
(2015) 08 TP CK 0050
In the Tripura High Court
Case No : WP(C) Nos. 244 and 252 of 2015

Pranay Kumar Podder and Others

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Citation : (2016) AIR (Tripura) 1

Hon'ble Judges : Deepak Gupta, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : A. Bhowmik, for the Appellant; T.D. Majumder, Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J—Both the petitions are being disposed of by a common judgment since the following question is involved in these petitions:

"Whether a person who is suffering from colour blindness is eligible to be admitted into the MBBS course?"

2. It is not disputed that both the petitioners have otherwise qualified in the written examination to be admitted into the MBBS course. They have been denied admission solely on the ground that they suffer from colour blindness and hence they cannot be admitted in the course.

3. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 makes provision for reservation even in favour of disabled candidates but the question is who are the candidates eligible for admission? The criteria for admission is laid down in the instructions issued in the Regulations of the Medical Council of India which have been annexed along with the petition. The general criteria with regard to age, educational qualifications etc. is given in Chapter II Regulation 4. This regulation does not give any medical criteria. One Clause has been added after Clause 2(f) in terms of notification published on 25th March, 2009 by the Medical Council of India and

the said Clause reads as follows:

"3. 3% seats of the annual sanctioned intake capacity shall be filled up by candidates with locomotory disability of lower limbs between 50% to 70%.

Provided that in case any seat in this 3% quota remains unfilled on account of unavailability of candidates with locomotory disability of lower limbs between 50% to 70% then any such unfilled seat in this 3% quota shall be filled up by persons with locomotory disability of lower limbs between 40% to 50% - before they are included in the annual sanctioned seats for General Category candidates.

Provided further that this entire exercise shall be completed by each medical college/institution as per the statutory time schedule for admissions and in no case any admission will be made in the MBBS course after 30th September."

4. As far as reserved category for disabled persons is concerned, the Medical Council of India has taken a decision that 3% of seats shall be reserved in the MBBS course but these shall be available only to those persons who are suffering with disability of lower limbs between 50% to 70%. In case the 3% quota remains unfilled on account of unavailability of candidates in this category then the 3% quota shall be filled up with those having locomotive disability of lower limbs between 40% to 50%. It is thus obvious that the Medical Council has not made any reservation for visually impaired persons or hearing impaired persons. Reservation has been made only for persons having disability in the lower limb and that too between the percentage of 50% to 70%. If anybody has disability of more than 70% to the lower limb that person would not be eligible to get a seat in the MBBS course.

5. It is contended by Mr. A Bhowmik, learned counsel for the petitioners that there is nothing in the Rules or Regulations of the Medical Council of India which prohibits a person suffering from colour blindness from getting admission to the course. He submits that the petitioners are not seeking benefit of reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 but have been selected on their own merit and are only praying that since the regulations do not lay down any condition with regard to the eligibility or non-eligibility of a person suffering from colour blindness the authorities have no right to reject their candidature.

6. We may have now make reference to certain documents relied upon by the State. It would be pertinent to mention that the Medical Council of India constituted an Expert Committee to consider the eligibility of colour blind students for admission to the MBBS course. This Expert Committee gave the following opinion:

"The expert committee deliberated at length about the importance of normal colour vision to pursue various subjects in the curriculum of MBBS course. All the experts unanimously thought that the presence of normal colour vision was indispensable to acquire the desired competency of a MBBS doctor. The presence

of good colour vision is also essential to pursue post graduation in various disciplines of Medicine and Surgery. Moreover, as the normal colour vision is essential all the services mentioned under the category "Technical" which included Indian Police Service, Indian Forest Service, Railway Engineering Service, Indian Railway Traffic Service, Posts on Marine establishment, Telegraph Engineering Services etc., it is imperative that the doctor who conducts the medical exam of these individuals should also have normal colour vision. The main recommendations of the Committee were as follows:--

The testing of colour vision must be conducted in respect of all the students for admission to MBBS course. The colour defective students should not be allowed to pursue the MBBS course as a normal colour vision is absolutely necessary for such a study."

A perusal of the report of the Expert Committee shows that the Expert Committee was of the considered view that persons with colour blindness are not fit to be doctors. All the members of the Committee unanimously held that normal colour vision was indispensable to acquire desired competency for a doctor.

7. This Court can also take judicial notice of the fact that a doctor in various cases has to do physical examination. The colour of the eyes, the colour of the tongue and the colour of the skin is directly relatable to many diagnostic criteria and if a doctor cannot identify the colour correctly it may lead to fatal consequences. We have to look into larger public interest. The health of the citizens is of paramount importance. It may be true that the petitioners are very good students and have successfully cleared the entrance examination but that by itself does not entitle them to get seats in the medical college. It is for the Medical Council of India which is the expert body to decide what are the criteria for admission to the medical colleges. It constituted the Expert Committee which opined that normal colour vision is necessary for any person to become a competent doctor. This Court cannot substitute its opinion for the opinion of experts.

8. This recommendation of the Sub-Committee was approved by the Executive Committee. Thereafter the matter was placed before the General Body of the Medical Council of India when the Council considered the reports of the Executive Committee and the Sub-Committee and referred the matter back to the Sub-Committee to re-examine the issue after incorporating more members belonging to the field of ophthalmology.

9. Mr. T D Majumder, learned Government Advocate has placed before us the minutes of the General Body meeting, held on 12th October, 2004 and in this General Body meeting the recommendations of the Committee were again considered and the committee had in connection with visually handicapped persons given the following recommendation:

".....The Committee has concluded that the visually handicapped is not in a position to

pursue the medical course and do the internship, as corrected vision is absolutely necessary for the study and for the practice of Medicine.

..... "

Furthermore, the General Body approved the following recommendations relating to visually handicapped persons:

"1. Admission of visually handicapped persons for MBBS:

It is mandatory that the students who are selected to join MBBS course should undergo an eye examination by a qualified Ophthalmologist and must be certified to have best corrected visual activity of 6/9 in each eye. In case of one-eyed person, the best corrected visual activity should be 6/6. The candidate should be able to identify the three primary colours.

(emphasis supplied)

2. The time of onset blindness and continuation of their curriculum from thereon:

Retention of normal vision is an absolute need for undergoing the training in medical curriculum unlike in other streams of education like Arts and Science. Medicine is a course where perfect vision is the absolute need. The Committee recommends that a candidate who becomes visually challenged after having been admitted to the course and completed to a reasonable extent his clinical training may still be considered fit for assessment and final examination. However, if the candidate develops visual challenge before acquiring reasonable amount of knowledge and skill in clinical and basic sciences he/she should be discharged from the course."

The Medical Council of India approved the recommendations of the Executive Committee. Now there is a decision of the Medical Council that those who are colour blind or suffering from any sort of visual impairment cannot be admitted in the MBBS course.

10. It is contended by Mr. Bhowmik that in the Regulation there is no bar for admission of such students. We are not impressed with this argument. The Regulations are not a complete code by itself. The Regulations lay down the general guidelines but the Medical Council of India in pursuance to the directions issued by the Apex Court in Civil Appeal No. 4604 of 2000, Dy. Secretary, Department of Health v. Soachita Biswas decided on 18th September, 2002 considered the matter as to which handicapped persons could be considered for admission and who could not be considered for admission. Thereafter the Medical Council formed a Sub-Committee which opined that persons who are colour blind could not be efficient doctors. This finding of the Committee has been upheld by the Medical Council which is the expert body in the field and we cannot overturn this decision. Under the Indian Medical Council Act, 1956 it is the Medical Council of India which is empowered to take these decisions. The Apex Court in Writ Petition No. 184 of 2005, Dr. Kumar Sourav v. Union of India and Ors has clearly

held that it is the Medical Council of India which is to lay down the guidelines in this regard and that the Courts cannot lay down such guidelines.

11. With regard to the argument of Mr. Bhowmik that the Regulations are silent, we may add that where Regulations are silent executive orders and decisions can fill up the gap. The law is well settled that if the Regulations or Rules are silent in certain aspects then even executive orders can be issued to fill up these gaps.

12. Therefore, we are unable to accept the contention made on behalf of the petitioners and the writ petitions are, accordingly, rejected.