

Dr (Mrs) Kirti Deshmankar

Vs

Union of India and Others

Civil Appeal No. 4479 of 1990

(M. H. Kania, L. M. Sharma JJ)

06.09.1990

JUDGMENT

SHARMA, J. -

1. Special leave is granted.
2. The appellant and respondent 5 along with others were candidates for admission to the Post-Graduate Course in Obstetrics and Gynaecology in the G.R. Medical College, Gwalior. They had duly passed the MBBS examination and satisfied the other essential conditions for admission. The selection of the candidates was made on the basis of their relative merit and respondent 5 was selected as the last candidate in the list of the successful applicants. The appellant was placed on the top of the waiting list and was admitted for the Diploma Course. She challenged the admission of respondent 5 on the ground that the latter was a foreign national, and was not entitled to be considered for admission in absence of prior clearance certificate by the Ministry of Health and Family Welfare, Central Government; which she could not file along with her application nor could she produce it before she was finally selected. A writ application under Article 226 of the Constitution filed by the appellant was heard by a Full Bench of the Madhya Pradesh High Court and was dismissed by the judgment under appeal.
3. The learned counsel for the appellant has relied upon the Instruction dated August 6, 1983 issued by the Government of India, Ministry of Health and Family Welfare, to the Deans and the Principals of all Medical Colleges regarding procedure for admission of foreign students in medical institutions in the country. By a subsequent order the Instruction which in terms had been issued for a particular year was kept alive. The learned counsel for the respondents have not disputed the binding nature of the Instruction. But there is a serious dispute about its interpretation.
4. After the receipt of the applications for admission the matter was scrutinised by a committee described as the College and Hospital Council and it prepared a merit list in which respondent 5 ranked higher than the appellant. Objections were invited latest by October 23, 1989 and the appellant filed her application within time alleging that respondent 5 was not eligible for admission at all as she had not produced the necessary certificate from the Ministry of Health and Family Welfare. It appears that respondent 5 had produced a letter from the Ministry of External Affairs stating that the said Ministry had no objection to the admission of the respondent. The objection was considered by the College and Hospital Council of which besides others the Dean Dr A. K. Govila as also the mother-in-law of respondent 5 Dr (Mrs) P. Oliyai, a former Professor and Head of the Department of Obstetrics and Gynaecology of the College were members. The objection raised by the appellant was rejected by the following decision :

"(b) Dr. Roza Oliyai, since married to an Indian doctor and obtained the permission of Ministry of External Affairs (Letter No. 1703/Dir.(GMS)/89 dated August 31, 1989), the objections raised were rejected and her merit stands as status quo."

Accordingly the final list was published on November 8, 1989. Respondent 5 was, however, able to obtain the necessary certificate from the Ministry of Health and Family Welfare later and the same was filed in the College. Respondent 5 was formally admitted in the first week of December 1989.

5. The learned counsel for the appellant has pressed the following two points in support of the appeal :

(a) The selection of respondent 5 by the College and Hospital Council was vitiated on account of participation of the respondent's mother-in-law as a member; and

(b) Under the Government of India Instruction it was necessary for respondent 5 to have produced before the College and Hospital Council the necessary certificate from the Ministry of Health and Family Welfare before her final selection. The crucial date was when respondent 5 was finally selected and her formal admission later in December 1989 was not material. Also the certificate issued by the Ministry of External Affairs could not be a substitute for the Ministry of Health and Family Welfare.

6. The first argument of the learned counsel for the appellant is well founded. Dr (Mrs) P. Oliyai was, without any doubt, vitally interested in the admission of her daughter-in-law and her presence in the meeting of the Council must be held to have vitiated the selection of respondent 5 for admission. As was observed in *A. K. Kraipak v. Union of India* ((1969) 2 SCC 262 : (1970) 1 SCR 457) there was a conflict between her interest and duty and taking into consideration human probabilities in the ordinary course of human conduct, there was reasonable ground for pleading that she was likely to have been biased. In the *Kraipak* case ((1969) 2 SCC 262 : (1970) 1 SCR 457) the person concerned was the Acting Chief Conservator of Forests who did not participate in some of the deliberations of the Selection Board, but the fact that he was a member of the Board and that he participated in the deliberations where the claims of his rivals were considered and in the preparation of list were held to have necessarily caused an impact on the selection, as the Board must have given weight to his opinion. In that case the other members of the Board had filed affidavits stating that the Acting Chief Conservator had in no manner influenced their decision, but this was not considered sufficient to save the selection. The principle has been followed in numerous cases including in *Ashok Kumar Yadav v. State of Haryana* ((1985) 4 SCC 417 : 1986 SCC (L&S) 88) where it was emphasised that it was not necessary to establish bias and that it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. It is regrettable that in spite of repeated reminders by the courts of law, the College and Hospital Council constituted by a number of highly educated persons and headed by the Dean himself did not pay any heed. It was expected of Dr (Mrs) Oliyai to dissociate from the Council instead of espousing the case of her daughter-in-law and in any event it was the bounden duty of the Dean to have seen that Dr Oliyai did so before proceeding with the selection process. We, accordingly hold that the selection of respondent 5 for admission to the Post-graduate Course was vitiated in law.

7. Ordinarily as a result of our above finding the matter would have been sent for reconsideration by a properly constituted selection committee, but having regard to the nature of the dispute between

the rival doctors for the right of admission to the course of study for the present session which is fast progressing necessitating expeditious disposal of the issue, we asked the learned counsel for the parties to place the merits of their respective cases. Accordingly, arguments were addressed, and we have considered the same at some length, and we proceed to decide the controversy finally here.

8. Although during the hearing the learned advocates for the parties made submissions dealing with several other facets of the disputed issue, but ultimately they agreed, and in our view rightly, that the final outcome of the present litigation is dependent on the interpretation of the direction as contained in the Instruction issued by the Ministry of Health and Family Welfare, referred to above. At one stage it was suggested on behalf of the respondent that since she has now acquired Indian nationality, she cannot be thrown out of the College. There is no merit in this argument, as admittedly the respondent was not a citizen of this country when she was actually admitted in the College in the first week, of December 1989. Mr G.L. Sanghi also relied upon the letter dated August 31, 1989 issued by the Ministry of External Affairs in favour of the respondent which was relied upon by the College and Hospital Council for rejecting the objection of the appellant. This again cannot be of any help. The role of the Ministry of External Affairs is distinctly different from that of the Ministry of Health and Family Welfare, and a certificate of no objection by one department cannot be a substitute for the clearance by the other. Scrutiny by the Ministry of External Affairs is made with a view to screen the person concerned to find out whether he is desirable person at all to enjoy the hospitality of the country in the background of various relevant factors in this regard. So far the Ministry of Health and Family Welfare is concerned, it has to take into account the question whether a seat for the medical course either up to the degree standard or the post-graduate stage can be spared for a foreign national. The State has to spend a large sum of money in running institutions of higher technical education and the seats are limited. In such a situation a seat can be allotted to a foreign national only at the cost of a citizen of this country. The College and Hospital Council was, therefore, not right in deciding to admit respondent 5 on the strength of no objection certificate by the Ministry of External Affairs.

9. Now remains the question as to meaning of the aforesaid Instruction which contains two provisions as mentioned in clauses (a) and (b). Undisputedly clause (a) is not attracted in the present case as the seat in question has not been made available by the Ministry of Health and Family Welfare and consequently there is no question of a foreign student to be sponsored by the said Ministry. The second of the Instruction as contained in clause (b) reads as follows :

"(b) No foreign student, who is seeking admission directly for such course, shall be admitted unless Ministry of Health and Family Welfare gives its clearance."

According to the appellant the state at which the condition mentioned above has to be satisfied is when the final selection for admission is made. Mr Sanghi contends that the direction has to be construed in the light of the expression "admitted" used therein, which indicates that if the necessary certificate is produced before the actual admission takes place, the same cannot be held to be illegal. The learned counsel pointed out that the purpose of the Instruction is to ensure that no foreign national is allowed to occupy a seat ordinarily meant for the citizen of the country without the permission of the Ministry of Health and Family Welfare, Government of India, and once the hurdle is cleared, the purpose is fully satisfied. After the production of the necessary clearance, there does not remain any reason for rejecting the claim of a more meritorious candidate. He emphasised the fact that respondent 5 having secured higher percentage of marks than the appellant in the MBBS examination was adjudged a better candidate on merits. We agree. Accordingly, we find that the admission of respondent 5 cannot be ignored or cancelled on the ground of any illegality. The

appeal is, therefore, dismissed but, in the circumstances, without costs.

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