
(2002) 09 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 6688 of 2001

Patel Prakash Prahladbhai

APPELLANT

Vs

Government Medical College

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2003) 4 GLR 184

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.J. Shastri, for Petitioner No. 1-3, for the Appellant; K.P. Raval, AGP for Respondent No. 1, 3, Mukund M. Desai, for Respondent No. 2, A.S. Supehia, for Respondent No. 4-7, Amit M. Panchal, for Respondent No. 8-13, 16-21, R.C. Jani, for Respondent No. 14 and B.N. Keshwani, for the Respondent

Final Decision : Partly Allowed

Judgement

Jayant Patel, J.—This petition is preferred challenging the legality and validity of the rule of permitting jumping of post graduate students in medicine from one branch to another branch of post graduate study more particularly after getting admission and prosecuting studies for some time.

2. Short facts of the case are that the petitioners are students who have completed MBBS and they are aspirant to get admission in PG course to various branches in medicines and others of South Gujarat University. The contention of the petitioners is that so far as other Universities and medical colleges affiliated to other Universities of Gujarat State are concerned, there is no such provision permitting jumping from one branch to another branch in the midst of studies and it is only in South Gujarat University, such a practice is prevailing on account of Rule 8 of P.G.Rule (Medical Admission). The Rule 8 which is under challenge in this petition is reproduced as under:

" A student intending to take Post Graduate Degree in a subject different from the one for which he has been registered must register himself afresh by paying

the prescribed registration fee. Such registration will be permissible only if an application in this behalf is received by the University through the Professor-in-charge of the centre in the new subject concerned.

If, as a result of a change in the subject, it is necessary for the student to change in Post Graduate centre concerned his tuition fee should be charged afresh"

3. The contention raised on behalf of the petitioner is that aforesaid Rule provides that if any student is prosecuting studies of Post Graduate Degree in medicine of a particular branch and after completing the studies for two years or one year, he/she can change the branch of study, if vacancy is available afresh and as a result thereof, the period during which the study is undertaken would not only be wasted but the said seat created at that time would also lapse for all time to come e.g. A has opted for Post Graduate Degree in Paediatrics branch and after studying in this branch for about two years, he decides that since the seat is available in Post Graduate Degree in Ophthalmology branch, he should opt for it. As a consequence of the existing Rule, he applies and the permission is granted, then the result would be that the seat of Post Graduate degree in Paediatrics branch would not only lapse but the period during which the student studied would also be wasted and seat would also not be available to any other candidates for remaining 3rd and 4th years. The consequences would be as shown above. Explaining the circumstances and the manner in which if the jumping would be permitted the consequences would ensue.

4. The contention is raised on behalf of the petitioner that the aforesaid Rule is also in conflict with Rule of 8(2) of the State Government providing registration in Post Graduate studies. It has also been submitted that if Rule 8 is compared with Rule 4, then also Rule 8 would stand in conflict with Rule 4 inasmuch as Rule 4 provides granting of registration once whereas; Rule 8 provides jumping in the midst of the studies and therefore it has been submitted that Rule 8 cannot be allowed to stand more particularly because Rule 4 is a general Rule providing registration to all branches.

5. Mr. Shastri further submitted that even otherwise also there is no rationale and the Rule is arbitrary because as a consequence of allowing the Rule to operate not only serious prejudice would be caused to public money but for all time to come the seat of a particular branch which is created would be lapsed and the expenditure incurred by the Government by way of contribution towards studies in the medical branch would also go for all time to come. He also submitted that when in the whole of Gujarat State except in South Gujarat University, so far as other medical colleges are concerned, such things are not permitted in the larger interest and the expert body in the field of education has also not permitted the same, the Rule cannot be said to be reasonable and cannot be maintained on the ground that since it was suggested by the expert body of the South Gujarat University and therefore, this court should not disturb the validity of the Rule under judicial scrutiny in a petitioner under Article 226 of the Constitution of India. Mr. Shastri has relied upon the judgment of the Division

Bench of this Court { C.K.Thakkar Actg.C.J (as then he was) and K.M.Mehta-J} in L.P.A. No.912 of 1999 in SCA No. 3048 of 1999 to contend that so far as Jamnagar Medical College is concerned, said practice was permitted and the same is not held to be legal and valid by the Division Bench. Mr. Shastri has further relied upon the judgments of the Apex Court reported in Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, , Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . and Senior Superintendent of Post Offices, Allahabad and Others Vs. Izhar Hussain, to contend that there cannot be any unfettered , unreasonable and arbitrary power given to make the provisions from the statutory rule or otherwise.

6. Mr. M.M.Desai learned advocate for the University submitted that the rules are framed by the expert body of the University and this court while exercising power under Article 226 of the Constitution of India cannot substitute its opinion as to whether the rule is in the larger interest or not and there is a limited scope of judicial review. Mr. Desai also submitted that as per the Regulations issued by the Medical Council of India more particularly Regulation 12(4) provides that no post graduate seat left unfilled in any academic year, shall be carried forward to the next or subsequent academic years, and an academic year is from 1st January to 31st December of any calendar year. In that context it was put to Mr. Desai that if a situation is created as referred to hereinabove that a student after undergoing two years" study in paediatrics decides to join Post Graduate course in Ophthalmology afresh, whether the seat over said student studied in paediatrics course would continue or not and Mr. Desai fairly submitted that in view of this circumstance, the seat would lapse.

7. Mr. K.P.Raval, learned AGP on behalf of the respondent Government submitted that as a matter of fact making provision of jumping would rather be against the interest of the Government inasmuch as he submitted that it creates a lot of administrative difficulties and problems if jumping is permitted inasmuch as the seat would lapse for all time to come and the aspirant student of a particular branch of medical study would not get opportunity to prosecute studies in Post Graduate course of medicine. Mr. Raval, in substance did not support the contention raised by the University and submitted that so far as other medical colleges in Gujarat State are concerned, there is no such provision and it is only in South Gujarat University such a provision is there and he fairly submitted that there is no rationale behind making the provision of jumping and on the contrary it would be against the public interest since it may result into wastage of public money also.

8. On behalf of the students who have already granted admission pursuant to Rule 8 Mr. Amit Panchal learned advocate submitted that even if this court holds ultimately that Rule is arbitrary or unreasonable, then it would apply prospectively and he submitted that so far as his clients are concerned, they have already been granted permission to change the branch and the admission already granted may be disturbed by this court while passing final order. Mr.

Raval learned AGP also submitted that this court while passing final order may appropriately consider the situation that the students who have already been permitted to change the branch, may not suffer and the court may either strike down the Rule or the court may also direct the authority to reframe the Rule by making suitable observations.

9. Mr. B.N.Keshwani learned advocate has supported the contentions raised on behalf of the petitioner. However, Mr. R.C.Jani learned advocate for one of the students who wanted to opt Orthopaedics branch from Pathology branch submitted that his client has not been granted registration but the contention of Mr.Jani was that his client is similarly situated with those who have already been granted registration by way of change in the branch and therefore, even if this court ultimately decides to strike down the provision of Rule 8, the contention of Mr. Jani was that his client may be permitted to change of branch and he submitted that his client has completed 10 months study only. But when it was further inquired, he fairly submitted that his client has completed 10 years of study in Pathology branch and not in orthopaedics in which branch his client desires to prosecute his further studies by fresh registration. Mr. Jani also contended that not only the case of his client is similarly situated with the other students who have been granted provisional registration but only two students are left out from the said group and even if this court strikes down the Rule it should apply from the next academic year and the same would take care of his client.

10. Considering the above rival submissions of the parties, the first thing which is required to be considered is about the scope of judicial review of this court while exercising extra ordinary powers under Article 226 of the Constitution of India. It is true that this court is having limited judicial review in the matter of education activities and the court cannot substitute its wisdom or substitute its opinion whether a particular provision made by any Educational Institution would be in the fitness of things or not. But at the same time, it is not that the court has no authority to examine the validity or constitutionality of any rule. In the present case, the rules in question are by subordinate legislation. I am of the view that if the court finds that a Rule is arbitrary on the face of it, and is also unreasonable, the court while exercising judicial review can examine the said aspect. If ultimately the court finds that the Rule is arbitrary on the face of it and no rationale is going to be achieved by such a Rule and if the court finds that on the contrary, such rule would frustrate not only the purpose but it would rather be against the public interest and if the court finds that allowing operation of the Rule would result into foreclosing opportunities of large number of eligible and aspirant candidates for no fault on their part, then the court even while exercising powers under Article 226 of the Constitution of India can examine and render the decision as to whether the Rule is meeting with the test of reasonableness or test of Article 14 of the Constitution or not.

11. In the judgment of the Division Bench of this Court in LPA No.712 of 1999, it

was ultimately observed as under:

"...In our opinion, if that is the legal position, the student who not only opts for a particular course but prosecutes study for one year, two years or three years, cannot be permitted to change the course. Such interpretation would not be in consonance with law and spirit of the rules and such interpretation cannot be given by a court particularly when plain reading of rule 2 does not permit such jumping."

It is true that in the said case, there were express provision under the Rule which came to be interpreted by the Division Bench of this Court.

12. Mr. Shastri during the course of the arguments produced relevant rules for granting admission in Post Graduate Medical course in Gujarat University for comparison. Relevant Rules 1.5 and 1.6 are reproduced as under:

"1.5. A candidate who is currently engaged in P.G.Medical studies in Gujarat University or any other University or equivalent body is not eligible, On completion of the course, be becomes eligible.

1.6. A candidate who, in the past, selected and joined to any P.G.Medical course of this or any other University or equivalent body and did not complete that course, is not eligible."

13. Now the State not has disputed that it is only in South Gujarat University such provision permitting jumping from one branch to another by the impugned Rule is prevailing. In the other medical colleges of Gujarat which are affiliated to other Universities (other than South Gujarat University) such things are not permitted.

14. It appears that if such a Rule is allowed to operate, the consequences would be that Post Graduate seat for which Government is equally contributing huge amount would lapse. The second second consequence would be that the aspirant candidates after completing the course in MBBS desirous to join the Post Graduate course will loose the opportunity for all time to come qua the seat which has lapsed. Further in the midst of study or after undergoing study for about 2 years if the change of branch is permitted, the period for which the candidate has studied would not only go in vain and would stand wasted but the period for which the contribution of public money would also go away and would stand wasted. The availability of the said seat for the remaining period would also go away as a result thereof and the study in the educational field will not be able to achieve its object and purpose in the maximum possible manner. It cannot be ignored that for imparting education in medical branch and more particularly in Post Graduate branch, Government is contributing huge amount of money and is one of the vital field of education of the society too. Therefore, I am of the view that Rule 8 is arbitrary and unreasonable on the face of it inasmuch as no useful purpose would be served by allowing such a Rule to operate and thereby to allow the student concerned to change in the Post

Graduate branch of medicine and thereby allowing the seats to be lapsed and foreclosing the opportunities of aspiring students. In my view, striking down of the Rule would rather be in the public interest and on the contrary if such Rule is allowed to operate, it would defeat the public interest inasmuch as it will result into foreclosing the opportunities of the aspiring eligible students for Post Graduate studies in medicine. It would also result into wastage of public money and time and as a consequence thereof it would also result into depriving the society the services of Post Graduate doctors which is rather a basic and fundamental need of the society in any atmosphere. The only basis for making such rule appears to be to enable the student concerned to get the degree of Post Graduate. Such basis cannot be said to be rational and it would be rather irrational if the seat is allowed to lapse and public money is allowed to be wasted and opportunities of other doctors holding degree of MBBS are foreclosed.

15. It also appears that Rule 4 provides that students will be offered only one registration at a time i.e. degree or diploma and simultaneous registration will not be given to any student. The intention of the aforesaid rule 4 is that one student can be offered only one registration and therefore, if it is read to its full logical end, it must be until the said course for which registration is opted and is completed. Such reading of the said Rule, in my view, is rather in consonance with the Medical Council of India Postgraduate Medical Education Regulations, 2000. Therefore, if the Rule 4 is accordingly read, the consequence would be that once the registration is obtained and until the study is completed to its full term, second registration or registration afresh in between during the course of study should not be permitted. The effect of Rule 4 would not only be diluted but rather would not be nullified if Rule 8 is also allowed to operate and therefore, I am of the view that Rule 8 would stand in conflict with Rule 4. Between the aforesaid two Rules, viz. Rule 4 and Rule 8, Rule 4 operates to wider extent vis-a-vis the contingency stipulated under Rule 8 and therefore, when the two Rules are in conflict with each other, the Rule which holds the field to the wider extent must be maintained and be allowed to operate. In my view if Rule 8 is maintained and Rule 4 is struck down it would frustrate the basic method and manner of admission. Therefore, considering the contents of Rule 8, since it operates only to a limited field, it will stand in conflict with Rule 4 since Rule 4 is required to be interpreted as observed earlier. I am therefore, of the view that there is additional ground of striking down Rule 8 and maintaining of Rule 4.

16. The aforesaid is coupled with the two important aspects that in the whole of the State of Gujarat in all medical colleges except the colleges which are affiliated to South Gujarat University, change of branch is not permitted. Further in view of the Regulations of Medical Council of India referred to hereinabove, the seats cannot be allowed to be carried forward and therefore, the circumstances which can be salvaged should be in the interest of all. By striking down Rule 8 and by maintaining Rule 4 the seats can be used to their fullest extent and the public at large and the Government exchequer would also not suffer and it will

make room for the aspiring students to have opportunities to the fullest extent from the possible the number of available seats.

17. In view of the aforesaid discussion while striking down the Rule the only room can be made available to those students who have already been permitted to avail of the benefit pursuant to Rule 8 because if admission already granted and registration granted would be disturbed, it would result into adversely affecting the career of those students for no fault on their part. However, at the same time so far as new registrations are concerned, if they are not granted they have to abide by the view taken by this court. Since Mr. Jani's client is not granted registration and since the clients of Mr. Shastri as well as of Mr. Kehswani are aspiring to study on the availability of seats and it may be that there may be other aspiring students who might not have applied for the first time for getting admission in Post Graduate course of medicine hence I find no justification to allow now the Rule 8 to operate even in respect of the students who are otherwise were interviewed and declared passed but they have not been actually granted registration by the authority. As a consequence thereof care will have to be taken while passing the final order.

18. In view of the above the petition is required to be allowed to the extent that Rule 8 referred to hereinabove of South Gujarat University Post Graduate admission course in medicine is declared as ultravires, unconstitutional and violative of Article 14 of the Constitution of India. However, it is clarified that this declaration will not disturb the admission and registration already granted to the students pursuant to Rule 8 but the authorities will be required to undertake the fresh procedure for granting of admission and granting of registration prospectively on the basis of the availability of seats. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.