

Ravindra Kumar Rai

Vs

State of Maharashtra & Ors.

(S. C.Agrawal, M. Jagannadha Rao, A. P. Misra JJ)

27.02.1998

JUDGMENT

M.JAGANNADHA RAO J

1.This writ petition under Article 32 of the Constitution of India has been filed against the State of Maharashtra (1st respondent) and the Medical Education Department of the State (2nd respondent) for the issue of a writ or direction commanding the State to hold a Combined Entrance Examination for admission to Medical College in the said State and to direct the State to start the process for holding the said competitive examination for the students to be admitted into medical colleges from 1998 onwards. The writ petition is based mainly on the Regulations made by the Indian Medical Council recently in 1997.

2.The petitioner has filed this case as a public interest case and has also stated that his daughter is going to appear for the 12th standard examination from the Kendriya Vidyalaya, 1, Colaba, Mumbai in March, 1998 and that she will become eligible for admission to medical colleges in 1998.Petitioner states that 85% of seats in Maharashtra are available for local students because 15% are to go to the All India Pool. It is pointed out that in Maharashtra there are a large number of medical colleges affiliated to various university-like the Bombay University, Pune University, Nagpur University etc. As of today admissions to the colleges under these University are being made by the Medical Education Department of Government (2nd respondent) solely on the basis of marks obtained at the qualifying examination which are conducted by three Boards, namely, the ISC Board, the CBSE Board and the Maharashtra Higher Secondary Examination Board. Under that system, the 2nd respondent invites applications from students and allocates the students to the Medical Colleges in the State, some of them being Government colleges and some under Private Management and Municipal Corporations of Bombay and Thane. It is pointed out that according to rulings of the Supreme Court, admissions to Medical Colleges should be based strictly on merit and that there should be proper criteria for admission. Reference in this connection is made to the Regulations framed recently by the Medical Council of India with the previous sanction of the Central Government by virtue of powers conferred on it under section 33 of the Indian Medical Council Act, 1956.These Regulations are called 'Regulations on Graduate Medical Education, 1997.(Published in Part III, Section 4 of Gazette of India dated 17.5.1997).Regulation 4 prescribes, in considerable detail, the eligibility criteria for students with various types of education leading to 10 + 2 or its equivalent. Regulation 5 is important and reads as follows :

"Reg. 5 : Selection of Students : The selection of students to medical college shall be based solely on merit of the candidate for determination of merit, the following criteria be adopted uniformly throughout the country.

(1) In States, having only one Medical College and one university/board/examing

body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In States, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standard at qualifying examination conducted by different agencies ;

(3) Where there are more than one college in a state and only one University/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges ;

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character ;

(5) To be eligible for competitive entrance examination, the candidate must have passed any of the qualifying examinations as enumerated under the head note 'Eligibility Criteria'.

3.The proviso to the Regulation prescribes the percentage of marks which are to be obtained at the qualifying or/ and competitive examinations by students including those belonging to SC/ST or O.B.C. classification. It is the petitioner's case that sub-clause (2) of Regulation 5 is attracted to the State of Maharashtra.

4.A counter affidavit has been filed by the Deputy Secretary to the Government of Maharashtra in the Medical Education and Drug Department. It is stated there that the case of the State of Maharashtra does not fall under sub-clause (2) of Regulation 5 but falls under sub-clause (3) of Regulations 5.It is accepted that there are several medical colleges and universities in the State of Maharashtra and that there are also various qualifying examining bodies i.e.(i) ICS Board (ii) CBSE Board and (iii) Maharashtra Higher Secondary Board. Under the Maharashtra Higher Secondary Board. Under the Maharashtra Board, there are 7 divisional examination boards and the number of the students who qualify at 10 + 2 stage through the Maharashtra Board, would be more than 1,10,000.Those who pass from CBSE would be around 900 and represent only 0.5% or 0.8% of the students who qualify in 10 + 2. It is therefore contended that for a small number of students appearing for the CBSE examination. It will not be proper to categorize the States of Maharashtra into sub-clause (2) of Regulation 5.It is also pointed out that the Governor of Maharashtra has issued proceedings under Article 371 (2) (c) in regard to 3 regions Vidharba, Marathwada and rest of Maharashtra, and the admissions for 1997-98 have to be made by the Development Boards which are separately constituted for the 3 regions. Admissions are not University wise but are Development region wise. It is stated that it will be difficult to implement the directions of the Governor if a Common Entrance Examination is to be held for the whole State. It is also stated that it will be an extremely arduous task to conduct a Common Entrance Examination for 50,000 students. It involves setting of papers, evaluation of answer sheets and preparation of merit lists after taking into account the choices of the students in respect of Medical and Dental colleges and this will prolong the admission process. It is said that holding Common Entrance Examination for Medical and not for Engineering courses will be discriminatory. It is then stated that the petitioner's daughter is yet the pass 10 + 2 and petitioner could even make his daughter apply for the 15 % All

India pool. Rules for admission to Maharashtra Board, would be more than 1,10,000. Those who pass from CBSE would be around 900 and represent only 0.5% or 0.8% of the students who qualify in 10 + 2. It is therefore contended that for a small number of students appearing for the CBSE examination. It will not be proper to categorize the State of Maharashtra into sub-clause (2) of Regulations 5. It is also pointed out that the Governor of Maharashtra has issued proceedings under Article 371 (2) (c) in regard to 3 regions Vidharba, Maharashtra and rest of Maharashtra, and the admissions for 1997-98 have to be made by the Development Boards which are separately constituted for the 3 regions. Admissions are not University wise but are Development-region wise. It is stated that it will be difficult to implement the directions of the Governor if a common Entrance Examination is to be held for the whole State. It is also stated that it will be an extremely arduous task to conduct a Common Entrance Examination for 50,000 students. It involves setting of papers, evaluation of answer sheets and preparation of merit lists after taking into account the choices of the students in respect of Medical and Dental colleges and this will prolong the admission process. It is said that holding Common Entrance Examination for Medical and not for Engineering courses will be discriminatory. It is then stated that the petitioner's daughter is yet to pass 10 + 2 and petitioner could even make his daughter apply for the 15% All India pool. Rules for admission to 1998-99 are yet to be published, the writ petition is premature and is liable to be dismissed.

5. We have heard the learned counsel for the petitioner, the learned counsel for the State of Maharashtra. The learned counsel for the Medical Council of India supported the writ petitioner's contention.

6. We may at the outset point out that inasmuch as there was three Boards in Maharashtra State which conduct the qualifying examination and inasmuch as there are several Universities, the State of Maharashtra would clearly fall under sub-clause (2) of Regulation 5 made by the Medical Council and not under sub-clauses (3). The contention for the State that candidates from CBSE Board are small in number does not appeal to us. Inasmuch as there is no dispute that more than one Board conducts the qualifying examination and the Universities are more than one in number sub-clause (3) of Regulations 5 in our view, is not attracted. It is also not possible for the State to say that conduction a common examination for 1,80,000 at the 10 + 2 level in the 7 divisional boards would itself show that the State is capable of conducting a Common Entrance Examination for admission to medical colleges, even if the number of students is large. We may also say that in several States, Common Entrance Examination is being conducted even before 1997 when these Regulations made by the Medical Council came into force. In fact in some States, entrance examination is conducted jointly for Engineering and medical students also. We fail to see why the State of Maharashtra should say that it will be an arduous task.

7. In a recent judgment of this Court in *Shri Chander Chinar Bada Akhara Udasin Society & Others vs. State of J&K & Others* {1996 (5) SCC 732}, in the context of admission to Medical Colleges, and the need for a Common Entrance Examination, this Court observed (p.738) as follows :

"It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at higher secondary stage cannot be treated as uniform. Some of such examination are conducted at the State level, other at the national level examination. The percentage secured at different examinations are bound to vary according to standard applied by such examination bodies, which is well known. As such a common entrance examination has to be held. "It has been, therefore, held that a 'Common Entrance Examination' for admission to Medical Colleges has to be held.

8. We next come to the contention of the respondent based upon Article 371 (2) (c) of the Constitution of India. That Article permits the Governor to require an equitable arrangement be made for providing adequate facilities for 'technical education and vocational training' in respect of the areas Vidharbha, Marathweda and the rest of Maharashtra. Assuming that medical education falls within the scope of the said Article, we do think that compliance with Regulations 5 (2) of the Regulations made by the Medical Council of India will in any manner come in the way of giving effect to the provisions of Article 371 (2) (c).

9. Finally, it was argued for the respondent that, in any event, it will not be possible to conduct a 'common entrance examination' for the academic year starting from 1998 inasmuch as, just now, the time available is too short. We cannot agree. These Regulations have come into force is long back as on 4.3.1997. There is, in our view, sufficient time available and all that is necessary is that the State must immediately draw up the programmer and time table for conducting the Common Entrance Examination for 1998 year and for other steps in that behalf.

10. In the result, we allow the writ petition and direct the State of Maharashtra and its Medical Education Department to start the process for holding the common Entrance Examination for admission to Medical Colleges in Maharashtra for the year 198 and conduct the said Examination in accordance with the 'Regulations on Graduate Medical Education 1997' made by the Medical Council of India. Writ Petition is allowed as stated above.