

Gujarat University

Vs

Rajiv Gopinath Bhatt and Others

Civil Appeal No. 7565 of 1996

(CJI A. M. Ahmadi, N. P. Singh, B. N. Kirpal JJ)

01.05.1996

JUDGEMENT

N.P. SINGH, J.:-

1. Leave Granted.

2. This appeal has been filed on behalf of the Gujarat University (hereinafter referred to as the university) for setting aside an order dated 30-9-1991, passed by the High Court directing the appellant-university to grant admission to the respondent No. 1 (hereinafter referred to as the respondent) in the super speciality course of M.Ch. (Master of Chirurjee) in Onco surgery in the session which commenced from 1-7-1991.

3. It appears that the appellatant-university invited applications for admission to two years' super speciality course of D.M. and M. Ch. commencing from 1-7-1991. An entrance examination was also conducted to select the students for admission in the aforesaid courses. The number of seats in the super speciality courses is very limited, because of which in the rule framed by the appellatant-university, it has been provided that the first preference shall be given to the students of the appellatant-university. The students from other universities are not denied admission but they have to rank next to the students of the appellatant-university. As the respondent aforesaid was denied admission on the ground that he was not a student of the appellatant-university, a writ petition was filed on his behalf, before the High Court, which as already stated above was allowed by the impugned order.

4. When the appeal was taken up for hearing, counsel appearing for the parties, informed the Court that this appeal has become infructuous, because on basis of the order passed by the High Court, the respondent was allowed to join the course and he has already completed the course. In this background, this Court is not actually required to examine the grievance made on behalf of the appellatant-university in respect of the directions given by the High Court. However, the learned counsel, appearing for the university drew the attention of the Court to the relevant rule for selection of the candidate for admission in the super speciality courses:

"O.M.S. - 16 : Selection for uper-specialities course(i.e. M.Ch and D.M.).

1. First preference will be given to candidates from Gujarat University. Second preference will be given to candidates from other Universities of Gujarat State. Any

vacancy remaining after this shall remain unfilled.

2. Post-graduate degree qualification i.e. M.D. or M.S. is essential.

3. The Vice-Chancellor will arrange thereby examination for the candidates, preferably objective. No practicals will be held. The result of this examination will be sole criterion for admission and decision of the Vice-Chancellor will be final".

The stand of the university in the affidavit in reply filed before the High Court, was that the basis of the admission is merit; only preference is to be given to the students of the appellant-university. The High Court has pointed out that students who have passed M.D/M.S. examination either from the appellant-university or from any other university recognised by the appellant-university are eligible for being admitted to the super speciality course in question, and the clause saying that preference will be given to the students of the appellant-university was violative of Article 14 of the Constitution of India. In this connection reference was made by the High Court to the judgment of this Court in the cases of Jagdish Saran v. Union of India, (1980) 2 SCC 768 : (AIR 1980 SC 820) and Pradeep Jain v. Union of India, (1984) 3 SCC 654: (AIR 1984 SC 1420) where it has been observed that the Court cannot allow excellence to be compromised for any other consideration.

5. Without examining that question in detail it may be pointed out that the aforesaid judgments were not in connection with the admission in super speciality course. At the same time, we reiterate that object of any institution while selecting applicants for admission is to select the best amongst the applicants, regional and other considerations which do not satisfy the test of Article 14 of the Constitution should not affect the merit criteria. But from time to time, this Court taking into consideration the local and regional compulsion have been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super speciality courses arises, in which the seats are limited in number. In the case of Pradeep Jain v. Union of India (AIR 1984 SC 1420 at p. 1439) (supra) this Court has observed:

"We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State....."

The same question was again examined in the case of Dinesh Kumar v. Motilal Nehru Medical College, (1986) 3 SCC 727 : (AIR 1986 SC 1877). Recently, in the case of Anant Madaan v. State of Haryana, (1995) 2 SCC 135 : (1995 AIR SCW 914, Para 13) it was said :

"The eligibility condition, therefore, which requires that the candidate should have studied 10th, 10+1 and 10+2 classes from a recognised institution in the State of Haryana is neither arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same."

Therefore, if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the university in question per se it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution.

6. The learned counsel, appearing for the appellant-university, could not explain the object and purpose of part of the impugned rule which provides "any vacancy remaining after this shall remain unfilled". This part of the rule cannot be held to be rational. It is only just and proper that the university should examine and give a fresh look to the said rule making provision for filling up even such vacancies which are not filled for one reason or the other; of course within the time schedule prescribed for the super speciality courses.

7. The appeal is accordingly allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no orders as to cost. Appeal allowed.