

Anil Baipadithaya and Others

Vs

State of Karnataka and Others

Civil Appeals Nos. 9438-53 of 1995

(B. L. Hansaria, Faizanuddin JJ)

17.10.1995

JUDGMENT

HANSARIA, J. -

1. Special leave granted.

2. Admissions in professional courses, specially medical, despite all efforts being made to secure them, have always been a vexed question and posed problems. If the efforts are within legal parameters, the same cannot boomerang. The appellants, however, overdid, so much so, that while seeking admissions to 1st year MBBS courses for the academic year 1993-94, they, in collusion with the members of the Selection Scrutiny Committee (SSC), put up higher rankings in their admission forms, by reason of which they were given admissions in various medical colleges of the State of Karnataka. However, it was subsequently found that the rankings were really not as mentioned in the admission forms, but lower. When this fact came to the notice of the authorities, their admissions were cancelled. The cancellation order was challenged on various grounds, but the High Court of Karnataka upheld the action. Hence these appeals by special leave.

3. On a grievance being made that the appellants had been condemned unheard, this Court by its order dated 9-1-1995 noted that the State would have no objection to granting a post-decisional hearing to the appellants [except Appellant 1 K. Sudarshan Shetty in Civil Appeals Nos. 9454-56 of 1995 arising out of SLPs (C) Nos. 14608-10 of 1994, who had already secured admission and did not want to go through the rigmarole of the inquiry] and an officer, who may even be a judicial officer, could be nominated for this purpose. In that order a request was, therefore, made to the Chief Justice of the High Court to nominate an officer to undertake the inquiry, which officer must not be below the rank of the District and Sessions Judge. Pursuant to this order, an inquiry was held by Shri T. Mahesh Hegde, District and Sessions Judge functioning as Officer-on-duty-cum-Registrar of the Karnataka Administrative Tribunal.

4. The report runs into 27 pages and the result of the inquiry has been summed up as below in para 16:

"(1) General merit list of all successful candidates was not published in the newspapers as required under Rule 9 of the Rules, but the same was published at Nodal Centres/Directorate of Medical Education and Technical Education.

(2) Select Lists Nos. 1 and 2 were published in the newspapers with the details of admission ticket numbers. College code etc., and the petitioners were not among the

candidates selected in these two lists.

(3) The rankings claimed by the petitioners while securing admissions were not theirs and that the rankings actually secured by them were much lower than the rankings claimed by them and there is no dispute in this regard.

(4) The petitioners secured admissions by furnishing incorrect rankings in collusion with SSC.

(5) All the petitioners were eligible to be selected during spot selection.

(6) Members of SSC including the Chairman, who are equally guilty, if not more, have been promoted (Lokayukta investigation is still pending).

(7) Other eligible candidates have not challenged the selection of the petitioners and the petitioners being otherwise eligible to be selected have not deprived other merited students of their legitimate seats."

5. The aforesaid conclusions show that incorrect rankings had been mentioned and admissions had been secured in collusion with the members of the SSC. Another important finding is that all the appellants were eligible to be selected on the basis of their rankings, which came to be given during spot selection. We have also noted that the appellants' admissions have not been challenged by any other eligible candidate. Further, the appellants have not deprived any other merited students of their legitimate seats.

6. In view of the aforesaid facts and circumstances, the question that arises for consideration is as to what appropriate order should be passed, because of the fraud played initially. As to this, the submission of Shri Venugopal for the appellants is that the State may not be allowed to blow hot and cold inasmuch as the members of the then SSC (who colluded with the appellants) having been even promoted, it does not lie in the mouth of the State and its officers concerned to demand punishment of the appellants alone. The learned counsel submitted that both promotion of members of the then SSC and punishment of the appellants cannot go together; they have to be treated alike and have to rise and fall together.

7. On the State counsel being asked by us as to whether the State is prepared to restore the status quo ante regarding the posts which the members consumed of the SSC were holding at that time, cold shoulder is shown. Shri Nagaraja states that the officers at this stage cannot be punished without giving them opportunity. It is really not a question of punishment to them, but of taking back the reward given. As the State is not prepared to do so, we do not think if we would be justified in punishing only one party to the fraud. This would not be equitable. So, even though we strongly decry and condemn the fraud played by the appellants, the present is not an occasion where any punishment is deserved at the behest of one who is not prepared to punish the main culprit, as the members of the SSC have to be regarded, because, but for their active role, the appellants would not have succeeded in their highly objectionable and deplorable act. In not allowing the cancellation to take effect, we have also noted that the appellants have studied for about two years by now and their action had otherwise not deprived any other merited student of his legitimate seat.

8. In the result, the appeals are allowed and the cancellation orders are set aside. We, however, make it clear that this shall not be treated as a precedent. We leave the parties to bear their own costs.