
(2015) 03 RAJ CK 0121

In the Rajasthan High Court

Case No : Civil Special Appeal No. 81/2005 in Civil Writ Petition No. 3070/2003

State of Rajasthan and Others

APPELLANT

Vs

Kantesh Khetani and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16, 226
Contract Act, 1872 — Section 16(1), 23

Citation : (2015) 3 CDR 1049 : (2015) 3 RLW 1870 : (2015) 3 SCT 367

Hon'ble Judges : Sunil Ambwani, C.J.; Jaishree Thakur, J.

Bench : Division Bench

Advocate : K.L. Thakur, Additional Advocate General and Rishabh Tayal, for the Appellant; Ravindra Singh and Umesh Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, C.J.

1 This Special Appeal is directed against the judgment dated 14.12.2004, in S.B. Civil Writ Petition No. 3070/2003- Dr. Kantesh Khetani and 20 Ors. v. State of Rajasthan and Ors., by which the writ petition was allowed, to that extent, and in the manner, that the petitioners who were doing PG DNB Course of three years, were held entitled to receive stipend for all three years. The State of Rajasthan through the Secretary, Medical and Health Department, Government of Rajasthan, was directed to determine and fix the amount of stipend, to be paid to the students doing PG DNB Course, within three months, from the date when they started the Course. The stipend could be less than the amount, paid to the students doing PG Course (MS/MD), but that the amount should be higher than the amount, paid to the students doing Diploma Course.

2. Brief facts, giving rise to the writ petition are that, all the petitioners, who are respondents in this Special Appeal, took admission in Diploma Course, run by the National Board of Examinations (NBE), of a duration of three years in Dr. S.N. Medical College, Jodhpur, after their selections by the NBE, training in the course

provided for award of Diplomate of National Board (DNB), and for which they were working in different hospitals of Jodhpur, affiliated to Dr. S.N. Medical College, Jodhpur.

3. The NBE was established by the Government of India in 1975, with an object of improving the quality of medical education, elevating the level of standard of post graduate examinations in modern medicine on all India basis. It was to function as a national resource of imparting quality in evaluation of professional competence in medical sciences. At that time, there were more than 135 recognized medical colleges in the country and abroad, in addition to over 191 accredited institutions imparting medical education in various levels, and in various broad and super specialties. The NBE identified 39 medical disciplines, for which approved training facilities were available in the country. Though, the Medical Council of India has laid down the standards for post graduate examinations, it was felt that the level of proficiency and standards of evaluation vary considerably in these institutions and the Universities. It was felt to set up a national body to conduct postgraduate medical examinations, to provide a common measurement of standard, and mechanism of evaluation of the minimum level of attainment of the objective, for which the postgraduate degree courses were started in medical institutions. The inter-country and international comparison was felt to be facilitated with the availability of commonly accepted evaluation mechanism.

4. The Government of India, vide Notification dated 19.09.1983, in exercise of powers conferred by sub-section (2) of Section (ii) of the Indian Medical Council Act, 1956 (for short, "the Act of 1956"), after consultation with the Medical Council of India, amended the first Schedule appended to the Act, incorporating the degrees relating to the NBE, in the first Schedule of the Act of 1956.

5. All the respondents/petitioners were appointed with a condition stipulated in the appointment letters, that the State Government will not bear any financial liability, and furthermore, an undertaking was also obtained from the respondents on a bond, that they will undergo the training of DNB Course, on honorary basis.

6. It was stated that the petitioners were required and were working practically as full time resident doctors in the hospitals, according to their specialization. They were doing the same work, as was done by the MD/MS students, for about 12-14 hours daily in the same hospitals.

7. It was submitted that vide Notification dated 03.10.1994, appended as Appendix-1 to Schedule B, in the Bulletin of Information and Application Form for Diplomate of National Board Primary Examination, it was stated by the Director(ME), Ministry of Health and Family Welfare, Government of India, that the medical qualification awarded by the NBE, will be treated at par with MD/MS of Indian Universities for all the posts, including teaching posts. They were awarded Diplomas, but were not paid any stipend, in discrimination to the

students doing PG Course (MS/MD) in the same hospital, in which they were required to work for three years.

8. The petitioners relied on a letter written by the Deputy Director(Admn.), NBE, dated 24.09.2001, to all the accredited institutions, stating that payment of stipend for the students of DNB Course, is now mandatory, and the same be paid to them. Since no action was taken by the respondents, a reminder was issued on 15.12.2001.

9. It was submitted that the contract for working on honorary basis, was accepted under the influence of the respondents, and was hit by Section 16(1) of the Indian Contract Act, 1872, and for which, they relied on Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

10. After making a request to the respondents, which was not accepted, the writ petition was filed, claiming discrimination as against the students of PG(MS/MD), and on the principle of "Equal Pay for Equal Work". The denial of stipend was challenged as violative of Articles 14 and 16 of the Constitution of India.

11. In the reply, given by the respondents, it was stated that the appointment letters/orders of the petitioners were issued with a condition that it will not incur any financial liability upon the State Government. The petitioners had voluntarily executed the bonds, mentioning therein, in clear terms, that they will perform the duties on honorary basis. They belonged to distinct class and could not be equated, nor their duties and functions were equal to that of the PG students of MS/MD.

12. Learned Single Judge held that the petitioners were duly selected by the NBE, and were imparted training for DNB, for which they were working in different hospitals of Jodhpur, affiliated by Dr. S.N. Medical College, Jodhpur. The medical qualification awarded by the NBE, was included in the first Schedule, appended to the Act of 1956, and was at par with the PG medical qualifications of the Indian Universities. The Notification dated 03.10.1994, in the Bulletin of Information and Application Form for Diplomate of National Board, clarified that their qualifications were equivalent to PG Course(MS/MD). Learned Single Judge also noted that whereas the students of PG Course (MS/MD), and those of diploma course students such as Diploma in Child and Health, were paid stipend, the petitioners were discriminated, in payment, for performing the same work and duties in the hospitals. It was held that there does not appear to be any substantial difference in the nature of duties of a junior resident, whether he is doing MD/MS Course, or a DNB Course. The difference lies in the degree of responsibility, the level of skill, and expertise employed, rather than in the nature of the work.

13. Learned Single Judge, after discussing the meaning of "stipend" and "pay", held that there was no object to be achieved nor any reasonable classification, in providing that the DNB students will not be paid stipend. In the matter of

payment of stipend, the guiding principles should be degree of skill, nature of work, experience, training required, responsibility undertaken, mental and physical requirements, the task performed, hazard attendant to the work, and fatigue involved etc. It was held that in the case of DNB students, the work taken from them was of the same nature, responsibility and involved same mental, physical requirement, stress and hazards, on which they have been discriminated, in payment of stipend, as against the students of PG Course (MS/MD).

14. Learned Single Judge relied on *Jaipal and Others Vs. State of Haryana and Others*, , in holding that the principles of "Equal Pay for Equal Work", are attracted in the present case, calling for interference under Article 226 of the Constitution of India, as the petitioners had suffered legal injury on the agreement and the bonds. He held that the transactions, which are unfair and unconscionable and caused by economic duress, cannot bind the petitioners, even if they were not under undue influence or coercion. The Courts have struck down such terms on the ground of public policy. He relied on *Central Inland Water Transport Corporation v. Brojo Nath Ganguly And Anr.* (supra), in which the Supreme Court held that the Courts will not enforce, and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in the contract between the parties, who are not equal in bargaining power. There could be no exhaustive list of all bargains, but that the principle will apply where the inequality of bargaining power is the result of great disparity in the economic strength of the contracting parties. It will apply to a situation, in which the weaker party is in a position where he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party, or go without them, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules is unfair, unreasonable and unconscionable. There can be myriad situations which result in unfair and unreasonable bargains between the parties. These cases cannot either be enumerated, or fully illustrated. The Court must judge each case on its own facts and circumstances.

15. Learned Single Judge referred to the judgment of Delhi High Court in Civil Writ No. 3742/2001- *Dr. Vishal Sehgal and Others Vs. Secretary (Health) and Others*, , in which the Delhi High Court, speaking through Hon'ble Mr. Justice Madan Lokur (as he then was), decided the matter in favour of the petitioners therein, holding, inter alia, that DNB students are entitled to receive stipend. Learned Single Judge agreed with the judgment of Delhi High Court.

16. Learned counsel appearing for the State of Rajasthan, and Dr. S.N. Medical College, Jodhpur, submitted that the respondents were appointed with a condition that the State of Rajasthan will not be liable to bear any financial burden for the work performed by them, while undergoing the DNB Course of NBE. The appointment orders clearly stipulated that no payment will be made, and they will perform their duties on honorary basis. A bond was also executed

by the respondents undertaking that they will not be paid any stipend, and thus, having fully understood the terms and conditions, under which they were appointed and have completed the Diploma Course, they were not entitled to any relief from the Court.

17. It is submitted that the condition in the order, by which the respondents were admitted to the course, and the bond executed by them, operates as estoppel against the respondents. An undertaking was given by all the DNB students. Dr. Sawai Lal Jain (respondent No. 9), like all others executed a bond on a stamp paper of Rs. 100/-, in which he clearly admitted that he will not claim any stipend during the course from the State Government or the Institution. The document labeled as "Undertaking" annexed as Annexure R-1 to the reply, reads as follows:--

"UNDERTAKING

I, Dr. Sawai Lal Jain s/o Shri Paras Mal Jain, resident of Vill. CHOHTAN and Dist. BARMER RAJ., do hereby take oath that;

1. I have cleared my D.N.B. Primary Examination from National Board of Examination New Delhi, held in 13 Jan. 2002.
2. If i got admission in Dr. S.N. Medical College, Jodhpur as a D.N.B. trainees in the Department of Medicine I will follow all the rules and regulations of said Institution/ Government.
3. I will work as full time P.G. student on honorary basis.
4. I will not claim any stipend during the course from State Govt./Institution.

DEPONENT

VERIFICATION

I, Dr. Sawai Lal Jain, above deponent, do hereby verify that all the above facts are true and nothing has been concealed. SO HELP ME GOD.

DEPONENT"

18. Learned counsel appearing for the State of Rajasthan has relied on P.R. Deshpande Vs. Maruti Balaram Haibatti, , in which the Supreme Court explained the equitable doctrine of election or approbate and reprobate, which may not operate as bar to the constitutional remedies under Article 136, or any other statutory remedy. The doctrine of election is founded on equitable principle that where a person persuades another one to act in a manner to his prejudice and derives any advantage from that, then he cannot turn around and claim that he was not liable to perform his part as it was void. No party can accept and reject the same instrument, and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it was valid, and then turn around and say it was void for the purpose of securing some other advantage.

19. Reliance has also been placed on The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, , in which it was held that in case of contractual disputes, a writ of mandamus should not generally be issued to enforce contractual obligations. The doctrine of estoppel or election applies to ensure equity, however it must not be applied in such a manner, so as to violate the principles of what is right and of good conscience.

20. It is submitted that the PG Course (MS/MD), is not equal to PG DNB Course, and that no material was produced, to demonstrate that the duties and the responsibilities of the students undergoing the PG Course (MS/MD), and those undergoing DNB Course, were similar in nature. The Court could not have undertaken the task of equating the work and responsibilities of both categories of students.

21. Learned counsel appearing for the respondents, on the other hand, submitted that learned Single Judge has considered the material and the arguments, and has found that since the work and responsibilities of both categories of students were same, the respondents were discriminated without any reasonable basis, or any object, to be achieved, in refusing to pay them the stipend. The condition in the order of admission to the course, and the undertaking, was unconscionable. The respondents were working for 12-14 hours in the hospital, looking after the patients, and performing same duties and responsibilities, as that of the students of PG Course (MS/MD). It was rightly held by learned Single Judge that on the principle of equality, the students undergoing DNB Course, were also required to be paid the stipend.

22. The respondents have strongly placed reliance on the judgment of learned Single Judge of Delhi High Court in Dr. Vishal Sehgal and Ors. v. Secretary(Health) and Ors.(supra), in which, on the same facts and circumstances, the Delhi High Court held that the students undergoing DNB Course, are entitled to receive stipend. The Delhi High Court, however, after holding that the students of DNB Course are entitled to stipend, did not quantify the stipend, and left the quantum, to be determined by the respondents, with further observation in para-57, that the decision will be applicable to all DNB students, who joined the course contemporaneously with the petitioners therein. Relying on Brojo Nath Ganguly's case(supra), Delhi High Court held that the term imposed, to the effect that DNB students have to complete the course without payment, must be held unconscionable and void.

23. We have considered the rival submission of the parties, and do not find any error in the judgment of learned Single Judge, to take a different view in the Special Appeal.

24. Brojo Nath Ganguly's case(supra), has been followed by the Supreme Court in a large number of decisions. It is unreasonable and unfair that two categories of more or less equally qualified doctors doing the same type of work, though

with differing skills and expertise, one category gets a monthly stipend while the other gets nothing at all. It may be possible that DNB students, admitted by the NBE, may get lesser stipend, but that taking work from the DNB students in the hospitals in the State of Rajasthan, for three years without any payment, was wholly unfair, unreasonable and is violative of Article 14 of the Constitution of India.

25. The inclusion of the DNB Course in the first Schedule, appended to the Act of 1956, making it equal to all PG Degrees, was with a view to provide a common measurement standard and mechanism of evaluation of the minimum level of attainment of the PG Degree courses. The DNB Course could not be completed without working for three years in the hospitals. In the reply, there is no denial that the DNB students were performing the same duties and undertook the same responsibility, as that of the students of PG Course(MS/MD). The candidates studying for PG qualifications, are required to work as senior resident/registrar, on full time basis.

26. The Bulletin of Information and Application Form for Diplomate of National Board by National Board of Examinations, provided for practical training and practical examination. Para 7.7 of it, provided that the candidates will be required to obtain 50%, in the aggregate, for practical examinations, and three years training, in which super specialties for all the subjects, require clinical practical, and for which 176 institutions were listed as accredited institutions, recognized by the Board of Training in various specialties. The exhaustive training courses with practical experience, did not justify that the students will not be paid any stipend, as the course was not confined to theory, but practical examination, in which the students were required to work in the hospitals. All the respondents had MBBS qualifications before they were admitted to DNB Course, and they were equally qualified Doctors as those who were pursuing PG Course (MS/MD).

27. It appears that the NBE, with best intentions for providing the course which was equal to MS/MD, could not work out or take commitment of financial liability from with the State Governments for payment of stipend to the students, who were pursuing the DNB Course. The State Governments were however not justified to take their services free, only on the ground that they were admitted to the course with an understanding that it will be on honorary basis, and for which, they had also submitted an undertaking.

28. The principle of law, under which unconscionable contract can be struck down, are now recognized by the Indian Judiciary System. In Brojo Nath Ganguly's case(supra), the Supreme Court held, considering the question in the light of Section 23 of the Contract Act, which provides that a contract which is opposed to public policy, would be void, that the public policy is not capable of a precise definition; it however connotes matters which concerns the public good and in public interest. The concept of what is for the public good, or what is in public interest, or what would be injurious or harmful to the public good, or the

public interest, has varied from time to time. The principles governing the policy, is a test, to be applied in the given case, in achieving the public good for public purpose. It was entirely unreasonable to enforce the contract against the students, who were doing same type of work in hospitals as Doctors, though with differing skills and expertise, as those who were admitted to PG Course (MS/MD) and were getting the stipend, and were not paid any amount in the hospitals in the State of Rajasthan.

29. For the aforesaid reasons, we do not find any good ground to interfere with the reasoning and conclusion in the judgment of learned Single Judge.

30. The Special Appeal is dismissed.