
(2019) 07 UK CK 0263

In the Uttarakhand High Court

Case No : Special Appeal No. 224, 666, 667, 668, 669, 671, 673, 677, 678, 679
Of 2019, Delay Condonation Application No. 3614 Of 2019

State Of Uttarakhand And Others

APPELLANT

Vs

Neetu Verma And Others

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 162

Citation : (2019) 07 UK CK 0263

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Paresh Tripathi, Anil Kumar Bisht, Vinay Kumar, Dr. Kartikey Hari Gupta, D.C.S. Rawat, Saurav Adhikari, S.C. Dumka, Karan Anand

Final Decision : Allowed

Judgement

Ramesh Ranganathan, CJ

1. Delay of 75 days, in preferring Special Appeal No. 224 of 2019, is not opposed by Mr. Vinay Kumar, learned counsel for the respondent-writ petitioner; and the delay is, therefore, condoned. Delay Condonation Application is, accordingly, disposed of.

2. All these appeals are preferred against the orders passed by the learned Single Judge holding that the State Government lacked jurisdiction to recover the bond amount from students who were admitted to under-graduate courses, in Medical Colleges in the State of Uttarakhand, under the All-India quota of 15%.

3. Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the appellants-State and Mr. Vinay Kumar & Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of the respondents-writ petitioners, agree that it would suffice, for the disposal of this batch of Special Appeals, if the contents of the order, in Writ Petition (M/S) No. 1058 of 2016 and batch dated 13.11.2018, are noted.

4. The jurisdiction of this Court was invoked by the respondents-writ petitioners questioning the Government Orders dated 23.07.2008, 04.08.2008, 09.09.2009 and 23.05.2013 on the ground that, since they were selected for admission in the MBBS course against the 15% All-India quota, they could not have been asked to furnish a surety bond, in terms of the impugned Government Orders, while taking admission in the MBBS Course in Government Medical Colleges of the State of Uttarakhand. While some of the respondents-writ petitioners, in this batch of Special Appeals, were admitted into the under-graduate medical course in Government Medical College, Haldwani during the year 2011-12, some others joined the MBBS course in the Government Medical College, Haldwani during the year 2013-14. In terms of the Government Order dated 09.09.2009 a concessional fee of Rs.15,000/- per annum was to be charged from students who were willing to furnish a bond to serve in the hilly and rural areas of the State of Uttarakhand for five years after completion of their under-graduate medical course, and, in case they chose not to do so, they were then required to pay the regular fee of Rs. 2,20,000/- per annum as tuition fees. Similarly in terms of the Government Order dated 23.05.2013 a concessional fee of Rs. 40,000/- per annum was payable in case the students, who sought admission in under-graduate medical courses in Government Medical Colleges in the State, agreed to execute a bond to serve in the hilly and rural areas of the State of Uttarakhand for five years. They were, however, entitled to seek admission, without executing a bond, on payment of the regular fee of Rs. 4,00,000/- per annum.

5. All the respondents-writ petitioners furnished a bond to serve the hilly and rural areas of the State of Uttarakhand for a period of five years after completion of their under-graduate medical courses, and were permitted to prosecute their under-graduate medical course on payment of the concessional fee of Rs. 15,000/- per annum / Rs. 40,000/- per annum for the academic year 2011-12 and 2013-14 respectively. After joining the under-graduate course, and having prosecuted their studies for a couple of years, some of the respondents-writ petitioners invoked the jurisdiction of this Court, and some others invoked the jurisdiction of this Court only after completing their MBBS course, relying on certain judgments passed by this Court, including the order in Writ Petition (M/S) No. 1845 of 2009 dated 09.04.2015.

6. In the order under appeal the learned Single Judge, while relying on the judgments of the Supreme Court in *Anand S. Biji v.State of Kerala* : JT 2001 (10) SC 121; *Harsh Pratap Sisodia v.Union of India* : (1999) 2 SCC 575 and the judgment of a learned Single Judge of this Court in Writ Petition (M/S) No. 186 of 2016 dated 23.02.2016, also took note of Clause 5(ii) of the Information Bulletin (Counseling) AIPMT 2011 issued by the Government of India, and held that though the condition of executing a bond, in terms of the Government Orders dated 23.07.2008, 04.08.2008 and 09.09.2009, may be valid in relation to any other seats reserved for other quotas, the same may not apply in so far as it relates to the respondents-writ petitioners who were selected against the 15% All-India quota, in the light of the stipulations contained under Clause 5(ii) of the

Information Bulletin (Counseling) AIPMT 2011 issued by the Government of India. All the Writ Petitions were allowed and the condition, of execution of a surety bond to serve for a period of five years in the rural areas pursuant to the Government Orders, was held inapplicable to the respondent-writ petitioners who had prosecuted their MBBS course from the academic year 2011-12 and 2013-14 against the 15% All-India quota.

7. Clause 5 of the Information Bulletin (Counseling) AIPMT 2011, issued by the Government of India, stipulated conditions relating to bond/fee structure and rural services. Clause 5(ii) of the said Bulletin stipulated that any additional State condition pertaining to bond/rural service shall not be applicable to All-India quota candidates; and as per the directions of the Supreme Court, in *Anand S. Biji v. State of Kerala : JT 2001 (10) SC 121*, it was not open to any State to fix any additional eligibility criteria in the case of candidates who fall under the All-India quota.

8. As reliance was placed by the learned Single Judge on two judgments of the Supreme Court, in *Anand S. Biji v. State of Kerala : JT 2001 (10) SC 121* and *Harsh Pratap Sisodia v. Union of India : (1999) 2 SCC 575*, it is necessary to take note of the law declared therein.

9. In *Harsh Pratap Sisodia v. Union of India : (1999) 2 SCC 575*, the Dean of the respondent-Medical College refused to admit the petitioner therein, who had qualified in the Entrance Test for admission against the 15% All-India quota, on the ground that he had passed the Intermediate Examination of the U.P. Board in July 1993 without Biology; he had passed Biology as his subject at the Intermediate Board in the year 1994; as per the existing Rules in the State of Maharashtra, the incumbent must have passed HSC or equivalent examination in one and the same attempt; and the petitioner, therefore, did not fulfill the condition prescribed under the Rule for eligibility.

10. While holding that the eligibility criteria, for admission to medical colleges throughout the country under the 15% All-India quota as stipulated by Clause 4.4 of the 1998 bulletin, did not provide for any such requirement as was claimed by the Dean of the respondent-Medical College, and that the petitioner had passed his Intermediate Examination in the first division, the Supreme Court, in *Harsh Pratap Sisodia v. Union of India : (1999) 2 SCC 575*, observed:

".....It is not disputed that the criteria of eligibility for allotment of a seat to MBBS against the 15% all-India quota has been fixed by the CBSE in consultation with the Medical Council of India under a modified scheme approved by this Court. Under that scheme, the States and colleges cannot insist upon satisfaction of the "State requirements" as a condition to grant admission to the allottees against the 15% all-India quota. It is, therefore, not open to any State to fix any additional eligibility criteria in cases of candidates who fall under the 15% all-India quota. The eligibility criteria having been approved by this Court, it could not be ignored by the Dean, Medical College, Solapur. The denial of

admission to the petitioner was thus wholly illegal and unjustified. Consequently, this writ petition succeeds and is allowed. The Dean, V.M. Medical College, Solapur is hereby directed to grant admission to the petitioner in the first year of MBBS course under the 15% all-India quota forthwith....."

(emphasis supplied)

11. In *Anand S. Biji v. State of Kerala* : JT 2001 (10) SC 121, the Supreme Court took note of the problems faced in the matter of implementing the scheme framed by the Court for admission to post-graduate medical courses. It took note of the request of the learned Solicitor General to make clear certain aspects for smooth implementation of the scheme of admission into medical colleges and, in particular, those pertaining to the 15% All-India quota. The learned Solicitor General had submitted that the States and Colleges should not insist upon satisfaction of the "State requirements" as a condition to grant admission to allottees against the 15% All-India quota; the States were imposing conditions on the candidates admitted to post-graduate courses in the colleges, for example, the Government of Gujarat had required the post-graduate students to execute a bond of Rs. 75,000/-, for rendering three years' rural service in the State, as prescribed by the State Government; similarly, the Government of Maharashtra had imposed a condition that the candidates should have to serve the Government of Maharashtra for a period of one year; this had resulted in different States imposing different conditions; consequently candidates admitted under the All-India quota, in different State Medical Colleges, were not uniformly placed; and, while some of the candidates had to fulfill those requirements, others were not required to do so. The Supreme Court, after referring to its earlier judgment in *Harsh Pratap Sisodia v. Union of India* : (1999) 2 SCC 575, observed that, in view of the directions issued therein, no fresh directions were required to be issued in this regard.

12. What was faulted by the Supreme Court, in *Harsh Pratap Sisodia v. Union of India* : (1999) 2 SCC 575 and *Anand S. Biji v. State of Kerala* : JT 2001 (10) SC 121, is the varying conditions imposed by different State Governments which had resulted in lack of uniformity for students selected for admission in the 15% All-India quota and consequently, while some of those candidates who were given admission in a Government Medical College in a particular State were required to fulfill the conditions stipulated by that State Government, other candidates who secured admission in Government Medical Colleges in some other State, where such a condition was not prescribed, were not obligated to comply with such a requirement. It is in this context that the observations of the Supreme Court, in *Harsh Pratap Sisodia v. Union of India* : (1999) 2 SCC 575 and *Anand S. Biji v. State of Kerala* : JT 2001 (10) SC 121, must be read.

13. Clause 5 of the Information Bulletin (Counseling) AIPMT 2011, issued by the Government of India, stipulates the conditions relating to bond/fee structure and rural services and reads as under:

"(i) The conditions relating to start of academic session/deposit and refund of fee, if any may vary from State to State, College to College and University to University and shall be as per rules and regulations of the respective State/College/University concerned. The Directorate General of Health Services has no role to play in the matter after allotment of seat/college.

(ii) Any additional State condition pertaining to Bond/Rural service shall not be applicable to All India Quota candidates. As per the Hon'ble Supreme Court's directions, it is not open to any State to fix any additional eligibility criteria in cases of candidates who fall under the All India Quota vide its Order dated 27.12.2001 in IA Nos. 9-13 in Civil Appeal No.1944 of 1993 (Anand S. Biji v/s State of Kerala and Ors.)"

14. It is evident from Clause 5(i) of the Information Bulletin (Counseling) AIPMT 2011, issued by the Government of India, that the condition relating to deposit of fee would vary from State to State, College to College and University to University, and shall be as per the Rules and Regulations of the respective State/College/University concerned. What was prohibited, in terms of Clause 5(ii) of the said Bulletin, was imposition of any additional State condition pertaining to Bond/Rural service to candidates admitted, under the All-India Quota, in the light of the law declared by the Supreme Court in Anand S. Biji v. State of Kerala : JT 2001 (10) SC 121.

15. The additional conditions, referred to in Clause 5(ii) of the Information Bulletin (Counseling) AIPMT 2011, are in addition to those stipulated in Clause 5(i), which related to the fee structure. In the prospectus issued to candidates, who secured admission for the year 2011-12 in the Government Medical College, Haldwani, it is specifically stated that as per the Government Orders/Rules, if a candidate executes a bond, the tuition fee was Rs.15,000/- annually; and if a candidate does not wish to execute a bond, the tuition fee was Rs. 2,20,000/- annually. A similar prospectus was issued with respect to admissions made in the year 2013-14 where the fee structure has been specified as Rs. 40,000/- annually on execution of a bond; and Rs. 4,00,000/- annually on non-execution of a bond. All the respondents-writ petitioners, who had secured admission in the Government Medical College at Haldwani in Nainital District, were made aware of the differential fee structure in terms of the Government Orders issued by the State of Uttarakhand.

16. The aforesaid Government Orders make it clear that, since the State of Uttarakhand consists largely of hilly areas, the State Government was not in a position to cater to the medical needs of all its people; and, with a view to provide adequate health and medical services to its populace, the State Government was offering concessional fees to such of those students who were willing to execute a bond to serve in the hilly and rural areas of the State for a period of five years after completion of their under-graduate medical course; and others, who do not wish to render services in the hilly and rural areas of the State of Uttarakhand, were required to pay the regular fee which was Rs.

2,20,000/- per annum in the year 2011-12, and was Rs. 4,00,000/- per annum in the year 2013-14. The respondents-writ petitioners were made aware by the Information Bulletin (Counseling) AIPMT 2011, issued by the Government of India, that the fee structure was State/College/ University specific. By the prospectus issued by the Government Medical College, Haldwani all the respondents-writ petitioners were informed of the differential fee structure i.e. regular fees for those who did not wish to serve in hilly and rural areas of the State after completion of their under-graduate medical course, and a concessional fee for those who were willing to.

17. What was faulted by the Supreme Court, in *Harsh Pratap Sisodia v. Union of India* : (1999) 2 SCC 575 and *Anand S. Biji v. State of Kerala* : JT 2001 (10) SC 121, was the additional stipulation of a bond. For example if the State Government had imposed a condition that the candidates securing admission should furnish a bond to serve in the hilly and rural areas of the State for a period of five years, despite paying the regular tuition fee of Rs. 2,20,000/- / Rs. 4,00,000/- per annum, imposition of any such condition would have been illegal.

18. In the present case, the Government of Uttarakhand has, by its Orders, informed all eligible applicants that the State Government was willing to provide them medical education at a concessional fee, if they were willing to serve the hilly and rural areas of the State for a period of five years after completing their MBBS course; and if they did not wish to avail this benefit, they would then be required to pay the regular fees applicable to all other similarly placed candidates.

19. The respondents-writ petitioners cannot, while claiming the benefit of a concessional fee and having prosecuted their MBBS course at the cost of the public exchequer, turn around and contend that merely because they were granted admission, in the 15% All-India quota, they should be extended the benefit of the concessional fee without having to discharge the corresponding obligation to serve in the hilly and rural areas of the State of Uttarakhand for a period of five years, though this condition is applicable to all students who were admitted in under-graduate medical courses in the Government Medical Colleges of the State.

20. Both Mr. Vinay Kumar and Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of the respondents-writ petitioners, seek to sustain the order under appeal on two grounds. Firstly, that the State Government has not preferred appeals against similar orders passed in the earlier Writ Petitions relating to the year 2016 and, since those orders have attained finality, the respondents-writ petitioners are entitled to be treated on par with those candidates; and, secondly, that the respondents-writ petitioners were not informed, during allotment of seats at New Delhi that they would be required to pay a higher fee, in case they did not execute a bond; and if they had been made aware of the additional fee structure, during allotment of seats, they would not have opted to join the Government Medical College at Haldwani.

21. Since reliance is placed on behalf of the respondents-writ petitioners on the judgment of this Court, in Writ Petition (M/S) No. 1845 of 2009 dated 09.04.2015, to contend that no appeal was preferred there-against, it is necessary to take note of what the learned Single Judge has held therein. The students, in that case, were all admitted in the academic session 2009 before the Government Order dated 09.09.2009 was issued. By the time the said Government Order was issued, MBBS classes had also commenced in August, 2009. It is in this context that the learned Single Judge observed that the State Government was estopped from compelling students to furnish a bond to serve the State Government for five years, failing which the students had to pay the enhanced fee; and the Government Order dated 09.09.2009 had no application in so far as it related to students who were granted admission, under the All-India quota, for the course commencing prior to 09.09.2009. The law laid down in the said judgment is that a Government Order, issued under Article 162 of the Constitution of India, cannot be given retrospective effect as that would adversely affect the vested rights of students who were admitted, and had joined, prior to the date on which the Government Orders were issued.

22. Unlike the petitioners in Writ Petition (M/S) No. 1845 of 2009, the respondents-writ petitioners herein were admitted into the Government Medical College, Haldwani during the academic years 2011-12 and 2013-14, only after the Government Orders dated 09.09.2009 and 23.05.2013 were issued. The respondents-writ petitioners' claim for parity, with the petitioners in Writ Petition (M/S) No. 1845 of 2009, is therefore not justified. Even otherwise, in *Col. B.J. Akkara (Retd.) v. Govt. of India* : (2006) 11 SCC 709, the Supreme Court held that the State is not prevented or barred from challenging the subsequent decisions, or resisting subsequent Writ Petitions, even though a judgment in a case involving a similar issue was allowed to reach finality in the case of others; this would, however, not apply if it was proved that the State had adopted a "pick and choose" method only to exclude petitioners on account of malafides or ulterior motives; and neither the principle of *res judicata* nor the principle of estoppel was attracted. In the present batch of cases also no allegations of "pick and choose", malafides or ulterior motives are made.

23. On a similar question as to whether the State could prefer an appeal in one case, even where a common order was passed in four cases, the Supreme Court, in *The State of Punjab Vs. Joginder Singh* : AIR 1963 SC 913, noted the submission, urged on behalf of the respondents therein, that, since orders in the other three petitions had become final, any order passed in the appeal before it, at variance with the relief granted in the other three petitions, would create inconsistent decrees in respect of the same matter; and the appeal before it should also be dismissed. The Supreme Court held that this would not be the legal effect of an order passed by it in the appeal, and there was no merit in the objection as a bar to the hearing of the appeal; the true position was that, if the appeal filed by the State Government were to succeed, it would only mean that the finality of the orders passed in the other three writ petitions by the Punjab

High Court would not be disturbed, and those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed; that, however, would not help the respondent before it, who would be bound by the judgment of the Supreme Court in the present appeal; and, so far as the general law was concerned, the law laid down by the Supreme Court would be applicable to everyone other than the three writ petitioners (who would be entitled to the benefit of decisions in their favour having attained finality).

24. The consequence of a particular order not being questioned in appeal, and in being permitted to attain finality, is that, even if a Division Bench of this Court were now to take a different view from the law declared earlier by the learned Single Judge, the State Government, having permitted the earlier order of the learned Single Judge to attain finality, cannot apply the law laid down by the Division Bench to that case, since judgments inter-parties, having attained finality, are binding on the parties thereto, including the State Government. That does not, however, disable the State Government from challenging the order under appeal, and to contend that the law declared in the earlier judgments of the learned Single Judge does not represent the correct law. This contention must, therefore, fail.

25. The other contention, urged on behalf of the respondents-writ petitioners, is that, if the respondents-writ petitioners had been informed of the differential fee structure during the course of allotment of seats at New Delhi, they may have chosen not to seek admission in the Government Medical College, Haldwani. This contention also necessitates rejection, since Clause 5(1) of the Information Bulletin (Counseling) AIPMT 2011, issued by the Government of India, had made all candidates aware that the conditions relating to deposit and refund of fee, if any, may vary from State to State, College to College and University to University. The respondents-writ petitioners, who were seeking admission in the Government Medical College at Haldwani, were therefore obligated to ascertain the fee structure applicable in the said college before exercising their option for admission to the said College. It is not disputed before us, and is in fact evident from the documents annexed along with the Writ Petition itself, that the prospectus issued by the Government Medical College, Haldwani makes the differential fee structure explicit and, while informing candidates that in case they execute a bond they would be charged a total fee of Rs. 15,000/- / Rs. 40,000/- per annum, they were also informed that, in case they choose not to execute a bond, they would then be required to pay the regular fee of Rs. 2,20,000/- / Rs. 4,00,000/- per annum.

26. The petitioners, having executed a bond and having prosecuted their MBBS course at a concessional fee of Rs. 15,000/- / Rs. 40,000/-per annum, cannot now turn around and contend that they were unaware of the differential fee structure, and the State Government is therefore disabled from recovering the said amount from them.

27. Viewed from any angle, we find no illegality in the Government Orders prescribing (i) concessional fee for those who are willing to serve in the hilly and rural areas of the State of Uttarakhand, for a period of five years, after completion of their five years' under-graduate medical course; and (ii) regular fees for those students who did not wish to exercise such an option.

28. While the respondents-writ petitioners cannot be compelled to serve in the hilly and rural areas of the State of Uttarakhand for a period of five years after they had completed their under-graduate course, they would, in case they wish not to render such services, be obligated to pay the regular fee of Rs. 2,20,000/- / Rs. 4,00,000/- per annum, as was being charged from all other students who were not willing to exercise such an option.

29. The order under appeal is set aside and all the Special Appeals are allowed. The appellants shall offer all the respondents-writ petitioners employment, to serve in the hilly and rural areas of the State of Uttarakhand, within six weeks from today.

30. In case the respondents-writ petitioners are willing to serve in the hilly and rural areas of the State of Uttarakhand, it is open to them to join duty in terms of the offer of employment to be made by the State Government. In case the respondents-writ petitioners do not wish to exercise such an option, and do not join duty within the time stipulated in the offer to be made by the appellants-State, it is open to the State Government to recover the differential fee amount, (i.e. Rs. 2,20,000 minus Rs. 15,000/- per annum for students who secured admission in the year 2011-12, and Rs. 4,00,000/- minus Rs. 40,000/-per annum for students who secured admission in the year 2013-14), along with interest at 18% per annum.

31. All the Special Appeals are, accordingly, allowed. No costs.