

Dr. Ku. Nilofar Insaf

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 3447 of 1990

(S. Ranganathan, N. D. Ojha, Smt. M.S. Fathima Beevi JJ)

08.08.1991

JUDGMENT

RANGANATHAN, J.

1. Getting an admission into a professional course has become so difficult and competitive of late that litigation instituted by disappointed candidates has become a regular feature. This appeal, arising out of such a context, throws up for consideration certain aspects which call for a difficult exercise in balancing equities. We, therefore, proceed to discuss the facts and issues at some length.
2. The appellant Dr Km. Nilofar Insaf and respondent 4, Dr Devraj Jain, were competitors for a single seat in the Master's Degree (MD) course in Radiology at Gandhi Medical College, Bhopal. The appellant got admission to this seat in preference to Dr Jain because she had obtained average marks of 59.60 per cent in the examinations of the MBBS course whereas Dr Jain had obtained only 58.50 per cent. Dr Jain successfully challenged the admission granted to the appellant in preference to himself in a writ petition in the Madhya Pradesh High Court. Dr Insaf, who has forfeited her admission in consequence of the judgment of the High Court, has filed the present appeal.
3. In order to appreciate the circumstances in which the admission granted to the appellant was quashed by the High Court, though she had admittedly got a higher percentage of marks than Dr Jain, it is necessary to set out a few further facts. Dr Jain and Dr Insaf both completed their MBBS course in the years 1983-87. However, while Dr Jain had been admitted into and completed that course in the Gandhi Medical College, Bhopal, the appellant had initially joined her MBBS course in the M.S. Ramayya Medical College, Bangalore, wrote the first examination and completed the first year of the MBBS course there. Thereafter, in August 1984, she made an application for her transfer to the Gandhi Medical College, Bhopal. Her request was granted by the Gandhi Medical College with the approval of the State of Madhya Pradesh and with "no objection" from the Ramayya Medical College. Thereafter she sat in the second and third examinations pertaining to the MBBS degree along with Dr Jain and completed her MBBS course along with Dr Jain in 1987 from the Gandhi Medical College, Bhopal. Thereafter, both of them cleared their internship of one year and also joined a house job in Radiology in the same college and completed and same in August 1989. It was at this stage that both of them applied for being admitted to the MD course with the result already set out.
4. As already mentioned, it is not in dispute that, if the total number of marks obtained by the two contestants in all the examinations of the MBBS degree are taken and reduced to an "effective" percentage and a common maximum as per the rules, Dr Nilofar does get a higher percentage of marks than the respondent. In fact, we find from the papers filed before us that another candidate, Dr

Km, Indu Fotedar, had obtained a percentage of 59.04 which was also higher than the percentage obtained by Dr Jain. However, she is no longer in the race for a seat in MD (Radiology) as she appears to have joined the MD course in medicine that was offered to her. Thus it was that the Radiology seat went to Dr Insaf.

5. Dr Jain's challenge to the admission granted to the appellant cannot be a direct one as the latter had clearly secured higher percentage of marks than himself in the MBBS examinations. He, therefore, attacks her candidature for the MD course on other grounds which may be described as collateral or indirect. According to him, the transfer of the appellant from the Bangalore Medical College to the Bhopal Medical College was itself invalid and he urges that, since the very admission of the appellant to the MBBS degree in the Bhopal College was invalid, she could not at all have been considered for admission to the MD course which was available only to the institutional candidates. The grounds on which the transfer of the appellant from Bangalore to Bhopal is challenged by Dr Jain are -

(a) the appellant had appeared in the pre-medical test for admission to medical colleges in Madhya Pradesh. It is not known whether she passed the test or did not get a sufficiently high rank but the fact is that she did not get admission in any of the medical colleges in Madhya Pradesh. To overcome this difficulty, she joined the Bangalore Medical College (the admission to which did not perhaps require qualification in a premedical examination) by paying a capitation fee. She has thus circumvented the requirement of pre-medical test by getting admitted first at Bangalore and then getting a transfer to Bhopal;

(b) According to the rules, no transfer of a candidate to a medical college in Madhya Pradesh was permissible to students of medical colleges outside the State who had secured admission in a college after paying a capitation fee, development fee or donation in any form. As the appellant had obtained admission in the Bangalore college by paying a capitation fee, her application for transfer to the Bhopal Medical College could not and ought not to have been entertained;

(c) The rules also require, where a person makes an application for a transfer to a medical college in Madhya Pradesh, that the application should state the grounds on which he got admission in a medical college of another State and whether he had appeared for a pre-medical test or similar examination of that State. The appellant's application for transfer did not contain any reference to this crucial aspect which was fundamental to a valid transfer to the college in Madhya Pradesh;

(d) Even assuming that the transfer itself was not bad, a comparison between the marks obtained by the appellant and those obtained by the respondent was not a fair or proper one. The appellant had appeared for one examination at Bangalore and two examinations at Bhopal whereas Dr Jain had appeared for all the three examinations at Bhopal. At Bangalore, for the first year, the appellant had three papers whereas in the Bhopal college there were only two papers in the first year. Having regard to the disparity in the syllabus, the subjects for the examination, the standards of valuation and quality of teaching the comparison between himself and the appellant was not valid. If at all a comparison had to be made, it should have been made by excluding the marks got by both in the first examination and taking into account only the marks obtained by them in the other two examinations which were common to both.

6. The above contentions found favour with the High Court which quashed the admission of the appellant and directed Dr Jain to be admitted to that seat. Hence the present appeal.

7. In our opinion, contentions (a) and (d) cannot stand by themselves and rest, for their validity, on contentions (b) and (c). While it is true that the appellant does not appear to have qualified in the premedical test for admission to colleges in Madhya Pradesh, it cannot be said that she has circumvented the rules by first getting admitted to the Bangalore college and then seeking a transfer to Bhopal; that course, if permissible under the rules, was unobjectionable. So also, the last contention by itself has no force. It is well known that, in these competitive days, students are not able to get admission, in the first instance, in an institution at their own place and have, very often, to seek admission elsewhere initially and then try to get a transfer back. This is also envisaged by the rules which permit the transfer of a student only after the first year course is completed. In such cases, if a valid transfer is made, the position is as if the candidate has completed the course in the second place and the rules (the validity of which are not in issue) permit a comparison of the average of marks obtained by the candidates in all the examinations after reducing them as a percentage of a uniform maximum. There can, therefore, be no doubt that such transfers and comparisons can be valid and permissible. The real question, therefore, is whether there has been a valid transfer on the facts of the present case.

8. An annexure has been filed before us - it was also before the High Court - which purports to set out the "rules for transfer of the students from other medical colleges to Madhya Pradesh State medical colleges". Though the High Court and the parties before it proceeded on the basis that these were "rules" governing transfer, there has been some controversy before us on this to which we shall advert later. The following rules are relevant for our present purpose :

1. The applications from students for transfer from Medical Colleges outside the State and studying in Ist MBBS (Pre-Clinical block) will not be considered.

2. Applications of those candidates who have cleared the Ist MBBS examination of the university in Anatomy and Physiology (including Biochemistry) and are studying in higher classes will be considered provided the college in which he was studying was a Medical Council of India approved college.

3. Applications only those will be considered who satisfy the following conditions in accordance with the pre-medical examination rules of Madhya Pradesh -

(a) possessed minimum qualification for appearing in the pre-medical examination at the time of admission.

(b) is a bona fide resident of Madhya Pradesh as per rules of pre-medical examination of M.P.

(c) was within the prescribed age limit as per rules of pre-medical examination of Madhya Pradesh at the time of admission.

Government would consider relaxation of rules in respect of those candidates who are married to a government servant employed in the Madhya Pradesh State.

4. Applications of those candidates for transfer from Medical Colleges outside the State will not be considered who have secured admission in a College after paying

capitation, development fee or donation in any form. Application should also state the grounds on which he got admission in a Medical College of another State and whether he had appeared for pre-medical test or similar examination of that State.

9. The applicant will submit a 'no objection' certificate of the concerned Medical College and the University where he was studying before his transfer.

13. The applicant will submit his applications with all the required information first to the Dean, Medical College where he wants to be transferred and the application will then be routed through the Chairman, Pre-Medical Examination Board to government for final orders."

9. On the basis of these rules, the objections to the transfer raised on behalf of Dr Jain may now be considered :

(a) A submission was made that the Bangalore college is not an approved medical college (vide Rule 2 above) but this is not substantiated. The document relied upon in support of this contention is only a list of medical colleges in India published by the Health Ministry of the Central Government. There is no mention in it that only these colleges and none else have been approved by the All India Medical Council. Also, the list does not bear a date. It appears to be an old one and does not refer to any college recognised after 1979. There is nothing to show that the Bangalore medical college was established before that. That apart, it appears that the Bangalore college is affiliated to the Bangalore University and there is no reason to believe that it was not an approved medical college.

(b) The objection that the transfer is bad because the appellant had not qualified in a pre-medical test, conducted either in Madhya Pradesh or in Bangalore, does not appear to be well founded. While the rules no doubt contain a reference to pre-medical tests, Rules 3, 5 and 13 made it clear that the passing of a pre-medical test is not a pre-requisite for a transfer. No doubt Rule 4 requires that the application for transfer should say whether the applicant had appeared for a pre-medical or similar test in the State from which a transfer is sought. The omission of the appellant in the present case to mention this in her application may be a defect but, in the absence of any clear rule to the effect that a pass in a pre-medical test is an essential condition for transfer, it cannot be treated as a vital defect vitiating the transfer.

(c) There is, however, force in the contention that the transfer in the present case was violative of the first part of Rule 4. This clearly precludes the consideration of an application for transfer from a person who had gained admission to a medical college on payment of a capitation fee, development fee or donation. Neither the appellant nor the State contradicted Dr Jain's averment in the writ petition that the appellant had secured admission in the Bangalore college only on the basis of such payment. There is, therefore, an infringement of Rule 4 - at least in part - and we shall proceed to do so, we should like to degree a little to make some general observations.

10. From the facts stated earlier, it is not clear how, in the face of the specific provisions contained in the rules, the appellant's transfer was considered and sanctioned, particularly when the application had to be scrutinised by a number of authorities : the Bhopal medical college, the Chairman of the

Pre-medical Board referred to in Rule 13, the University of Bhopal and the State Government. It is difficult to believe that they were not conscious that the limitations imposed by the rules operated in this case. The application of the appellant (a copy of which has been placed before us) contained a bare and simple request for transfer and nothing more and the authorities did not even care to call for the details required under the rules before taking a decision. The respondent has alleged that this was done by reason of the influence exerted by the appellant's father but his is not substantiated. All that has been brought out is that the appellant is a resident of Bhopal and her father is a doctor practising at Bhopal. In the circumstances we think that the authorities must have acted bona fide on considerations of sympathy towards, and the hardship of, the appellant in pursuing her course of study for a number of years at distant Bangalore. They must have thought that their decision would only help the appellant and harm no one. But the facts of the present case show how even well meant decisions, which seem innocuous at the time they are taken, can rebound in the long run and affect the interests of others in a manner that could not have been even conceived of earlier. It is, therefore, necessary to emphasise that, in matters of this type, the authorities should carefully and strictly apply the relevant rules.

11. Now reverting to the question as to the impact of this infringement of the rules on the situation in the present case, Sri Sachar, appearing for the appellant, puts forward two aspects for consideration. In the first place, he submits that the rules relied upon for the respondent are merely internal guidelines or instructions not having the force of law and that a deviation therefrom here or there would not affect the validity of the order accepting the application for transfer. Sri Sachar may be right in saying this but unfortunately, both parties and the High Court have proceeded on the basis that there were "rules" i.e. some instruments having statutory force. No material has been placed before us either to support or repel this assumption and so we will not be justified in treating them to be otherwise. However, we think that, even if they are viewed as "rules" they should not be treated as rigid, inflexible and mandatory, having in mind the context and purpose in which they are made. These are rules setting out circumstances in which the application for transfer will be granted and deal with a matter primarily concerning the applicant and the authorities.

12. The validity of an order for transfer may be challenged contemporaneously by a third party whose claim for admission or transfer is superseded by such order but cannot be allowed to be challenged by a third party because he finds, in retrospect, at a future point of time, that it has affected his interests as a result of subsequent events. We would, therefore, hold that the order of the State of Madhya Pradesh permitting the transfer of the appellant cannot be struck down as void. There has been some irregularity but, in the circumstances in which it was passed, it was one within the competence of the State Government.

13. The second answer, furnished on behalf of the appellant to Dr Jain's challenge is that Dr Jain was aware, even as early as 1987, that in the order of merit of MBBS candidates the appellant ranked higher than the respondent. Apart from the fact that this was just a matter of arithmetic, an "order of merit" had indeed been published by the University at the time the medical graduates of 1987 were being considered for house jobs. Reference is made in this context to a chart entitled "Merit list for the selection of House Officers, Gandhi Medical College, Bhopal, for the year 1988 : placed at p. 68 of the paper book before us. This list is incomplete but it contains the names, in order of merit, of 58 students who had completed MBBS in 1987 who had, apparently, applied for house jobs in the college. It sets out their aggregate marks in the MBBS examinations with certain adjustments and also the effective percentage thereof. The appellant's percentage is shown as 59.60; and his rank as 37; Dr Indu Fotedar is at 44 with a percentage of 59.04; and Dr Jain is No. 49 with a percentage of 58.50. Sri Sachar invites our attention to the "Rules for Post-graduation (MD/MS

course) in clinical, para-clinical and non-clinical disciplines, in medical colleges in Madhya Pradesh." These rules provide a scheme whereby (a) the marks obtained by candidates in the MBBS examinations (sometimes at different colleges and universities which have different maxima for the examinations) are to be standardised to a common maximum; (b) adjusted by giving certain penalty marks (for example, where a candidate has made extra attempts in any examination) and bonus marks (where he has some special distinctions in academics or extra-curricular activities : for example, distinction in a subject or National Cadet Corps certificates); and (c) determining the "effective marks" and their percentage. The process of selection of merit candidates for the post-graduate course is outlined in Rules 8.1 to 8.3. They read thus :

"8.1 Merit candidates in clinical subjects shall be selected from out of those who are completing their house jobs within that calendar year.

8.2 Candidates under 8.1 shall be selected by the Dean of the Medical College, strictly on the basis of merit from amongst the students passing from that college, on the recommendation of the college and Hospital Council or the P.G. Committee of the college.

8.3 The merit list of candidates under 8.1 and 8.2 would be prepared by each Dean of the college every year and notified on the College Notice Board. Any objection or representation received within 10 days of notification would be considered by the Dean of the college who shall make modifications, if necessary, after placing the objection or representation before the College and Hospital Council or P.G. Committee."

On the strength of these rules, Sri Sachar contends that the respondent, not having preferred objections to the merit list referred to earlier, is now stopped from challenging the merit list.

14. We find that there is a good deal of confusion about the relevant facts in this regard. In the High Court, the respondent's case was that he had duly filed his objections to the merit list of 1989 in July 1989 and well within time. The list that is relied upon by him is a list published by the Dean which bears the heading "Particulars of the candidates who have applied for registration in MD Radiology for the year 1989" placed at p. 49 of the paper book. It contains nine names (including Dr Insaf, Jain and Fotedar) and the details of their period of study and internship. The last two columns are headed "Effective Marks" and "Effective Percentage". They are not, however, arranged in order of merit but are arranged on a different basis. This first four names are of candidates who had applied for the MD course in Radiology, whereas the others had applied also for admission to MD courses in other subjects. It is on the basis of this list apparently, that the selections were made and, in his petition for special leave before us, the appellant also admitted this position. Sri Sachar, however, contends, that the earlier list produced by him (p. 68) is the merit list referred to in the rules and not this one which does not even purport to be a "merit list."

15. The merit list of 1988 (p. 68) was clearly one prepared in the context of selection for house jobs in 1988. The rules regulating admissions for that purpose have not been placed before us. We can only guess from the contents and columns in the list that they apparently run on the same lines as the rules for admission for MD. If this be treated as the merit list referred to in Rule 8.3, of the relevant rules, Dr Jain is clearly precluded from challenging it after one year. But Rule 8.3 refers to merit list for selection of candidates for the diploma course being published every year. None of the parties including the college authorities have been able to clarify whether (apart from the list at p.

49 of the paper book) any "merit list" for the year 1989 in respect of admission to MD courses, on the pattern of the list at p. 68, had at all been published by the Dean of the college. In this context, we should point out that the list earlier published (p. 68) contained all the relevant details for preparation of such a merit list. There is nothing before us to show that the procedure for adjustment, standardisation and averaging were not the same for preparing a merit list for selection of house officers as for the selection of candidates to the MD course outlined in Rule 8.5 (and this appears to be so from the adjustment columns in the list at p. 68). The only difference is that this list is restricted only to the nine candidates seeking admission to the MD course in radiology. Apparently, having regard to the small number of applicants for the course in question, the authorities merely prepared a short list containing the relevant extracts regarding effective marks and percentage from the earlier list - without calling it a merit list - and made the selections. In the circumstances, we think that there can be no practical or legal difficulty in treating the list at p. 49 as the relevant merit list for the present purpose. Learned counsel for Dr Jain is, therefore, correct in saying that, in this view, he could and did lodge his objections within the time specified in Rule 8.3 and he cannot be precluded from contesting the correctness or validity of the list on the grounds of delay. On strictly legal considerations, therefore, the respondent cannot be shut out from raising his objections at this stage.

16. But, it seems to us, questions of this nature cannot be decided on considerations of pure law. Granting that it is open to Dr Jain to challenge the merit list, one has to examine whether there are any limits to the scope of such challenge on grounds, if not of law, of justice and equality. Of course, he can challenge the correctness of the order of merit, he can challenge any errors in the marks taken into account or the adjustments made thereto, and he can even challenge the eligibility of any of the candidates for consideration. But there are obvious limitations to such challenge. For example, it would seem difficult to say that one can challenge the correctness of the marks that one of the other candidates has obtained Jain the examinations and call for the revaluation of some or all of his papers or to permit a contention that one of the candidates has not been properly awarded the MBBS degree and that, therefore, his application should be ignored. Their having obtained the marks noted in the list or a degree of a university or secured a transfer are actual events that have happened. There may have been some irregularity at some earlier stage but it does not go to the root of the matter so as to render the qualification void ab initio capable of being ignored, without anything more, at any time for any purpose. The position may be different where a person is claiming under a bogus degree. The appellant has obtained the degree after a regular course; the only grievance is that she should not have been permitted to do part of it in a particular college. The legality or validity of such qualifications must be directly challenged and got set aside in independent proceedings. To permit a collateral attack on them in other proceedings, as here, will be beset with problems and complications of a far-reaching magnitude. For obvious reasons, limitations have to be imposed on the grounds available for such challenge. The need for such circumspection will be better appreciated if another situation of a similar nature is considered. Suppose the competition between the two present contestants had arisen, not, as it has, just two years after the MBBS degree, but, say, fifteen years later, when they both apply for a post in a hospital or government open to MBBS graduates. If, in that situation, it should be contended for Dr Jain that the appellant cannot be considered for the post because her transfer to the Bhopal medical college was bad and, consequently, that the MBBS degree obtained by her was not valid, we think the answer to the contention must patently be in the negative. The need to avoid disturbing settled issues which affect the life and career of an individual after a lapse of time or after the interposition of further events, as a result of which he has rightly developed a sense of security, has been emphasised by this Court in *K.R. Mudgal v. R.P. Singh* ((1986) 4 SCC 531 : 1987 SCC (L&S) 6)

relying on the earlier decisions in *R.S. Makashi v. I.M. Menon* ((1982) 1 SCC 379 : 1982 SCC (L&S) 77 : (1982) 2 SCR 69) and *Malcom Lawrence Cecil D'Souza v. Union of India* ((1976) 1 SCC 599 : 1976 SCC (L&S) 115 : 1975 Supp SCR 409). What should be a reasonable period beyond which, or the intervening developments because of which, such challenge cannot be permitted must depend on the facts and circumstances of each case.

17. In the present case, there are valid considerations why Dr Jain should not be allowed to challenge the merit list at this point of time. We have referred earlier to the plea of Dr Jain that he has challenged the merit list of 1989 within the period of time mentioned in the rules. Technically, he is right, as we have already held. But if we look at the position more closely, we find that the precedence of the appellant over Dr Jain crystallised as soon as the MBBS results were published. We do not know whether any merit list of the results of the examination were published or not at that time but it cannot be that Dr Jain was not aware that the appellant had got higher percentage of marks than himself. At any rate, this became clear when the merit list was published for the house jobs in August 1988. It is true that the place accorded to the appellant in that list did not prejudice Dr Jain in his selection for the house job. Still, the rules of the university make it clear that the aggregate and average marks in the MBBS course could also be material for admission to the MD course. The merit list of 1989 is nothing but a reproduction of the merit list of 1988 confined to a narrowed group of students of the same batch. The latter did show the appellant to have obtained more marks than Dr Jain and, in this sense, was adverse to his interests. The omission of Dr Jain to challenge the correctness of the list then lulled the appellant into a sense of security that the merit list was acceptable to all. We, therefore, think that Dr Jain should be barred, on equitable considerations, from challenging the order of merit at the present stage.

18. Another important consideration which prevents us from giving any relief to Dr Jain - even if we accept all his contentions - is this. The MD course, admission to which is the bone of controversy, started in August 1989 and is coming to a close shortly. Though the appellant lost in the High Court, she was permitted by this Court - though, obviously, subject to the result of this appeal - to continue attending the classes for MD in Radiology. Now she has almost completed her course and, to deprive her of her seat at this stage, apart from irretrievably harming her, will not benefit Dr Jain who cannot now be admitted against the MD seat of 1989. This again is a development which militates against the grant of any relief to Dr Jain.

19. Before we conclude, we should like to touch upon one more aspect. The course of events narrated above will show that Dr Jain has been the victim, partly, of a lapse on the part of the medical college authorities in properly applying the rules governing transfer and, partly, of courts' delay in disposing of his writ petition and the present appeal. In the course of the hearing, therefore, we were tempted to consider whether we should give some relief to Dr Jain by directing the authorities to consider his case for admission to the MD course at least this year. On careful thought, however, we find it difficult to make any specific directions or recommendations for a number of reasons. In the first place, we are told that Dr Jain has, in the meantime, undergone and completed a diploma course in Radiology and, in terms of rule recently promulgated, is not eligible to apply for the MD course for another three years, even if he is interested to do so. Secondly, as noted already, the rules permit admission in MD in any year only to candidates who have finished their house jobs in that year and, Dr Jain having completed his house job in 1989, may not be eligible to be considered for admission this year. Thirdly, if any direction of the above nature is given by us, it will operate to the prejudice of some other candidate who is eligible for admission to that course in the normal course. Fourthly, it would not also have been possible for us - even if we had come to the conclusion that Dr Jain and not the appellant should have been admitted in 1989 - to direct the

University to carry forward that vacancy and grant him admission to it now. We therefore refrain from giving any directions to the authorities in the matter as had been mooted in the course of the hearing.

20. For the reasons abovementioned, we have come to the conclusion that the appeal should be allowed and the appellant's admission to the MD Radiology course (1989-91) should be upheld. We direct accordingly. No costs.

</html