

Krishna Priya Ganguly and Others

Vs

University of Lucknow and Others

Principal, King George's Medical College, Lucknow, U. P. and Others

Vs

Dr. Ved Parkash Gupta and Others

Civil Appeals Nos. 133-134, 137-140, 142-146, 595, 3045-3046 of 1982

(A. Varadarajan, Syed M. Fazal Ali, M. P. Thakkar JJ)

07.10.1983

JUDGMENT

FAZAL ALI, J. -

1. Soon after our hard won freedom there was a gradual rise in the urban population in view of the process of industrialisation and setting up of heavy projects and industries in order to make our country more and more self-sufficient. This led to a certain spurt and rise in the urban population as people from the rural areas started pouring into the urban cities which provided far better opportunities for education and employment than the rural areas. This sudden increase in urban population led to the spread of epidemics and diseases resulting in a rapid growth of educational institutions both in the public and private sectors.

2. In these appeals, we are concerned only with the medical education; the Government had to face a serious problem with the coming up of medical colleges which started growing like mushrooms and were charging huge capitation fees to make substantial profits without providing proper medical education and caring precious little for achieving excellence of standards in medical education which, if denuded of such standards, would pose a serious health hazard to the people. Surely, we would not wish that people who could ill-afford to go in for well-equipped expensive medical practitioners should be thrown at the mercy of quacks. Similar situation arose in technical, engineering and other kinds of institutions but we would concentrate on the feature and facets of medical education which alone forms the subject-matter of these appeals. We have seen from our experience that each year there is a huge rush for admission to seats in medical colleges for various courses, which being rather few and insufficient to control or absorb all sorts and kinds of candidates as the well-known Persian proverb "Jaye Tang Ast Wa Marduma Bisyar" (i.e. little space and people many) seems aptly to apply in such a situation. However, in order to meet the contingency resulting from a heavy rush for admissions the institutions set up certain standards or tests which had to be complied with before candidates could be admitted. Here also, as in other spheres, favouritism and nepotism have their own role to play as a result of which merits suffer. In order to meet these contingencies and ward off such evils, the Government through its circulars and the Medical Council of India being alive to this delicate and difficult problem sought to solve the problem by making rules and regulations for admission of candidates to various courses in different

disciplines (subjects) to achieve excellence in medical standards keeping in view statutory and constitutional reservations. Unfortunately, however, these rules were often flouted and observed more in breach than in compliance by those who were in charge of the medical education : the result was again a huge spurt of writ petitions in the High Court to weed out the inefficient and ineligible and absorb the efficient and eligible.

3. With this short prelude, now to the facts of the case which disclose a sad story indeed - not because those in charge of the institutions commit errors but because the courts start directing the authorities to grant provisional admissions to students even if they did not deserve the same in some cases. Experience has shown that in view of the huge accumulation of arrears in courts, it takes a long time for the petitions to be disposed of, hence we have evolved the practice of forcing the authorities to grant provisional admissions which has resulted in a piquant and pungent situation because by the time the case comes up for hearing, the rejected candidates having completed their course and having appeared at the examination with every hope of success become eligible for admission to the higher course in case of success though the court may ultimately find that their initial rejection was justified. Such a situation becomes a sort of a *fait accompli* for those in charge of the institutions as a result of which the candidates are admitted in due deference to the desire of the court by increasing or creating vacancies even in the absence of suitable and proper facilities to train the extra candidates. This results in an anathema and a dilemma for which there is hardly any remedy. The present cases are a clear illustration of this problem. Our suggestion, therefore, is that whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. In order, however, to test this fact even a short notice may be given to explore as to what the other side has to say and thereafter if the court is satisfied that there is strong *prima facie* case and the matter needs thorough examination, provisional admission may be given. We hope and trust that the High Courts would in future discontinue the practice of lightly granting provisional admission to the candidates at the time of regular admissions, as observed above. It is needless to state that this Court on its part would also be extremely reluctant to grant provisional admission and would do so only in a very special case. The fundamental reason for this is that otherwise the institutions are likely to become overcrowded by candidates, eligible or ineligible, efficient or inefficient. Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general.

4. Out of these appeals, some of them have been dismissed as not pressed, others were heard on merits. By the time the case was taken up by this Court, in as many as 9 out of the 20 appeals the candidates had completed their courses and as only the result had to be declared, the counsel for the State with his usual fairness, realising the futility of forcing the candidates to complete the course all over again conceded that the results of such candidates may be declared and on passing the same they would be admitted to the courses concerned though the petitioners were lacking in merits and their original rejection was justified. We made this direction by a formal order, the reasons for which we would give hereafter.

5. This now brings us to the consideration of the appeals which survive. Before dealing with the individual cases of the appellants respondents, it may be necessary for us to adjudicate on the validity of the circulars passed by the Government and the rules and regulations framed by the Medical Council of India, to put the matter beyond controversy so that a consistent test may be

applied to all candidates desiring admission and unless rules are adhered to, admissions would be denied in which case this Court will not interfere in the absence of a plea of prejudice or bias which would be naturally for the candidates to establish.

6. In some cases the candidates are appellants and in a few the State is the appellant and therefore for facility, the candidates who have filed appeals against refusal for admission to the M.D./M.S. course of the King George's Medical College, affiliated to the Lucknow University, will hereinafter be referred to as the 'candidates' and the State of Uttar Pradesh will be referred to as the 'State'. We might also mention that before the appeals were heard on merit, C.A. Nos. 132 and 136 of 1982 were dismissed as not pressed, owing to lack of instructions, by our Order dated August 17, 1983 and C.A. Nos. 135, 141 and 163 of 1982 were also dismissed by this Court as not pressed. Thus, the appeals filed by the candidates or the State which survive, alone need be adjudicated by this Court. The facts of the case, the grounds taken by the candidates or the State and other details have been very clearly set out in the judgment of the High Court and it is not necessary for us to repeat the same all over again.

7. The appeals arise out of the admissions sought by several candidates to the M.D./M.S. course for the year 1981-82, the session starting from April 1, 1981. In order to regulate the admission of the candidates to the M.D./M.S. course the Government by an Order dated December 3, 1980 laid down the tests and criteria for admitting the candidates to the courses in various disciplines. The High Court has rightly pointed out that there are diverse modes of determining one's merit which, in our opinion, is of prime importance because while admitting candidates to M. D. course every precaution should be taken to rule out inefficiency or incompetency lest the candidate admitted and passed, turns out to be a serious health hazard to the people who are to be treated by him. The High Court further pointed out that merit should be determined with reference to good academic career or to the performance at the last M.B.B.S. examination or at the last qualifying examination. It is common ground that in these cases of the candidates, they had passed their M.B.B.S. examination securing aggregate marks ranging from 63 per cent to 43 per cent in various disciplines. The main disciplines in which the admissions were sought by the candidates were - M.D. (Obstetrician and Gynaecology), M.D. (Anaesthesia), M.S. (Orthopaedic Surgery), M.D. (Pediatrics), M.D. (Medicine) and M.D. (Tuberculosis) differing from candidate to candidate. The Government by its Order dated December 3, 1980, as mentioned above, chose the safest method to determine the merit and suitability for the candidates to be admitted to the M.D./M.S. course on the basis that the admission should be made purely on merit as gleaned from the marks obtained by them in the total percentage of the M.B.B.S. examination. The Government Order dated December 3, 1980 may be extracted below because on this depends the entire fate of the admissions to be granted to the competing candidates :

The Governor, considering it so necessary and keeping in view the recommendations of the Medical Council of India, is pleased to order that with effect from December 14, 1979 the following policy and procedure shall be followed with regard to the admission of candidates in the post-graduate course (Degree and Diploma) in the State Medical Colleges and the King George's Medical College, Lucknow :

- (1) Admission shall be made only on the basis of merit.
- (2) The basis of determining the merit shall be percentage of marks worked out after deducting one per cent marks for each failure in every subject from the total percentage of marks obtained in the M.B.B.S examination. In case of a candidate

who fails in a subject and is declared successful in second or subsequent attempt in that subject, the marks obtained by him for day-to-day performance in the first examination in that subject shall be added to his total marks while preparing the said index.

8. The Order seems to us to be fully consistent with the tenor and spirit of the Rules framed by the Medical Council of India, which is a statutory body, whose Rules are binding on all the colleges and universities in the country providing for medical education. On an interpretation of the Government Order the High Court was of the opinion that a candidate passing M.B.B.S. examination in four subjects with a third division cannot be preferred to the one possessing the said degree in one subject only with a first division because that would decide the index of merit. The Government Order was made under Section 28 (5) of the U.P. State Universities Act, 1973 (U.P. Act. No. X of 1973) (for short, hereinafter to be referred to as the 'Act'). The High Court also correctly found that merely because a candidate happens to obtain a diploma after passing M.B.B.S. examination in any subject he would not be entitled to weightage for otherwise the entire complexion of pure merit and suitability as intended by the Government Order, which does not provide for any such weightage, would be set at naught.

9. This now brings us to the relevant provisions of the rules framed by the Medical Council of India on the recommendations of Post-graduate Medical Education which were adopted in February 1971, i.e. long before the present writ petitions were filed in the High Court. The relevant portions of the Rules may be extracted thus :

(1) For M.D./M.S. degree in clinical subjects, there shall be proper training in basic medical sciences related to the disciplines concerned as well as paper in these subjects at the examination. In the case of M.D. and M.S. in basic medical sciences there should be training in applied aspects of the subject and a paper on the subject.

(3) Thesis should be a part of the examination in the degree courses as this gives training in research methodology.

(4) The student-teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year be maintained at 1 : 1.

For the proper training of the post-graduate students, there should be a limit to the number of students admitted per year. For this purpose every unit should consist of at least 3 full time post-graduate teachers and can admit not more than 3 students for post-graduate training per year. If the number of post-graduate teachers in the unit is more than three then the number of students can be increased proportionately. For this purpose one student should associate with one post-graduate teacher.

Where the number of post-graduate teachers is less than 3 per unit then the number of students should be reduced so as to keep the ratio to one student-teacher per year.

10. It would be seen that it was clearly mandated by the Medical Council that normally the ratio of student : teacher should be one teacher to one student per unit and in exceptional cases in a unit with one post-graduate qualification, a maximum of two students should be admitted per year. The Rules further lay down that in addition to the students admitted to M.D./M.S. courses, a maximum number

of six students per year can be admitted to diploma courses in such departments where diploma courses are conducted. In case the number of recognised post-graduate teachers was more than three, the number of students for admission to the diploma course may be increased on a ratio of two students per additional recognised post-graduate teacher per year subject to a maximum of 12 students admitted in the department. Then come the most important Rules which determine the selection of post-graduates for degree and diploma courses. Rules 5 and 7 may be extracted thus :

(5) The selection of post-graduates both for degree and diploma courses should be strictly on the basis of academic merit.

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(7) Candidates pursuing degree or diploma courses should work in the concerned department of the institution for the full period.

11. Coming now to the criteria laid down by the Rules for selection of candidates, Paragraph (1) of Rule (c) may be quoted below :

They must subsequently have done one year's housemanship prior to admission to the post-graduate degree or diploma course. Housemanship should preferably be for one year in the same subject, or at least six months in the same department and the remaining six months in an allied department. Provided that in departments like Radiology/Anaesthesiology/Physical Medicine and Rehabilitation where suitable candidates who have done housemanship in the respective subject for the respective speciality are not available then the housemanship in Medicine and/or in Surgery may be considered as sufficient.

12. The above Rule clearly provides that the candidates must have done one year's housemanship prior to admission to the post-graduate degree or diploma course preferably in the same subject, which has been technically called as 'discipline', or at least six months in the same department and the remaining six months in an allied department. It further lays down that in order to determine the merit of a candidate for admission to post-graduate medical courses the following three factors must be taken into consideration :

(1) his performance at the M.B.B.S. examination,

(2) his performance during the course of internship and housemanship for which a daily assessment chart should be maintained, and

(3) the report of the teacher which is submitted from time to time.

13. Alternatively, the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses.

14. The other methods covered by the Rules are not germane for the purpose of deciding these cases. As these Rules were adopted by the Medical Council of India they became rules made under Section 33 of the Indian Medical Council Act of 1956 passed by the Government of India, and, therefore, had doubtless a statutory effect.

15. The candidates consists of students who had not been admitted to the medical courses and they

have assailed the refusal of their admission as being violative of Article 14 of the Constitution and to the statutory orders passed and rules framed by the Government from time to time. In some cases, the Government Order referred to above has also been challenged as being arbitrary and outside the scope of Article 14.

16. Before dealing with the contentions of the parties on merit we might dispose of a few matters as a result of which some of the appeals do not survive at all. As observed above, the admission sought by the candidates were in the session of 1981-82 and by the time these cases came up for hearing by the High Court or this Court, the session has completely run out but as provisional admissions had been allowed either by the High Court or by this Court the candidates had completed their M.D./M.S. courses and in some cases only the results were to be declared. Realising the piquant situation that arose in view of the provisional admissions, the learned counsel for the State very fairly agreed to the declaration of the result of the following candidates.

#1. Dr. Krishna Priya Ganguly (C.A. No. 133/82)2. Dr. Gopal Krishna Goyal (C.A. No. 134/82)3. Dr. Pramod Kumar Kohli (C.A. No. 137/82)4. Dr. Pratap Singh (C.A. No. 138/82)5. Dr. Kamal Mehra (C.A. No. 139/82)6. Dr. R. S. Topwal (C.A. No. 140/82)7. Dr. Hari Om Gupta (C.A. No. 3045/82)8. Dr. R. C. Aggarwal (C.A. No. 3046/82)9. Dr. Ved Prakash Gupta (C.A. No. 3047/82)##

17. The Counsel for the State further agreed to passing an order that those candidates who were refused admission but granted provisional admissions under the orders of the Court may be deemed to be admitted to complete the course according to the provisions of the Rules. We might mention that this concession was made because the candidates concerned had secured pretty high percentage and since they had completed the course in the peculiar facts and circumstances of the case. As far as C.A. No. 3045/82 filed by the State against the decision of the High Court is concerned, the view taken by the High Court is unsustainable. The High Court could not have given a go-by to the rules framed by Admission Committee. It was a matter for decision of the academic body and since the academic body had applied the rules in a bona fide manner to all the students equally, there was no jurisdiction whatsoever on the part of the High Court to interfere with the internal working of an academic institution concerned with imparting higher education in the field of post-graduate course in medicine. The Rule prescribing that housemanship must be in the same subject is not inconsistent with the Ordinance. It is supplementary to the Ordinance and amplifies the same. Hence there is no inconsistency and the High court was therefore clearly wrong. however, as the counsel for the State has agreed to declare his result we do not pass any order for reversing the directive issued by the High Court as far as Dr. Hari Om Gupta is concerned though the High Court was wrong.

18. As regards C.A. No. 3047/82 which has been filed by the State, the view taken by the High Court is altogether untenable. The condition regarding putting in two years' work in the department concerned could not have been dispensed with. The High Court should not have interfered with the decision of the academic body. The High Court cannot relax the rules or rewrite them. After the declaration of his result, as agreed to by the counsel for the State, if he fails at this examination he will have to put in two years' work in the department concerned before he is permitted to appear for the final examination next time.

19. So far as the above-mentioned appeals are concerned, it is not necessary for us to go to the merits or to give the reasons thereof in view of the fact that the candidates got what they wanted, on the basis of the concession made by the counsel for the State and accepted by this Court, as a result of which we passed orders for declaring the results of the candidates or directing them to complete

the course. We would however like to make it clear that after declaration of the results in case the candidates concerned in appeals do not pass or their these are not approved, they would have to do the full course all over again. This position was accepted by the candidates who conceded that in case they failed in the examination the logical consequences will follow. The candidates who were directed by this Court to be given admission may be listed below :

#1. Dr. Aditya Kumar (C.A. No. 142/82)2. Dr. Manoj Kumar (C.A. No. 143/82)##

20. The appeals that remain for consideration may now be taken up, viz., C.A. Nos. 144, 145 and 595 of 1982. We might mention here that out of the appeals filed by the State the appeal which has been seriously pressed before is that of Dr. V. N. Sinha (C.A. No. 595/82) and the State has invited us to give a final decision in the matter which involves a serious question of principle.

21. Coming first to C.A. No. 144/82 filed by Dr. Rachna Saxena it appears that she had obtained an aggregate of 53.7 per cent but the main obstacle in her way was that two candidates with a higher aggregate had been admitted and therefore her case did not merit any consideration. Even from amongst those who did not secure admission there were four others who had secured higher marks than her viz., Dr. Ganguly (59.23 per cent), Dr. Aggarwal (57.40 per cent), Dr. Jain (56.9 per cent) and Dr. Upadhyaya (55.33 per cent). She could not therefore have secured admission in any event. She cannot therefore complain of discrimination. For these reasons, therefore, we affirm the decision of the High Court and dismiss C.A. No. 144/82 without any order as to costs.

22. C.A. No. 145/82 has been filed by Dr. V. K. Kohli. After going through the judgment of the High Court and hearing counsel for the parties we entirely agree with the view taken by the High Court which seems to us to be unexceptionable on merits and must be confirmed. The appeal is therefore dismissed without any order as to costs.

23. Coming now to C.A. No. 595/82 which has been filed by the State it seems to us after hearing counsel for the parties that the stand taken by the States absolutely correct and for the reasons that we will give hereafter we find it impossible to support the judgment of the High Court.

24. To begin with, Dr. Vijay Narain Sinha who was being considered for admission to the M.S. course in Orthopedic Surgery had obtained only 43 per cent marks in the aggregate and happened to be the last candidate in the list of persons who had applied for admission to the M.D./M.S. course. This important handicap relating to Dr. Sinha seems to have been completely glossed over by the High Court by saying that though he has not secured very high marks but he could be almost equal in all respects to the candidates who had been granted admission. This, however, was not so. The main argument of the High Court was that in determining the six admissions which were made in consonance with the prescribed instructions indicated that the ratio of admission should be with respect to the strength of the staff in the concerned department. The main complaint of the respondent (Dr. Sinha) was that while there were six teachers in the Department of Orthopaedic Surgery, nine admissions were made in that particular session. The State had clearly explained that the usual number of candidates to be admitted was six and as a special case due to fortuitous circumstances an exception was made only in one session for good reasons which had been given by the State. Thereafter no such departure had been made in any other session. What the High Court completely overlooked was that even if nine students were admitted Dr. Sinha could not have secured admission as he was on the very bottom of the list in view of the very low percentage secured by him. The stand taken by the State has not been refuted by the counsel for the respondent who submitted that since the State had agreed to declare the results of all the candidates the

respondent may also be given the same facility. We are, however, unable to agree with this argument because to grant admission to a person who is appreciably below the required merit would be to play with the lives of the people whom the candidate would have to treat after getting the M.S. degree. The High Court seems to have relied mainly on the fact that in view of the increase in population and orthopaedic cases the college must have persons with special qualifications and as the respondent had a diploma that should be treated to be a special qualification. A mere diploma however cannot override the consideration regarding the merit as disclosed in the low aggregate obtained by him in the last M.B.B.S. examination. If the college authorities went by the pure test of merit, the diploma could not be a good substitute for admitting the lowest and the last candidate in the list.

25. The High court could not devise its own criterion for admission. Since the academic body has made the marks obtained in M.B.B.S. examination the criterion, admission had to be made by such a criterion. The High Court could not have introduced its own notions in such an academic matter. The High Court was not competent to do so and had no jurisdiction to import its own ideology.

26. The High Court further observed that the respondent appears to be a very dedicated worker having acquired a diploma and would have proved an invaluable asset to the Institution. We do not see any proper material for this conclusion to which the High Court has suddenly jumped apart from the fact that admission were not to be given by the High Court according to its own notions. Finally, in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to the respondent which he himself never prayed for and could not have prayed for. Such a gross discrimination made in the case of a person who had obtained lowest aggregate and lowest position seems to us to be extremely shocking. Although much could be said against the view taken by the High Court yet we would not like to say more than this that the High Court had made a very arbitrary, casual and laconic approach to the case and based its judgment purely on speculation and conjectures swept away by the consideration that Dr. Sinha possessed a diploma when in fact other candidates also had obtained diploma but that could not be taken into consideration, because the Rules did not so provide.

27. For these reasons, therefore, we allow this appeal and set aside the judgment of the High Court issuing mandamus to the state to admit the respondent to the M.S. course. His writ petition in the High court thus stands dismissed.

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