

(2001) 10 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23357 of 2000 and 13006 of 2001

U. Anveshini and Another

APPELLANT

Vs

Convenor, EAMCT-2000 and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into under Graduate Professional Courses through Common Entrance Test) Rules, 1993 — Rule 4(3)
Constitution of India, 1950 — Article 14, 226
EAMCET Regulations, 2000 and 2001 — Regulation 3(B)
Graduate Medical Examination Regulations, 1997 — Regulation 4, 4(1)
Indian Medical Council Act, 1956 — Section 19

Citation : (2001) 6 ALD 180 : (2001) 5 ALT 686

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Nandigam Krishna Rao, for the Appellant; K.G.K. Prasad and S. Niranjana Reddy, Additional Advocate-General and Government Pleader for Higher Education, for the Respondent

Final Decision : Dismissed

Judgement

1. Both these writ petitions may be disposed of by a common order, since common questions are involved.

2. The petitioners in both the writ petitions pray for issuance of a writ of mandamus declaring Regulation 4(1) of the Regulations on Graduate Medical Education, 1997 framed by the 4th respondent-Medical Council of India fixing the minimum age limit of 17 years on or before the 31st December of the year of admission to the medical curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) course, as illegal, arbitrary and unconstitutional being violative of Article 14 of the Constitution of India and against the regulation making power of the Medical Council of India. The petitioners also pray to declare Rule 4(3)(b) (1)(i) of the Andhra Pradesh Professional Educational Institutions (Regulation of

Admissions into under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 issued in G.O.Ms.No.184, Education (EC-2) Department, dated 20-8-1993, as illegal and arbitrary. The petitioners further pray to declare Regulation 3 (B) (b) of EAMCET-2000 and 2001 Regulations imposing the condition of completing 17 years by the date of commencement of admissions to MBBS Course as illegal, arbitrary and unconstitutional.

3. The petitioner in W.P.No.23357 of 2000 hails from S.C. community. She was born on 26-2-1985 and as on 31-12-2000 her age was 15 years 10 months. She completed her two years Intermediate Course with Biology, Physics and Chemistry (BiPC) as optional subjects in the month of March, 2000 by securing the first division with 83.1% marks. She appeared for EAMCET- 2000 and awarded the rank of 4520.

4. The petitioner in W.P.No. 13006 of 2001 was born on 5-7-1985 and she has completed her two years Intermediate Course with Biology, Physics and Chemistry (BiPC) as optional subjects in the month of March/ April, 2001 by securing the first division with 92% marks whereas in optional subjects she secured 95%. She has a brilliant academic record. She appeared for the EAMCET-2001 held on 27-5-2001 and secured 2160 rank. She was aged about 16 years when she appeared in the EAMCET-2001 examination.

5. Both the petitioners intend to seek admission into first year MBBS Course. Their case, obviously, cannot be considered for admission, since both of them are under age. It is under those circumstances, the petitioners challenge the constitutional validity of Regulation 4 (1) of the Regulations on Graduate Medical Education, 1997 framed by the Medical Council of India and the consequential rules of admission framed in G.O.Ms.No.184, Education (EC-2) Department, dated 20-8-1993.

6. The second respondent in the admission notification to MBBS, BDS, Ag. BSc., and other courses inter alia stipulated that a candidate must complete 17 years of age by the date of commencement of admissions as announced by the committee or on such other date as may be notified by the committee. Such a stipulation is, obviously, made in view of the rules framed by the Government of Andhra Pradesh in G.O.Ms.No.184, Education (EC-2) Department, dated.20-8-1993, that is to say, Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 (for short "the Admission Rules"). Rule 4(3) (b)(1)(i) of the said Rules stipulates that for admission into MBBS and BDS a candidate should have completed 17 years of age and should not have completed 22 years by the date of commencement of admissions as announced by the committee or on such other date as may be notified by the Committee.

7. The petitioners were, obviously, under-aged when they have submitted their applications seeking admission into first year MBBS Course.

8. The rules framed by the Government of Andhra Pradesh through G.O.Ms. No. t

84, Education (EC-2) Department, dated 20-8-1993, that is to say, the Admission Rules and the consequential stipulation made in the prospectus issued by the first respondent and the notification for admission into medical courses stipulating the minimum age of 17 years are obviously based on the regulations framed by the Medical Council of India in purported exercise of the power u/s 33 of the Indian Medical Council Act, 1956 (for short "the Act"). The regulations are known as "Regulations on Graduate Medical Education, 1997" (for short "1997 Regulations"). The impugned regulation framed under the Act reads as follows:

4. Admission to the Medical Course :--Eligibility Criteria: No Candidate shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

(1) He/she shall complete the age of 17 years on or before 31st December, of the year of admission to the MBBS Course;

(2).....

9. Sri Nandigam Krishna Rao, learned counsel for the petitioners contends that the impugned regulation is ultra vires the Indian Medical Council Act, 1956. It is contended that Section 33 of the Act does not authorise to frame any regulation prescribing any age limit for admission into first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course. It is further contended that even Section 19A of the Act does not authorise the Medical Council of India (for short "the Council") to frame any regulation to fix the minimum age and the restriction so imposed by the Council by framing the impugned regulation is illegal. It is also contended that such prescription of minimum age is arbitrary. This is the main thrust of the case.

10. The Council in exercise of the powers conferred upon it under the provisions of Section 33 of the Act with the previous sanction of the Central Government has made (the 1997 regulations. Chapter II of 1997 Regulations inter alia deals with eligibility criteria prescribed for admission to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course. Regulation 4 (1) of the 1997 Regulations is couched in mandatory form. It declares that no candidate shall be allowed to be admitted to Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until he/she completes the age of 17 years on or before 31 st December of the year of admission to the MBBS Course.

11. It is explained in the counter affidavit filed by the Council that there is a rational behind keeping a fixed date on which a candidate must attain the age of 17 years. It is intended to apply uniformly throughout the country. The Council has chosen the said fixed date as 31 st December of the year in which a candidate is admitted in MBBS Course. It is explained that the qualifying examinations are conducted by the various Boards, Universities etc., at different points of time in a year. Similar is the case with the Entrance Examinations held for admission into MBBS courses of various Universities. Similarly, in different

Universities, 1st MBBS Course may commence at different points of time in a year. Therefore, with a view to have uniformity, the Council has chosen 31st December as the date on which a candidate should attain the age of 17 years in the year in which admission is made to MBBS Course. It is further explained that in the existing pattern of education in the country, normally a candidate passes the said qualifying examination when he/she is minimum of 16-17 years of age. The Council in its wisdom came to the conclusion that "for proper understanding and comprehension of medical education, a candidate must possess certain level of maturity which comes with age as one of the factors."

12. It is further explained that the prescription of minimum age by the Council is on account of studied deliberations made by the Council and is a manifestation of an informed decision taken by the Council in association with the Central Government for prescribing the minimum standards and qualifications. The said decision has been taken in pursuance of discussions, consultations and deliberations made by an expert academic body and is made for the furtherance and maintenance of minimum standards for medical study. Such regulation cannot be characterised as arbitrary. There is no illegality involved.

13. It is further explained that the power to prescribe the standards by the Council would also extend to and include the prescription of standards for the admission to Medical Course, which necessarily include the prescription of minimum age qualifications.

14. Sri S. Niranjan Reddy, learned Standing Counsel for the Indian Medical Council with his usual clarity submitted that the regulation prescribing the minimum age limit does not suffer from any legal infirmity. It is submitted that the decisions taken by the expert bodies in consultation and in association with the Central Government for prescribing the minimum standards cannot be interfered with by this court unless such decision is shown to suffer from irrationality. It is also submitted that the regulations framed by the Council are intra vires the provisions of the Section 33 of the Act.

15. It is required to notice that Section 19A of the Act enables the Council to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India. It is the obligation cast upon the Council to prescribe the standards of the medical education. Section 33 of the Act confers authority upon the Council to make regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government.

16. A plain reading of Section 19A of the Act together with Section 330) of the Act would make it clear that the Council is entitled to prescribe the minimum standards on medical education including 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 recognition medical qualifications. Therefore, the submission that the Council has no authority to frame any regulation in purported exercise of the power u/s 33 of the Act even to prescribe the minimum standards and the courses and period of study cannot be accepted. The power to prescribe the minimum age is traceable to Section 19-A of the Act. The power to prescribe the qualifications includes the power to prescribe the minimum or the maximum age, as the case may be.

17. The Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , observed that "the norms for admission have a direct connection with the standards of education. Norms of admission can have a direct impact on the standards of education. Standards of education in an institution or college will depend on various factors."

18. It is observed by the Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, , that "the regulation prescribes the eligibility of a candidate for admission to medical courses. For maintaining proper standards in medical colleges and institutions it comes within the competence of the Council to prescribe the necessary qualification of the candidates who may seek admission into the Medical Colleges. As this regulation is within the competence of the Council, the Council has framed this Regulation in a manner which leaves no doubt that this Regulation is mandatory. "The Supreme Court while referring to the requirement of the age restriction observed that "the regulation leaves no doubt that it is mandatory."

19. In *Gautam Kapoor Vs. State of Rajasthan and Another*, a Full Bench of Rajasthan High Court speaking through J.S. Verma, C.J. (as His Lordship then was) observed:

"We must, therefore, give due weight to the recommendation of the Medical Council of India in this behalf which is being followed uniformly for a long time throughout the country and which is undoubtedly based on experience of experts in the field. It is their opinion that the requisite degree of maturity of body and mind for entry into a Medical College is not attained normally before the age of 17 years. The question, therefore, is whether the opinion of these experts in the field should be substituted by any other opinion, particularly when there is no dispute that a candidate for entry into a Medical College cannot ordinarily be less than 16 years in age, since it is not feasible to pass the qualifying examination before attaining the age of 16 years."

(Emphasis is of mine).

It is further observed by the court:

"The classification on the basis of age is a reasonable classification unless the age prescribed is arbitrary or unreasonable. The minimum age of 17 years for entry into a Medical College cannot be called unreasonable or arbitrary. For framing the general rule it is the normal and not the exception which has to be

taken into account."

20. The said judgment squarely covers the question that fails for consideration in the instant writ petitions.

21. In this case, both the petitioners (students) appear to be of extraordinary merit. They may have completed their qualifying examination even before attaining the age of 16 years. The case of the petitioners may fall under exception. But such exception cannot be taken as a basis for declaring the classification based on the age as unreasonable. Such a classification cannot be characterised as an arbitrary one.

Whether the prescription of cut off date itself suffers from any arbitrariness?

22. It may not be necessary to burden this decision unnecessarily with the authorities and it would be sufficient to notice the judgment of the Supreme Court in *University Grants Commission Vs. Sadhana Chaudhary and Others*, , in which it is observed.

"it is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even "if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When fixing a line or a point is necessary and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it is very wide off the reasonable mark."

23. This decision should put an end to the controversy raised by the petitioners. It is clearly explained in the counter affidavit, which is referred to hereinabove, as to why and under what circumstances the Medical Council of India has taken such a decision to fix the cut off date. The decision is neither arbitrary nor discriminatory.

Whether the Admission Rules suffer from any legal infirmity?

24. The rules notified in G.O.Ms.No.184, dated 20-8-1993 are obviously issued by the State Government in conformity with the regulations framed by the Council. Neither the State Government nor the University could have taken any decision contrary to the regulations framed by the Council. The source of power of the Council for framing the Regulations is traceable to the Act referable to Entry 66 of List 1 of VII Schedule to the Constitution of India. Any Act of the State, whether executive or legislative, would be subject to the said Central enactment and the regulations made thereunder. Obviously, neither the State government nor the University is entitled to prescribe the qualifications repugnant to the regulations prescribing the eligibility criteria regulating the admissions to medical courses. Any action of the State government or the University contrary to the regulations would be void and ultra vires. In the circumstances, there is absolutely no difficulty to hold that the age limit prescribed in the Rules and admission notification is inconsonance with the regulations made by the Medical Council of India in exercise of its power under

the Act.

25. In *Grandhi Sri Pavana Krishna Murthy being minor rep. by his father and natural guardian, Grandhi Raja Vs. Government of Andhra Pradesh and Others*, , a learned single Judge of this court observed that "the requirement of age, both minimum and maximum, is mandatory and not directory. In professional courses like medicine and engineering, the authorities felt proper that for proper maturity and understanding of the course, minimum age requirement is necessary and that is based on intelligible differentia." It is further observed that "there is a nexus for the object to be achieved and the classification of 17 years and below 17 years is based on rational aspect."

26. There is no reason to take a different view other than the one taken by this court in the said case.

Whether the petitioners are entitled for grant of any relaxation of age limit?

27. Admittedly, neither the State Government nor the University nor the Convenor of Admissions can grant any relaxation to the petitioners as long as the regulation prescribing the qualification of age continues to be in operation. No doubt, the Council allowed the relaxation for the years 1997-98 and 1998-99 and in the counter affidavit it is clearly explained as to how and under what circumstances such a relaxation has been given by the Council. It is stated that the 1997 Regulations were published in Gazette of India dated 17-5-1997 from which date the 1997 Regulations came into force. After publication of the 1997 Regulations, representations from various Universities were received by the Council stating that either they had already commenced the process of admission on the basis of the previous Regulations or they need more time to implement the 1997 Regulations. It is on the basis of such representations, in 1997 Regulations were relaxed and it was left to the Universities to follow either the old Regulations or the 1997 Regulations. It is, however, stated that no relaxation has been granted by the Council in individual cases.

28. Be that as it may, it is not explained as to under what provision the Council could have granted such relaxation enabling the Universities to follow either the old Regulations or the 1997 Regulations. It is doubtful as to whether the Council at all could have granted such an exemption or the relaxation, as the case may be. There is no provision under which such a relaxation at all could have been granted by the Council. At any rate, the same cannot be treated as a precedent and the court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the Council to grant relaxation, particularly when it is not shown that the Council has such power to grant relaxation or exemption. Such a course is not permissible in law. This court itself cannot grant any such relaxation. Sympathy is not one of the grounds for reviewing the decision making process.

29. For all the aforesaid reasons, I do not find any merit in these writ petitions. They shall accordingly stand dismissed. There shall be no order as to costs.