
(1992) 10 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 5488 of 1992

Sonal Avinash Thakkar

APPELLANT

Vs

Dean, Baroda Medical College and Others

RESPONDENT

Date of Decision : 08-10-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Gujarat University Rules — Rule 4.6

Citation : AIR 1994 Guj 4

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : Y.N. Oza, for the Appellant; B.M. Mangkia, AGP, S.N. Shelat and P.B. Majmudar, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Mehta, J.—The petitioner challenges the policy and the committee decision of the respondent authorities of the medical college regarding postings of the resident doctors in various units. According to the petitioner, on admission to the post-graduate course (in general surgery), the choice of the unit should be left to the students in order of merit. According to the respondents, the students are admitted to the post-graduate course in the subject of their choice according to their merit. However, on admission to the postgraduate course in the subject of their choice, question of allocation of unit is not left to the student concerned, but is being done by rotation. There are six seats in General Surgery and there are six units and these units are filled in by earmarking a particular unit called a "credit unit" and that credit unit is rotated on every occasion. Therefore, when there are six units ABCDEF, six students admitted according to their merit will be allocated to these units by fixing a particular unit as a credit Unit. If on the first occasion, "A" is the credit Unit the allocation of the units will be in the order beginning from A. On the next occasion, credit unit will be shifted from "A" to "B" and on the third occasion, credit unit "C" and thereafter "D" will be allocated and in that manner, the credit unit will be rotated.

2. According to the petitioner, this cyclical rotation is absolutely arbitrary and Whimsical and the students should be given the choice of unit and the choice of teacher attached to the unit. It is also submitted that in other Universities of the State, choice of teacher and unit is given.

3. The relevant rules of the Gujarat University only are shown to the Court. It appears that Gujarat University is the only University in the State which has this kind of rule. Ordinance M.D. 14 and M.S. 14 effective from July 1, 1991 provide as follows in Rule 4.6.

"The candidate will be given a choice of subject and P.G. Teacher according to his merit level. He will have to choose either Registration with Residency or Registration without Residency out of the available choices in different subjects under particular Teacher at his merit level."

It is, therefore, argued that if Gujarat University and two medical colleges affiliated to Gujarat University can give the candidate not only choice of subject but also the choice of PG Teacher according to his merit, there is no reason why a similar choice cannot be given to the students of the medical college attached to Baroda University and for that matter, the students of other medical colleges in the State attached to different Universities are at par with the students of medical colleges attached to Baroda University.

4. On the other hand, on behalf of the respondents, it is submitted that the Gujarat University model is not necessarily the only ideal model which should be treated as the only reasonable model. It is open to every authority to have its own model and method and it is required to be examined on its own whether it is rational and reasonable and it is for the petitioner to prove that the method adopted by the respondents in the present case is arbitrary and unjust. It is further submitted that the P.G, admissions are on the basis of merit and according to the choice of subject of students. However, once the students are admitted to the subject of their choice, the allocation of units becomes subject matter of administration of the hospital because it is a question of uniform medical services to the patients and it is not a question of students' choice of the teacher. In the affidavit-in-reply, it is also submitted that if such a choice is given to the students in this University, it is likely to happen that some of the units may remain without P.G. students and a resident doctor. Secondly, it is submitted that for patients' services, all the units should, uniformly and in a fairly representative manner, constitute a proper unit. It should not happen that one particular unit, year after year, gets students of the highest merit and another unit, year after year, gets students of lowest merit. In such a case, patients' services are likely to suffer and the patients also might seek preference to go to a particular unit and there might be undue pressure of patients on one unit and another unit may not get sufficient number of patients.

5. The learned Counsel for the petitioner has relied on the judgment of the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India

(UOI) and Others, and more particularly the observations made in para 22 are relied. In that judgment, the Supreme Court has emphasized the merit aspect for admission to P.O. course in medicine. However, that judgment does not throw any light and is not helpful in the question that is posed in this case. In the present case, admissions to P.O. course are given in order of merit. The only question is whether such admission on merit is further required to be carried for giving an option or a choice to the candidate for selecting his unit or a teacher. This question is not only a question of admission of a student, but also a question of hospital administration and also a question of patients' services.

6. On behalf of the respondents, reliance has been placed on the observations of this Court "in the case of Kumari Jayashree Chandrachud v. State of Gujarat(1979) 20 GLR 614 and this Court had observed in para 10 as follows:--

"When a challenge based on Article 14 against any of those rules is brought before the Court, however, it would be worthwhile to remember that the legitimate presumption is that the rule must have been framed by the State Government in good faith and with full knowledge of the existing conditions as well as requirements and that the amendment, if any, must have been made to solve difficulties manifested by experience. The State Government, is required to deal with diverse problems arising out of an infinite variety of situations and it must, therefore, have the power to make provision to meet with such problems and to attain particular rational objects. Another thing which requires to be borne in mind is that in order to come within the mischief of Article 14, it is not sufficient to show merely that there is differentiation or inequality of treatment, for, differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the said Article, it is necessary to show that the differentiation or inequality, if any, is irrational or arbitrary and that it has no rational relation to the object sought to be achieved. Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, . Equal treatment of unequal objects, transactions or persons is also not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved (see Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, . It is also an accepted principle that if the difference in treatment is of a trivial, unsubstantial or illusory nature, then that circumstance alone is sometimes regarded as a cogent ground for holding that the action is not discriminatory at all or no inequality has, in fact, been created (See The State of West Bengal Vs. Anwar Ali Sarkar, . Mathematical nicety and perfect equality are also not required to meet the test of Article 14, What is of the essence of the matter is similarity and not identity of the treatment (State of Bombay v. F. N. Balsara AIR 1951 SC 318 : (1951 Cri LJ 1361). The formula devised with a view to attaining the given object need not be scientifically perfect or logically complete so long as it stands the test of reasonableness and it has nexus with the object sought to be achieved (See Ganga Ram and Others Vs. The Union of India (UOI) and Others, . Invalidity of such formula cannot be established by merely finding fault with the

scheme adopted to achieve the purpose in view (See Jalan Trading Co.)."

7. In the present case, the rule which has been framed by a committee in 1981 and which has been operating since last 12 years is not shown to be operating in a discriminatory manner. It applies to all students who are admitted and there is no element of arbitrariness. The said decision dated August 8, 1981 is at page 17 of the paper book annexed to the affidavit-in-reply which shows that a subcommittee of the college council had considered the matter and after deliberations, the conclusions were recorded. In the present case, the Junior Doctors' Association has also intervened and was heard and they have also supported the stand of the respondents and submitted that the rotation system of allocation of units is just and reasonable because all the units will have an opportunity of having the best student on rotational basis and all units will have equally balanced team and if choice were to be given to the students, it would result into discrepancy in the team work of different units and will hamper the performance of different units and patients' service. Their written representation filed in this objection has been signed by nearly 100 doctors working in different subjects. When this system achieves a kind of uniformity in patients' services and is an equally balanced team of all the units, it is one of the merits of this system and it operates equally and without any discrimination. In these circumstances, it is not possible to hold that the system is arbitrary and violative of Article 14 of the Constitution. It cannot be said that the only system of allocation of units as per the merit is rational and reasonable and any other system would necessarily be unreasonable.

7A. In the case of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, , the Supreme Court has held that it is not open to the High Court to devise its own criterion and to introduce its notions in such academic matter and direct admission. It was also a case of post graduate medical admissions. The admission committee had made a rule prescribing that housemanship must be in the same subject and the committee applied the rule of equality to all the students. When the High Court had directed to give provisional admission relying on the said rule, the Supreme Court had reversed the same observing that the High Court could not have done it and could not have rewritten the rule.

8. In the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, , the Supreme Court, again in the case of admissions to the medical colleges, observed that the Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize on any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. It was also observed that the procedure for selection laid down by the executive as well as the selection is, however, always open to judicial review on the ground of unreasonableness or on any other constitutional or legal infirmity. Therefore, even if one University has adopted one criteria and another University adopts another criteria and even though it may appeal to the Court that one criteria is

better than the other, it would not be open to the Court to substitute its view for that of the authority. The only scope of judicial review would be to examine whether the criteria adopted is reasonable or unreasonable. If the criteria adopted is reasonable, the matter ends there.

9. In the case of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, , the question before the Supreme Court was regarding equivalence of the Board examinations of Rajasthan and of Karnataka and the Supreme Court held that it is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It was held to be an academic question in which the Court should not interfere in the decision taken by the University. In that case, the students of Rajasthan Board were held eligible for admissions to the colleges in Rajasthan. However, they were not held eligible for admissions to University and colleges in Karnataka and the Supreme Court held that such academic decision of the "Karnataka University regarding equivalence could not be interfered by the Court.

10. In view of the aforesaid discussion, when it is found that the method of allocating units by rotation of credit units is not un reasonable or arbitrary, there is nothing that can be done for the petitioner in the present petition. ,

11. There is another hurdle in the way of the petitioner. By an order dated September 14, 1992, the petitioner was granted leave to add persons likely to be affected by the reliefs claimed in the petition. The petitioner has joined only one respondent who has been given the unit of the choice of the petitioner. If the petitioner is granted the relief, there is bound to be a chain reaction. It is not that the petitioner would affect respondent No. 4 only but the respondent No. 4 will have same option which the petitioner claim and, there fore, not only the respondent No. 4 may claim a different unit than what is allotted to the petitioner, but may also claim a different subject altogether and the chain of reaction would be such large scale that it would be impossible for the petitioner to get such relief in absence of all those parties.

12. In the result, the petition fails and is dismissed. Rule discharged.