

(1985) 08 BOM CK 0039

In the Bombay High Court

Case No : Write Petition No. 134 of 1985

Vivek Ishwar Hebbar

APPELLANT

Vs

Dean, Goa Medical College, Panaji, Goa and Others

RESPONDENT

Date of Decision : 16-08-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1987 Bom 72 : (1986) MhLj 132

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : S.K. Kakodkar and A.F. Diniz, for the Appellant; V.B. Nadkarni, Government Advocate and V.N. Lawande, for the Respondent

Judgement

Couto, J.—The petitioner, a candidate for admission to the M.B.B.S. course of the Goa Medical College for the session 1985-86, seeks in this petition a writ of mandamus or in the nature of mandamus commanding the first three respondents to forthwith admit him to the said course and further a declaration that the conditions that the candidate should have passed the XIIth standard (HSSCE/equivalent) form schools/colleges in the Union Territory of Goa, Daman and Dir, and that the exemption form passing the XIIth standard or its equivalent from such school/college is available only to the children of the officers of the Central Government posted under the Government of Goa, Daman and Diu, if the transfer of the concerned officer takes place during the mid-academic year when the children were studying in schools/colleges outside the Union Territory of Goa, Daman and Diu, are arbitrary and unconstitutional.

2. The relevant facts may be stated. The petitioner is the son of a Central Government servant, namely, an Assistant Engineer, Microwave. His father was transferred on 13-7-1984 from Karad to Panaji and this transfer took place during the mid-academic year when the petitioner was studying in the XIIth standard in a college outside the Territory of Goa, Daman and Diu. The petitioner answered his Higher Secondary School Certificate Examination conducted by the

Maharashtra State Board for Secondary and Higher Secondary Education, Pune Divisional the said examination from the Science College, Karad, (District) Satara. According to the petitioner, the said examination is deemed by the University of Bombay, in its scope and standard, to be equivalent to the Higher Secondary School Certificate Examination and the subjects studied by the petitioner include physics, chemistry and biology, including a practical test in each of these subjects, and also English. The medium of instruction of the petitioner at the level of the said examination has been English. The petitioner applied for admission to the M.B.B.S. course of the Goa Medical College (session 1985-1986) in the general category within the prescribed time, attaching to the said application some documents. However, along with his application, he filed also a letter dated 7-6-1985, wherein he has stated that he has appeared for the XIIth Science examination in March 1985 from the H.S.S.C. Board, Pune at Karad centre and the result of the said examination has not been yet declared at the time of the filing of the application and was going to be declared on 12th June, 1985. He, therefore, submitted that he was not able to produce, as required in the Prospectus, the passing Higher Secondary School Certificate as well as the mark list. The last date prescribed in the Prospectus of the Goa Medical College for filing the application was 10th June, 1985, and the petitioner has produced the passing certificate of the H.S.S.C.E. only somewhere on 17th June, 1985. On 30th June, 1985, the first respondent, Dean of the Goa Medical College, published on the notice board a list of candidates selected for admission to the M.B.B.S. course of the Goa Medical College (session 1985-1986) under the category general. The name of the petitioner was not included in the said list and as such, it is clear that he has been refused admission to the said course.

3. The petitioner states that the list contains 39 candidates beginning with one Kum. Naique Varsha B. and ending with Kum. Shenvi Malaya Bindav. The Said Kum. Naique Varsha B. had obtained 91.66 per cent marks whereas Kum. Shenvi Malaya Bindav obtained 79.33 per cent marks. The petitioner has obtained 90 per cent marks in Science biology. Therefore, he made inquiries as to why he had not been selected and he was informed by the first respondent that admission to the M.B.B.S. course of the Goa Medical College, Panaji (session 1985-86) has been refused to the petitioner because, although the condition of five years residence in the Union Territory did not apply to the petitioner since he is the son of a Central Government servant who has been transferred to the Union Territory of Goa, Daman and Diu, the condition of having passed the XIIth standard or its equivalent from any school/college in the Union Territory applies to him, in spite of the fact that the petitioner's father has been transferred to this Union Territory during the mid-academic year when the petitioner was studying in the XIIth standard in a college outside this territory. This was so because the petitioner's father, it was represented, is not posted under the Government of Goa, Daman and Diu. It is further the case of the petitioner that by letters dated 26th June, 1985 and 1st July, 1985, he pointed out to the Lt. Governor of Goa, Daman and Diu., the injustice of the rule refusing admissions

to the M.B.B.S. course at the Goa Medical College, Panaji, to sons of the Central Government servants posted in the Union Territory of Goa, Daman and Diu, but not under the government of Goa, Daman and Diu while granting them to sons of the Central Government servants posted under the Government of Goa, Daman and Diu. According to the petitioner, the said rule contained in sub-clause(6) of CI. 1 of Part II of the Goa Medical College Prospectus is arbitrary, unconstitutional ultra vires, null and void and hence, the present writ petition seeking a declaration to that effect and a direction to respondents 1 to 3 to admit him forthwith to the M.B.B.S. course (session 1985-86).

4. The respondents filed their returns. In his affidavit-in-reply, the first respondent stated that it is not correct to say that the petitioner has applied to the M.B.B.S. course of the Goa Medical College, category general, within the prescribed time and had further attached to the said application the documents as required in CI.4 of Part II of theadmission to the said course in general category within the prescribed time on 7-6-1985 but he has not complied with the application for admission be accompanied by certified true copies of the testimonials and certificates as provided in CI. 4 of Part II of the Prospectus. He specifically failed to produce the certificate and the mark list showing that he has passed the Higher Secondary School Examination. He further, along with his application, filed a letter addressed to the first ;respondent dated 7-6-1985 wherein he has stated that he has appeared for XIIth Science examination in March, 1985, from the H.S.S.C. Board, Pune, at Karad centre, and that the result had not been declared and were going to be declared only on 12-6-1985. Therefore, he submitted that the was not able to produce H.S.S.C. mark list, H.S.S.C. certificate and medium of instruction. He also stated that he would produce such certificates within a week after the results were declared, and later on, he actually produced the said certificates. Therefore, the first respondent contends in his return that the petition is liable to be dismissed on the said ground alone without going into the merits of the submissions made by the petitioner. Similarly, respondents 2 and 3 filed their affidavit-in-relpy and submitted that the application of the petitioner for admission to the M.B.B.S. course, though received in the office of the Dean on 7-6-1985, did not comply with all the requirements as-stipulated in the Prospectus. In fact, the petitioner has not attached to the application the certificates as required in sub-cl. (2) and (3) of CI. 4 of Part II of the Prospectus and, on the contrary, has stated in his letter dated 7-6-1985 that the results of the XIIth standard examination to which he has appeared were due to be declared on 12th June, 1985. Therefore, it is the case of the second and third respondents that on the date for submitting the applications, that is 10th June, 1985, the petitioner was not eligible to be considered for admission to the M.B.B.S. course, 1985-86 session. It is further alleged that not all averments made in the petition are correct and, in any case, the exemption for passing the XIIth standard examination or equivalent is intended only to candidates, the services of whose fathers are placed at the disposal of the administration of Goa. Daman and Diu for being appointed to the

posts in the administration of this Territory and whose services are paid from Budget funds voted by the Legislative Assembly of Goa, Daman and Diu. It is denied that the classification made does not disclose any intelligible differentia having a rational nexus to the object sought to be achieved and declared by the college Prospectus.

5. Before entering into the merits of the petitioner's case, particularly into the merit of his contentions that the conditions embodied in sub-cl.(6) of CI. 1 of Part 11 of the Prospectus are or are not unconstitutional it is necessary to deal first with the questions raised by respondents 1 to 3 in their returns, particularly that the petitioner was not a breach of contract because of the intention of the Government of Tripura to enforce the bank guarantee, as the petitioner cannot escape the liability to pay the dues of the State Government on account of sale of said lottery tickets as sole agent. In support of this contention reliance has been placed on several decisions of the Supreme Court, viz., *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, and *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*. It has been submitted that the observation of the learned Single Judge of this Court in *Sudhu Ram Yadav's* case (1982) 1 Cal LJ 286 relied on by the learned Counsel for the petitioner has been made per incuriam as the decision in the *International Airport Authority of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, invalidates unreasonable or arbitrary action or discrimination by the stage of entry into the contractual area and does not deal with contractual obligations in the field of performance or non-performance of the terms and conditions of a concluded contract. It is submitted that *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, is a case of application of the doctrine of promissory estoppel to compel the corporation to perform its statutory duty to advance the loan as the agreement to advance the loan was entered into in performance of the statutory duty cast on the corporation by the statute under which it was created. It is pointed out that the expression "or entering into contracts or otherwise" in the observation of the Supreme Court in para 11 of the judgement referred to on behalf of the petitioner relates to the stage of entry into the field or contract or discharge of statutory obligation in the context of the facts of the reported case.

6. In my view, the contentions raised on behalf of the respondents are well founded and must prevail. In this case there are rival claims and counter claims arising out of alleged non-fulfilment of contractual obligations. In *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, the writ petitions were directed against revision of rates of royalty under a lease of 1970 followed by cancellation of the lease and the ground of challenge was that such acts of the Government of Bihar and its officers were illegal and mala fide. Primarily the case of the petitioner was that of a breach of contract for which the state would be ordinarily liable to pay damages if it had broken it. The Supreme Court observed (at P. 1500):

"but after the State of its agents have entered into the field of ordinary contract the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No. question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act within this field perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the

State in the contractual field which is a part from contract(vide para 10 at page 1500)".

The Court reaffirmed the observation in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, That " a writ petition is not an appropriate remedy for impeaching contractual obligations (see para 19 at page 1502)." In *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, the writ petitioners who were allottees of flats claimed refund of surcharge said to have been illegally collected in allotting flats to the petitioner by the Delhi Development Authority and the court held that writ jurisdiction cannot be invoked to get back part of the purchase price paid and benefit taken. After the State or its agents have entered into the field of ordinary contract no question arises of violation of Art. 14 or of any other constitutional provision. In the absence of any special statutory power or obligation on the State in the contractual field apart from the contract the petitioners are bound by the terms and conditions of the contract. The principles laid down in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, have been restated. I cannot accept the submissions made on behalf of the petitioner that the aforesaid cases of the Supreme Court are distinguishable and have no application in this case because in this case the facts are different and that the petitioner's simple claim is that the State cannot act arbitrarily or illegally in attempting to enforce the bank guarantee contrary to its terms, without admission or proof of loss, if any, sustained by the State Government should be accepted. In my view, the petitioner has sought to claim relief against the alleged threat held out by the State Government of Tripura of breach of the contract of guarantee in the field of concluded contract and in view of the principles laid down in *Radha Krishna Agarwal's* case restated in several decisions of the Supreme Court thereafter the present writ petition claiming such relief cannot be maintained, as the remedy against the alleged threat of breach of contract by the State lies elsewhere. The petitioner is not entitled to any remedy under Art. 226 of the Constitution for threatened enforcement of the bank guarantee by the respondents. Arbitrariness or illegality of action by the State in the field of contract not governed by any statute falls within the domain of private law which is outside the realm of public law, the remedy for which is to be pursued in the civil court and not in the writ petition that the respondents have deliberately misread and misconstrued the clauses of the agreement between the parties. But dispute over interpretation of the terms of the contract cannot be resolved in the constitutional jurisdiction of

this Court.

7. The second contention raised on behalf of the petitioner is that the respondents cannot demand vouchers from the petitioner, under the terms of the contract and in view of their past action of settling accounts without demanding vouchers in support of payment of incentives to agents/sellers of prize winning tickets by the petitioner on behalf of the respondents. So, it is argued that the respondents' demand for vouchers is illegal and arbitrary. Such contention must fail in this forum for the same reason namely, that it relates to alleged breach of contractual obligation on the part of the State in the field of concluded contract. That apart the petitioner as agent has duty, irrespective of any contract or that effect, to produce vouchers by which items of disbursement are supported as part of the obligation to render proper accounts to the principal on demand under S. 213, Contract Act. The principal is not estopped from enforcing it. So, there is no prima facie arguable case against the demands for vouchers on the ground of arbitrariness or illegality even if the dispute appertains to the field of concluded contract between the parties.

8. In view of the foregoing discussions I hold that the writ petition cannot be maintained and must fail. The writ petition is dismissed without any order as to costs.

9. Petition dismissed.