
(2016) 03 JH CK 0133
In the Jharkhand High Court
Case No : W.P.(C) Case No. 85 of 2016

Rohit Keshav and others

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Postgraduate Medical Education Regulations, 2000 — Regulation 9

Citation : (2016) 3 AIRJharR 429 : (2016) 2 JBCJ 263 : (2016) 2 JLJR 521

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Rajesh Kumar, G.P.V, Anoop Kumar Mehta, Advocate, Kumar Sundaram, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. The Medical Council of India (M.C.I.) constituted under the Indian Medical Council Act, 1956 by the act of the Parliament under the field of Entry 66 list I of Schedule VII of the Constitution of India framed guidelines/regulations for framing the Post Graduate Medical Education Regulations, 2000 in exercise of powers under Section 33 read with Section 20 of the Act of 1956. The regulations were amended again in July, 2009, November, 2011 and lastly vide notification dated 15.2.2012, wherein sub clause VII under Regulation 9 has been incorporated under consideration in the present matter and also quoted here under:-

"Sub clause VII:- 50% of the seats in Post Graduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and/or difficult areas. After acquiring the PG Diploma, the Medical Officers shall serve for two more years in remote and/or difficult areas as defined by State Government/Competent authority from time to time".

3. In a public interest litigation being W.P.(PIL) No. 1938 of 2014 filed by certain

human right students, a direction was sought to implement the M.C.I Post Graduate Medical Education Regulations, 2000 as amended up to date in its letter and spirit. Taking into account the stand of the respondent-department of Health, Medical Education and Family Welfare, Government of Jharkhand that it is bound to strictly follow the M.C.I. Act/Rules/Regulations and take note of the recent amendments of the M.C.I. with respect to admission in Post Graduate in Medical Education which was pending before the Cabinet for approval, the learned Division Bench of this Court passed order on 25.2.2015 in the following manner:-

"In our considered view, State of Jharkhand is required to take a positive decision in this regard without any waste of time, as already done by other States that being in the interest of State only, lest it loses the good doctors. Since the State has already taken some pain in this regard as stated in its counter affidavit, we grant three months time to the State to complete this exercise logically".

4. The Department of Health, Medical Education and Family Welfare, Government of Jharkhand issued a resolution on 22.12.2015 bearing memo no. 230(9), Annexure-5 to the writ petition. The resolution has been made effective from the date of its notification. Para 4 there of, which is the main source of the dispute between the petitioners and the respondents is quoted herein below:-

HINDI MATTER

5. The respondent-department had before issuance of this resolution initiated a process for admission to Post Graduate Course within the State vide advertisement at Annexure-2 dated 1.12.2015. The advertisement at Annexure-2 known as Post Graduate Medical Admission Test, 2016 prescribes the eligibility criteria, provisions relating to reservation etc. and the last date for making application was 11.1.2016. The examination has already been held pursuant to the advertisement on 7.2.2016. Petitioners have also participated in the examination as candidates who have completed one year of internship after their M.B.B.S course, a necessary requirement to be fulfilled. Petitioners came before this Court being aggrieved by the conditions incorporated in the resolution dated 22.12.2015, para 4, quoted herein above. They questioned the reservation of 50% of the seats in Post Graduate Degree Course to in service Medical officers who have been working in the rural areas for more than 3 years. They pointed out that the relevant condition at sub clause VII of Clause 9 provides for 50% reservation only in Post Graduate Diploma Course alone to such in service candidates who have worked in remote and difficult areas. The respondent-department has not only acted beyond the M.C.I regulations but the impugned condition would deny adequate opportunity to a large number of other candidates like petitioners who are interested in undertaking specialised courses in Post Graduation. They have also questioned the jurisdiction of the State Government in incorporating the condition, which is in teeth of the M.C.I. regulations. They would also adversely impinge upon the standards, mode and

manner of admission in Post Graduate Courses framed by the M.C.I. under an enactment passed by the Parliament in the field of Entry 66 under List I of Schedule VII of the Constitution of India. There are no legislation enacted by the State in exercise of any such field of Entry 25 under List III of Schedule VII to that effect. Even if such legislation were made, that could only be subject to consent of Hon"ble President of India as required under Article 254 of the Constitution of India. This again could also be open to challenge whether even such legislation was within the permissible constitutional limits of interference in the regulations framed by the M.C.I. M.C.I Regulation 9 has been held be to be complete code by the Apex Court in the judgment rendered in the case of Sudhir N. and others v. State of Kerala and others reported in (2015) 6 SCC 685, para 15 there of is relied upon by the petitioners. Petitioners have also pointed out that the State Government has not coined or defined the expression "remote and difficult areas" referred to in sub clause VII of Regulation 9, in the absence of which indiscriminate number of candidates would avail the benefits to the disadvantage of seriously competing students as the quota would be limited to 50% for general category only.

6. Respondent-State has sought to defend the impugned notification, firstly on the ground that it is seeking to implement the M.C.I regulations itself and in obedience of the learned Division Bench of this Court in P.I.L. It further seeks to justify its action on the ground that it would be in the interest of the State Health Services that candidates who are in service and serving in remote areas get the incentive against the defined quota for improvement in their educational qualification. The additional criteria would bound them also for serving in remote area in the interest of the State. The State is well within its jurisdiction for laying down additional qualification, which do not lower the minimum standards laid down by M.C.I. Learned State counsel has also relied upon from the same judgment rendered by the Apex Court in the case of Sudhir N. and others (supra) where the judgment rendered by the Apex Court in the case of State of Tamil Nadu v. Adhiyaman Educational and Research Institute reported in (1995) 4 SCC 104 has also been followed. The respondents have also stated through their supplementary counter affidavit that rural areas in the State are being treated as remote and difficult areas in the State of Jharkhand and candidates who have served in such area would only avail the benefit of admission under 50% quota in the Post Graduate Degree Course also.

7. This stand of the respondents is not only opposed by the petitioners as narrated herein above but squarely been traversed by the M.C.I in its counter affidavit. Through the sequence of facts averred in the counter affidavit, which include reference to the framing of the M.C.I Act of 1956, the judgment rendered by the Apex Court in the case of State of Kerala v. T.P. Roshna (1979) SCC 580, MCI v. State of Karnataka (1998) 6 SCC 131, Dr. Preeti Srivastava v. State of M.P. and others (1999) 7 SCC 120 and other judgments including the latest judgment rendered in the case of Sudhir N. and others (supra), the affidavit has categorically alleged violation of the Post Graduate Medical Education

Regulations, 2000, so far as it relates to memo no. 22.12.2015 issued by the Respondent-Department incorporating reservation of 50% in Post Graduate Degree Courses also to in service candidates who have served in rural areas. It is their categorical stand that 50% seats to in service Medical Offices are meant only for Post Graduate Diploma Courses. The regulation does not provide for reservation in Post Graduate Degree Courses. The rationale for incorporating such condition has also been explained in para 26 and 27 of the counter affidavit stating that if such reservation is extended to various Post Graduate Degree Courses, there would be hardly any seat left for general category students who seek admission to various Post Graduate Degree Courses. The seats would be unnecessarily limited and many such serious candidates would suffer.

8. In this light, it is also relevant to refer to the observations rendered by the Hon'ble Supreme Court in the latest judgment in the case of Sudhir N. and others (supra) at para 15 thereof wherein it is held that M.C.I Regulation 9 have been held to be a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. Para 15, 18 and 22 of the said judgment is reproduced herein below for better appreciation :-

Para 15:- Regulation 9 is, in our opinion, a complete code by itself inasmuch as it prescribes the basis for determining the eligibility of the candidates including the method to be adopted for determining the inter se merit which remains the only basis for such admissions. To the performance in the entrance test can be added weightage on account of rural service rendered by the candidates in the manner and to the extent indicated in the third proviso to Regulation 9. Suffice it to say that but for the impugned legislation making an attempt to change the basis on which admissions can be made, such admissions must, in all categories, be made only on the basis of merit as determined in terms of the provision extracted above. That method, however, is given a go-by by the impugned legislation when it provides that in-service candidates seeking admission in the quota reserved for in-service doctors shall be granted such admission not on the basis of one of the methodologies sanctioned by Rule 9(2) of the Rules but on the basis of inter se seniority of such candidates. The question is whether the State was competent to enact such a law. Our answer to that question is in the negative. The reasons are not far to seek.

Para 18:- In State of T.N. v. Adhiyaman Educational and Research Institute, this Court was examining the scope of Entry 66 of the Union List vis-a-vis Entry 25 of the Concurrent List in relation to the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Madras University Act, 1923 vis-a-vis the All India Council for Technical Education Act, 1987. This Court held that the Central Act was intended to achieve the object of coordinated and integrated development of the technical education system at all levels throughout the country with a view to promoting qualitative improvement of such education.

This Court further held that the Central Act, namely, the All India Council for Technical Education Act, 1987 was within the scope of Entry 66 of List I and Entry 25 of List III and that on the subject covered by the statute the State could neither make a law under Entry 11 of List II nor under Entry 25 of List III after the Forty-second Amendment. If there was any law existing immediately before the commencement of the Constitution within the meaning of Article 372, such as the Madras University Act, 1923, the Central legislation would, to the extent of repugnancy, impliedly repeal such pre-existing law.

Para 22:- This Court in Preeti Srivastava case further held that MCI had framed Regulations in exercise of the power conferred under Section 20 read with Section 33 of the Medical Council of India Act which covered postgraduate medical education. These Regulations are binding and the States cannot, in exercise of their power under Entry 25 of List III, make any rules which are in conflict with or adversely impinge upon the Regulations made by MCI. Since the standards laid down are in exercise of power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The State's power to frame rules pertaining to education was in any case subject to any provision made in that connection by the Union Government. The Court observed: (Preeti Srivastava case, SCC p. 162, paras 52-53).

52. "Mr Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed Regulations which govern postgraduate medical education. These Regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

53. Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254."

9. The conspectus of facts noted herein above invariably leads to the impression that the State Government has travelled beyond the confines of M.C.I Regulation 9, which lays down the eligibility criteria for admission to Post Graduate Course and also provides for the mode and manner of determining the inter-se merit of the competing candidates. It appears that the inclusion of expression "Post

Graduate Courses" in the impugned resolution is therefore in teeth of the M.C.I Regulations and if allowed to stand, it may adversely effect the standards prescribed by the M.C.I, which is regulating body empowered to fix the minimum standard in the field of Medical Education in exercise of its statutory powers conferred under the Parent Act of 1956 framed under Entry 66 of the Union List under Schedule VII. The rationale in limiting the quota of 50% to Postgraduate Diploma Courses to in service candidates working in rural areas is not difficult to find and rather explicit from the stand of the M.C.I also. The M.C.I conscious of the requirement of having Medical Officers with Post Graduate qualification such as Diploma has wisely chosen to limit the quota to the Post Graduate Diploma Courses alone and not Post Graduate Degree Courses. There are no legislation on the part of the State Government also in the field, which if any, could also have to satisfy the conditions enshrined in Article 254 of the Constitution of India. They could still be open to challenge on constitutional and other legal grounds. The regulations therefore, does not intend to exactly fulfil the directions passed by the learned P.I.L. Bench, which, while passing the directions to implement the M.C.I Regulations took into account the stand of the respondent-Department itself, which shown their willingness and full intention to implement the M.C.I guidelines. The implementation therefore has gone beyond the M.C.I guidelines and the order of learned Division Bench in no way can protect the stand of the respondent-State in the instant case. As has been noted herein above, resolution has been made effective from the date of its issuance i.e. 22.12.2015, in effect it also comes after issuance of the advertisement of Post Graduate Medical Admission Test, 2016 issued on 1.12.2015. It implements sub clause VII of regulation 9 of the M.C.I.

10. In such circumstances, the relevant clause 4 of the impugned notification dated 22.12.2015, so far as it allows 50% reservation in Post Graduate Degree Courses to in service candidates for those who have been serving in rural areas cannot be upheld. Therefore, in the present admission exercise, the respondents cannot grant benefits of reservation of 50% in Post Graduate Degree Courses to such in service candidates who have been serving in rural areas. The reservation of 50% would be confined only to Post Graduate Diploma Courses. The impugned part of the resolution therefore is unsustainable in the eye of law and is accordingly quashed.

11. The writ petition is allowed in the manner and to the extent indicated herein above.