
(2004) 05 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1449 of 2004

Sanjay Pareek (Dr.) and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 33

Citation : (2004) 4 RLW 2673 : (2004) 3 WLC 577

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : R.D. Rastogi and Ajay Rastogi, for the Appellant; Mohd. Rafiq, AAG and A.K. Sharma and Mukesh Kumar Meena, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—These are four writ petitions and at the request of the respective parties all the writ petitions are heard together and being disposed of by a common order. The facts of the case of Dr. Sanjay Pareek and Ors. v. State of Rajasthan and Anr. (S.B. Civil Writ Petition No. 1449/2004) are being taken as a leading case.

2. The petitioners passed the MBBS courses from recognized colleges and also completed internship as it is part of MBBS course and were declared successful in the said course.

3. The petitioners were interested to join PG Course in different medical colleges in the State of Rajasthan in inservice category. As per the policy decision in the State of Rajasthan dated 18.6.98 if a candidate who is already in service of the State of Rajasthan as Doctor and has served the State of Rajasthan in rural areas for 3 years or in hilly, tribal and desert areas for a period of 2 years then such doctor can apply for the PG course in the various medical colleges in the State of Rajasthan in the category of in-service.

4. Learned counsel for the petitioners submits that all the petitioners are qualified to apply for the PG course as being in- service candidate. The State of Rajasthan issued an advertisement for Pre PG Entrance Examination in the month of April 2002 for the batch of 2002 and for the eligibility in the category of in- service the petitioners were required to obtain minimum 50% marks in Entrance Test.

5. Since all the petitioners have not secured 50% of marks, which is required for eligibility to appear in the entrance test, thus, the petitioners preferred the writ petition before this Court. The learned single Judge vide order dated. 11.6.2002 disposed of the writ petition with some direction to Medical Council of India.

6. The order dated 11.6.2002 passed by the learned single Judge is assailed by the petitioners before the Division Bench. The Division Bench of this Court has referred the matter of Full Bench vide reference order dated 28.8.2002 and framed two questions of law, which was answered by the Full Court vide judgment dated 5.2.2003 and held that regulation 9 was not a legal impediment against the State Government in filing such seats by taking the candidates who might have secured even less marks than 50% in Pre PG Entrance Test and accordingly directed the State Government to grant admission to the said candidates of 2002 batch.

7. Against the Full Court judgment dated 5.2.2003 the SLIP was filed before the Hon"ble Supreme Court and the Hon"ble Supreme Court vide its judgment dated 19.8.2003 passed the following interim order:

"We have taken up the hearing in all these matters. However, it is found that in SLP (c) Nos. 965/2003 and 14367- 91/2003 formal notices have not yet been issued. There were several writ petitioners before the High Court who have been impleaded as respondents and in our opinion they must be served and afforded an opportunity of hearing before these matters are taken up for hearing. Issue notice. Learned counsel for the petitioner submits that service shall be effected on all the respondents through Director Health Service, State of Rajasthan as per the private respondents are all in service doctors and in addition notices shall also be published in Rajasthan Patrika (Hindi) and The Hindustan Times (English), Jaipur Edition. In addition we direct the Secretary (Medical & Health) department, State of Rajasthan to put in notice on the notice board of all the medical colleges in the State of Rajasthan about the filing of these petitioners and their coming up for hearing and that the respondents may enter appearance if so advised. The publication in the newspapers and notice displayed on the notice boards of the Medical Colleges shall clearly state the names of all the private respondents. The State of Rajasthan, University of Rajasthan and Dr. Ajay Srivastava are represented in connected matters and they accept notices in these matters. Notices need not be served on them. The Convenor of Pre-PG Examination and Union of India have been served in the connected matters and have chosen not to appear. It is pointed out by the learned counsel for the petitioner that they are proforma parties and not interested in contesting these

matters. The learned counsel for the petitioner has pressed for stay of the operation of the impugned judgment submitting that the Full Bench decision of the High Court of Rajasthan though directed conflict with the earlier decisions of this Court as also with State of Madhya Pradesh and Ors. v. Gopal D. Tirthan and Ors. 2003 (6) IT 204 that being followed in the State of Rajasthan. It is directed that operation of the impugned judgment shall remain suspended for future."

8. The Hon"ble Supreme Court after hearing the matter vide its judgment dated 16.9.2003 in the case of Harish Verma and Others Vs. Ajay Srivastava and Another, decided the question and quashed and set aside the judgment of the Full Bench of the High Court of Rajasthan and restored the judgment given by the learned Single Judge.

9. Pursuant to the interim order dated 19.8.2003 some of the petitioners pursuing their study in PG course for about six months. Their admissions were cancelled as per their undertaking furnished before Hon"ble Supreme Court.

10. Learned counsel for the petitioners Mr. Rastogi submits that in case of Ruchi Saxena v. State of Rajasthan and Ors. the Hon"ble Supreme Court gave liberty to file fresh petition under Article. 226 of the Constitution of India. Pursuant to the order passed by Hon"ble Supreme Court dated 5.1.2004 the petitioners preferred these writ petitions.

11. Learned counsel for the petitioners submits that the State Government is pursuing unrecognised courses in certain faculties. He mentioned the specialty in para No. 14 and the petitioners are claiming admission in unrecognised specialty for PG course.

12. Mr. Rastogi further submits that the respondents also represented before MCI to create superannuity post. Vide Annex. 2 dated 13.10.2003 the State Government moved before the Medical Council of India for considering the amendment in Regulation 9 as proposed by the State and to create 160 superannuity seats for the post graduate in the year 2002-03 in the State of Rajasthan.

13. He submits that the judgment passed by the Hon"ble Supreme Court is binding only to those, who are pursuing their study in recognised courses not binding on the unrecognised PG course.

14. He further submits that the State Government has wrongly represented before MCI and for unrecognised PG course the State Government may not seek any permission from the MCI. Thus without asking Medical Council of India and without applying the ratio decided by the Hon"ble Supreme Court in the judgment rendered in Harish Verma and Ors. v. Ajay Srivastava and Ors. (supra) the State can give admissions to the petitioners in unrecognised courses.

15. The petitioners even are ready to pursue their study in unrecognised PG course and the petitioners are well aware of this fact that they cannot serve outside the State even after getting the degree in unrecognised course of PG.

16. Mr. Ajay Rastogi, who is appearing in S.B. Civil Writ Petition No. 2189/2004, referred certain clauses of Indian Medical Council Act, 1956. He also referred Section 33 (j) whereby the power is given to Medical Council of India to make regulation. As per sub-clause (j) of Section 33 the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications. In support of his submissions he also referred Ordinance 67 of University Handbook and submits that for un-recognised PG course the criteria of minimum 50% made by MCI is not applicable and by and large he supports other submissions raised by Mr. R.D. Rastogi.

17. Per contra learned Addl. Advocate General Mr. Mohd. Rafiq submits that in view of the direction issued by this Court they represented before MCT for amendment in regulation 9 and for creation of superannuary seats of the post graduate in the year 2002-03 vide letter dated 13.10.2003. But the MCT in response to the letter dated 13.10.2003 has informed the State that the representation of the State was considered by the members of ad- hoc committee and of the Executive Committee and the request made on behalf of the State considering the amendment of Regulation 9 and creation of 160 superannuary PG seats for 2002-03 in the State of Rajas than was declined and the request made on behalf of the State was also rejected by order dated 22.1.2004.

18. Mr. Rafiq further submits that according to the provisions of Indian Medical Council Act, 1956, the increase in the intake capacity of a Medical College whether Undergraduate Medical courses or Postgraduate Medical Courses has to take place only with the permission of the Medical Council of India and even if certain seats are there which are not yet recognized, the process for their recognition is a continuous activity with Medical Council of India periodically subjecting such Medical Colleges for inspection to verify whether or not the adequate facilities are being available for the purpose of imparting studies and whether the standards of education are being maintained by the Medical Colleges while granting admission and imparting education. The Medical Council of India in exercise of its power under the Indian Medical Council Act has framed Regulation 9 in which it has prescribed 50% to be qualifying marks in the year 2000 and, therefore, in order to maintain the standards of medical education, the state government and for that matter the Medical Colleges shall have to necessarily adhere to the standards in the matter of prescription of minimum qualifying marks.

19. Mr. Rafiq further submits that in the said regulations, if they failed to do so, the MCI may not only recognise these seats but even derecognise the other seats which have been recognised for the purpose of grant of admission in the PG Course.

20. Mr. A.K. Sharma, who is appearing on behalf of the university also supports

the submissions made on behalf of learned Addl. Advocate General and further submits that in any case the respondents cannot overlook the directions issued by the Hon"ble Supreme Court. Since the MCT has rejected the request made on behalf of the State, the State has no option other than to follow the criteria laid down by MCI and the directions issued by the Hon"ble Supreme Court.

21. Mr. Sharma submits that in the courses of 2002-03 all seats are filled in and the students are pursuing their study in the specialties of PG courses. Since the request of the increase of seats is declined the State Government is not able to increase the single seat contrary to the directions issued by the MCI.

22. Mr. Sharma further submits that the petitioner has failed to establish his case as to how these writ petitions are maintainable and which rights of the petitioners are flouted for which they are seeking writ order or direction from this Court. Neither the petitioners have right for consideration as no seat is lying vacant nor the petitioners have able to establish that any discrimination has been made.

23. Mr. Rafiq informed that even in the unrecognised seats of the post graduate medical courses not a single candidate have been given admission, who have secured less than 50% of marks. In such circumstances, the question of discrimination also not arises.

24. Heard rival submissions of the respective parties and perused the judgments referred before me and the provisions of the Indian Medical Council; Act, 1956 as well as the material available on the record. It is not disputed that the Hon"ble Supreme Court has upheld the criteria laid down by the MCI prescribing 50% marks for minimum eligibility to appears in PG course. It is also not disputed that pursuant to the directions issued by the Hon"ble Supreme Court some of the petitioners were given admission in PG course and admissions were cancelled as the undertaking was furnished by them before the Hon"ble Supreme Court.

25. I also perused the judgment, which was referred by Mr. R.D. Rastogi in the case of Ruchi Saxena v. State of Raj. and Ors. wherein the Hon"ble Supreme Court dismissed the petition as withdrawn with liberty to file a petition under Article 226 of the Constitution.

26. I am not convinced with the submissions made on behalf of the petitioners that pursuant to the direction issued by the Hon"ble Supreme Court, they have filed this writ petition seeking admission in PG course. Since the writ petition was submitted before the Hon"ble Supreme Court and the same was dismissed as withdrawn and with the liberty to file petition under Article 226, does not mean that the petitioner are given liberty to raise the same issues, which were raised in the earlier writ petition. Even considering the submissions made on behalf of the petitioners, the ratio decided by Hon"ble Supreme Court in the case of Ruchi Saxena v. State of Raj. and Ors. is not applicable as the petitioners are now seeking the admission in un-recognised specialty of PG course and the criteria laid down by the Medical Council of India also not applicable so far as the un-

recognised seats.

27. As already discussed herein above Mr. Rafiq has categorically stated that they are strictly following the criteria laid down by the Medical Council of India keeping in mind that they will apply for recognition of the un-recognised specialties and for that purpose they have to maintain the standard as laid down by MCI.

28. The State is right in saying that the inspection was conducted by the Medical Council of India to verify whether or not adequate facilities are being available for the purpose of imparting studies and whether the standards of education are being maintained by the Medical Colleges while granting admission and imparting education. They have to maintain the standards as laid down by MCI.

29. I am not convinced with the submissions made on behalf of the petitioners that they may be permitted to pursue their studies in un-recognised specialties as they are ready to face the consequences if the courses are not recognised. In my considered view the petitioners cannot be considered as no seats is lying vacant. Since the petitioners failed to give a single illustration, who have been given admission even in un-recognised PG specialties, who has secured less than 50% marks, in such circumstances, the petitioners utterly fail to establish the case of discrimination.

30. The submissions made on behalf of the petitioners are that the State itself wanted to give the admissions to the petitioners, to this effect they moved before the MCI, although it was not needed to move before MCI.

31. It is no doubt that the State moved before MCI but the request made on behalf of the State was rejected by MCI. Even after rejection I fail to understand as to how the State can increase the seats as regulation 10 of MCI Act was referred by learned Addl. Advocate General that without seeking permission from MCI they cannot increase single seat. Since no seats are available as stated at Bar, the petitioners' case cannot be considered for admission.

32. At this stage learned counsel for the petitioners request that the respondents may be directed to consider their candidature.

33. As discussed herein above I am not convinced with the submissions made on behalf of the petitioners as the petitioners are not able to make out their case as to how they are entitled even for consideration. However, it is for the petitioner to apply before the State and it is for the State to consider and decide. This Court does not want to issue any writ, order or direction to this effect.

34. In view of the aforesaid submissions and observations all the writ petitions fail being devoid of merit and is herewith dismissed with no order as to costs.