

SUPREME COURT OF INDIA

Aneesh D. Lawande

Vs.

State of Goa

Writ Petition (C) No. 598 of 2013

(Anil R.Dave and Dipak Misra JJ.)

30.08.2013

JUDGMENT

DIPAK MISRA, J.

1. The present litigation expositis a sad sad scenario. It is sad because a chaos has crept in in the lives of some students and it is further sad as the State of Goa and its functionaries have allowed ingress of systemic anarchy throwing propriety to the winds possibly harbouring the attitude of utter indifference and nurturing an incurable propensity to pave the path of deviancy. The context is admission to Post Graduate courses in a single Government medical college at Goa. The insensitivity of the authorities administering medical college admissions was seriously decried by a three-Judge Bench in *Convenor, MBBS/BDS Selection Board and others v. Chandan Mishra and others*[1] and further echoed in *Medical Council of India v. Madhu Singh and others*[2]. The Court in *Chandan Mishra (supra)* had approvingly reproduced a sentence from the decision of the High Court that proclaimed in sheer anguish: “Shakespeare in Othello has written “Chaos is come again”.

2. The saga of anguish continues with constant consistency. In *Asha v. Pt. B.D. Sharma University of Health Sciences and others*[3] a two-Judge Bench commenced the judgment thus: -

“Admission to the medical courses (MBBS and BDS) has consistently been a subject of judicial scrutiny and review for more than three decades. While this Court has enunciated the law and put to rest the controversy arising in

relation to one facet of the admission and selection process to the medical courses, because of the ingenuity of the authorities involved in this process, even more complex and sophisticated sets of questions have come up for consideration of the Court with the passage of time. One can hardly find any infirmities, inaccuracies or impracticalities in the prescribed scheme and notifications in regard to the process of selection and grant of admission. It is the arbitrary and colourable use of power and manipulation in implementation of the schedule as well as the apparently perverse handling of the process by the persons concerned or the authorities involved, in collusion with the students or otherwise, that have rendered the entire admission process faulty and questionable before the courts. It is the admissions granted arbitrarily, discriminately or in a manner repugnant to the regulations dealing with the subject that have invited judicial catechism. With the passage of time, the quantum of this litigation has increased manifold.”

3. We have begun with such a prefatory note and referred to the aforesaid pronouncements as the facts, as have been uncurtained, would shock one’s conscience. A deliberate labyrinth which not only assaults the majesty, sanctity and purity of law, but also simultaneously creates a complex situation requiring this Court to intervene in a different manner to redeem the situation as far as possible so that there is some sanguine cathartic effect.

4. Presently to the facts. The State of Goa has framed a set of Rules, namely, the Goa (Rules for admission to Postgraduate degree and diploma courses of the Goa University at the Goa Medical College) Rules, 2004 (for short “the Rules”). Rule 3 deals with eligibility, preference and order of merit. Rule 3(1) deals with eligibility criteria and Rule 3(2) with preference. Rule 3(3) of the Rules deals with order of merit. The relevant part of the said Rule is reproduced below:-

“(3) Order of Merit –

(i) The order of merit shall be determined by the percentage of aggregate marks.

(ii) Aggregate Marks – The percentage of aggregate marks shall be arrived at by totaling the marks obtained in all the subjects of the 1st, 2nd and 3rd

MBBS Examinations and reducing it to a percentage after the following deductions: -

a) 5 per cent of marks shall be deducted for every failure from the marks of the subject failed

b) 5 per cent of marks shall also be deducted as above, if the student takes a drop in the subject.

(iii) If two or more candidates secure the same marks in the merit list as drawn above, the marks obtained in the subject shall decide the merit. In case the subject marks are also the same, the total marks secured by the candidates in the Final M.B.B.S. Examination, or total marks of IInd MBBS Examination or total marks of the 1st M.B.B.S. Examination, depending on whether the candidate is seeking registration in the clinical or para-clinical or pre-clinical subjects respectively, shall decide the merit.

(iv) A candidate, who has failed three times in a particular subject, shall not be eligible for registration for the degree or diplomas for which the marks of that subject are considered.

(v) For admission to the postgraduate degree and diploma courses, the candidates belonging to the General Category will be required to obtain minimum 50% and the candidates belonging to the Scheduled Casts, Scheduled Tribes and Other Backward Classes will be required to obtain minimum 40%, aggregate marks as determined above.”

5. The said Rule governs the admission to the singular medical college and the lone dental college, both Government colleges affiliated to Goa University. On 9.8.2012 the Government of Goa in the Department of Public Health, through its Under Secretary (Health) communicated to the Dean, Goa Medical College, as follows:-

“I am directed to refer to your letter No. Acad/141/ NEET/12/G.M.C./245 dated 27.6.2012 on the subject cited above and to convey approval of the Government for implementation of the Medical Council of India’s Notification on the National Eligibility-cum-Entrance Test (NEET) for the Under Graduate and Post Graduate students from the Academic Year 2013-14.”

6. In pursuance of the decision taken the students appeared in the National Eligibility-cum-Entrance Test (NEET) held in November-December, 2012 for the medical courses and in January, 2013 for the dental courses. It is worthy to note that introduction of NEET was made by issue of a notification by the Medical Council of India in exercise of power conferred on it by Section 33 of the Indian Medical Council Act, 1956. The said notification as well as the notification issued by the Dental Council of India came to be challenged in *Christian Medical College Vellore and others v. Union of India and others*[4].

7. During the pendency of the writ petitions as well as the transferred cases which were transferred from various High Courts, this Court on 13.12.2012 passed the following order:- “Place these matters on 15th January, 2013.

In the meantime, the Medical Council of India, the Dental Council of India, as well as the States and Universities and other institutions, will be entitled to conduct their respective examinations for the M.B.B.S., B.D.S. and Post-Graduate courses, but shall not declare the results of the same, until further orders of this Court.

Learned counsel for the respective parties are all directed to make available their written submissions by 7th January, 2013.

Let copies of this Order be made available to the advocates-on- record for the respective parties for communication to concerned Authorities.

Wide publicity may also be given to this Order by the States, Union of India, Medical Council of India and the Dental Council of India so that the students, who are intending to sit for the entrance examination, may have knowledge of the same.”

[Underlining is ours]

8. After the aforesaid order came to be passed the NEET examination was conducted for the medical as well as dental courses. On 13.5.2013 this Court referred to the challenge to the notifications, order passed on 13.12.2012 and thereafter passed the following order: -

“3. On 13th December, 2012, when the matters were taken up for consideration, we decided to post the matters for final hearing on 15th, 16th and 17th January, 2013, and allowed the respective entrance examinations, which had already been notified, to be held, while the hearing progressed. Such examinations included the National Eligibility Entrance Test (NEET) for both MBBS and PostGraduate courses in different disciplines, as also the BDS and MDS examinations. Presuming that the hearing would be completed on the dates indicated, we had directed that the Medical Council of India, the Dental Council of India, as well as the States and Universities and other institutions, would be entitled to conduct their respective examinations for the MBBS, BDS and Post-Graduate courses, but the results of the examinations were not to be declared until further orders of the Court. Consequently, although, the examinations have been held, the results have been withheld and have not been declared, on account of the interim order passed by us.

4. The hearing could not be concluded within 17th January, 2013, as we had hoped, on account of the enlargement of the scope of the hearing and the large number of parties who had to be heard in the matter. In fact, the matters were last heard on 30th April, 2013, and it has, therefore, not been possible to pronounce judgment before the Supreme Court closed for the summer vacations on 10th May, 2013.

5. While the matters were being heard, we had been informed by the learned senior counsel appearing for the Christian Medical College, Vellore, and the Karnataka Pvt. Medical & Dental College, that a large number of students would be adversely affected and would stand to lose a year, if the bar on the declaration of their results was not lifted. Although, initially, we had declined to entertain such prayer, on account of the delay in completion of the hearing and the prospect of the students losing a year on account thereof, we feel that students hoping to gain admission in the MBBS as well as Post-Graduate courses on the strength of the results of the examinations, which have already been held and for which they had appeared, should not be denied such opportunity, at least for this year. We are also alive to the fact that it is the Post-Graduate students in the medical colleges, who take charge of the medical treatment of patients in the hospitals. Without fresh entrants into the Post-Graduate courses, even for a year, the hospitals are likely to be

adversely affected on account of lack of doctors to directly take care of the patients in the hospitals.

6. Apart from the above, the students, who aspire to gain entry into the medical colleges at the MBBS and BDS and the Post- Graduate levels, have been caught in the legal tangle for no fault of theirs and are the victims of policy decisions. In order to safeguard their interests, as also the interest of the hospitals, we consider it just and equitable to lift the bar imposed by us on 13th December, 2012, for this year's entrance examinations and, to that extent, we modify our order of 13th December, 2012, and allow the results of the examinations already conducted to be declared to enable the students to take advantage of the same for the current year.”

[Emphasis supplied]

9. Pursuant to the aforesaid order, the results of NEET were declared on 16.5.2013. The writ petitioners herein secured ranks which entitled them to be admitted to the post graduate courses in various streams in the State of Goa.

10. When the matter was sub-judice before this Court and this Court has been passing interim orders regard being had to the numerous fact situations, the High Court of Bombay at Goa entertained Writ Petition No. 366 of 2013 by the students, who had failed to qualify in the NEET examination but were eligible to get admission on the basis of their aggregate marks as provided under the Rules, and passed the following interim order: - “Mr. Nadkarni submits that the applications for admission to postgraduate courses in Goa Medical College have been invited from the students, who fall in the category of M.B.B.S. examination from Goa Medical College as well as those who have passed National Eligibility-cum-Entrance Test (‘NEET’ for short) and counselling and admission process are presently being undertaken in terms of MCI Rules on the basis of the result of the NEET.

Considering the equities in the matter, we direct the respondents to hold counselling in respect of both the categories of students and permit admission to the students, who have passed NEET subject to further orders that may be passed by this Court, depending upon the order passed by the Apex Court in the matter pending before it. The selected candidates shall be

put on notice that the admissions are provisional in nature and shall be subject to further orders that may be passed by this Court.”

11. It is condign to note here that on the basis of the ranks in NEET examination and the counselling the writ petitioners were admitted in the Government Medical College at Goa.

12. At this juncture, we are obliged to state that the problem to some extent has been created by the interim order passed by the High Court. With all respect at our command, we may state that when the matter was before this Court and interim orders were being passed from time to time, the High Court should have been well advised not to entertain the petition and pass any interim order. Such a restraint was requisite and, more so, when number of writ petitions had been transferred to this Court and the Court was dealing with a batch of 115 matters.

13. The writ petitions filed before this Court and the transferred cases were decided on 18.7.2013 whereby the majority came to hold that the Medical Council of India is not empowered under the Medical Council of India Act, 1956 to conduct the NEET. After so holding the majority directed as follows: - “163. The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI- 31(1)/2010-MED/49068, and MCI.18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented thereunder along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India, are hereby quashed. This will not, however, invalidate actions so far as taken under the amended Regulations, including the admissions already given on the basis of the NEET conducted by the Medical Council of India, the Dental Council of India and other private medical institutions, and the same shall be valid for all purposes.”

[Emphasis added]

14. After the judgment was pronounced, some kind of infantile wisdom which may, in different terminology, be called depraved sense of egocentric knowledge, the Additional Secretary (Health) had conveyed the Government’s decision dated 25.7.2013 which is as under: -

“The Dean

Goa Medical College,

Bambolim-Goa

Sub: Decision of the Government regarding

Admission to Post Graduate Degree/Diploma

Courses at GMC.

I am directed to refer to your letter No. Acad/175/G.M.C./2013/441 dt. 23.7.2013 on the subject cited above and to convey the decision of the Government to admit the students for Post Graduate Degree/Diploma based on aggregate MBBS marks, as per existing rules as notified in the Official Gazette Series I No. 50 and Series I No. 51, Notification No. I/B/2033-II/PHD.

Provisional admissions given on the basis of the NEET merit earlier thus stands cancelled.”

[Underlining is ours]

15. This wise act of the State Government can irrefragably be compared with “absence of common sense in an uncommon degree”.

16. When the writ petitions came before the High Court on 25.7.2013, it passed the following order: -

“Mr. Nadkarni, learned Advocate General appearing on behalf of respondents No. 1 to 5 states that in view of the decision of the Supreme Court dated 18/07/2013 in T.C. (C) No. 98 of 2012 and allied matters, the State Government has decided to follow its decision dated 15/06/2013 and grant admissions in terms of the State Regulations.

In view of the statement made by the learned Advocate General, Mr. Lotlikar, learned Senior Counsel seeks leave to withdraw the petition, which

is objected to by the learned counsel appearing on behalf of the private respondents. Before granting leave to withdraw the petition, we deem it appropriate to hear the respondents.

We also direct the State Government to place on record the decision taken by it to go by the said regulations by filing an Affidavit of a responsible officer. The Affidavit to be filed by 29/07/2013 with advance copies to the learned counsel appearing for the petitioners as well as the respondents.”

17. After the aforesaid event, chaos ruled. The candidates, who had qualified in the NEET examination and had been admitted, were compelled to leave the college and the students who had qualified under the Rules were admitted. The dissatisfaction impelled the grieved students to approach this Court under Article 32 of the Constitution and the Court on 30.7.2013 stayed the order of the State Government and thereafter on 7.8.2013 passed a mandatory order to the effect that the petitioners shall be permitted to continue their studies.

18. The thrust of the matter is whether the petitioners have any right to continue or the respondents who have been admitted under the Rules have the right of admission.

19. Mr. R.F. Nariman, learned senior counsel appearing for the petitioners, would urge with immense vehemence that the State of Goa had consciously accepted the NEET examination for the purpose of admission to post graduate courses and, hence, it cannot be permitted to take a somersault. That apart, submits the learned senior counsel, in view of the protection granted by this Court in its final judgment, which protects their admissions, their rights could not have been demolished in such an irrational manner.

20. Mr. Singh, learned senior counsel appearing for the State of Goa, would submit that NEET having been declared ultra vires, the acceptance or non-acceptance by the State Government has to pale into insignificance. He would further submit that the State Government, keeping the High Court order in view wherein it was mentioned that admission should be provisional, had issued the order of cancellation of the admissions given to the successful NEET candidates.

21. We have already reproduced paragraph 163 of the judgment pronounced by this Court in Christian Medical College, Vellore (supra) on 18.7.2013. The

majority has unequivocally stated that the quashment of the notifications shall not invalidate the action already taken under the amended regulations including the admissions already given on the basis of NEET conducted by the Medical Council of India and the Dental Council of India. There is no cavil over the fact that the petitioners had qualified and taken admissions. The High Court by its order dated 20.6.2013 directed to hold counselling in respect of both the categories of students and permit admissions to the students who have passed NEET subject to further orders that may be passed by it depending upon the order passed by the Apex Court in the matter pending before it. As per the direction of the High Court the selected candidates are to be put on notice that the admissions are provisional in nature and shall be subject to further orders that may be passed by the High Court. The High Court should not have entertained the writ petition on three counts, namely, (i) all the writ petitions challenging the notification from all the High Courts had been transferred to this Court; (ii) that the Court had been passing interim orders from time to time; and (iii) that any order passed by it had the potentiality to usher in some kind of anomaly. What the High Court would have done while finally adjudicating the matter is another issue but on the basis of the decision taken by the State Government on 25.7.2013, possibly the learned Advocate General made a statement before the Court on 25.7.2013.

22. Mr. Singh, learned senior counsel, would submit that all admissions being provisional, as stated by the High Court, the State Government after interpreting the orders thought it apposite that the admissions given on the base of ranks in NEET should be cancelled and the admissions given under the Rules should be sustained. We have already stated how the Government has taken the decision. Though we have stated that the High Court should not have entertained and passed any order, yet we are obliged to state that the order of the High Court is also quite clear to the effect that interim order was subject to further orders that may be passed by it depending upon the order passed by this Court. Thus, the order passed by the High Court was a guarded one. This Court in the final judgment had not invalidated the actions taken under the amended regulations and it included the admissions already given on the basis of the NEET conducted by the Medical Council of India. Therefore, there could not have been any scintilla of doubt in any one's mind that the admissions given on the basis of NEET examination had been protected by this Court and hence, their admissions could not have been cancelled by the State Government.

23. It is really perplexing that the State Government in spite of the order of this Court took a decision on 25.7.2013 to cancel the provisional admissions given to the students on the basis of NEET merit examination. The act indubitably shows total lack of prudence. The authorities in the Government are required to understand that the basic governance consists in the act of taking considered, well vigilant, appropriate and legal decisions. It is the sacrosanct duty of the Government to follow the law and the pronouncements of the court and not to take recourse to such subterfuges. The Government should have reminded itself the saying of Benjamin Disraeli:

“I repeat – that all power is a trust – that we are accountable for its exercise – that, from the people and for the people, all springs, and all must exist.”

24. It may not be out of place to state here that every public authority has a duty coupled with power. Before exercising the power one is required to understand the object of such power and the conditions in which the same is to be exercised. Similarly, when one performs public duty he has to remain alive to the legal position and not be oblivious of it. In this context, we may refer to the authority in *Superintending Engineer, Public Health, U.T. Chandigarh and others v. Kuldeep Singh and others*[5] wherein the Court has reproduced the observations of Lord Cairns L.C. in the House of Lords in *Julius v. Lord Bishop of Oxford*[6] which was quoted with approval by this Court in *Commissioner of Police, Bombay v. Gordhandas Bhanji*[7]. The succinctly stated passage reads thus: -

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

But, unfortunately, here the authorities of the State Government have felt courageous enough to play possum and proceeded to crucify the fate of the candidates who had been protected by the verdict of this Court. Such an action is absolutely impermissible. Thus analysed the letter dated 25.7.2013 deserves to be lanced and we so do. The writ petitioners, who have been admitted on the basis of the NEET examination, shall be allowed to prosecute their studies.

25. The agony and woe do not end here. The anguish of the students who were admitted on the basis of the Rules, in our considered opinion, deserves to be addressed. True it is, they instead of approaching this Court knocked at the doors of the High Court, may be in anxiety, as the counselling for the candidates qualified in the NEET examination had commenced. By virtue of the order of the High Court they got provisional admissions. They have prosecuted their studies for some time. Had the NEET not been introduced, they would have been admitted under the Rules. But, presently the situation is totally different. With the intention to solve the problem we had directed issue of notice to the Medical Council of India. Mr. Amit Kumar, learned counsel appearing for the Medical Council of India, has invited our attention to the pronouncements of this Court in *K.S. Bhoir v. State of Maharashtra and others*[8], *Faiza Choudhary v. State of Jammu and Kashmir and another*[9], *Satyabrata Sahoo and others v. State of Orissa and others*[10] and *Medical Council of India v. State of Karnataka and others*[11]. Learned counsel has drawn colossal inspiration from the pronouncements in *Satyabrata Sahoo and Faiza Choudhary (supra)*.

26. In *Satyabrata Sahoo*, a two-Judge Bench has stated thus: -

“This Court in *State of Punjab v. Renuka Singla*[12] held that the High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment and staff, the limit of the number of admissions is fixed by the Medical Council of India.

Thereafter, the learned Judges proceeded to state thus:-

“...in *Medical Council of India v. State of Karnataka* this Court held that the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.”

27. In *Faiza Choudhary (supra)* a two-Judge Bench has ruled thus: -

“In *Medical Council of India v. State of Karnataka* this Court held that the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in the medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council. In *Medical Council of India v. Madhu Singh*[13], this Court held that there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. Recently, this Court in *Satyabrata Sahoo v. State of Orissa* has reiterated that it would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years.”

28. From the aforesaid decisions two principles emerge: (i) that there cannot be direction for increase of seats and (ii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent years.

29. At this juncture, we may refer with profit to *Priya Gupta v. State of Chhattisgarh and others*[14], wherein the Court had issued directions under Article 142 of the Constitution permitting the appellants therein to complete the course.

30. The factual matrix of the present case, being totally exceptional, compels us to exercise our jurisdiction under Article 142 of the Constitution to issue a direction so that it can act as a palliative at least for some of the students who had been given admissions under the Rules. We have been apprised by Mr. Singh, learned senior counsel for the State and Ms. Indu Malhotra, learned senior counsel for the private respondents, that 21 seats of All India quota in postgraduate medical course and 7 seats in dental course have been transferred to the State quota. Mr. Amit Kumar, learned counsel for the Medical Council of India, while not disputing the numbers, would submit that they are to be filled up on different parameters. We are absolutely conscious of the said position. However, regard being had to the special features of the case and the litigations that have cropped up and the mistake that the State Government has committed, we are inclined to direct that 21 seats transferred to the State quota shall be filled up from among the students who had taken admissions under the 2004 Rules. It needs no special emphasis to state that the admissions and the allocations of the stream shall be on their inter se merit as per the Rules. We may hasten to clarify that none of these candidates shall be allowed to encroach upon the streams that have already been allotted to the

petitioners who were admitted having been qualified in the NEET examination. We have been further apprised at the Bar that there are some unfilled seats as some students have left the College. If the vacancies have occurred, the same can also be filled up regard being had to the merit as stipulated under the Rules.

31. We will be failing in our duty if we do not take note of two submissions put forth by the learned counsel for the State as well as by Ms. Indu Malhotra, learned senior counsel for the private respondents. The first one is to the effect that there should be increase of the seats for the academic year 2013-14 and the students should be adjusted. Be it noted, an application was filed by the College for enhancement of seats for 2014-15 and during the pendency of this petition there has been a request to the Medical Council of India to prepone it for the year 2013-14. Enhancement of seats requires inspection and is controlled by a set of Regulations and, in any case, the application for 2014-15 cannot be directed to be processed in the current year.

32. The next submission relates to the issue whether the students who cannot be adjusted in the seats of All India quota that have been transferred to the State quota of this year can be adjusted next year. During the course of hearing though there was some debate with regard to giving of admissions to such students in the academic year 2014-15, Mr. Amit Kumar, learned counsel for the Medical Council of India, has seriously opposed the same and, thereafter, has cited the authorities which we have referred to hereinbefore. We are bound by the said precedents. In certain individual cases where there is defective counselling and merit has become a casualty, this Court has directed for adjustment in the next academic session but in the case at hand, it is not exactly so. Though we are at pains, yet we must express that it will not be appropriate to issue directions to adjust them in respect of the subsequent academic year, for taking recourse to the same would affect the other meritorious candidates who would be aspirant to get admissions next year. For doing equity to some in presenti we cannot afford to do injustice to others in future. Therefore, the submission stands repelled.

33. The writ petition is accordingly disposed of with no order as to costs.

[2] 1995 Supp (3) SCC 77

[3]

[4] (2002) 7 SCC 258

[5]

- [6] (2012) 7 SCC 389
- [7]
- [8] 2013 (9) SCALE 226
- [9]
- [10] (1997) 9 SCC 199
- [11]
- [12] (1880) 5 A.C. 214
- [13]
- [14] AIR 1952 SC 16
- [15]
- [16] (2001) 10 SCC 264
- [17]
- [18] (2012) 10 SCC 149
- [19]
- [20] (2012) 8 SCC 203
- [21]
- [22] (1998) 6 SCC 131
- [23]
- [24] (1994) 1 SCC 175
- [25]
- [26] (2002) 7 SCC 258
- [27]
- [28] (2012) 7 SCC 433