsel for the fourth respondent - University has drawn our attention to the decision of the Supreme Court in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, and contended that Regulation-I which lays down the conditions or qualifications for admission into medical course falls within the competence of the Medical Council of India u/s 33 of Medical Council of India Act, 1956 and hence any such stipulation is mandatory. He further contended that even the A.P. State Government had framed Rules called Andhra Pradesh Government Professional Institutions (Regulation of Admissions into Under-Graduate Medical and Dental Professional Courses) Rules, 2004 in exercise of powers conferred by Sections 3 and 15 of Act 5 of 1983, and Rule 3(5)(ii) thereof stipulates that the candidate should have completed 17 years of age as on 31st December of the year of admission, therefore the relaxation of age given by the Government is not legal. The learned standing counsel for MCI, while supporting the above plea, also relied upon the Full Bench decision of Rajasthan High Court in Gautam Kapoor Vs. State of Rajasthan and Another, in support of the proposition that prescribing minimum age of 17 years is valid and not violative of Article 14 of the Constitution of India and that the Court must give weight to the recommendations of the Medical Council. He has also relied upon the decision of a learned single Judge in U. Anveshini and Another Vs. Convenor, EAMCT-2000 and Others, wherein it was observed that the power to prescribe the minimum age is traceable to Section 19-A of the Act and the power to prescribe the qualifications for admission to undergraduate courses includes the power to prescribe the minimum or the maximum age, as the case may be.

9. Learned standing counsel for the fifth respondent - Medical Council of India contended that by virtue of Section 33 of the Medical Council of India Act, the

Council is empowered to make Rules and Regulations.

10. In the instant case, we are concerned with the provisions of Sections 19-A and 33 of the Indian Medical Council Act, 1956. Admittedly, the medical education in India is regulated and governed by the provisions of Indian Medical Council Act, 1956, which is enacted by Parliament, and in order to give effect to the Act, the Medical Council of India is constituted and the Council is empowered under the Act to prescribe standards of medical education, including the age, qualifications, duration of course, internship and any other mandatory requirements which would further the quality and standard of medical profession in the country, be it at the undergraduate level or post-graduate level. While this being the role of Medical Council of India, 1997 Regulations have been framed and Regulation No. 4 thereunder deals with the eligibility criteria for admission to the medical course, which stipulates that the candidate shall complete the age of 17 years on or before 31st December of the year of admission. Likewise, the Government of Andhra Pradesh in pursuance of the judgment of the Supreme Court in *Papuri Deveedu Vs. Banavath Lokhya and Another*, and in exercise of powers conferred under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 issued G.O.Ms. No. 136 dated 30-4-2007 whereunder the age limit is fixed and the candidate should have completed the age of seventeen years on or before 31st December of the year of admission. This is in conformity with the Regulation No. 4 of the Medical Council of India. The question as to whether the Regulations framed u/s 33 of the said Act are mandatory or not, has been considered by the Supreme Court in *State of Madhya Pradesh v. Kumari Nivedita* (1 supra) and it was categorically held that Regulation-I which lays down the conditions or qualifications for admission into medical course falls within the competence of the Council u/s 33 of the Act and hence is mandatory. Further, the Council has used language to manifest the mandatory character clearly, whereas Regulation-II which deals with the process or procedure for selection from amongst eligible candidates for admission is merely recommendatory and directory in nature, as laying down the process or procedure for selection for admission of candidates out of the candidates eligible or qualified for such admission under Regulation-I.

11. The Constitution Bench of the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, per majority view, inter alia, observed that under Indian Medical Council Act, 1956, the Indian Medical Council is empowered to prescribe, inter alia, standards in respect of medical education and the Regulations framed u/s 20 r/w Section 33 of the Medical Council Act, 1956 governing the medical education, are binding and the States cannot make Rules and Regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India.

12. The Supreme Court in *Medical Council of India Vs. State of Karnataka and Others*, held as under:

25. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List).

It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entries 25 or 26 of List III (Concurrent List). Regulations framed u/s 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred u/s 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. August 27, 1992) and Clauses (j), (k) and (l) of Section 33.

13. A Full Bench of Rajasthan High Court in *Gautam Kapoor v. State of Rajasthan* (2 supra), while dealing with a similar issue, observed as follows:

Court must give due weight to the recommendation of the Medical Council of India in this behalf which is being followed uniformly for a long time throughout the country and which is undoubtedly based on experience of experts in the field. It is their opinion that the requisite degree of maturity of body and mind for entry into a Medical College is not attained normally before the age of 17 years.

14. A Division Bench of this Court has considered similar contentions and after considering the entire matter elaborately, negated the same in W.P. Nos. 3684 of 1980 and batch, which was disposed of 22-08-1980. It was also observed that the minimum and maximum age limits prescribed for admission into 1 year MBBS course are reasonable and fair restrictions within the meaning of Article 14 of the Constitution of India. The contention that the minimum age of 16 years prescribed for engineering course while minimum age of completion of 17 years is prescribed for medical course amounts to discrimination, cannot be accepted for the reason that in respect of the medical course, a candidate is required to take a great load on his mental faculties in view of the vastness of subjects involved in the medical course and the maturity and understanding the same needed certain minimum age. Hence, prescribing minimum age of 17 years has direct relationship with the understanding of complex subjects. A well-trained candidate can turn out to be a good Doctor who will serve the society better. Thus, there is a rational basis for fixing 17 years of age for admission into medical course.

15. It is not disputed that the Medical Council of India has framed 1997 Regulations in exercise of Section 33 of the said Act, which are mandatory. In the case on hand, the State Government has also framed Andhra Pradesh Common Entrance Test Rules for entry into Engineering, Architecture, Pharmacy, Agriculture, Medical and Dental Course Rules, 2004 prescribing completion of 17 years as on 31st December of the year of admission as the requisite condition. The petitioner had taken the entrance exam knowing fully well that he has not completed 17 years of age and thus, he is aware of the consequences of his action. It is surprising to note that the State Government while referring to

G.O.Ms. No. 16 dated 25-2-2004 had issued G.O.Rt. No. 545 dated 23-7-2009 condoning the shortage of age in respect of the petitioner. In fact, G.O.Ms. No. 16 dated 25-2-2004 stipulates minimum age of completion of 17 years and while so, the State Government had issued G.O.Rt. No. 545 dated 23-7-2009 without tracing the source of power under the Rules or Act. We express our displeasure at the way in which the State Government issued G.O.Rt. No. 545 dated 23-7-2009 contrary to the Rules governing the field and the factors that led to issuing of the said G.O.Rt. No. 545 are not clearly spelt out. For the foregoing reasons and having regard to the dicta laid down by the Supreme Court as aforestated, the writ petition is liable to be and is accordingly dismissed without any order as to costs.