

**(1996) 06 RAJ CK 0003**

**In the Rajasthan High Court**

**Case No : C.W.P. No's. 1801 and 1804 of 1996**

Ram Lal and Others

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

**Date of Decision : 25-06-1996**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : AIR 1996 Raj 235 : (1996) 2 RLW 644 : (1996) 1 WLN 429**

**Hon'ble Judges : M.A.A. Khan, V.J.**

**Bench : Single Bench**

**Advocate : G.R. Punja, K.L. Khatri, for the Appellant; B.L. Bishnoi, S. Mathur for Goving Mathur, for the Respondent**

**Final Decision : Dismissed**

## Judgement

M.A.A. Khan, V.J.

1. Heard.

2. The present petitioners want to appear at the incoming Pre-Medical Test going to be held on 27-6-1996. Condition No. 3(a) of the guidelines issued by the Examining Body prescribes the minimum age at 17 years for appearing at the said test. Petitioner Ram Lal's age falls short by 9 days, that of Miss Shanti Bishnoi by one year and that of Gyaneshwar Prasad by two months of the aforesaid minimum age of 17 years prescribed for appearing at the aforementioned test.

3. The contention of the learned counsel for the petitioner is that the fixation of the minimum age of 17 years is quite arbitrary and violative of Articles 14 and 16 of the Constitution of India inasmuch as it deprives qualified persons from appearing at the preadmission test for a professional course. In this behalf reliance has been placed on the orders passed by this Court in S.B. Civil Misc. Stay Petition No. 4480/92 in S.B. Civil Writ Petition No. 4586/92 Kumari Puja Arora v. University of Rajasthan, S.B. Civil Writ Petition No. 1189/96 Gopal

Krishan v. State and another and S.B. Civil Writ Petition No. 1468/96 Ram Lal v. University of Rajasthan where interim orders, permitting the petitioners, whose age fell short of the minimum 17 years as prescribed in the guideline No. 3(a), were made. Relying on Vishnu Traders v. State of Haryana and Ors. it was also urged that though interlocutory orders passed by the High Court do not have binding precedent, however, there is every need of maintaining consistency in approach and uniformity in the exercise of the judicial discretion respecting similar matters.

4. The learned counsel for the University of Rajasthan has objected to the grant of any interim relief to the petitioners on the ground that such interference by the Courts not only disturb the scheme of the examination but also creates problems and confusion later on. It was submitted that the cut-off date as fixed for the admission to the Pre-Medical Test is not at all arbitrary and there was no violation of Articles 14 and 16 of the Constitution. It was further submitted that a three-Judges Bench of this Court in the case of Surendra Singh Rao v. State of Rajasthan 1995(1)WLC 197, had considered a similar situation and held that the rule-making authority was competent to fix the cut-off dates prescribing minimum and maximum ages for direct recruitment and the exercise of such power cannot be said to be arbitrary or capricious merely on the ground that such cut-off dates cause inconvenience or are not suitable to a particular individual. Reliance has also been placed on a decision of the Supreme Court in the case of Dr. V.P. Malik v. Union of India 1996 (I) SCC 454 : 1996 AIR SCW 539 wherein in para 5 it was observed that the choice of cutoff date cannot be dubbed as arbitrary unless it is shown to be capricious or whimsical in the facts and circumstances of the given case. The learned counsel for the respondent further pointed out that in none of the cases relied upon by the learned counsel for the petitioners three-Judges Bench decision of this Court, referred to above or any decision from the Apex Court, was referred to and considered. It was submitted that in view of the above facts, those decisions do not make any sound precedent for this Court in the present cases.

5. In the case of Surendra Singh Rao (supra) the three-Judges Bench of this Court had considered the question as to whether the rule-making authority can fix any cut-off date prescribing maximum age for a candidate for direct recruitment to the service and merely because a cut-off date has been provided can it be said to be arbitrary? That question was examined at sufficient length with reference to several decisions of the Apex Court. In para 10 it was pointed out that in the matter of recruitment of employees, it has been traditional to fix a minimum age as well as a maximum age. What shall be the cut-off date for computation of such minimum age and of the maximum age, is usually in the discretion of the employer or the rule-making authority or its delegate. When it is seen that a line or point there must be, but there is no mathematical or logical way of fixing such a line or point in a precise manner, the decision of the Legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark. Such a view was expressed by Justice Holmes in

Louseville Gas Co. v. Coleman, 1927 US 32. This view was cited with approval in Union of India (UOI) and Another Vs. Parameswaran Match Works and Others,

6. The Bench also referred to the case of Union of India and Another Vs. Sudhir Kumar Jaiswal, where the crucial date of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time, that cut-off date was fixed, there used to be only one examination for recruitment to Indian Administrative Service and Allied Services. Later on a preliminary examination was also introduced yet the cut-off date was not modified. The cut-off date of 1st August of the year in which the examination was to be held continued to be the crucial date. The Central Administrative Tribunal did not feel inclined to follow its previous decisions on the point and took the view that since a preliminary examination had been introduced, which was held prior to August 1st, of the year concerned, continuation of the 1st August as the cut-off date was arbitrary. The Supreme Court citing the view expressed by Holmes, J. in Louseville Gas (supra) observed that in so far as fixation of cut-off date is concerned, the same can be regarded as arbitrary by a Court, if he same be one about which it can be said that it has been "picked out from a hat."

7. The same point was again considered in the cases of D.R. Nim, I.P.S. Vs. Union of India (UOI), and A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, and the same view was expressed. The Bench reproduced the following observations of the Apex Court from the case of A.P. Public Service Commission :

"When such are the different steps in the process of selection, the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon fluctuating on uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate, as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications."

8. Several other similar decisions were also referred to by the three-Judges Bench and finally it was held in para 24 that :

"To our mind, the fixing of a cut-off date in a service Rule is to ensure that all candidates eligible on such a date may be considered and the best candidates amongst them may be selected and appointed. The fixing of a cut-off date eliminates the uncertainty in the minds of prospective candidates about their eligibility. Moreover, fixing of such a date would no longer be open to challenge in the light of Sudhir Kumar Jaiswal's case (supra) particularly when fixing of such a date could not be dubbed as capricious, whimsical or very much wide of the mark. May be by fixing of such a cut-off date, some candidates would be eligible and some would be ineligible. But this would happen in every case, where a cut-off date is fixed, whether by way of last date on receipt of applications or as on

the date of the application. As stated elsewhere, when the date is fixed by the Rule, itself, it is known well in advance to everybody; on the other hand if the date of notification or advertisement or last date or receipt of applications is fixed as a cut-off date, it would always be fluctuating according to whims and caprices, of the person charged with the duty of fixing such a date. We, therefore, find that fixing a cut-off date in the Service Rules is not bad constitutionally. It cannot be said that the cut-off date fixed by the rule has been picked from a hat or is quite wide of the mark."

9. In case of Dr. V. P. Malik (*supra*) and the Apex Court held in para No. 5 of the report as under :

"As to whether the fixation of the date (1-12-1991) can be regarded as arbitrary, it may be stated that fixation of a cut-off date can be so regarded by Court if the same be one about which it can be said that it has been "picked out from, a hat," as stated by this Court in *D. R. Nim v. Union of India*. A Bench of this Court to which one of us (Hansaria, J.) was a party examined the question of fixation of cut-off date on the touchstone of Article 14 in the *Union of India v. Sudhir Kumar Jaiswal*. In that case the case of *D. R. Nim* was noted in para 4, followed by reference to other important decisions on this aspect in paras 5 to 7. We do not propose to reiterate what was stated in *Jaiswal*'s case. It would be enough to point out that the observation of Holmes, J. in *Louiseville Gas and Electric Co. v. Clell Coleman*, that a choice of cut-off date can be interfered with if the fixation be "very wide of any reasonable mark" was cited with approval by this Court in *Union of India v. Parameswaran Match Works*. It was further added that a choice of date cannot be dubbed as arbitrary unless it is shown to be capricious or whimsical in the circumstances."

10. It is thus well settled that unless it is shown that the cut-off date, fixing the minimum and/or maximum age as eligibility for the admission to a test/examination/course of study/office of employment has been "picked out from a hat" and is "wide of any reasonable mark" the same cannot be dubbed as arbitrary, capricious or whimsical. There is no material on the record of these cases to take the view that the fixation of the minimum age at 17 years for the admission to Pre-Medical Test to be conducted by the respondent-University is, in any manner, arbitrary or capricious or whimsical. The sole argument of the learned counsel for the petitioner that the minimum age of 17 years for admission to the Pre-Medical Test was fixed for the reason that earlier a student could not appear at the Secondary/High School Examination until and unless he had attained the age of 15 years and since now there is no such condition, there was no justification for restricting the entry to the Pre-Medical Test before obtaining the age of 17 years on the cut-off date fixed by the Examining Body does not outweigh the view of this Court, as expressed in *Surendra Singh Rao*'s case (*supra*). That apart the argument advanced is not acceptable in view of the Supreme Court decision in the case of *Union of India v. Sudhir Kumar Jaiswal* (*supra*). It may be observed that mere acquisition of "requisite qualification" for

entry into a course of study or into service does not do away with the requirement of "eligibility" for the entry into that course of study or service. The two terms "requisite minimum qualification" and the "requisite eligibility" convey different meanings. The former is referable to academic qualifications or experience and the later to age. Another term "suitability" may be referable to health and other particulars of the prospective candidate. For entry to the Pre-Medical Test the requirements of minimum qualification of education and acquisition of minimum age were considered necessary and such requirements do not offend any fundamental right of the petitioners. The issue in these petitions thus stands covered against the petitioners by the three-Judges Bench decision of this Court in the case of Surendra Singh Rao (supra) as also by several decisions of the Supreme Court as cited supra.

11. It was submitted by the learned counsel for the petitioners that a SLP has been filed against the decision of this Court in the case of Surendra Singh Rao and 28 others (supra). It has been settled view of the Supreme Court that mere filing of a SLP in the Supreme Court against a judgment of the High Court in no way adversely affect the value and force of the judgment or order appealed against. The argument is misconceived and is accordingly overruled.

12. In view of the above, I find no force in these writ petitions and the same are hereby dismissed in limine.