State of Bihar and Others

Vs

Dr. Asis Kumar Mukherjee and Others

Civil Appeals Nos. 1430 and 1431 of 1974

(A . C. Gupta, P.K. Goswmi, V. R. Krishna Iyer JJ)

03.12.1974

JUDGMENT

KRISHNA IYER, J. -

1. We may as well begin this judgment with a prefatory sociological observation. The meaning of two common expressions 'teaching experience' and 'teaching institution' incarnate into a legal frame and subjected to forensic dissection and examination during three years of litigation makes up this bitter contest between a talented orthopaedic surgeon and two like rivals trying to break each other's academic bones to gain the post of Lecturer in Orthopaedics, one in each of two government medical colleges in Bihar. Our judicial bone-setting operation cannot undo the social fracture inflicted by this long expensive bout in court. Research and reform of the system is needed if the therapeutic value of law is to last and be not lost.

2. The two appeals before us, by special leave, unfold a musical chair type situation where three candidates ran for two posts in the government-run Patna and Dharbanga Medical Colleges. Inevitably one lost or, rather, was screened as ineligible, his British work and experience notwithstanding, and chagrined by his discomfiture, he, Dr. Mukherjee, challenged the whole selection by a writ petition on the short and ambitious ground that he was not only qualified but superior, with his bright British career, to the other two India-trained hands, Dr. Ram and Dr. Jamuar, but was illegally rejected as unqualified.

3. The main issue that arises and was argued before us by the State's Counsel, supported by Shri Garg for the other candidates, is that the High Court, which allowed the writ petition, grievously erred in probing improperly into the concerned cabinet papers and upsetting government's orders of appointment, upholding the petitioner's eligibility and directing a reconsideration of the claims of all the contenders on certain untenable finding of fact and indefensible interpretation of law. Did the petitioner possess the prescribed qualifications for the post ? If he did the High Court was right in directing the appointing authority to consider his claims; and if did not, government rightly ignored his credentials for the post as an unqualified hand, despite his impressive British testimonials and good showing otherwise. Such is the compass of the dispute which is basically a technical question but, under our system has to be decided by courts unaided by expert advice.

4. The case has taken three of argument based on three heavy volumes of appeal records - mercifully less than the eight days of hearing in the High Court. The colossal consumption of forensic time, investment of considerable litigation expense and the diversion of useful medical energy of three young specialists for three years in two rounds of writ contests are the heavy social price paid by the community for discovering through court - trained in law and not in medicine, and

called upon to adventure into the nature of actual teaching experience and the names of approved teaching institutions beyond Indian frontiers. The question involved is as to whether the writ petitioner, a doctor who worked in hospitals in Britain under orthopaedic professors supposedly of great repute, had teaching experience in a teaching institution good enough under the Indian statute and for the Patna Collage. From Olympic team selection to orthopaedic expertise the judicial robes are invited to exercise umpire's jurisdiction under our system. Even were Judges angels, should they not fear to tread where perhaps others may rush in ?

5. It is equally disturbing that Indian Courts, in contrast with some other modern judicial systems, are called upon to devote considerable time for oral arguments to decide controversial issues even of a simple or a short nature. Condensed submissions and capsuled briefs, familiar in certain foreign jurisdictions, and other reforms may, perhaps with modifications, suit our genius. Here, in the higher Courts, with mild exaggeration, it may be remarked that 'Time rolls his ceaseless course' and not unoften 'little fishes' . . . 'talk like whales'. The superstitious regard to long oral hearing and long speaking orders as sacred safe-guards of justice may be counter-productive of the efficacy of law in the solution of social issues, thus diminishing the ultimate justness of legal justice.

6. Like in the other complex modern operations, the processes of legal justice call for management techniques and methodological reforms and definition of the range of operation for success, all of which must be the public concern of the Bench and the Bar (and the community) alike, animated by the social mission of shortening time and expense and becoming meaningful in securing justice. These observations, made en passant, are provoked by the tricky meshes of the litigation in which the parties here are caught and the frequent phenomena these tend to be.

7. The petitioner before the High Court, Dr. Mukherjee, is the first respondent in both the appeals before us while the State of Bihar, the Health Commissioner and the Health Minister are the appellants in C.A. No. 1430 of 1974. The defeated doctors Dr. Ram and Dr. Jamuar, whose appointments have been upset by the High Court, are the appellants in the connected appeal No. 1431 of 1974.

8. The quarrel is over whether the first respondent could be considered for appointment. Certain peripheral contentions apart, the core of the matter is the possession by Dr. Mukherjee of teaching experience 'as Registrar for at least three years in orthopaedics or allied subjects in a teaching institution'. Other basic qualifications statutorily laid down, he admittedly has. Prima facie he has worked for three years under apparently outstanding British orthopaedic surgeons. Nevertheless, we are called upon, the in the absence of statutory definition, to pronounce upon the sufficiency of this experience vis-a-vis the relevant regulations. Common sense suggests that such technical questions should be judge-proof except in glaring cases, or mala fide exercise. In these specialised areas legal tools may not work but we are enjoined to decide the legality of Government's order and so we shall. Article 226 of the Constitution has come to be a universal rostrum but judicial robes are not omniscient. The whole case turns on the precise construction of the blurred expression 'teaching experience' in a 'teaching institution' occurring in the regulations framed by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956 (hereinafter called the regulations and the Act, for short, respectively).

9. The Act has created a statutory body designated the Medical Council of India, charged with technical and professional responsibilities. Section 33 vests power in the Council to make regulations, with the approval of the Government of India, laying down qualifications required for appointment of persons to the teaching and allied posts in medical colleges. It is common ground

that we are concerned with two such medical colleges and to two such posts. Under the relevant regulation, for a lecturer's post in orthopaedics, teaching experience in a teaching institution is a sine qua non. (We ignore some proposed change omitting 'teaching institution'). But what is 'teaching experience' ? What is a 'teaching institution' ? Too simple to deserve an answer, one might be tempted to think; but too abstruse, when examined in the forensic crucible, to be disposed of in less than 59 pages by the High Court and less than several hours of argument in this Court. Legalese makes complex what looks simple.

10. Now to the further facts and the legal stances. The Government of Bihar took the view, while appointing lecturers in Orthopaedics, that the first respondent did not have the necessary teaching experience in a teaching institution whereupon he sought refuge in the writ jurisdiction of the High Court and filed C.W. J.C. 754 of 1972 contending that he had acquired the required teaching experience during the time he worked in the United Kingdom and was therefore entitled to be appointed lecturer. The State met the challenge on many grounds. Inter alia, it urged that the rule does not recognise teaching experience gained in a foreign country. A circular letter issued by the Deputy Director of Health Services, dated April 14, 1963 was also cited. We agree with the High Court (vide para 24 of its judgment) that the said circular though adopted by Government on July 13, 1972 had no bearing on the crucial issue of actual teaching experience. The Court, however, quashed the decision of Government and directed it to reconsider the case of the first respondent herein together with those of the other two. Government examined the cases de novo in obedience to the direction of the court but again held against the first respondent's eligibility. The aggrieved first respondent hurried to the High Court again and succeeded a second time in persuading it to quash the order and to issue a writ to the State to consider the claim of Dr. Mukherjee, the first respondent, finding that he did possess the requisite experience. In so doing the High Court called for and examined the Cabinet papers and other reports and notings of the officers, technical and administrative. The frustrated candidates and the aggrieved State have filed the two appeals assailing the judgment on the following principal grounds :

> (i) That the teaching experience in teaching institutions visualised by the regulations must be in India and not abroad. If this be valid, the first respondent would be clean bowled, since his qualifications in this regard were attained in England.
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> (ii) The post of Registrar filled by Dr. Mukherjee in England had not been shown to carry among its functions, teaching, so that the length of occupancy of that office did not prove 'teaching experience' even assuming that British Medical Institutions could come within the purview of the regulations.
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> (iii) In any view, the hospitals, and the Universities to which they were linked, where Dr. Mukherjee worked were not proved to be teaching institutions either recognised by the Medical Council of India or regarded as such under the provisions of the British National Health Service Act.
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> (iv) The testimonials produced by the first respondent or at least some of them were not reliable and could not, without further proof, be treated as probative of their contents.

11. A few other arguments were addressed regarding relative seniority or length of teaching service and allied matters which are not germane to the determination of the issue before us. Maybe such considerations will be pertinent when the appointing authority makes comparative evaluation among

the candidates. The submission by Shri Jagdish Swaroop based on the dichotomy in the National Health Service Act, 1946 (9 & 10 Georgc 6c. 81) between teaching and non-teaching hospitals has no substance. It is true that under Section 11(8) of that Act the Minister of Health is authorised to designate as a teaching hospital any hospital or group of hospitals which appears to him to provide for any university facilities for under-graduates or post graduate clinical teaching. We have no material to find out whether hospitals not so designated do provide facilities for teaching nor the criteria and purpose guiding the Minister in exercising his power. Certainly it will be of great help to the first respondent to prove his case that the hospital he worked in was a teaching hospital had it come under the notification of the Minister. The converse does not necessarily follow. We are concerned with an Indian situation and called upon to construe words which are not defined and therefore bear their natural meaning. In this view we do not proceed to examine whether the hospitals in which the first respondent claims to have gained teaching experience belong to the category designated under Section 11(8) of the British Act.

12. Section 3 of the Indian Act makes it clear that the constitution and composition of a high powered council of professional men vested with the responsibility to oversee the conduct the examinations and ensure minimum standards of medical education is among the objects of the statute. The Council has vast powers including the role of consultant in some vital matters and according recognition of medical qualifications granted by institutions in India (Section 11), in countries with which there is a scheme of reciprocity (Section 12) and of degrees, etc. granted by certain other institutions (Section 13). These three categories of medical institutions are covered by Schedules One to Three of the Act. Section 14 relates to recognition by the Government of India of medical qualifications granted by some other countries abroad, after consulting the Council. Inspection, collection of information, granting and withdrawing of recognition and the life are also ancillary powers statutorily conferred on the Council. The regulation by the Council prescribing teaching experience for three years in a teaching institution have statutory status. The provisions of the Act form a conspectus and illumine the meaning of the subsidiary legislation. The Council's regulations under Section 33 must be read in this background.

13. It may straightaway be mentioned that while the expressions 'medical institution' and 'approved institution' are defined (vide Section 2), neither 'teaching experience' nor 'teaching institution' has been defined in the Act, rules or regulations. Simple Anglo-Saxon, the framers must have presumed, must be capable of easy understanding and interpretation. Nevertheless, Counsels have argued at learned length on the semantics of these words although we are inclined to take not a pedantic nor artificial view of the import of these words but a simple commonsense idea of their meaning. Of course, it would be natural to expect any authority (like the Bihar Government in this case) called upon to construe these words used in the setting of a medical statute, if in doubt, to consult the high professional authority enjoying statutory status, viz., the Medical Council of India. In was faintly suggested at the Bar that the Council had given a view once but modified it a little somewhat later. We do not find any deviation and are not disposed to sidetrack ourselves into such non-germane issues. If it were true that national technical bodies were shaky on crucial occasions, (although we do not find anything like that has happened here), they lend themselves to the suspicion that pressure pays. We are sure that will not expose themselves to this risk. In the present case the Government of Bihar is stated to have taken a policy decision not to consult the Medical Council of India. While the appointing authority is the State Government and the responsibility for final choice vests in it, it is reasonable to consult bodies or authorities of a high technical level when the points in dispute are of a technical nature. To consult another is not to surrender to that other, but merely to seek assistance in the careful exercise of public power. All that we mean to emphasize is that the plain words we have already referred to, about the meaning of which the two sides have battled,

should be read having due regard to their normal import, statutory setting, professional object and insistence on standards.

14. Shri Jagdish Swaroop, Counsel for the State, took us through the various provisions of the Act and emphasized that by and large the medical institutions the Act had in view and over which the Council had control were Indian and not foreign, and that therefore the 'teaching institutions' and 'teaching experience' specified in the regulations in question also must possess Indian flavour. Patriotism apart, it is apparent from the Act that it has recognised medical institutions in Universities without India (vide Section 12 and Section 14). The question is not therefore so simple as to be solved by reference to the Indian map. This country, while rejecting colonial reverence for British institutions has continued to accept and respect advances made in medical specialities abroad, including the United Kingdom and the United States, as is reflected in the Act. The India-bound construction is untenable. Equally extreme and unsustainable is the spacious plea of Shri Desai that any teaching experience from any foreign teaching institution is good enough. Imagine teaching experience, acquired from some unmentionably under-developed country which is new to modern medicine being fobbed off on an Indian college ! Reputed institutions noted for their advanced courses of teaching and training cannot be ignored merely because they bear a foreign badge. What we have to look for is to find guidelines within the framework of the Act for fixing those foreign medical institutions. Such a nexus once discernible may light up the otherwise ill-lit expressions 'teaching experience' and 'teaching institutions'. We have therefore to look, at the outset, for indicators in the Act for deciding which foreign teaching institutions may safely fall within the scope of regulation. The whole object is to see that India gets highly qualified medical teachers and this is served neither by narrow Swadeshi nor by neo-colonialism, but by setting our rights on the lines of the statute. Indeed, the argument that the teaching institutions in India alone can be taken note of had been urged and over-ruled in the first round of litigation by the High Court and the State Government had virtually accepted that decision when it examined the case of Dr. Mukherjee in accordance with the direction in Writ Petition C.W.J.C. No. 754 of 1972. Teaching institutions abroad not being ruled out, we consider it right to reckon as competent and qualitatively acceptable those institutions which are linked with, or are recognised as teaching institutions by the Universities and organisations in Schedule II and Schedule III and recognised by the Central Government under Section 14. Teaching institutions as such may be too wide if extended all over the globe but viewed in the perspective of the Indian Medical Council Act, 1956 certainly they cover institutions expressly embraced by the provisions of the statute. If those institutions are good enough for the important purposes of Sections 12, 13 and 14, it is reasonable to infer they are good enough for the teaching experience gained therefrom being reckoned as satisfactory. In this view the problem is whether the institutions referred to in the testimonials of Dr. Mukherjee come within the above recognised categories. We have also to see whether Dr. Mukherjee's service in those institutions as a Registrar, even if assumed in his favour, amount to teaching experience. We will deal with these two decisive questions presently.

15. We agree that the bald expressions 'teaching experience' and teaching institutions' with blurred contours have been at the root of the controversy but, as Denning, L.J., in Seaford Court Estates Ltd. v. Asher ((1949) 2 All ER 155, 164) observed :

When a defect appears a judge cannot simple fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament .... and then he must supplement the written so as to give 'force and life' to the intention of Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? We must then do as they would have done. A

judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

We take the cue from these observations in the construction we have adopted above.

16. The Indian teaching institutions plea having been over-ruled earlier, its die-hard persistence this time is unfortunate. Even so, the first respondent must make out that his institutions fall within the species we have already indicated. Prima facie they do and there is no reason to suspect that the testimonials produced by him are trumped up. Unless proved to the contrary they should be taken by a public authority acting bona fide at their face value.

17. Teaching experience of the requisite period is another component of qualifications. A Registrar, the first respondent was, for three years. But did he teach during that term ? He did, if we read his certificates issued by professors like Dr. Robert and Dr. Geoffrey Osborne. The appellants however have challenged their reliability. There are six certificates now on record and the first respondent is stated to have taken part in teaching work as Registrar. You cannot expect to produce those surgeons in Patna in proof and unless serious circumstances militating against veracity exist fair-minded administrators may, after expert consultations, rely on them. We are sure Government will not depart from fair play in this case or stand on prestige on such an issue to stick to their earlier positions.

18. The State has suggested that some clarificatory testimonials might have been procured late from the professors abroad. There is nothing wrong in obtaining such testimonials clarify the position and we see no unusual bias in these testimonials from such outstanding Professors of Orthopaedics in British Universities.

19. The simple question is whether a Registrar, like the petitioner, did or could acquire teaching experience. On the language of those documents there is some marginal doubt, in the sense that he is stated to have 'participated' or 'assisted' in teaching. The contention of the other side naturally is that 'assisting' or 'participating' is different from 'actual teaching'. While we are hesitant to swallow such a contention it is not for us to finally pronounce on it, the matter being essentially a technical one. Indeed we have restrained ourselves from finally stating whether the institutions in which Dr. Mukherjee has worked are teaching institutions and whether the Registrar's post in which he worked gave him such teaching experience. These two matters have to be decided by the appointing authority. Courts cannot and do not appoint petitioners to posts they claim but lay down the legal criteria and give the correct directions, the Executive being the organ of State of exercise the power to appoint but in conformity with the legal directions. The State Government being that authority has to take the ultimate decision.

20. There is some force in the grievance of Counsel for the State that the Court should not ordinarily call for cabinet papers and start scrutinising the notings and reports of the various officers merely because a writ petition challenging the order has been made. When a writ of certiorari is moved, the Court has the power to call for the record, but in cases where mala fides is not alleged or other special circumstances set out, sensitive materials in the possession of Government may not routinely be sent for. The power of the Court is wide but will have to be exercised judicially and judiciously, having regard to the totality of circumstances, including the impropriety of every disgruntled party getting an opportunity to pry into the files of Government. Of course, acts of public authorities must ordinarily be amenable to public scrutiny and not be hidden in suspicious secrecy. We are not satisfied that the High Court in this case should necessarily have looked into the cabinet papers and

back records, but the question has not been argued, except to the extent of mentioning that the Court was not in order although the State Government had produced the document on a direction. We leave the matter at that, for this reason.

21. What do the alleged infirmities add up to ? Shri Jagdish Swaroop rightly stressed that once the right to appoint belonged to Government the Court could not usurp it merely because it would have chosen a different person as better qualified or given a finer gloss or different construction to the regulation or on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extra-ordinary jurisdiction under Article 226. True, no speaking order need be made while appointing a government servant. Speaking in platitudinous terms these propositions may deserve serious reflection. The administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative worth of the candidates. Is there violation of a Fundamental Right, illegality or akin error of law which vitiates the appointment ? The overlooking of alleged superlative abilities claimed by Dr. Mukherjee is not of judicial concern but of public resentment and individual injustice, if wrongly discarded by an appointing authority - in the absence of proof of bad faith or oblique exercise or other error of law. Nor is the corrective judicial review but an appeal to other democratic processes which hold sanctions against misdoings of any administration and its minions. The Court is not to evaluate comparatively but to adjudicate on legal flaws.

22. Viewed in this perspective, was the High Court right in issuing a writ ? We are disposed to say 'yes'. Undoubtedly, appointments to posts need not be accompanied by speaking orders or reasoned grounds. Then the wheels of Government will slow down to a grinding halt, tardy as it is even otherwise, and comity of constitutional instrumentalities forbids unfriendly interference where jurisdiction does not clearly exist. Granting this institutional modus vivendi, has the Court gone awry ? No, and we will give our grounds.

23. While officious interference with every wrong government order is not right, here the first respondent has complained of violation of the regulations which bind State and citizen alike. Although the State need not always make a reasoned order of appointment, reasons relevant to the rules must animate the order. Moreover, an obligation to consider every qualified candidate is implicit in the 'equal opportunity' right enshrined in Articles 14 and 16 of the Constitution. Screening a candidate out of consideration altogether is illegal if the applicant has eligibility under the regulations. And for such a drastic step as refusal to evaluate comparatively, i.e., exclusion from the ring of a competitor manifest grounds must appear on the record. Such being the legal perspective let us test the present order of Government by those canons.

24. The explanatory affidavit of the appellant State and the records fairly produced by it before the Court disclose that Government has adopted a turbid attitude. Did it disregard Dr. Mukherjee out of hand for want of Indian teaching experience in an Indian teaching institution ? Shri Jagdish Swaroop's submission is that such experience is essential. If so, a violation of the regulation, as interpreted by us, has been committed. Failing in this, the State falls back on another basis that his foreign experience is not shown to be from an approved teaching hospital, which may be clever but not straightforward. To be cute in Court may not correspond with being correct in administration. The first respondent's case for the post has not been considered from the legal angle.

25. It was the duty of Government to be satisfied, on reasonable materials, that (a) the U.K. Hospitals relied on by the first respondent are teaching institutions as explained by us after a study

of the spirit of the statute; (b) the posts of Registrar in which he worked for three years involved teaching functions, the question being looked at fairly, not by semantic hair-splitting and quibbling on words like 'participating' in teaching; (c) the testimonials or written testimony from any British (or Indian, for that matter) Orthopaedics Professor will be taken at its face value except where grave suspicion taints such document, high-placed academic men being assumed to be veracious in the absence of clear contrary indications; (d) Indian experience, if any, of the first respondent, will also be paid attention, provided it satisfies the dual tests contained in the regulation. We are satisfied that the State has made short shrift of Dr. Mukherjee by preliminary screening. The notings and reports and vacillating opinions entertained by Government, at various stages do not detain us as they are incidental to any administrative decision and cannot be espied with a suspicious eye by Court. Governmental ways may not be familiar for forensic processes but for that reason cannot be suspected.

26. We have already observed that at the first flush the first respondent looks like eligible and highly qualified but there may be more than meets the eye. Government may investigate and be satisfied about the real qualifications. In the interests of justice and in view of the ambiguous thinking on this question at administrative levels we regard it as necessary to give the candidates time till the end of January, 1975 to produce evidence of the first respondent's teaching experience in teaching institutions as interpreted by us. Government will give a fair consideration to the qualifications and relative worth of all the candidates. Length of teaching experience will certainly be a relevant - not necessarily dominate - factor. The quality of their experience, their academic attainments and the intellectual ability to stimulate students in the speciality and the investigative curiosity likely to be imparted to the alumni - these weighty considerations will promote public weal in a country hungering for talented doctors. Government's sole concern, we feel confident, will be to get the most capable, in the public interest and in the hope that this happy wish will not fail we proceed to issue the substantive declarations and directions.

27. We declare the order of appointment of the appellants in C.A. No. 1431 of 1974 as bad in law and direct the appellants in C.A. No. 1430 of 1974 to reconsider de novo the appointments to the two posts of lecturers. In so doing, the State will act in conformity with the findings and observations made above. The first respondent's eligibility on the basis of the relevant regulation will be examined afresh before February 15, 1975, the parties, particularly the first respondent, being at liberty to adduce materials to satisfy the State Government on his qualifications (or otherwise) on or before the last day of January, 1975. Government will be free to consult technical authorities of its own before reaching a decision. We do not preclude the right of the administration to arrive at its decision even earlier, fairly dealing with the situation since the sooner the appointments are finalised the better. While we have indicated the broad approach, it is within the power and responsibility of Government to take all relevant considerations and exclude extraneous matters in making the final choice for the two posts. We make it clear that there is no obligation to make any speaking order although there is nothing which stands in its way in doing so. The appeals are dismissed, but we express our distress that three years of two rounds of litigation involving young specialists have held up the appointments to medical college posts thus hampering the process of medical courses and adversely affecting student interest - a socio-legal syndrome which needs a closer diagnostic procedure. It will, therefore, be the duty of the Government not to delay the making of fresh appointments after receipt of such materials, if any, as may be produced by the candidates. With these observations, we dismiss the appeals with costs against the State only and only in favour of respondent No. 1 Dr. Mukherjee.

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