

SUPREME COURT OF INDIA

Harish Verma

Vs.

Ajay Srivastava

C.A.No.1807 of 2003

(R. C. Lahoti and Ashok Bhan, JJ.)

16.09.2003

JUDGEMENT

R. C. LAHOTI, J.:-

1. Leave granted in S. L. P. (C) Nos. 4965/03 and 14367-91/03.

2. In exercise of the powers conferred by S. 33 read with S. 20 of the Indian Medical Council Act, 1956, the Medical Council of India has, with the previous sanction of the Central Government, made the regulations called "the Post-Graduate Medical Education Regulations, 2000" (hereinafter the Regulations, for short). Regulation 9, relevant for our purpose, provides as under :-

9. SELECTION OF POST-GRADUATE STUDENTS

(1) Students for post-graduate medical courses shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the University/institution may adopt any one of the following procedures both for degree and diploma courses :-

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or

(ii) On the basis of merit as determined by a centralized competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same University; or

Provided that wherever entrance test for post-graduate admission is held by a State Government or a University or any other authorised examining body, the minimum percentage of marks for eligibility for admission to post-graduate medical course shall be 50 per cent. for general category candidates and 40 per cent. for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backwad Classes :

Provided further that in non-Government institutions fifty per cent. of the total seats shall be filled by the competent authority and the remaining fifty per cent. by the management of the institution on the basis of merit.

(Emphasis supplied)

3. The first proviso to Regulation 9 in its present form was introduced with effect from 20-9-2001. Earlier the first proviso required the minimum percentage of marks for eligibility as 50 per cent. for all the categories of candidates.

4. In the first week of March, 2002 the University of Rajasthan published a Notification announcing the holding of pre-PG examination on 21-4-2002. The minimum qualifying marks were notified as 50 per cent. for general category candidates and 40 per cent. for SC/ST/OBC candidates consistently

with the first proviso to Regulation 9. The examination was held on 21-4-2002. The result of the examination was declared on the next day.

5. On 29-4-2002 several in-service doctors (i.e. the graduate doctors who were serving under the State of Rajasthan) filed a writ petition laying challenge to the constitutional validity of the first proviso to Regulation 9 and seeking its being declared ultra vires in its applicability to in-service candidates. In the alternative, it was prayed that the first proviso aforesaid be declared as inapplicable insofar the seats meant for in-service candidates in post-graduate medical courses are concerned. Consistently with such declaration it was prayed that the result be declared afresh and that the in-service candidates be declared to have qualified for entrance in PG degree/diploma courses without insisting on the prescribed minimum qualifying marks. Several such writ petitions were filed. It is significant to note that the writ petitioners before the High Court were all such doctors who were serving in the State services and who had participated in the pre-PG examination but had failed in securing the minimum qualifying marks as prescribed by the first proviso to Regulation 9 and the Notification dated 2nd March, 2002. The High Court issued rule nisi and also passed an interim order to the effect that the unfilled seats in the in-service category shall be kept vacant during the pendency of the proceedings.

6. The State of Rajasthan, the University of Rajasthan and the Medical Council of India were all impleaded as parties. In their respective counter-affidavits they supported the validity of Regulation 9 along with its provisos and submitted that the High Court ought not to modify or make departure from the statutory regulations framed by the Medical Council of India and the standards laid down by it in the interest of medical profession.

7. A learned single Judge of the High Court who heard a batch of 44 similar writ petitions directed all the petitions to be dismissed upholding the validity of the impugned Regulation.

8. The writ petitioners, being aggrieved by the judgment of the learned single Judge, preferred several intra-Court appeals under S. 18 of the Rajasthan High Court Ordinance. On 28-8-2002 the Division Bench framed the following two questions of law and opining the questions to be of considerable importance directed all the appeals to be placed for hearing before a Full Bench:-

1. Whether any reserved quota could not be separately specified for in-service candidates; merely because such in-service category is not mentioned in Art. 15(4) of the Constitution of India?

2. Whether the prescribing of a separate quota for in-service candidates withstands the test of reasonable classification under Art. 14 of the Constitution of India?

9. On 5-2-2003, vide the judgment impugned herein, the High Court has allowed the appeals and set aside the judgment of the learned single Judge. During the course of its judgment the Full Bench has held that the Regulations framed by the Medical Council of India have only a persuasive value and do not have any binding force insofar as the State Government is concerned. The State has the power to prescribe a lower percentage of marks for in-service candidates. Regulation 9 does not apply to in-service candidates. However, the Full Bench held that as the minimum qualifying marks for in-service candidates could not have a wide disparity with the marks prescribed for general category candidates. It directed that it shall be open to the State Government to go ahead with the admission of in-service candidates to the post-graduate courses on the basis of such percentage of qualifying marks which may be lower than 50 per cent. but not below 40 per cent., which is the minimum eligibility percentage prescribed for the reserved category candidates.

10. These are the appeals filed by special leave by the general category candidates and the Medical Council of India.

11. On 24-2-2003 leave to appeal was granted under Art. 136 of the Constitution. The appellants had sought staying of the operation of the judgment of the Full Bench of the High Court being stayed. Prayer for interim relief being allowed ex parte was refused by the Court and notice was directed to be issued to the respondents. On 4-4-2003 counselling was held and 126 seats were filled. 75 students from the in-service category who had secured marks between 40 and 50 per cent. participated in the counselling and have been allotted seats, subject to an undertaking filed by each one of them that the judgment of this Court whenever pronounced shall be binding on them. During the pendency of these appeals the process of admission against PG seats for the year 2003 has been completed. 80 in-service candidates have been allotted seats, out of whom only 18 candidates have cleared the 50 per cent. eligibility criteria. The remaining 62 candidates are ineligible as per the first proviso to Regulation 9. The counselling for 2003 candidates has been held on 28/29-8-2003.

12. When the matter came up for hearing on 19-8-2003 it was brought to the notice of the Court that various candidates who have been declared successful at the pre-PG examination in accordance with the judgment of the Full Bench of the High Court and who may be dislodged in the event of the appeals being allowed were not noticed. The Secretary, Medical and Health Department, State of Rajasthan, was directed to notify on the Notice Board of all the medical colleges in the State of Rajasthan the factum of filing of these appeals and of their coming up for hearing, putting the candidates on notice that they could enter appearance and participate in the hearing, if so advised, so as to defend themselves. That compliance has been done. However, none of such in-service candidates have chosen to appear.

13. We have heard Ms. Indu Malhotra, the learned counsel for the appellants (general category non-service doctors), Mr. Salman Khursheed, the learned counsel for the private respondents who were the writ petitioners in the High Court, Mr. Ranji Thomas, the learned counsel for the State of

Rajasthan, Mr. Maninder Singh, the learned counsel for the Medical Council of India, and all other learned counsel appearing for the parties.

14. Ms. Indu Malhotra, the learned counsel for the appellants (private respondents in the High Court) has carried the Court through the judgment of the Full Bench of the High Court to demonstrate the gross error of law unwittingly committed by the High Court in ignoring the majority view of the Constitution Bench decision of this Court in *Dr. Preeti Srivastava and another v. State of M. P. and others* (1999) 7 SCC 120. Instead, the learned counsel submitted, the Full Bench has quoted a few passages from the minority opinion from *Dr. Preeti Srivastava's case* (supra) which is at variance with the majority opinion, and therefore, the judgment stands vitiated. It was further submitted that a recent decision of this Court in the *State of Madhya Pradesh and others v. Gopal D. Tirthani and others*, 2003 (6) JT (SC) 204 clinches the issue and applies squarely to the facts of the present case, and therefore, also the impugned judgment has to be reversed. We find merit in the submissions so made. AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947

2003 AIR SCW 3636

15. It will be useful to extract and reproduce the law laid down by the majority consisting of four learned Judges speaking through Sujata Manohar, J. in *Dr. Preeti Srivastava's case* (supra). It was held :

(i) the Indian Medical Council Act, 1956, especially the provisions contained in Ss. 16 to 20 of the Act empower the Council to prescribe the minimum standards of medical education required for granting recognised medical qualifications other than post-graduate medical qualifications by the Universities or medical institutions, as also to prescribe the minimum standards of post-graduate medical education. The Universities must necessarily be guided by the standards prescribed under S. 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. An earlier decision of this Court in *Ajay Kumar Singh and others v. State of Bihar and others* (1994) 4 SCC 401 taking the view that the standards of post-graduate medical education prescribed by the Medical Council of India are merely directory and the Universities are not bound to comply with the standards so prescribed was overruled (para 55); 1994 AIR SCW 2515

(ii) The Medical Council Regulations have statutory force and are mandatory. The Act contemplates the Medical Council of India having been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission to medical institutions. The Medical Council has to keep overall vigilance to prevent sub-standard entrance qualifications for medical courses. These observations apply equally to post-graduate medical courses (para 57);

(iii) A Common Entrance Examination envisaged under the Regulation framed by the Medical

Council of India for post-graduate medical education requires the fixing of minimum qualifying marks for passing the examination since it is not a mere screening test;

(iv) Whether any lower minimum qualifying marks (than the one prescribed by the first proviso to Regulation 9) can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of post-graduate medical education. Prescribing the percentage of 20 per cent. for the reserved category and 45 per cent. for the general category is not permissible; the same being unreasonable at the post-graduate level and contrary to the public interest.

16. However, the Full Bench of the High Court has referred to several observations made vide para 77 and para 116 of Dr. Preeti Srivastava's case (supra) wherein the dissenting opinion has disagreed with the conclusions reached by the majority that the fixing of minimum qualifying marks for passing the entrance test for post-graduate course is concerned with the standards of post-graduate medical education. Vide para 116, the dissenting opinion has held that the Regulation and guidelines given by the Medical Council of India are persuasive and do not have any binding force, which are to be kept in view only broadly and that it is permissible for the State authorities to short-list the eligible and qualified MBBS doctors for being considered for admissions to post-graduate medical courses in the institutions of the State, and for the purpose of such short-listing full pleasure is available to the State authorities to exercise legislative or executive power. With respect to the learned Judges constituting the Full Bench of the High Court, we have to say that they could not have relied on the dissenting opinion of one learned Judge, overlooking the majority opinion which is the law laid down by the Constitution Bench and has the binding force. AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947, paras 77 and 114

17. The issue arising for decision before the Full Bench of Rajasthan High Court, arose for decisions in a very similar background in the State of Madhya Pradesh and others v. Gopal D. Tirthani and others (2003 (6) JT (SC) 204). Dealing with the question of why a common entrance test is necessary and why an exception cannot be carved out in favour of in-service candidates by lowering the standards below the ones permitted by the Medical Council of India, this court, following Dr. Preeti Shrivastava's case opined as under :- 2003 AIR SCW 3636, para 23

AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947

"A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high marks. If excellence is to be promoted at the post-graduate level, the candidates qualifying should be able to secure good marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Prescription of qualifying marks is for assessment of the calibre of students chosen for admission. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of

teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable calibre and intelligence, else the students will not be able to move along with each other as a common class. Hence the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education."

It was held that the selection of students who had secured marks less than the minimum marks prescribed by the Medical Council of India's Regulation on account of reduction in the minimum marks in the entrance examination made by the State Government, was liable to be struck down and ignored. If the State has a case for making a departure from the standards laid down by the Medical Council of India or for carving out an exception in favour of any identifiable class of persons, then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification before the Medical Council of India. "The in-service candidates may have been away from academics and theories because of being in-service. Still, they need to be assessed as eligible for entrance in P.G. for taking up such examination, they must either keep updating themselves regularly or concentrate on studies preparatory to entrance examination but without sacrificing or compromising with their obligations to the people whom they are meant to serve on account of being in State services."

18. Out of the several conclusions summed up by the Court the one relevant for the purpose of the present case is- "There can be only one common entrance test for determining eligibility for post-graduation for in-service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India regulations framed in this behalf."

19. The Court has observed that subject to securing the minimum qualifying marks if the in-service candidates formulate a class by themselves for whom a separate channel of entry has been carved out then within the group there may be scope for assigning weightage for rural service rendered, for the purpose of determining order of merit inter se, but such weightage cannot be utilized for the purpose of relaxing the condition as to minimum qualifying marks as prescribed by the Medical Council of India.

20. The decision of the Full Bench of the High Court, having been rendered in ignorance of the binding law laid down by the majority opinion in the Constitution Bench decision of this Court in Dr. Preeti Srivastava and another (supra) and also being inconsistent with the decision of this Court in the case of Gopal D. Tirthani and others (supra) is liable to be set aside. The appeal is allowed. The impugned judgment of the Full Bench of the High Court of Rajasthan is set aside and the judgment given by the learned single Judge is restored. AIR 1999 SC 2894 : 1999 AIR SCW 2795 : 1999 All LJ 1947

2003 AIR SCW 3636

21. As a consequence, the admissions given to such of the in-service candidates who have secured marks less than the minimum prescribed by Regulation 9 framed by the Medical Council of India are struck down and set aside. The counselling shall have to be done afresh to the extent necessary. We are conscious of the fact that there would be some delay in commencement of post-graduation studies and to some extent the 2002 and 2003 batches would overlap. However, that is a situation which cannot be avoided. It is an inevitable consequence for which the successful candidates for the year 2002 and 2003, i.e. those who will be held entitled for admission in post-graduation courses of studies consequent upon this judgment, cannot be made to suffer for no fault of theirs. It will be for the State of Rajasthan, if necessary then in consultation with the Medical Council of India, to sort out the difficulties and to run the regular courses of the studies.

No order as to the costs.

Appeal allowed. .