

SUPREME COURT OF INDIA

Tamil Nadu Medical Officers' Association

Vs.

Union of India

W.P.(Civil)No.196/2018

(Kurian Joseph,J., Mohan M.Shantanagoudar and Navin Sinha,JJ.,)

13.04.2018

ORDER

1. Issue notice in the fresh writ petitions.
2. Standing Counsel for the concerned States, Union of India and Medical Council of India appear and accept notice for the respective parties.
3. In these writ petitions, Regulation 9(IV) and (VII), after amendment dated 05.04.2018 - Regulation 9(4) and (8) of the Post Graduate Medical Education Regulations, 2000, as framed by the Medical Council of India, are under challenge.
4. To get a comprehensive idea, Regulation 9, to the extent relevant up to sub-regulation (8), reads as "9. Procedure for selection of candidate for Postgraduate courses shall be as follows:-

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely 'National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

(2) The "designated authority" to conduct the 'National Eligibility-cum- Entrance Test' shall be the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

(3) In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the

Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility- cum-Entrance Test for Postgraduate courses. Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only.

(4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum- Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only. Provided that in determining the merit of candidates who are in service of government/public authority, weight age in the marks may be given by the Government/Competent Authority as an incentive up to 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."

5. 5% seats of annual sanctioned intake capacity shall be filled up by persons with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of National Eligibility- Cum-Entrance Test for admission to Postgraduate Medical Courses. In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC.

(6) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-Clause (3) above shall be admitted to any Postgraduate courses in the said academic year.

(7) In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned

medical colleges/institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test."

(8) 50% of the seats in Postgraduate Diploma Courses shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and /or difficult areas and / or Rural areas. After acquiring the Postgraduate Diploma, the Medical Officers shall serve for two more years in remote and /or difficult areas and / or Rural areas as defined by State Government/Competent authority from time to time. ..." consideration of Regulation 9 (4) in *Dinesh Singh Chauhan (supra)* is at paragraphs 24 to 27, which read as follows:-

"24. By now, it is well established that Regulation 9 is a self-contained code regarding the procedure to be followed for admissions to medical courses. It is also well established that the State has no authority to enact any law much less by executive instructions that may undermine the procedure for admission to postgraduate medical courses enunciated by the Central legislation and regulations framed there under, being a subject falling within Schedule VII List I Entry 66 of the Constitution (see *Preeti Srivastava v. State of M.P.*). The procedure for selection of candidates for the postgraduate degree courses is one such area on which the Central legislation and regulations must prevail.

25. Thus, we must first ascertain whether Regulation 9, as applicable to the case on hand, envisages reservation of seats for in-service medical officers generally for admission to postgraduate "degree" courses. Regulation 9 is a composite provision prescribing procedure for selection of candidates-both for postgraduate "degree" as well as postgraduate "diploma" courses:

25.1. Clause (I) of Regulation 9 mandates that there shall be a single National Eligibility-cum-Entrance Test (hereinafter referred to as "NEET") to be conducted by the designated authority.

25.2. Clause (II) provides for three per cent seats of the annual sanctioned intake capacity to be earmarked for candidates with locomotory disability of lower limbs. We are not concerned with this provision.

25.3. Clause (III) provides for eligibility for admission to any postgraduate course in a particular academic year.

25.4. Clause (IV) is the relevant provision. It provides for reservation of seats in medical colleges/institutions for reserved categories as per applicable laws prevailing in States/Union Territories. The reservation referred to in the opening part of this clause is, obviously, with reference to reservation as per the constitutional scheme (for the Scheduled Caste, the Scheduled Tribe or the Other Backward Class candidates); and not for the in-service candidates or medical officers in service. It further stipulates that all-India merit list as well as State- wise merit list of the eligible

candidates shall be prepared on the basis of the marks Obtained in NEET and the admission to postgraduate courses in the State concerned shall be as per the merit list only. Thus, it is a provision mandating admission of candidates strictly as per the merit list of eligible candidates for the respective medical courses in the State. This provision, however, contains a proviso. It predicates that in determining the merit of candidates who are in service of the Government or a public authority, weight age in the marks may be given by the Government/competent authority as an incentive @ 10% of the marks obtained for each year of service in specified remote or difficult areas of the State up to the maximum of 30% of the marks obtained in NEET. This provision even if read liberally does not provide for reservation for in-service candidates, but only of giving a weightage in the form of incentive marks as specified to the class of in-service candidates (who have served in notified remote and difficult areas in the State).

26. From the plain language of this proviso, it is amply clear that it does not envisage reservation for in-service candidates in respect of postgraduate "degree" courses with which we are presently concerned. This proviso postulates giving weightage of marks to "specified in-service candidates" who have worked in notified remote and/or difficult areas in the State-both for postgraduate "degree" courses as also for postgraduate "diploma" courses. Further, the weightage of marks so allotted is required to be reckoned while preparing the merit list of candidates.

27. Thus understood, the Central enactment and the regulations framed thereunder do not provide for reservation for in-service candidates in postgraduate "degree" courses. As there is no express provision prohibiting reservation to in-service candidates in respect of admission to postgraduate "degree" courses, it was contended that providing for such reservation by the State Government is not impermissible in law. Further, there are precedents of this Court to suggest that such arrangement is permissible as a separate channel of admission for in-service candidates. This argument does not commend to us. In the first place, the decisions pressed into service have considered the provisions regarding admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the regulations which have come into force from the academic year 2013-2014. This Regulation is a self-contained code. There is nothing in this Regulation to even remotely indicate that a separate channel for admission to in-service candidates must be provided, at least in respect of postgraduate "degree" courses. In contradistinction, however, 50% seats are earmarked for the postgraduate "diploma" courses for in-service candidates, as is discernible from clause (VII). If the regulation intended a similar separate channel for in-service candidates even in respect of postgraduate "degree" courses, that position would have been made clear in Regulation 9 itself. In absence thereof, it must be presumed that a separate channel for in-service candidates is not permissible for admission to postgraduate "degree" courses. Thus, the State Government, in law, had no authority to issue a Government Order such as dated 28-2-2014, to provide to the contrary. Hence, the High Court was fully justified in setting aside the said government order being contrary to the

mandate of Regulation 9 of the 2000 Regulations, as applicable from the academic year 2013-2014."

6. Learned senior counsel for the petitioners have vehemently contended that at least three Constitution Bench decisions of this Court, namely, *R. Chitrlekha and Another v. State of Mysore and Others, reported in*¹, *Kumari Chitra Ghosh and Another v. Union of India and Others, reported in*² and *Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others, reported in*³, have not been considered in *Dinesh Singh Chauhan (supra)*, on the aspect of the legislative competence under List I, Entry 66 and List III, Entry 25 of the Seventh Schedule. List I Entry 66, reads as follows:-

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

7. Entry 25 of List III, reads as follows:-

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

8. The main dispute pertains to the claim made by the State for reservation in favour of the in-service candidates in respect of 50% of the seats granted to the States, since 50% of the seats, in any case are set apart for All-India category.

9. It is the main contention of the petitioners that while "the coordination and determination of standards in institutions for higher education" is within the exclusive domain of the Union, medical education under Entry 25, List III, though made subject to Entry 66 of List I, being an Entry in the Concurrent List, the State is not denuded of its power to legislate on the manner and method for admissions to Post Graduate Medical Courses.

10. It is submitted that though Regulation 9(4) provides for 10% incentive for every year of service in remote/difficult/rural areas up to a maximum of 30% of the score, the provision will not enure to the benefit of the in-service candidates. It is pointed out that the States have been following, for several reasons and for several years, the pattern of reservation in respect of 50% of State Quota for the in-service candidates. It is submitted that even in that 50%, the list can be prepared by providing the Incentive for the service in difficult, rural or remote areas. It is also pointed out that the Regulations also have considered the power of the State to provide for reservation. This can be seen from Regulation 9(8) which provides for reservation of 50% of the seats in Post Graduate Diploma Courses for medical officers in Government service in the State who have served for at least three years in remote and difficult areas with a further condition of minimum continued service of two years in such areas. It is also the contention of the petitioners that if there can be such a reservation in the case of Post Graduate Diploma Courses, there is no justification for denying such a reservation in case of the Post Graduate Degree Courses.

11. On behalf of the Union of India and the Medical Council of India, it is pointed out that once an Entry is provided under List I, it is the exclusive domain of the Union and even if the Union has not legislated exhaustively in respect of that Entry, the State cannot legislate on that subject. Our reference has been invited to the decision of this Court in *Gujarat University and Another v. Krishna Ranganath Mudholkar and Others*, reported in¹. In any case, it is pointed out that all the contentions raised by the petitioners have been considered in *Dinesh Singh Chauhan* (supra) and, therefore, the writ petitions are only to be dismissed.

12. Having heard the learned senior counsel appearing on both the sides extensively, we are of the view that *Dinesh Singh Chauhan* (supra), has not considered the legislative Entries in respect of the contentions we have noted above. Apparently, it appears no such contentions were raised before the Court. Same is the situation with regard to the non-reference with respect to the three Constitution Bench decisions we have referred to above. As far as *Modern Dental* (supra) is concerned, perhaps the judgment had not been published by the time the judgment in *Dinesh Singh Chauhan* (supra) was rendered.

13. The petitioners have raised several other contentions and invited our reference to the judgments by Benches of equal strength as in *Dinesh Singh Chauhan* (supra).

14. In the above circumstances, we are of the view that these writ petitions require consideration by a larger Bench.

15. Learned senior counsel appearing for the petitioners have strenuously pressed for an interim order since the counseling has either commenced or in some States it is only about to commence. Having regard to the entire facts and circumstances of the case, we feel it is appropriate that even the interim relief should be considered by the larger Bench.

16. Accordingly, place the matters before the Hon'ble the Chief Justice of India for consideration by a larger Bench, emergently.

17. The petitioners are free to make a mention on Monday, the 16th April, 2018 before Hon'ble the Chief Justice of India.

Judgment Referred.

¹(1964) 6 SCR 0368

²(1969) 2 SCC 0228

³(2016) 7 SCC 0353

⁴(1963) Suppl. 1 SCR 0112