

State of U.P. and others

Vs

Dr. Anupam Gupta

Civil Appeals Nos. 782-83 and 781 of 1992

(K. Ramaswamy, K. Jayachandra Reddy JJ)

13.02.1992

JUDGEMENT

K.RAMASWAMY, J.:-

1. Special leave granted.

2. As common questions of facts and law arise for decision, these appeals are disposed of by a common judgment. Dr. Anupam Gupta, Dr. (Km.) Renu Agarwal and Dr. Sanjay Agarwal passed their M.B.B.S. course and also completed internship. The first two appeared for the Post Graduate Medical Entrance Examination (P.G.M.E.E.) held by Lucknow University on September 30, 1990 for admission into postgraduate degree and diploma courses in specialities. Dr. Sanjay Agarwal had appeared for the year 1991. Dr. Anupam Gupta secured in his qualifying M.B.B.S. examination 61.8% and 41.6% in Entrance examination. Dr. (Km.) Renu Agarwal secured 65% in the M.B.B.S qualifying examination and 49.1% in Entrance examination. Dr. Sanjay Agarwal secured 53.60 in qualifying M.B.B.S. examination and 46.6% in Entrance examination. They were denied admission in postgraduate courses due to their failure to secure minimum 50% qualifying marks in the Entrance examinations. Assailing the denial thereof, offending Articles 14, 15(1) and 29(2) of the Constitution they filed the writ petitions. In the case of first two Doctors, by a common judgment dated August 24, 1991, the High Court allowed the writ petitions and directed to give them admission in Allahabad and Agra Medical College in the Gynaecology and Obstetrics degree course to which they had given their options. The High Court upheld the validity of the prescription of 50% of the minimum marks as eligibility criteria. But on the finding that there are two vacant seats available for admission, directed those seats be given to them. Following this ratio Dr. Sanjay Agarwal was directed to be admitted in the Post Graduate Degree Course in Anesthesia in Gorakhpur Medical College in his writ petition. The State filed the appeals against these judgments.

3. Section 28 (5) of the U. P. Universities Act 10 of 1973, as amended by the Act 15 of 1980, the later came into force from January 1,1979, for short the Act provides that:

"Notwithstanding anything contained in any other provisions of this Act, admission to medical and engineering, colleges and to course of instruction for degrees in education or Ayurvedic and Unani Systems of medicine (including the number of students to be admitted), shall be regulated by such orders (which if necessary may be with retrospective effect, but not effective prior to January 1, 1979) as the State Government may, by notification, make in that behalf:

Provided that no order regulating admissions under this sub-section shall be

inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice."

4. The non obstante clause diffuses the effect of any inconsistent law in the Act and empowers the State Govt., if necessary with retrospective effect, to regulate by a notification, the admission to medical and engineering colleges as well as to courses of instructions and the number of students therein.

5. In exercise of the power under subs.(5) of S. 28, G.O. 4215 dated August 22, 1989 was issued by the State Govt. to enforce junior residency/ senior residency and dental 'residency scheme in all Govt. Alopathic Medical Colleges and affiliated degree colleges and hospitals prescribing the eligibility for selection/examination and fixation of seats of various degrees and diploma courses therein. Clause 3 prescribes the procedure for selection of the candidates for the aforesaid scheme. Clause 3 (e) is relevant which reads thus:

"The residents shall be selected departmentwise in the colleges under the said scheme and their registration shall take place on the basis of merit-cum-option. The merit shall be ascertained on the basis of 50% of marks obtained in the competitive examination and 50% of the total marks obtained in M.B.B.S. examination (50: 50)."

The competitive examination shall start with new batch for 75% seats in the institutions and the eligibility criteria was prescribed in paragraph 4. The details whereof, are not relevant for the purpose of this case. This was further amended by a notification No. 8390 dated October 9, 1990. It was stated therein that rulings of this Court, rules of Indian Medical Council and the recommendation of the Committee constituted to reform, P. G. Education/Training in All Govt. Alopathic Medical Colleges and Dental College of the State necessitated to prescribe the procedure for fixation of the seats in various degrees and diploma course eligibility and the marks. The scheme came into effect from August 1, 1987. In paragraph 8 (f) it has been stated that the residents shall be selected department wise in the colleges under such scheme and the registration shall take place on the basis of merit-cum-option. The merit shall be ascertained on the basis of the marks obtained in the "competitive examination". The minimum qualifications for admission were prescribed in clause (g), the details of which are not material for the purpose of this case. In the Press Note issued inviting applications for the entrance examination of the year 1990, no mention was made that the candidate shall secure the minimum 50% of the marks in the entrance examination to be held on May 27, 1990. But, however, in the subsequent press note issued obviously before holding of the examination on September 30, 1990, it was stated that as per G.O. No. 1259 (it is only a letter) dated February 20, 1990, the eligibility criteria for admission to the above postgraduate courses shall be for general candidates a minimum of 50% marks and for the candidates of the reserved category (Scheduled Castes and Scheduled Tribes) a minimum of 40% marks secured at P.G.M.E.E. Candidates belonging to SC/ST shall also be given weightage of 1.65% of the maximum marks of the competitive entrance examination, (i.e. 50 marks) for ranking them in the merit list for admission to the postgraduate courses. Therein it was further stated that:

" 1. For admission to postgraduate courses the competitive examination shall be organised on the pattern of All India Institute of Medical Science or University College of Medical Science.

2. This examination shall have 100% objective type questions. The eligibility criteria for admission to postgraduate courses shall be 50% minimum qualifying marks for

candidates of general category and 40% minimum qualifying marks for candidates of reserved categories (SC/ ST).

3. Candidates belonging to scheduled caste and scheduled tribe shall be given an additional weightage of 1.65% of the total marks.

4. This examination shall be held in the month of April 1990 on one and the same day for all the medical colleges but with different sets of question papers. For institutional seats of a college, candidates of the same college shall be eligible.

5. Candidates who shall be completing their internship by December 1990 shall be eligible to appear in this examination."

It is thus, clear that the Govt. by statutory notifications dated August 20, 1989 and October 9, 1990 prescribed entrance examination and prescription of 50% marks therein as a criteria for admission into P.G. degree and diploma courses in medicine and in the later notification 50% as a condition precedent. In the letter dated Feb. 20, 1990 prescribed as minimum 50% to the general candidates and 40% to SCs/STs together with weightage of 1.65% of the maximum marks i.e. 50 in total.

6. In *Pradeep Jain v. Union of India*, (1984) 3 SCC 654: 'AIR 1984 SC 1420), this Court laid emphasis for admission of the candidates into medical colleges on merit to meet excellence in the medical services thus (at p. 1430 of AIR):

"Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India.

Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students."

7. In *Dr. Dinesh v. Motilal Nehru Medical College, Allahabad*, (1937) 4 SCC 459, at page 462 paragraph 6 this Court laid time table for conducting entrance examination in P.G. courses for All India Quota of 25%. The Court held thus:

"What remains now to be dealt with is the finalisation of programme relating to the selection examination. As already decided the selection examination shall be conducted by the All India Institute of Medical Sciences, New Delhi. The announcement for holding of the selection examination shall be made on October 1 of every year and a full four weeks' time would be made available to candidates for making their applications. After the applications are received not later than six weeks from October 1, the same would be scrutinised and duly processed and admit cards would be issued. Examination shall be held on the second Sunday of January. The results of the examination shall be announced within four weeks from holding of the examination. Admission shall commence two weeks after the declaration of results. The last date for taking admission shall be six weeks from the date of the announcement of results but the Head of every institution shall be entitled to condone delay up to seven days for reasons shown and grounds recorded in special cases. The course of study shall commence in every institution providing such study throughout the country from May 2. Notification announcing examination, publication of results and allotment of place of admission (keeping Preference in view and our directions regarding preference of candidates in places of proximity to residence) shall be published in two successive issues of one national paper in English having large circulation in every State and at least in two local papers in the language of the State as quickly as possible."

8. In *Dr. Ajay Kumar Agarwal v. State of U.P.*, (1991) 1 SCC 636: (AIR 1991 SC, 498), while approving the procedure laid down in *Dr. Dinesh Kumar's* case this Court held that technicality in the issuance of the notification and non-compliance of statutory notification in terms of S. 28(5) of the Act would not stand in the way, stating thus, "There may be some force in the submission of the learned counsel, but we do not think in the present facts and setting of events and in particular for meeting the problem which has arisen we need approve a technical stand. "In paragraph 11 this court further stated, "It is not disputed that in U.P. the prevailing practice was 50% test for allowing postgraduate studies to Doctor with M. B. B. S. qualification..... We are of the view that it is in general interest that the 50% cut off base as has been adopted should be sustained. " It is, therefore, clear that technicality of non-compliance of S. 28(5) in issuing the letter dated February 20, 1990 was nailed past and approved the prescription of 50% cut off minimum marks as eligibility for admission into P.G. course in medicine for 1990, though plausible to countenance the contention appeared to be of securing 50% in qualifying examinations in M.B.B.S. course. But the fact is that

U.P. Govt., in fact, conducted entrance examination in 1990 and adopted 50% cut off as minimum marks.

9. In *Dr. Ambesh Kumar v. Principal, LLRM Medical College, Meerut*, (1987) 1 SCR 661 : (AIR 1987 SC 400), this Court upheld the Government's power under Art. 162 and held that where the number of seats for admission to various postgraduate courses both degree and diploma are limited and large number of candidates undoubtedly apply for admission to those courses of study, an order laying down qualifications for candidates to be eligible for being considered for selection for admission to the said courses on the basis of merit specified by regulation cannot be said to be in conflict with the regulations of All India Medical Council Act. It does not encroach upon the standard prescribed by the statute regulations. Laying down further qualifications of eligibility promotes and furthers the standard in the institutions. Thus it could be seen that this court consistently laid down the criteria for conducting entrance examination to the postgraduate degree and diploma courses in Medicine and the best among the talented candidates would be eligible for admission. 50% cut off marks was also held to be valid to achieve excellence in postgraduate speciality. Accordingly we uphold the prescription of 50% cut off marks to general candidates and 40% to SCs and STs together with 1.65% weightage of total marks i.e. 50 marks in total in entrance examination as constitutional and valid.

10. *Dr. Rajiv Dhavan and Sri Satish Chandra*, learned senior counsel for the Doctors, in fairness, also did not dispute that prescription of 50% minimum marks as eligibility criteria to seek admission into the postgraduate courses to be in any way arbitrary. However, Dr. Dhawan contended that the initial press note inviting applications for the entrance examination did not say that 50% minimum marks in the entrance examination as a condition for admission into the postgraduation. G.O. 4215 only mentions 50% of qualifying M.B.B.S. marks and 50% in entrance as eligibility. Therefore, denial of admission for non-securing 50% cut off in entrance examination is illegal. The doctrine of promissory estoppel was also passed into service. It is further contended that the Doctors satisfied the criteria laid on G.O. 4215. The High Court's order was justified on this base. *Shri Yogeshwar Prasad*, learned senior counsel for the State contended that this contention was not raised in the High Court and for the first time it cannot be raised. We find no force in the contention of the State. Though it was never raised, nor argued, since it is a pure question of law arises from record, it can be gone into. But on careful consideration of the record, we find no force in the Doctor's contention. Though the first press note omitted, before conducting examination the second press note specifically stated that securing minimum of 50% of the marks in the entrance examination was a condition as eligibility for admission. What paragraph 3(e) of the first notification postulates is the computation of 50% of the marks secured in the entrance examination and 50% of the marks secured at the M.B.B.S. qualifying examination to determine the eligibility for admission i.e. 50% total and also in the order of merit among the candidates that appeared in the examination. The letter dated Feb. 20, 1990 does not appear to have been published in the gazette. We refrain to give acceptance to the respondent contention, as was laid in *Dr. Sanjay Kumar's* case, for the scheme and procedure laid by this Court was adopted to have uniformity of institutional 75% candidates too. The technicality would not be permitted to outweigh the salutary scheme in the larger public interest. The contention of *Shri Satish Chandra* that merit-cum-option is the criteria and no criteria to determine 50% of the minimum marks was prescribed in paragraph 8(f) of the second G. O. Therefore, procedure prescribed in paragraph 3 (e) of the first G.O. 4215 should be followed and in calculating the candidates securing 50% cut off the marks would be eligible for admission is also devoid of force. The second G.O. expressly mentions that 50% minimum entrance examination is a must for admission in postgraduate courses. Undoubtedly, the letter dated -February 20, 1990 and the prescription of qualifications laid down therein are not notified in terms of S. 28(5) of the Act.

So they may be considered to be administrative instructions. The second press note, in pursuance of which the entrance examinations were conducted, did mention them, which came into force from August 1, 1987. It is settled law that administrative instructions would fill in the yawning gaps in the statutory rules. The statutory rules in paragraph 8 (f) of the notification dated Oct. 9, 1990 which was given retrospective effect from August 1, 1987 envisages 50% cut off marks. Para 3 (e) of first notification dated August 22 1989 merely provides the procedure for calculating the marks to determine the inter se order of merit .among all the candidates and nothing more. The instructions issued in the letter dated February 20, 1990, therefore amplifies prescribing the eligibility criteria among the candidates who have taken entrance examination. The prescription of the minimum of 50% marks as eligibility criteria would be applicable to the respondents. Fairly not disputed before us that the instructions in the letter dated Feb. 20, 1990 were issued much earlier to the date of holding of the examination and as notified in the second press note. Therefore, the instructions dated Feb. 20, 1990 are legal, valid and they would supplement the statutory rules. We hold that the candidates who fulfilled that qualification alone would become eligible for admission. The learned counsel in fairness conceded that the prescription of minimum marks is valid. The prescription of 40% to SCs and STs candidates obviously was done under Arts. 14, 15(1) and (4) and 46 together with 1.65% of total entrance marks i.e. 50 as weightage to them as a measure of social justice to accord them equality of opportunity of admission in Postgraduate courses. It is neither a source, nor an analogy to fall back upon or to rely, as wrongly applied by the High Court, as a criteria to select general candidates that secured below 50% of the marks.

11. Accordingly we hold that securing 50% marks at the entrance examination is one of the conditions precedent to become eligible for admission into the postgraduate degree and diploma courses. This is also consistent with the view expressed by this Court in Dr. Aiay Kumar Agarwal's case. In the view we refrain to go into whether there actually exist vacant seats (if need be we would decide/ get decided and suitable directions would follow).

12. It is next contended by Shri Yogeshwar Prasad that the courses were started from October 30, 1990 and in terms of the orders of this Court it shall be deemed to have been commenced from May 2, 1990, the direction as given in the impugned judgments for admission after more than a year, is illegal. To maintain excellence in the academic courses, the delay defeats the claim for admission, though posts are vacant. In Pramod Kumar Joshi v. Medical Council of India, Writ Petition No. 11 54 of 1990 dated February 19, 1991 this Court held that the course for the year 1991 is almost completed and it would not be proper to allow admission belatedly. In Dr. Subodh Nautial v. State of U.P. (Writ Petition No. 1215 of 1990 dated January 10, 1991) (reported in AIR 1991 SC 1131), there is a delay of four months in giving admission and this Court held that, "even according to Mr. Pandey the course has started in September for the session. This is technical course and to admit a student four months after the commencement would not at all be correct."

13. Dr. Dhawan placed reliance on Jeevak Almast v. Union of India, AIR 1988 SC 1812, wherein there was flux in selection of the candidates for M.B.B.S. course on all India basis and large number of vacancies left unfilled. Under these circumstances this Court, instead of allowing them to go waste, directed to maintain A list and B list and the direction was given to admit the candidates in A list who secured on merit and thereafter to admit in the order of merit from less meritorious candidates in the B list. That peculiar situation would not help to the respondents herein in postgraduate specialised courses. That was for M.B.B.S. course arose in the peculiar situation and does not afford as a precedent. Exercise of equity jurisdiction and prescription of minimum cut off are mutually incompatible and counter productive. It would frustrate the excellence.

14. Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to meet their excellence and come at par excellence. Admission in the midstream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained.

15. Accordingly, the appeals are allowed and writ petitions stand dismissed, but in the circumstances without costs. Appeals allowed.

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