

SUPREME COURT OF INDIA

Parmender Kumar & Ors.

Vs.

State of Haryana & Ors.

C.A.No.9717 of 2011

(Altamas Kabir,J.,Cyriac Joseph and Surinder Singh Nijjar,JJ.,)

14.11.2011

JUDGMENT

Altamas Kabir,J.,

SLP(Civil)No.15974 of 2011

1. Six Special Leave Petitions, being SLP(C)No.15974/2011, SLP(C)No.16075/2011, SLP(C)No.16346/2011, SLP(C)Nos.16228-30/2011, have been taken up together for hearing, as they involve common questions of fact and law relating to the eligibility of the Special Leave Petitioners, who are members of the Haryana Civil Medical Services, to be admitted to the Post-Graduate Courses conducted by the Pt. B.D. Sharma University of Health Sciences, Rohtak, Respondent No.2 herein, against the reserved quota for such candidates.

2. Leave granted.

3. Before proceeding further, I.A.Nos.4 and 5 of 2011, filed by Dr. Rajeev Kumar and 10 others in SLP(C)No.15974 of 2011, for impleadment in these proceedings as respondents, are allowed.

4. For the sake of convenience, we shall refer to the facts from SLP(C)No.15974/2011, filed by Dr. Parmender Kumar and others. As indicated hereinabove, the Appellants in all these appeals are candidates for admission to the Post-Graduate Courses conducted by the Respondent No.2 University against the Haryana Civil Medical Services (HCMS) reserved quota. As provided for by the prospectus dated 6th January, 2011, a common entrance examination was held for candidates who applied for admissions against seats reserved for the HCMS quota, as also seats under open merit category. The prospectus sets out the total number of seats in each course and the seats earmarked for the HCMS reserved category and also in respect of open merit. According to the prospectus, seats available for the Post-Graduate Course in the different disciplines indicate a total number of 145 seats available, of

which 73 seats were reserved for the All India quota, 29 seats were reserved for the HCMS reserved quota and 43 seats were reserved for the open merit category. As per the prospectus, the last date of receipt of application was 24th January, 2011 within 5 p.m. The common entrance examination was held as per schedule on 2nd March, 2011 and results were declared on 3rd March, 2011. Counselling was scheduled for 6th April, 2011 and the academic session was due to commence on 10th May, 2011.

5. The eligibility criteria laid down in the prospectus for candidates appearing in the entrance examination in respect of the HCMS reserved quota was included in Clause 5 of the prospectus, which reads as follows :

"5. HCMS doctors sponsored by the State Govt. will be eligible to appear in the entrance examination against the reserved seats for this category, provided they submit the application through their employer or submit their applications for getting NOCs to the department/State Government well in time and the Department/State Govt. will ensure that the NOCs where ever eligible, are issued before the date of 1st Counselling i.e. 06.04.2011."

6. What is of importance is the method of selection and admission which was made a part of the prospectus, wherein, in Clause 6 relating to determination of merit, in Sub-Clause (iii), it was indicated as follows :

"6.(iii) The conditions for NOCs fixed by the Govt. of Haryana vide letter No.2/123/05/I-HB-I dated 5.12.2008 for HCMS doctors who want to join PG-courses are given at Annexure-D. (However, latest Govt. instructions issued from time to time will be followed)."

7. For, as per the aforesaid Sub-Clause, HCMS doctors who wanted to join the PG-courses against the HCMS reserved quota, required NOC in terms of Government of Haryana instructions dated 5th December, 2008. As per the said instructions, one of the eligibility conditions was contained in Clause 3, which is extracted hereinbelow :

"3. The basic condition for eligibility is three years regular service with successful completion of probation period out of which two years service is essential in rural areas for both reserved and open seats in the case of HCMS doctors. However, the condition of rural service will not be applicable in the case of a member of the HMES."

8. The Appellants were allowed to participate in the selection process on the basis of the above criterion and as per the cases made out in the several appeals, their names were published in the merit list dated 3rd March, 2011. From the said list it will appear that out of the total number of 38 candidates in the HCMS quota in the M.D./M.S./P.G. Diploma course and 3 candidates in the MDs course, all the Appellants in the various appeals stood admitted along with similar candidates.

9. However, on 31st March, 2011, the Government of Haryana issued an instruction, which was circulated on its website on 5th April, 2011, that changed the eligibility conditions and applied the same to the process of admission which had already been set in motion on the basis of the Government instructions dated 5th December, 2008, and that too just one day before the date of counselling, i.e., 6th April, 2011. The amended provision is extracted hereinbelow :

"MBBS doctors will be eligible for doing Post-Graduate Course, both degree as well as Diploma after completion of 5 years of regular satisfactory service including 2 years of probation, out of which 3 years service should be in one of the District Hospital or a Sub-Divisional Hospital and 2 years in rural area institutions. Only the persons fulfilling this condition will be eligible for sponsorship against reserved seat in PGIMS Rohtak or other Government institution and against the open seats in the Government Colleges of Haryana or similar Government institutions anywhere else in the country."

10. It is the changed conditions relating to admission in the Post-Graduate Courses which resulted in the filing of CWP No.6168 of 2011, by Dr. Parmender Kumar and others and other writ petitions were filed by the other Appellants in the Punjab and Haryana High Court. Upon consideration of the original conditions relating to eligibility for admission in the Post-Graduate Course and the changes effected by the Government instruction dated 31st March, 2011, the learned Single Judge of the High Court by order dated 6th April, 2011, while listing the matter on 13th May, 2011, passed an interim order to the effect that in the meantime the Appellants would be permitted to take part in the counselling as against the HCMS quota candidates, subject to their own risk and responsibility. It was made clear that the said order would not confer any equitable right in favour of the Appellants. It was further directed that the result of the counselling of the Appellants should be kept in a sealed cover and would be subject to the outcome of the writ petition.

11. Aggrieved by the interim order passed by the learned Single Judge, Dr. Parmender Kumar and others filed Letters Patent Appeal Nos.983 and 995 of 2011, before the Division Bench of the Punjab and Haryana High Court. The appeals were disposed of by the Division Bench by its order dated 2nd June, 2011, upholding the order of the learned Single Judge rejecting the challenge to the new policy relating to grant of NOC, on the ground that it was evident that the State had every right to prescribe a policy for the grant of NOC, especially when it was dealing with the cases of sponsorship of in-service candidates for higher studies. The logic behind the same is that the State was committed to bear the expenses for the selected HCMS candidates, as such incumbents were entitled to full pay and the period spent by them in pursuing these courses was to be treated as having been spent on duty. The Division Bench also noted that the underlying principle in accepting the prospectus as correct is that the State does not indulge in nepotism, nor has any allegation of mala fide being made, nor are they even visible. The Division Bench observed that the Appellants had not been excluded from the zone of consideration, but they had been denied consideration in HCMS category. The Division Bench also took note of the fact that in the prospectus it had

been made clear that NOC was to be issued by the State as per its policy applicable from time to time and as a result even if the Appellants passed the test for admission to the Post-Graduate Courses, no vested right accrued to them to either get the NOC from the State of Haryana or to get full salary during the period of Post-Graduate studies. The Division Bench distinguished the decision of this Court in *State of Punjab & Anr. Vs. Dr. Viney Kumar Khullar & Ors*¹. by observing that provisional NOC had already been issued before the policy was revised, which was the distinguishing feature of the judgment in its applicability to the present case.

12. Appearing for the Appellants, Mr. Altaf Ahmad, learned Senior Advocate, as also Mr. K.K. Tyagi, learned Advocate, questioned the decision of the learned Single Judge, as well as the Division Bench of the High Court, on the ground that once a criterion had been laid down in the prospectus, the Respondents concerned had no authority to alter the same once the process under the said prospectus had already commenced and a select list of candidates had also been published. Change of such conditions, one day prior to counselling as to the discipline to be pursued, was to the prejudice of the candidates who had been selected, as they had been selected on the basis of the unamended prospectus. Mr. Ahmad submitted that one could possibly have accepted the change in the criterion for admission, if it had been made before the prospectus was acted upon, but once the prospectus was acted upon, the entire process of admission to the Post-Graduate or Diploma Courses would be governed by the said prospectus and any change and/or alteration of the conditions of the prospectus thereafter, would seriously prejudice the candidates who had already been selected.

13. In this regard, reliance was placed on the decision of this Court in *Dr. Viney Kumar Khullar's case* (supra), wherein, while dealing with almost a similar case altering the terms and conditions for selection, this Court held that besides the earlier circulars, the Amendment Circular ought to have been mentioned in the prospectus. It was observed that nothing prevented the Government from stating that the NOC should be subject to the conditions mentioned in the Circular dated 13th May, 1996, as amended by Circular dated 30th July, 2007, which was issued after the 2007 admissions and was sought to be made applicable for the first time in respect of 2008 admissions. Consequently, the candidates for the 2008 admissions would have no knowledge about the Amendment Circular dated 30th July, 2007, unless it was mentioned in the prospectus. This Court further held that the candidates would have bona fide proceeded on the basis of eligibility for the NOC, in terms of the Government Circular dated 13th May, 1996. Learned counsel submitted that a similar view had been taken by this Court in *Vinay Rampal (Dr.) Vs. State of J & K & Ors*². Wherein this Court had held that since no reference had been made in the advertisement about the subsequent Government Order dated 23rd March, 1979, it was the requirement set out in the advertisement which should have provided the basis for selection and eligibility for admission of the petitioner therein.

14. Mr. Altaf Ahmad pointed out that in yet another case, namely, *Rajiv Kapoor & Ors. Vs. State of Haryana & Ors*³. this Court had observed that the mess that had occurred leading to the litigation seemed to be more on account of the inept drafting and publication of the prospectus by the University and not properly carrying out the binding orders of the

Government and of too many orders passed from time to time, being allowed to stand piecemeal independently. In fact, it was also observed that the Government would do well in future to publish at the beginning of every academic year, even before inviting applications, a compendium of the entire scheme and basis for selection carrying out amendments up to date and the prospectus also, specifically adopting them as part of the prospectus, to avoid confusion in the matter of selection, every year.

15. Mr. Ahmad submitted that since the subsequent alteration of the criterion for admission to the Post-Graduate and Diploma Courses in the various disciplines had not been included in the prospectus for admissions to the current year, no reliance can be placed on the same and the submissions made on that behalf are liable to be rejected.

16. Mr. P.S. Patwalia, learned Senior Advocate, appearing for the added respondent Nos.2 to 11, on the other hand, submitted that the object of directing NOC to be obtained by the candidate before he could be allowed to join a new session was that the choice had to be made extremely carefully before such candidates would get full salary for the period during which they were to pursue Post-Graduate studies and they would also be deemed to be in service during the entire period.

Mr. Patwalia submitted that prior to the amendment in the prospectus, Clause 3 thereof provided that the basic conditions for eligibility would be 3 years' regular service, with successful completion of probation period, out of which 2 years' service was essential in the rural areas. An exception was made in the case of a candidate who was a member of HCMS. The said criteria was altered by the Government Instruction dated 5th December, 2008, whereby it was indicated that MBBS members would be eligible for doing the Post-Graduate and Diploma Courses after completion of 5 years of regular service in place of 3 years, as stipulated earlier, including 2 years of probation, out of which 3 years of service would have to be one of the District Hospitals or the Sub-Divisional Hospital and 2 years in a rural area institution. Mr. Patwalia submitted that the said change was not a change in regard to the criterion of eligibility for admission, but it was a change of conditions of service as the Government always has the power to make such changes. In this regard, reliance has been placed by Mr. Patwalia on two decisions of this Court in

“i) *Union of Public Service Commission Vs. Gaurav Dwivedi & Ors*⁴. and

(ii) *State of Orissa & Anr. Vs. Mamata Mohanty*⁵ in which it was emphasized that the necessity of possession of prescribed qualification by teachers, was extremely crucial for an educational institution, since excellence of instruction provided by an educational institution mainly depends directly on excellence of teaching staff. Hence, unless teachers themselves possess a good academic record, the standard of education can neither be maintained nor enhanced.

17. Mr. Patwalia also referred to the decision of this Court in Rajiv Kapoor's case (supra), in which the question of the right of in-service candidates to be admitted from the reserved

category of Post- Graduate Courses was under consideration. It was held that in regard to the method and procedure to be followed in selection from amongst HCMS candidates, the Government Orders providing procedure other than those contained in the prospectus were quite valid, since it had power to issue such orders and the prospectus could not prevail in exclusion of the Government Orders. The learned Judges observed that both should be so construed that inter se merits of the in-service candidates were assessed on the basis of their credentials and performance in service. It was categorically held that even if the latest Government Order was issued after declaration of results of the entrance examination, the earlier Order would still be required to be complied with.

18. Mr. Patwalia submitted that in view of the aforesaid decision, the appeals were liable to be dismissed.

19. On behalf of the State of Haryana, Mr. Vikas Singh, learned Senior Advocate, pointed out that the NOCs, which were given by the Government on 4th April, 2011, had been given to the candidates from the reserved HCMS category for 5 years, while NOC was given for 3 years to the candidates from the open category. As far as the Appellants are concerned, they were given NOCs for the open category and not for the reserved category and, hence, their claim for being considered for admission in the reserved HCMS category was without any basis and was liable to be rejected.

20. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the Post-Graduate or Diploma Courses in the different disciplines in medicine which had earlier been indicated in the prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the Post-Graduate or Diploma Courses in the reserved HCMS category.

21. Although, Mr. Patwalia had placed a good deal of reliance on the decision of this Court in Rajiv Kapoor's case (*supra*), wherein, the facts were almost similar to the facts of this case, there is a singular distinction between the two. It has, no doubt, been held by this Court in Rajiv Kapoor's case (*supra*), that the High Court fell into serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question had to be only in terms of the stipulations contained in Chapter V of the prospectus issued by the University. It was further held that such an error had been committed by assuming that the Government had no authority to issue any directions laying down any criteria other than the one contained in the prospectus and that the marks obtained in the written entrance examination alone constituted proper assessment of the merit performance of the candidates applying for selection and admission. This Court also observed that the

High Court in allowing the writ petitions had purported to follow an earlier judgment of the Full Bench of the same High Court reported in *Amardeep Singh Sahota Vs. State of Punjab*⁶ which, in fact, did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly, in respect of reserved category of seats. This Court also observed that ultimately the Full Bench had directed in the case decided by it that selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus, after ignoring the offending notification introducing a change at a later stage.

22. If the aforesaid decision of this Court is to be relied upon, it, in fact, favours the case of the Appellants, since, while observing that selections or admissions for the Courses in question will have to be effected only in terms of the stipulation contained in the prospectus issued by the University, the orders issued by the Government from time to time would also have to be taken into consideration. An exception was, however, made by this Court in relation to orders which came to be issued after the declaration of results of the written entrance examination. In that context, it was observed as follows :

".....The further error seems to be in omitting to notice the fact that the orders dated 21-5-1997, which came to be issued after the declaration of results of written entrance examination, even if eschewed from consideration the orders dated 20-3-1996 and 21-2-1997 passed in continuation of the orders of the earlier years, continued to hold the field, since the orders dated 21-5-1997 were only in continuation thereof."

23. As has also been pointed out hereinbefore, this Court took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage." In fact, this is what has been contended on behalf of the Appellants that once the process of selection of candidates for admission to the Post-Graduate and Diploma Courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. If such Government Orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses. It is no doubt true that the benefits of admission in the reserved category are many, but the same is the result of the policy adopted by the State Government to provide for candidates from the reserved category and since the Appellants had been selected on the basis of merit, in keeping with the results of the written examination, the submission made by Mr. Patwalia that such admissions in the reserved category will have to be made keeping in mind the necessity of upholding the standard of education in the institution, as was observed in Mamata Mohanty's case (supra), is not applicable in the facts of this case. The Appellants have shown their competence by being selected on the basis of their results in

the written examination. The submission made by Mr. Vikas Singh for the State, that the NOCs had been given to the Appellants from the open category, also does not appeal to us, since the Appellants were candidates in respect of the reserved category of the HCMS.

24. We, accordingly, have no hesitation in allowing the appeals and setting aside the judgment and order of the Division Bench of the Punjab and Haryana High Court. However, we appear to be facing the same problem, as was faced by this Court in Dr. Vinay Rampal's case (supra). The counselling process in these appeals was to be conducted on 6th April, 2011 and the academic session was to commence on 10th May, 2011. In other words, the Appellants have already lost about six months of the courses in question. As was observed in Dr. Vinay Rampal's case (supra), the sands of time had run out which is inevitable in judicial process. Following the same reasoning, as was adopted in the aforesaid case, we direct that the Appellants shall be admitted in the Post-Graduate or Diploma Courses, for which they have been selected, for the new academic year without any further test or selection.

25. The Appeals are disposed of accordingly. There will be no order as to costs.

Judgment Referred.

¹(2010) 13 SCC 0481

²(1984) 1 SCC 0160

³(2000) 9 SCC 0115

⁴(1999) 5 SCC 0180

⁵(2011) 3 SCC 0436

⁶(1993) 4 SLR 0673 (FB)