

State of Rajasthan and Another

Vs

Dr. Ashok Kumar Gupta and Others

Civil Appeal No. 2461-2463 of 1987

(M. P. Thakkar, B. C. Ray JJ)

11.10.1988

JUDGMENT

THAKKAR, J. –

1. What may 'appear' to be equal treatment accorded in obeisance to the equality doctrine embodied in Article 14 of the Constitution in its application in 'reality' may result in denial of equality and may accordingly be liable to be condemned for defying the equality doctrine. This has been illustrated by the provision embodied in Ordinance No. 278-E (d) (ii) of the Ordinance of University of Rajasthan which provides for uniform addition of 5 per cent marks to a student applying for admission to the post-graduate course in any one of the five Medical College provided the student has passed his final MBBS Examination from the college to which admission in post-graduate course is sought. The said provision has been held to be unconstitutional and in our opinion the conclusion reached by the High Court is right though the reasoning which has commended itself to this Court is somewhat different.

2. Three writ petitions were instituted in the Rajasthan High Court, (Jaipur Bench) by the writ petitioners who sought admission to postgraduate course in the colleges affiliated to the Rajasthan University. There are five such Medical Colleges at five different centres in Rajasthan, Viz. Jaipur, Bikaner, Udaipur, Jodhpur and Ajmer. It appears that for the purpose of securing admission to these colleges the applicants seeking admission have to appear at a competitive examination called PG. The passing of this examination is a precondition for securing admission to the PG course in any one of the aforesaid five colleges in Rajasthan. The PG competitive examination is 'common' for all the five Medical colleges. There is one syllabus and one combined examination is conducted by the University. The successful candidates are entitled to addition of 5 per cent marks in the percentage of aggregate marks by way of institutional preference if the concerned candidates had passed the final MBBS examination conducted by the Rajasthan University. A further addition of 5 per cent of marks by way of institutional preference in the sense of preference dependent on the particular Medical College at which the concerned candidate had passed his final MBBS examination is also provided. It is this college-based institutional preference which has given rise to the present controversy. Such preference is rooted in the impugned provision namely Ordinance 278-E (d) which deserves to be quoted :

(d) The total marks so obtained shall be converted into percentage. The percentage so obtained shall be increased as follows :

(i) By 5 if the applicant passed the final MBBS examination for the Rajasthan University.

(ii) By another 5 if the applicant passed the final MBBS examination from the same institution for which selections are being made.

The write petitioners contended that this provision violated the equality principle enshrined in Article 14 of the Constitution of India and was accordingly unconstitutional. It appears that while each of the five Medical Colleges in Rajasthan is conducting post-graduate courses in specified specialities and super specialities, the doctors who have graduated from all the Medical Colleges in Rajasthan by and large consider admission to post-graduate course at SMS College at Jaipur as most advantageous. In other words securing admission in postgraduate course at Jaipur in SMS College is considered to be an achievement and the courses at Jaipur are the most sought after courses. The reasons underlying this keenness to secure admission in Jaipur College are understandable inasmuch as :

(i) there are many more seats available for PG courses; and

(ii) there are many more specialities available at the Jaipur College as compared to other colleges;

A Tabular statement reflecting the position seats in the five medical colleges may be scrutinized :

#	Subject	SMS	SN	RNT	SP	
College	College	Jaipur	Jodhpur	Udaipur	Bikaner	Ajmer
1.	Genl. Surgery	17(4)	10(2)	8(2)	8(2)	8(2)
2.	Genl. Medicines	21(5)	9(2)	10(3)	10(2)	11(3)
3.	T.B. & C.D.	2(1)	1(0)	1(0)	0(0)	0(0)
4.	Skin V.D.	2(0)	1(1)	0(0)	0(0)	0(0)
5.	Psychiatry	3(1)	0(0)	0(0)	11(0)	0(0)
6.	Gyne. & Obst.	18(4)	8(2)	8(2)	8(2)	8(2)
7.	Paed. Medicine	11(3)	5(1)	4(1)	4(1)	4(1)
8.	Anaesthesia	11(3)	4(1)	4(1)	4(1)	4(1)
9.	Radio-Diagnosis	2(0)	2(1)	2(1)	2(0)	10(3)
10.	Radio-Therapy	1(1)	0(0)	0(0)	1(0)	0(0)
11.	E.N.T.	2(0)	1(1)	1(0)	1(0)	1(1)
12.	Ophthalmology	6(1)	2(0)	2(1)	2(0)	2(1)
13.	Orthopaedics	8(2)	2(1)	2(0)	2(1)	2(0)
14.	Pathology	4(1)	1(0)	1(0)	1(1)	1(0)
15.	Microbiology	2(1)	1(0)	1(1)	1(0)	1(0)
16.	P.S.M.	2(0)	1(0)	1(0)	1(1)	1(0)
17.	Physical/Medicine & Rehabilitation	1(0)	0(0)	0(0)	0(0)	0(0)
18.	Anatomy	1(1)	0(0)	0(0)	0(0)	0(0)
19.	Physiology	0(0)	1(0)	0(0)	0(0)	0(0)
20.	Bio-Chemistry	0(0)	0(0)	1(0)	0(0)	0(0)
21.	Pharmacology	0(0)	0(0)	0(0)	0(0)	0(0)
		46(12)	47(12)	45(11)	301(75)	
B. DIPLOMA						
	VID.A.	6(1)	0	6(2)	6(1)	0
	D.C.H.	6(2)	0	6(1)	6(2)	0
	D.P.H.	6(1)	0	0	0	0
	D.G.O.	6(2)	0	6(1)	0	0
	D.M.R.D.	6(2)	0	0	0	6(2)
Total :		30(8)	0	18(4)	12(3)	0
		60(15)				

Now it has to be realized that the aggregate of marks for all subjects put together is 2750. 5 per cent of these marks would work out to 137.5 marks. In the result a candidate from the same college will have an advantage of 137.5 marks over candidates from other colleges. In medical courses where there is intense competition and candidates run neck to neck so often with a difference of a mark or two, a difference of 137.5 marks by way of collegewise institutional preference would virtually make a mockery of the merit criteria. A candidate, say from Jaipur College, who secures 137.5

marks less than a candidate from Jodhpur, Bikaner, Udaipur or Ajmer will get admission in PG course at Jaipur in preference to the other more meritorious candidates merely because he passed the MBBS examination at Jaipur even though all of them secured their marks at the identical competitive examination for all the colleges. It needs no argument that Article 14 is seriously shattered.

3. Statements filed by the parties in this Court further go to show that some disciplines are available only in particular colleges and not in other colleges. For instance :

1. M.D. in 'Physical Medicine and Rehabilitation' is available only in SMS College, Jaipur.

2. 'T.B. and C.D.' is not available in Ajmer Medical College.

3. 'Skin and V.D.' is not available in Udaipur and Ajmer Colleges.

4. 'Psychiatry' is available only in Jaipur and Bikaner Colleges and not in others.

5. M.D. in 'Radio-Therapy' is available only in Jaipur and Bikaner and not in other colleges.

4. An analysis of the data reflected in aforesaid statement and its impact on the fortunes of the students aspiring for the post-graduate courses reveal :

(i) that a student passing his final degree examination in MBBS from Jaipur would steal a march over the students passing from the remaining four colleges for with 5 per cent weight-age a student from Jaipur would have a far better chance of securing admission in a post-graduate course at Jaipur inasmuch as there are as many as 114 seats at the Jaipur medical College as compared to the number of seats ranging between 45 and 49 in each of the remaining Medical Colleges regardless of the superior merits of students from other colleges.

(ii) a student passing his final degree examination in MBBS from Jaipur aspiring for admission in PG course would have a far better chance of securing admission in the subject of his choice vis-a-vis students from all other colleges inasmuch as in each subject the number of seats in the Jaipur College is much larger than in any of the remaining colleges regardless of his superior merits.

(iii) a candidate from any of the four colleges other than Jaipur College would have practically no chance of securing admission in certain disciplines such as :

(a) Physical Medicine and Rehabilitation,

(b) Anatomy, (subject to rotation after 1988)

(c) Radio-Therapy, and

(d) Psychiatry etc.

regardless of his superior merits.

(iv) a candidate with a special aptitude for a particular discipline would not get admission in PG course in that discipline unless he belongs to a college in which the particular discipline is available regardless of his superior merits.

5. The merit position in relation to the students would also undergo a vast change as is revealed by the tabular statement reproduced hereunder :

Merit position of respondent with and without 'Collegewise' institutional weightage-----SI. No. Name Merit Position with 5 per cent institutional weightage with 5 per cent institutional weightage-----1. Dr. Ashok Kumar Gupta 207 1712. Dr. Rajeev Ahuja 226 2093. Dr. Ashwani Kumar Singh 201 1624. Dr. Ishwar Das 177 1315. Dr. Ratan Lal Tiwari 215 1816. Dr. Madhu Sanwal 97 45-----##

6. The fortunes of the candidates would thus undergo a sea change. Those who are more meritorious having secured more aggregate marks than others would not get admission to PG courses anywhere in Rajasthan, whereas those with lesser merits would get admission by reason of the 5 per cent collegewise preference. To take the case of the appellants, they having secured aggregate marks of 1650, 1638, 1624, 1617 and 1613 have not been able to secure admission in any discipline. As against this candidates having secured such less marks already secured admission in one or the other of the five Medical Colleges. In order to illustrate the point, the tabular statements reproduced hereinbelow may be glanced at :

#-----Medical College Aggregate marks of Discipline allotted last candidate-----Jodhpur 1548 M.D. (Anaesthesia)Udaipur 1626 M.S. (Surgery)Jaipur 1602 M.D. (Anaesthesia)Bikaner 1622 M.D. (Microbiology)-----##

Statement showing list of candidates, less meritorious (than the appellants) who have secured admission

#-----College Aggregate marks Discipline allotted-----Jodhpur 1610, 1605 M.D. (Medicine) 1601 M.D. (Skin & V.D.) 1606, 1595, 1590 M.S. (Surgery) 1576, 1577 M.S. (Orthopaedics) 1582, 1570, 1548 M.D. (Anaesthesia) 1638 M.D. (Medicine) 1637, 1635, 1626 M.D. (In T.B.& C.D., Psychiatry, Skin & V.D.) 1629, 1610, 1604 M.S. (Surgery) 1620 M.S. (Orthopaedics) 1617, 1603, 1602 M.D. (Anaesthesia)-----##

7. What emerges form the above statements is that while one of the appellants who has secured 1650 marks in the common competitive examination has not been able to secure admission in PG course in any college in Rajasthan, a candidate who secured about 100 marks less (1548 marks) in the very same examination has been able to secure admission. And the rest of the appellants have not been able to secure admission anywhere though they have demonstrably secured more marks and are more meritorious than the aforesaid 22 persons. This analysis exposes the extremely unfair and unjust impact of the impugned rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of it the impugned rule appears to extend or accord

equal treatment of 5 per cent weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of 'apparent' equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive 'reality'. Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Article 14 of the Constitution of India.

8. The High Court has struck down as unconstitutional the impugned provision embodied in note (d) (ii) of Ordinance 278-E mainly on the ground that coupled with the institutional preference accorded under clause (i) it would virtually amount to making 100 per cent reservation in favour of the students of the Rajasthan University in the sense that no other student of any other University would have any reasonable chance to secure admission to these courses, relying on the principle enunciated in *Nidamarti Mahesh-kumar v. State of Maharashtra* ((1986) 2 SCC 534). The reasoning is reflected in the following passage extracted from paragraph 25 of the judgment under appeal :

Thus, after having given 5 per cent weightage on the ground of institutional preference that a candidate has passed his final MBBS examination from the University of Rajasthan, further 5 per cent weightage on the ground that he has passed his MBBS final examination from the Medical College where he seeks admission, in post-graduate course, is unreasonable and arbitrary and does not stand the touchstone of Article 14 of the Constitution. If 10 per cent weightage is given as aforesaid it will come to 275 marks and with this increase in marks no candidate from University other than University of Rajasthan can get admission to post-graduate course in any one of the medical colleges. It is against the equality clause as it amounts to cent per cent reservation as 10 per cent weightage in admission to post-graduate course to a student, 5 per cent weightage on the University basis and 5 per cent on the institutional basis, amounts to total exclusion of candidates of other Universities. We have already referred to the admissions for the years 1986 and 1987 and at the cost of repetition we may say that a look at Schedules 'A' and 'B' regarding admissions in SMS Medical College, Jaipur in post-graduate courses for the years 1986 and 1987 respectively will show that not a single candidate from the University other than University of Rajasthan could Seek admission.

9. Since however a number of seats are now (since 1988) reserved in each college for candidates on an all-India basis as disclosed by the tabular statements reproduced in the earlier part of this judgment, We prefer to rest our decision on the reasoning indicated earlier. These are the reasons which impelled us to pass the final order as under on July 21, 1988 :

ORDER

I

The appeals fail and are dismissed.

II

Ordinance 278-E (d) (ii) of the Ordinances of the University of Rajasthan is declared as unconstitutional and quashed.

III

Admissions to the post-graduate degree courses in all the Medical Colleges at all centres in Rajasthan shall hereafter be made in accordance with the decision of the High Court rendered on August 7, 1987 in the writ petitions giving rise to the present appeals which is hereby confirmed.

IV

Future vacancies including unfilled vacancies to the post-graduate degree courses in all the Medical Colleges in Rajasthan shall hereafter be filled on the basis that Ordinance 278-E (d) (ii) is invalid provided however that those students who have been admitted to post-graduate courses pursuant to the interim order of this Court will not be disturbed and will be permitted to complete their courses.

V

Unfilled vacancies may be filled in accordance with and in the light of this order even at this juncture if it can be so done.

VI

Reasons will follow.

VII

There will be no order as to costs.

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