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**(1998) 11 MP CK 0049**

**In the Madhya Pradesh High Court**

**Case No :** Letters Patent Appeal No's. 379 and 380 of 1998 and Writ Petition No's. 460 and 461 of 1998

State of Madhya Pradesh and Others

APPELLANT

Vs

Arpana Shukla

RESPONDENT

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**Date of Decision :** 07-11-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1999 MP 73 : (1999) 2 MPJR 535 : (1999) 2 MPLJ 91

**Hon'ble Judges :** Shambhoo Singh, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** S. Bhargava, AAG, for the Appellant; Chaphekar and Samvatsar, LC, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

B.A. Khan, J.

THOUGH we were seized of two appeals directed against an interim stay order passed by writ Court dated 8-9-1998, parties prayed for disposal of the writ petitions also to put an end to the controversy for good. That is how we propose to dispose of the whole matter.

Writ petitioners were candidates for admission to M.S./M.D. in general category in the State Medical Colleges for the session 1998. After they failed to qualify in their category they filed W.P. Nos. 460 and 461 of 1998 seeking quashment of circular dated 17-2-98 issued by the Government fixing minimum qualifying marks of 20% for Scheduled Caste candidates, 15% for Scheduled Tribe candidates and 40% for other Backward Class (OBC) candidates on the ground that it was not competent to lower the minimum qualifying standard below 40% in the face of the guidelines fixed by the Medical Council of India u/s 20 of the Medical Council Act and in terms of judgment of the Supreme Court in Dr. Sadhna Devi and others Vs. State of U.P. and others, : State of Orissa v. Sharat

Chandra Sahu reported in, AIR 1997 SC 1 and a Division Bench judgment of this Court in Vibhuti Prassana Sinha's case (W.P. No. 1084/97) decided on 6-5-97. In other words the case set up was that in the aforesaid judgments as also in the guidelines prescribed by Medical Council of India, minimum qualifying marks of 40% had to be obtained by a reserved category candidate in postgraduate entrance examination and, therefore, Government was not competent to relax or lower this standard by bringing it down 40% and consequently circular dated 17-2-98 issued by it was ultra vires, illegal and arbitrary. A direction was consequently sought for quashment of this circular and for reversion of the unfilled reserved category seats to the general category to enable the writ petitioners to qualify for admission in the respective post-graduate courses.

The two writ petitions were opposed by the State on the plea that these were misconceived and proceeded on a wrong premise. It was explained that in all 290 seats were to be filled up. Out of these 72 seats were earmarked for All India Quota, 33 for SC candidates, 46 for ST candidates and 30 for OBC candidates in accordance with the percentage of the reservation provided under the Rules. While all 109 general category seats were filled up on merit from amongst candidates who had obtained above 50% marks in the entrance examination, only -- seats could be filled from SC/ST/OBC candidates who had secured above 40% marks. Therefore, Government in its wisdom and in tune with its policy of reservation issued circular dated 17-2-98 fixing the minimum qualifying marks for the candidates of these reserved categories to accommodate more candidates from them. Accordingly 20% minimum qualifying marks were fixed for SC candidates, 15% for ST candidates and 40% for OBC candidates. But on second counselling after applying this standard, 69 seats still remained unfilled and the Govt. proposed to lower the minimum qualifying marks again to prevent the unfilled seats from going waste. It was accordingly proposed to further lower the percentage of minimum qualifying marks to 15% for SC candidates, 8% for ST candidates and 20% for OBC candidates to so that all 69 unfilled seats could be utilised for candidates from these reserved categories.

The impugned circular was justified on the plea that the Government vested with the power to fix the minimum qualifying standard and to relax it as deemed fit in tune with the philosophy of its reservation policy. It was repelled that the fixation of the minimum qualifying marks below 40% was violative of any Medical Council of India guidelines or in contravention of any judgment of the Supreme Court or this Court. On the Division Bench of this Court in Vibhuti Prassana's case where by it was left open to the Government to lay down the minimum percentage of marks for reserved categories candidates. It was also pointed out that this Court had at no stage fixed minimum 40% marks for admission of reserved category candidates to post-graduate courses in its judgment (supra), All it had done was to require the State to take in regard the guidelines prescribed by All India Medical Institute fixing 40% minimum qualifying marks for admission of reserved category candidates to its post-graduate courses which was done but these could not be adopted in toto because of the population mix and peculiar socio-

economic condition prevailing in the State. It was refuted that fixation of minimum qualifying marks below 40% was contrary to the Supreme Court judgment in Dr. Sadhnadevi's case.

During the pendency of the writ petitions, writ Court passed some interim orders from time-to-time and one of these dated 8-9-98 directing reversion of unfilled 69 reserved category seats to the general category became the subject-matter of challenge in the two appeals. The Appeals deserved to succeed because the order impugned in these directing reservation of 69 unfilled reserved category seats to general category granted whole relief to writ petitioners without examination of merit of rival contentions, leaving nothing for adjudication in the writ petitions and consequently non-suiting the State. As it is, all that remained to be seen was whether State was competent to fix the minimum qualifying marks for reserved category candidates and whether it could relax and lower such standard below 40% and whether such lowering was violative of any guidelines allegedly fixed by the Medical Council of India or All India Medical Institute or in contravention of the judgment of the Supreme Court in *State of Orissa v. Sharat Chandra Sahu* reported in, AIR 1997 SC 1 : *Dr. Sadhna Devi and others Vs. State of U.P. and others*, or Division Bench judgment of this Court in *Vibhuti Prassana Sinha's* case (W.P. No. 1084/97).

It is no more *res integra* that State was competent to undertake selection of candidates for admission to various courses in the Medical Colleges run by it and to adopt an appropriate mode in this regard taking in regard the circumstances and conditions prevailing in the State. As a natural corollary it could as well fix the minimum qualifying standard for this -- one for the general category -- and other for reserved category candidates. Any action taken in this regard was unassailable so long as it was reasonable, rational and bona fide. This position stands consistently affirmed by series of Supreme Court judgments beginning from *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, wherein the Government's action wholly doing away with the minimum qualifying marks for reserved category candidates was upheld while doing so the Court said (at page 2057) :

"It cannot be disputed that the State must do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and Other Backward Communities. The State is entitled to make reservations for them in the matter of admission to medical and other technical institutions. In the absence of any law contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving, the purpose for which reservation has been made and if there be no law to the contrary."

This was later affirmed by the Apex Court in Aarti Gupta and Others Vs. State of Punjab and Others, and in Rajesh Kumar Verma Vs. State of Madhya Pradesh and others,

That being so, the only issue that remained to be examined was whether State was obliged to fix such minimum standard at 40% only under any law or rule or pursuant to the mandate of any judgment of the Supreme Court or of this Court and whether any lowering below 40% was permissible.

The case of the petitioners as set out in their writ petitions in that minimum qualifying standard was to be fixed at 40% as per Medical Council of India guidelines framed u/s 20 of the Medical Council Act and the Supreme Court judgment in Sadhnadevi's case. LC for petitioners Mr. Chaphekar has, however, fairly conceded that this stand was misconceived as neither Medical Council of India nor the Supreme Court judgment had prescribed any such standard. He, however, sought shelter under the Division Bench judgment of this Court in Vibhuti Prassana Sinha's case which according to him required the State Government to take into regard and to adhere to All India Medical Institute guidelines fixing 40% minimum marks. According to him once Government was to exercise power of fixing the minimum qualifying marks in accordance with these guidelines by this Court, it had no option but to do so and the impugned circular issued by it fixing marks below 40% was vitiated. Resultantly seals becoming available were liable to be reverted to general category in tune with the direction passed by the Supreme Court in Dr. Sadhnadevi's case.

This narrows down the controversy and takes the whole sting out of petitioners' case rendering it by and large baseless. It all now turns on to the ratio and mandate of the Division Bench judgment of this Court in Vibhuti Prassana's case.

We have read this judgment in between the lines also but we have not been able to gather any such proposition laid down therein. Nowhere does this judgment provide for fixation of any such minimum standard, nor could it perhaps be laid down as a rule of thumb. All it had said was that due regard should be given by the State to the guidelines prescribed by All India Institute of Medical Science fixing 40% minimum qualifying marks for admission to its post-graduate medical courses, while fixing its own minimum qualifying standard. It nowhere ruled that 40% marks were required to be prescribed as minimum standard for reserved category candidates. The Government was not, therefore, under any command to fix a minimum of 40% qualifying marks for the reserved category candidates. It was only obliged to take in regard the AIMS guidelines which it says it had done but could not be accepted because of the peculiar socio-economic condition in the State. The question of any flouting of the Court judgment did not arise in the circumstances.

Looking it at from different angle the judgment in Vibhuti Prassana Sinha's case was only suggestive and could not be read to lay down that 40% could be the minimum qualifying standard for reserved category candidates seeking admission

to post-graduate medical courses. Nor it could be said or held that AIMS or MCI guidelines fixing 40% minimum qualifying marks for admission of reserved category candidates to its own courses was mutatis mutandis applicable to admission rules of Medical Colleges run by the States and binding on them. Such guidelines had no statutory force and were only recommendatory in nature and any violation or breach of these would not invalidate the action.

It is noticed at this stage that State had filed an application before the writ Court for permission to lower the standard further for filling up unfilled 69 seats from reserved category. We want to make it clear that it was not for the Court to accord such permission. It was for the State to take the decision in accordance with law and the Court was to test the validity of such decision only when assailed before it. It was not supposed to grant judicial sanction in anticipation of the proposed Government sanction.

Writ petitioners' prayer for reversion of the unfilled 69 seats to the general category, appears premature at this stage because the Government had gone on record to suggest that it wanted to lower the minimum qualifying standard to accommodate the candidates from the relevant reserved categories.

Concluding thus, we hold that the State was competent to prescribe a reasonable and rational minimum standard fixing less than 40% qualifying marks for selection of reserved category candidates to post-graduate medical course and that impugned circular issued by it in this regard did not suffer any infirmity or illegality,

Before parting it was noticed that M.P. Pre-P.G. Rules, 1997 did not provide any mode for filling up of surplus reserved category seat. Rule X( V) only provided that if any seat remained or fell vacant in any subject in any institution, it would be filled up from the waiting list from that category strictly in the order of merit by subsequent counselling. The Rule fails to envisage the situation where the reserved category seat could remain unfilled despite repeated counselling conducted by reference to fixed qualifying standard. Therefore, situations may arise where such seat would go waste and abegging if no mode was prescribed to fill it up. It was for the Government to consider and ponder over the issue and prescribe a suitable mode in this regard. It is directed to examine the issue and to take necessary steps to meet the situation by appropriate rule making within six months from receipt of this judgment to prevent any future litigation on the subject-matter.

L.P.A. No. 379/98 and 380/98 are accordingly allowed and writ petitions dismissed for the reasons recorded.