Dr. Sumanha Gajendragadkar

Vs

State of Madhya Pradesh and Others

Writ Petition (Civil) No. 1020 of 1990

(L.M. Sharma, Smt. M.S. Fathima Beevi JJ)

07.11.1990

ORDER

1. The case has been placed on board today for preliminary hearing. We have hard the learned counsel for the petitioner at considerable length and, in our opinion, the writ petition is fit to be dismissed in limine. We proceed to briefly indicate our reasons.

2. According to the case of the petitioner she has applied for admission to the MS course in Ophthalmology and her name stands on the top of the waiting list. She is, however, being denied admission on the ground that there is no vacancy. The contention is that the authorities are not justified in limiting the total strength of the seats on the basis of Rule 4 of the Madhya Pradesh Selection for Post-graduation Courses (Clinical, Para-clinical and Non-clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984 (hereinafter referred to as "the Rules") which reads as follows (as mentioned in Annexure 'D' to the writ petition) :

> "4. (a) The total number of seats available for admission shall be determined in accordance with the Medical Council of India regulations. This strength shall be revised every January on the basis of the post-graduate teachers available as on December 31 of the preceding year. However, the existing strength shall remain frozen till such time as the Medical Council of India requirements with regard to post-graduate teachers are fulfilled.
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> Categorywise number of seats available in clinical subjects in 1984 are given in Annexure I."

It is said that the State, respondent 1 has erroneously frozen the seats since 1984 in pursuance of this rule which is ultra vires. In support of the argument the petitioner has alleged that in the departments other than Ophthalmology respondent 1 has arbitrarily increased the seats from time to time and for that reason the Rule 4(a) must be struck down. We cannot agree with the petitioner as we do not find any justification for striking down the rule on the ground that the State under the cover of the rule is misusing its position. It cannot be suggested that the power under the rule is unbridled. It directs the existing strength to "remain frozen till such time as the Medical Council of India requirements with regard to the post-graduate teachers are fulfilled". If the State has at any point of time in another department exercised the poser in violation of this provision the same may be vulnerable, but for that reason no fault can be found with the rule.

3. The learned counsel has also referred to ground (F) in paragraph 71 of the writ petition challenging Rule 3 of the Rules which, as mentioned in Annexure 'D' to the writ petition, is quoted

below :

> "3. These courses shall be open to -
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> A. Merit candidates graduating from Medical Colleges in M.P.
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> B. Assistant Surgeons serving under the State Government.
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> C. Armed Forces Personnel, and
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> D. Private Medical Practitioners practising and settled in Madhya Pradesh and Medical Officers employed in Central Government institutions and Public Undertakings located in Madhya Pradesh and medical officers of para-military forces posted in Madhya Pradesh, in accordance with the allocation of seats described for each category."

It is argued that the Rule 3 does not allot any quota to the four different groups mentioned therein. But still the authorities have reserved one seat for Assistant Surgeon as per Annexure 'C'. This argument again, even if assumed to be correct, shall render the step taken by the authorities in Annexure 'C' to be open to objection but will not render the rule itself ultra vires. We, therefore, do not find any merit in the challenge to Rules 3 and 4(a) of the Rules on the grounds urged.

4. So far the allegations against the authorities are concerned, they appear to be controversial, and even assuming that the petitioners' allegations are correct, they may lead to the conclusion that the refusal to admit the petitioner is in violation of the statutory rules, and the proper remedy of the petitioner would have been to approach the High Court by an application under Article 226 of the Constitution.

5. The learned counsel for the petitioner has attempted to justify the filing of the present application directly before this Court by stating that on an earlier occasion a writ petition by another student in similar circumstances was dismissed by the High Court by a reasoned judgment and the High Court is, therefore, not likely to grant any relief to the petitioner. It is said that since the petitioner was not a party to that case, she could not challenge the order before this Court under Article 136 of the Constitution. We do not agree that on this ground the scope of Article 32 of the Constitution can be enlarged. If the allegations made by the petitioner are true and the grounds urged on that basis are well founded, there is no reason to assume that her case will not be considered by the High Court simply because on an earlier occasion somebody else was not able to succeed. In case a writ petition, if filed by the petitioner is erroneously dismissed by the High Court, she can certainly come to this Court with a special leave petition. We, therefore, dismiss the writ petition. We, however, make it clear that we have not examined the correctness of the allegations and the grounds urged on behalf of the petitioner on merits excepting the challenge to the Rules 3 and 4(a) of the Rules, and if the High Court or any appropriate authority is moved in the present matter, the dismissal of the present writ application will not prejudice the case of the applicant.

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