(2016) 02 KL CK 0162

In the High Court Of Kerala

Case No : W.P.(C) No. 34766 of 2015 (U)

Rajitha L. and Others — APPELLANT

Vs

Regional Cancer Centre and Others — RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:
Constitution of India, 1950 — Article 245, Article 246, Article 254
Indian Medical Council Act, 1956 — Section 19A, Section 20, Section 33

Citation : (2016) 02 KL CK 0162

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : O.V. Radhakrishnan, Sr. Adv., Antony Mukkath, Jos Leo Jose and K. Radhamani Amma, Advocates, for the Appellant; Abdul Kharim, SC, M. Sreekumar, SC and K. Jaju Babu, Sr. Adv., for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. The petitioners, both students of D.M. Medical Oncology, aspire to the post of Assistant Professor (Medical Oncology) in the 1st respondent. The 1st respondent has brought out a notification at Ext. P1 inter alia for appointment of personnel to the post of Assistant Professor (Medical Oncology). The qualifications prescribed for the said post as per Ext. P1 is as follows:

"2. A Post Graduate qualification ie, DM/DNB Medical Oncology or a recognized qualification equivalent thereto."

2. The petitioners are aggrieved insofar as a super specialty is prescribed and the Medical Council of India (for brevity ''MCI'') has laid down standards for recruitment of Assistant Professors in the Universities in Medical Education, which is only a Post Graduate qualification, which has been tinkered with by the 1st respondent insofar as prescribing a higher qualification for appointment to the post of Assistant Professor (Medical Oncology).

3. I have heard learned Senior Counsel for the petitioner and the 1st respondent and the learned Standing Counsel for the 4th respondent.

4. The specific ground raised by the petitioners is that ''The Minimum Qualification for Teachers In Medical Institutions Regulations, 1998'', brought out by the MCI, produced as Ext. P4, indicates the qualification for the post of Assistant Professor to be D.M. (Medical Oncology)/M.D. (Medicine) or M.D. (Radiotherapy) or M.D. (Paediatrics) with 2 years special training in Medical Oncology. It also prescribes different experience for a person having MD/MS degree from the MCI recognized medical colleges and for persons having Super Specialties like DNB/DM/M.Ch. The MCI intended that persons having Post Graduate qualification of Masters'' Degree alone, also be considered for the post of Assistant Professor, provided they satisfy the additional criteria of experience. A Super Specialty is an added advantage, but, mere Post Graduation having been prescribed; a person having a Masters'' Degree alone, cannot be excluded from being considered for selection to the post, is the argument.

5. The learned Senior Counsel would argue that Section 19A of the Indian Medical Council Act, 1956 (for brevity ''the Act'') speaks of minimum standards of Medical Education, whereas, Section 33 deals with prescription of standards of Post Graduate Medical Education. The Committee for assisting the Council in matters relating to Post Graduate Medical Education, is conferred with the power to prescribe the qualifications for the faculty handling medical education and hence, there can be no deviation from the qualifications prescribed by the MCI. It is also contended that many of the Universities permit persons having Post Graduate Masters'' qualification alone to be considered for such selection, which vitiates the prescription made by the 1st respondent, on the ground of discrimination. All the more the prescription made by the 1st respondent resulting in denial of even consideration, of the Masters'' degree holders, works against the principles laid down by a Constitution Bench of the Hon''ble Supreme Court in Dr. Preeti Srivastava v. State of M.P. and others - , (1999) 7 SCC 120.

6. The learned Senior Counsel for the 1st respondent, would specifically refer to the counter affidavit and emphasize on the need for persons with Super Specialty in the 1st respondent, which is engaged primarily and exclusively in the treatment of Cancer, to which also the faculty would be put to use, along with the teaching responsibilities. The learned Senior Counsel relies on another decision of the Hon''ble Supreme Court in State of T.N. v. S.V. Bratheep -, (2004) 4 SCC 513 to contend that there is no dilution as such and the prescription of a Super Specialty Post Graduate qualification is only a prescription of a higher standard, which cannot be interfered with.

7. The learned Standing Counsel for the MCI points out that the standards prescribed as per Ext. P4 is under Section 33 of the Act and such standards cannot at all be diluted, but, however, there can be no objection taken to the prescription of a higher standard.

8. It is not possible to discern any distinction in the powers conferred under Sections 19A and 20 of the Act merely for the reason that the former uses the word ''minimum'' while the latter does not. The Regulations framed by the MCI, as produced by the petitioners at Ext. P4 itself, styles it as the "Minimum Qualifications for Teachers". The Regulations also source the power of the MCI to Section 33 of the Act, as is also contented by the Learned Standing Counsel for the MCI, and that argument of the petitioners is to be rejected outright.

9. The counter affidavit filed by the 1st respondent specifically notices the need of a person having Super Specialty, in paragraphs 6 and 7, which is extracted hereunder:

"6. It is submitted that initially the entry cadre to academic position in RCC was the post of Lecturer. The qualifications fixed for the post of Lecturer was MD with three years experience in a MCI recognized Institute. As per GO(Rt) 2680/2013/ H&FWD dtd. 25/07/2013 (Exhibit R1) Govt. has fixed Assistant Professor as the entry level. The RCC is one of the major Cancer Care Hospitals in the country where a higher degree of specialization for sophisticated cancer care is required. It is at this point of time the Scientific Committee of RCC had recommended for opting DM (Medical Oncology) as qualification for the post of Assistant Professor in line with MCI guidelines. The centre requires highly qualified Doctors in the speciality to deliver patient care. Hence it had adopted the higher qualification of DM - Medical Oncology mentioned in the MCI guidelines on par with other major cancer care hospitals in the Country Viz, All India Institute of Medical Sciences (AIIMS), New Delhi, Tata Memorial Hospital (TMH) Mumbai and the Cancer Institute Adayar.

7. It is submitted that DM Medical Oncology course in RCC is recognized by the MCI. The RCC decided to impart the said course as it requires fully qualified Doctors in the specialty to deliver patient care. Only a person with DM Medical Oncology is considered as a full fledged Medical Oncologist. As such the contention of the Petitioners that this Respondent had flouted the MCI guidelines of the qualification for the post of Assistant Professor is devoid of any truth and hence denied."

10. The counter affidavit shows that the Scientific Committee of the RCC had recommended the prescription of qualification, which, however, is exclusively in the domain of the State; herein, the Union Parliament under Entry 66 of List I. The Union Parliament having come out with the Act and the apex body, the MCI, having issued regulations, there could be no deviation, goes the argument of the petitioners. The prescription made herein, is also by the Scientific Committee, following the regulations of the MCI. The power to prescribe qualifications being on the Union under Entry 66 of List I of the Constitution, even the State cannot impinge upon the said power, is the argument. The legislation made by the Union Parliament occupies the field and the statutory body, the MCI, having laid down inter alia the standards of Post Graduate Medical Education, and specifically prescribed the qualifications of the faculty, there can be no tinkering of the same

by the Scientific Committee, which has no statutory character.

11. It is trite that the entries in the three lists under the Seventh Schedule are not the source of power to legislate and they are merely a simple enumeration of the fields of legislation, which have to be given the widest amplitude. "Article 245 is the fountain source of legislative power" (sic: State of West Bengal v. Kesoram Industries Limited , (2004) 10 SCC 210). Article 246 divides the legislative fields between the Parliament and the Legislature of the States. Subject to the power of the Parliament to legislate on matters enumerated in the Union List (List I), the State has the exclusive power to legislate on any matter falling under the Concurrent list (List III). Article 254 grants precedence to the laws made by the Parliament if the law made by the legislature of the State is in any manner repugnant to the former, unless otherwise prescribed under clause (2). Here, the field is occupied by the law made by the parliament under List 1. The State admittedly has not made any legislation on the similar aspect in Entry 25 of List III.

12. The 1st respondent is a society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955, established primarily for cancer care and treatment and is entitled to fix the minimum requirements for being considered for employment under it. The employment herein being of faculty of medical education, the 1st respondent would have to comply with the Union Legislation on the aspect and hence, the standards prescribed by the apex body, the MCI. The 1st respondent has, as a precautionary measure, constituted a Scientific Committee to decide on the same and so long as the prescriptions do not impinge upon the standards prescribed by the MCI, no fault could be found by the Courts, which do not have any expertise in such matters.

13. In Dr. Preeti Srivastava (supra) after noticing Entry 25 of List III and Entry 66 of List I of Seventh Schedule of the Constitution, it was held so in paragraphs 35 and 36:

"xxx xxx xxx

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also

necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are :

(1) The calibre of the teaching staff;

(2) A proper syllabus designed to achieve a high level of education in the given span of time;

(3) The student-teacher ratio;

(4) The ratio between the students and the hospital beds available to each student;

(5) The calibre of the students admitted to the institution;

(6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) Adequate accommodation for the college and the attached hospital; and

(8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged".

14. It was categorically held so in paragraph 39:

"In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down".

15. The Constitution Bench decision was followed in State of T.N. v. S.V. Bratheep - , (2004) 4 SCC 513 and Visveswaraiah Technological University v. Krishnendu Halder - , (2011) 4 SCC 606. Visveswaraiah Technological University (supra) has held so in paragraph 13:

"Once the power of the State and the examining body, to fix higher qualifications is recognised, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective State, unless the AICTE itself subsequently modifies its norms by increasing the eligibility criteria fixed by the University and the State".

16. Specifically noticing Dr. Preeti Srivastava''s case (supra), the Hon''ble Supreme Court in S.V. Bratheep (supra) has said so:

"10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava case that the State can always fix a further qualification or additional to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution has to be understood in the manner as stated in Dr. Preeti Srivastava case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.

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13. In this view of the matter, we think these appeals deserve to be allowed in part and the order of the High Court stands modified to the extent of stating that it is permissible for the State Government to prescribe higher qualifications for purposes of admission to the engineering colleges than what had been prescribed by AICTE and what has been prescribed by the State and considered by us is not contrary to the same but is only complementary or supplementary to it."

(emphasis supplied)

17. Even going by the Constitution Bench decision, the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The very same principle applies in the case of MCI also, which is the apex body dealing with the standards of medical education and prescription of minimum qualifications for admissions as also for the faculty to be employed.

18. The 1st respondent, who is primarily concerned with Cancer care, has decided to invite applications and consider for selection, to the post of Assistant Professors only those persons having a Super Specialty. A person having Super

Specialty in DM/DNB (Medical Oncology) necessarily has a Post Graduate Masters'' qualification in one of the branches of Medicine, and in that circumstance, the Super Specialty prescribed is only a higher qualification. There can be no dilution found and there is also no deviation from the essential qualifications prescribed by the MCI. It is the exclusive premise of the 1st respondent, an Educational Institution affiliated to a University, to prescribe for the qualification ensuring only that the same does not violate the essential qualifications prescribed by the MCI and does not dilute the same.

19. One other argument is the discrimination meted out to the Masters'' degree holders, insofar as the other Universities/Institutions, considering them for entry level faculty positions. This particular issue, in a different context, was considered elaborately in Dr. Preeti Srivastava (supra) in paragraph 28, which is extracted herein below:--

"This argument ignores the reasons underlying the need for a common entrance examination for postgraduate medical courses in a State. There may be several universities in a State which conduct MBBS courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is required for getting the passing marks in the MBBS Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS Examination; while it may also be easier for candidates to secure marks at the higher level. A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously, as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS Examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more "generous" universities, may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are

prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialised education and the need to provide for some room for the backward even at the stage of specialised postgraduate education which is one step below the super specialities".

20. In the context of each University or Institution striving for excellence, the thrust is in having more qualified persons and in so prescribing requirements there can be no ground raised of hostile discrimination or exclusion. The counter affidavit also indicates the very same norms being followed by premier institutions in the Country, engaged in medical care and treatment. The emphasis is not on opportunities for employment, but is on better and specialised patient care and a more qualified faculty to be engaged in the sphere of higher education. The petitioners too are students in higher Post Graduate courses and seek to urge their rights only on the basis of the minimum standards prescribed by the MCI.

21. Apposite would be reference to the following words in paragraph 9 of S.V. Bratheep (supra):--

"In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr. Preeti Srivastava case".

This is what has been attempted by the 1st respondent and the contention of deviation of essential standards falls to the ground.

In the present case, this Court is unable to find any deviation, much less dilution of the standards as prescribed by MCI and in such circumstance, this Court is of the definite opinion that the writ petition is devoid of merit and the same is dismissed. No Costs.

