

(2002) 03 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4289 of 2001

Miss Sunita Meena

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Citation : (2002) 3 RLW 1804 : (2002) 2 WLC 690 : (2002) 5 WLN 171

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Manish Bhandari, for the Appellant; M. Rafiq, A.A.G., Suresh Sahni, Narendra Jain and Rinesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—Grievance of the petitioner as projected in the instant writ petition is that although the petitioner secured 589 aggregate marks in competitive examination of PMT but she was not given admission in MBBS Course on the ground that she did not secure minimum 33% marks in Physics Paper whereas the other candidates having less aggregate marks than the petitioner were given admission as they secured minimum 33% marks in individual papers. The petitioner seeks to quash the instructions issued by the State Government/ University providing for minimum qualifying marks in individual subject and prays to draw merit position based on the marks obtained by the candidates as per the regulations of the MCI i.e. 40% marks in aggregate in three subjects for reserved caste candidate and to declare the petitioner qualified for giving admission to MBBS course on the basis of aggregate marks secured by her.

2. Contextual facts depict that the respondent University issued an advertisement and information booklet for inviting applications for a competitive examination of PMT for the purpose of admission to the medical colleges. In the information book-let necessary instruction for eligibility to admission in MBBS course was published which reads thus-

"He/she shall have to obtain at least 50% marks in aggregate at the Pre-Medical Test (PMT) with at least 33% marks in individual subjects on the result of which above admission to the MBBS/BDS courses will be regulated. However, the natural born scheduled caste/Tribe candidates may be given a relaxation of 10% in aggregate marks secured in the Pre Medical Test (PMT)."

3. Pursuant to the advertisement the petitioner appeared in the Pre-Medical Test and secured marks as under-

Subjects

Maximum Marks

Marks obtained

Physics

300

69

Chemistry

300

161

Botany

300

188

Zoology

300

177

TOTAL

1200

589

A look at the marks sheet of the petitioner demonstrates that she being ST candidate, secured more than 40% marks in aggregate but could not secure 33% minimum marks in Physics paper. As she obtained only 23% marks in Physics, she was not given admission in MBBS course.

4. It is contended by the learned counsel for the petitioner that only the Medical Council of India (MCI) had competence to issue necessary regulations and instructions. As per the instructions of the MCI a candidate seeking admission to MBBS course is required to obtain 50% marks in English and 50% marks in Physics, Maths and Biology taken together i.e. in aggregate. For SC/ST

candidates the said 50% is to be read as 40%. The MCI never issued any regulation to provide that a candidate is required to obtain minimum marks in any of the subjects individually also. All the States are duty bound to follow the instructions of the MCI. When the MCI did not prescribe the condition for obtaining minimum marks in individual subject no such condition could be prescribed by the respondents. Hence the book-let so issued by the respondent No. 2 containing such a condition is without authority of law and void abinitio. Reliance was placed on Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another,

5. Constitution Bench of the Hon''ble Supreme Court in Dr. Preeti Srivastava v. State of M.P. (supra) propounded that standards of post graduate medical education and admission criteria can be laid down by the Central Legislation. The State competence under List I Entry 66 and List III Entry 25 to control or regulate higher education is subject to the standards so laid down by Union of India. States have competence to prescribe rules for admission to post graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India. Conclusion arrived at by their Lordships have been indicated in para 62 thus-

"To conclude-

(1) We have not examined the question whether reservations are permissible at the post graduate level of medical education.

(2) A common entrance examination envisaged under the regulations framed by the Medical Council of India for post graduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

(3) Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post graduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of post graduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidate there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The per centage of 20% for the reserved category and 45% per for general category is not permissible under Article 15(4), the same being unreasonable at the post graduate level and contrary to the public interest.

(4) At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection."

6. Jaya Gokul Education Trust case (supra) was a case wherein the Hon''ble

Supreme Court indicated that grant of approval for establishment of technical institutions was governed solely by the All India Council for Technical Education Act, 1987 (AICTE Act). The council established under the Act was the sole body authorised to grant approval. Provisions of any enactment conferring powers on State Government or University inconsistent with AICTE Act would be void.

7. Learned counsel for the respondents during the course of arguments although abandoned the preliminary objection regarding non-joinder of University of Rajasthan as party in the writ petition yet canvassed vociferously in support of the competence of the State Government in prescribing the eligibility criteria for admission in the MBBS course.

8. The only question that requires consideration is whether the State Government can prescribe rules for admission to MBBS course. As already noticed their Lordships of the Supreme Court in *Dr. Preeti Srivastava v. State of M.P.* (supra) indicated that the State competence to control or regulate higher education under List I Entry 66 and List III Entry 25 is subject to the standards so laid down by the Union of India. The State Government has competence to prescribe rules for admission to post graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India. Merit alone can be the basis of selection.

9. In the instant case, as per the instructions issued by the Medical Council of India a candidate seeking admission to MBBS course is required to obtain 50% marks in English and 50% marks in Physics, Maths and Biology taken together. The reserved category candidates are required to obtain 40% marks in aggregate. There is no condition that a candidate is required to obtain minimum marks in any of the subject individually also. Whereas the State of Rajasthan issued guidelines/instructions that were supplied to the candidate desirous of appearing in Pre Medical Test. Clause 3 (d) of the instructions provided that admission to the MBBS/BDS courses will be regulated on the result of the Pre Medical Test where a candidate obtained at least 50% marks in aggregate with atleast 33% marks in individual subjects. The reserved category candidates shall be given relaxation of 10% in aggregate marks. The petitioner appeared in the Pre Medical Test as reserved category candidate and she obtained more than 40% marks in aggregate since she could not secure 33% marks in Physics Paper therefore she was not given admission in MBBS course.

10. The guide lines prescribed by the State Government, to my mind are neither inconsistent to the standards laid down by the Medical Council of India nor do they adversely affect the standards of Medical education. As indicated by the Hon'ble Supreme Court merit alone can be the basis of selection. Then how could a candidate who secured only 23% marks in Physics paper be selected for admission to MBBS course? In order to adjudge over all merit of a candidate, his/her performance in each paper is also to be looked into alongwith the aggregate marks. Other candidates who obtained minimum qualifying marks in each paper but secured lesser aggregate marks in comparison to the petitioner, stand on

better footings. The petitioner in view of her poor performance in Physics paper is not entitled to relief sought in the writ petition.

11. There is yet another reason that disentitled the petitioner to the relief asked for by her. Knowing fully well the criteria for selection, the petitioner appeared in the Pre Medical Test without any protest, therefore she is estopped by her conduct from assailing the instructions published in the booklet for eligibility to admission in MBBS course. The issue of estoppel was considered by their Lordships of the Supreme Court extensively in *Sunita Aggrwal v. State of Haryana*, (2002) 2 SCC 615 *Union of India and Another Vs. N. Chandrasekharan and Another*, *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, and *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, and it was propounded that the petitioner having appeared before the selection committee without any protest and having taken a chance is estopped by conduct from challenging the selection process.

12. For the reasons aforementioned I do not find any merit in the writ petition, it stands dismissed without any order as to costs, The interim order passed during the pendency of the writ petition shall stand vacated.