

MADHYA PRADESH HIGH COURT

Ramchandra Vishnu

Vs.

State of M. P

Misc. Petn. No. 293 of 1960
(P.V. Dixit, C.J. and K.L. Pandey, J.)

19.12.1960

JUDGMENT

Pandey, J.

1. This is a petition under Articles 226 and 227 of the Constitution for a writ of mandamus or any other suitable writ or order directing the State Government (respondent 1) and the Principal, Medical College, Indore (respondent 2), to admit the petitioner to one of the Medical Colleges, in the State.

2. In this State, there are four Government Medical Colleges providing for admission of 330 candidates in the 1st year class. In the current year, the State Government constituted a Selection Committee of the Principals of the four colleges with the Principal, Medical College, Indore as Chairman, to recommend the names of candidates for admission to the Medical Colleges in accordance with "Medical Colleges in Madhya Pradesh Rules for Admission, 1960". These Rules provide inter alia as follows :-

"8. Selection of candidates from amongst those who have applied for admission, will be made on merit as disclosed by the marks obtained at the Inter Science Examination provided that candidates have passed their Inter Science Examination securing at least 45 per cent marks as prescribed by the Indian Medical Council.

Candidates who have passed the First Year of the Three Year B.Sc. Degree Course (Medical Group), should also have obtained a minimum of 45 per cent marks, to be eligible for admission.

In the case of candidates who have passed their B.Sc. Examination in the first

or second division, the requirement of securing 45 per cent marks in the qualifying examination of I. Sc. (Medical Group), may be relaxed."

"9. As between two candidates, who have secured equal marks, preference will be given to that candidate who, while in College and before passing the Inter Science Examination, served for a whole academic year in the N. C. C. provided the student mentions full particulars of the period of such Service in his application and produces Certificates in support of the same, from the head of the organisation along with his application for admission.

If the period of service rendered in the above organisation is not clearly mentioned, no credit will be given. Credit will also be given for being in the College team for Hockey, Football, Volley-ball, Cricket, Tennis, Badminton, Swimming or Hu-tu-tu, taking part in the University Inter College Tournaments, during the student's College career before passing the I. Sc. Examination."

"10. 15 per cent seats will be reserved for woman Candidates and 3 per cent for sons and daughters of *bona fide* political sufferers, provided that the candidates concerned have obtained at least 45 per Cent marks in the Inter Science Examination. Additional qualifications as mentioned in clause 9 will be taken into consideration while making selection from among the candidates for reserved seats of each category.

Note.- The term 'political sufferer' shall be interpreted in the light of the Madhya Pradesh Freedom Fighters Pension Rules, 1959."

"11. 15 per cent seats will also be reserved, each for Scheduled Caste and Scheduled Tribe Candidates in whose case, the requirement of minimum 45 per cent marks will be relaxed as per recommendations of the Indian Medical Council, provided they have passed their Inter Science Examination in Medical Group."

"12. If the required number of candidates possessing the minimum qualifications as laid down. above are not forthcoming for any category of reserved seats, the unfilled seats shall be treated as general and shall be open to all candidates satisfying the requisite standard as in clause 8."

"17. Government reserve to themselves the right to admit any student to any of the Medical Colleges in relaxation of the Rules in special circumstances."

There were 1637 candidates, including the petitioner and the respondents 3 and 4, who sought admission to the four Medical Colleges. The Selection Committee recommended the names of 318 candidates, for as many seats and the State Government finally selected 330 candidates to fill up all the seats. The petitioner, who passed his Inter Science Examination in the second division in his second attempt and secured 48.3 per cent marks (52.33 per cent in the Medical Group) was not selected. On the other hand, the respondent 3, who passed the same examination in the third division in his third attempt securing 44 per cent marks, and the respondent 4, who too passed that examination in the second division in his third attempt securing 46 per cent marks, were admitted.

3. The petitioner stated that while Rule 8 inhibited selection of candidates who had not secured at least 45 per cent marks in the Inter Science Examination, it required 'merit as disclosed by the marks obtained at the Inter Science Examination' to be the basis of selection from among other candidates. By selecting the respondents 3 and 4 in disregard of Rule 8, the respondents 1 and 2 infringed the right of the petitioner to secure admission and also discriminated against him. There are no special circumstances in favour of the respondents 3 and 4 and their admission in pursuance of Rule 17 is not justified. That Rule is void in that it enabled the State Government to exercise an arbitrary and uncontrolled power to admit any candidate without regard to his qualifications. Similarly, Rule 10 is also void because it provides for reservation in favour of women Candidates and sons and daughters of *bona fide* political sufferers.

4. In answer, it was stated that the Selection Committee recommended the names of 318 candidates on the following basis :-

- (i) Inter Science 1st division first attempt.
- (ii) Inter Science 1st division second attempt.
- (iii) Inter Science 2nd division first attempt with not less than 47.33 per cent marks in the Medical Group.
- (iv) Inter Science 2nd division second attempt with not less than 50 per cent marks in the medical group.
- (v) B.Sc. with not less than 50.33 per cent marks in the medical group.
- (vi) Inter Science pass division and Inter Science Third Division with 48.92 to 62.17 per cent of marks in the medical group.

- (vii) Scheduled Castes and Scheduled Tribes.
- (viii) Relations of political sufferers. On receiving the recommendation of the Selection Committee, the State Government readjusted the distribution of seats by modifying the basis of selection as follows :-
 - (i) Inter Science 2nd division first attempt with not less than 47 per cent marks.
 - (ii) Inter Science 2nd division second attempt with 51 per cent marks.
 - (iii) Inter Science pass division or third division with not less than 51 per Cent marks.
 - (iv) B.Sc. and M.Sc. first and second attempt not less than 50 per cent marks in the aggregate. The respondents 1 and 2 stated that the petitioner did not satisfy the criteria laid down by the Selection Committee and the State Government and that he was, therefore, disentitled to make a grievance of the fact that he was not selected. According to the respondents 1 and 2, the Medical Colleges in Madhya Pradesh Rules for Admission, 1960, are merely executive instructions without any statutory basis and do not have the force of law so as to curtail or limit the discretion of the State Government in the matter of admitting any candidate even in disregard of those Rules. In view of this position, the petitioner has no legal right to be admitted to any of the Medical Colleges nor do the respondents 1 and 2 owe any legal duty to admit him. It was further stated that the respondents 3 and 4 were admitted under Rule 17 for special considerations of which the State Government were the sole judge and which they were not bound to disclose.

5. The contention that the petitioner did not satisfy the criteria for selection does not appear to be correct. If candidates securing not less than 50 per cent marks in the medical group of the Intermediate Science Examination which they passed in the second attempt secured admission, the petitioner who had obtained 52.33 per cent marks in that group deserved to be admitted. This was so even according to the standard of 51 per cent marks laid down by the State Government, which had liberalised admission. It is, however, accepted that not only the petitioner was not selected but Candidates like the respondents 3 and 4, who were inferior in merit 'as disclosed by the marks obtained' were actually admitted. These facts show that like were not treated alike and the petitioner was denied equality in equal circumstances, Also, by refusing to disclose the special circumstances under which the respondents 3 and 4 were admitted, the State Government are exposed to the criticism that perhaps it would not be convenient to them to reveal the circumstances which impelled them so

to do.

6. The petitioner has attacked the provisions of Rule 10 relating to reservation of seats for women candidates and for the sons and daughters of political sufferers, who he thinks kept him out because he would otherwise have secured one of their seats. So far as women candidates are concerned, Article 15 of the Constitution ensures that there will be no discrimination on certain grounds, including sex. However, clause (3) of that Article makes an exception in favour of women and children and enables the State Government to make special provision for them. Also, sex is not mentioned in clause (2) of Article 29 of the Constitution as a ground on which admission into any educational institution may not be denied. The combined effect of the two provisions is that while men candidates have no right of admission to women's colleges, the right of women to admission in other colleges is a matter which may be regulated by the authorities empowered to admit candidates to those colleges. *University of Madras v. Shanta Bai*,¹

7. In regard to the seats reserved, for the sons and daughters of political sufferers, it would appear that the preferential treatment accorded to them is based upon irrelevant and wholly extraneous considerations because there is no rational relation between the political suffering of any person and the education imparted to his descendants in a Medical College with the object of promoting efficiency in the medical profession.

8. The main question for consideration is whether it is permissible for the State Government to accord selective or preferential treatment in the matter of admission to Medical Colleges either to individuals like the respondents 3 and 4 or to a class of their own creation like the sons and daughters of political sufferers. The Teamed Advocate General actually claimed that it would be competent to the State Government to reserve one of the Medical Colleges for the sons and daughters of political sufferers, though perhaps it would, according to him, not be proper to do so. The learned counsel for the petitioner rested his case on the principle of equality before the law embodied in Article 14 of the Constitution and relied upon several decided cases, only some of which dealt with admission to educational institutions. In *Champakam Dorairajan v. State of Madras*,² classification on the basis of religion, race and caste in the matter of admission into Medical and Engineering Colleges was struck down as offending against the provisions of Article 29(2) of the Constitution. This was approved by the Supreme Court in *State of Madras v. Smt. Champakam*

Dorairajan,³ In *State of Bombay v. Bombay Education Society*,⁴ discrimination in the matter of admission to schools on the basis of language was held to be violative of Article 29(2). Where admission to a Medical College was regulated on the basis of residence within a State and capitation fee was required to be paid by outsiders, it was held that there was no violation of Article 29(2). *Rustom v. State of Madhya Bharat*,⁵ The Supreme Court also took the same view in *D.P. Joshi v. State of Madhya Bharat*,⁶ In *Raghuamulu v. State of Andhra Pradesh*,⁷ *Sudarsan v. State of Andhra Pradesh*,⁸ and *Ramakrishna Singh v. State of Mysore*,⁹ it was held that reservation of a certain percentage of seats in educational institutions for candidates of backward classes would not disentitle them to claim other seats by open competition and such a claim could not be refused without violating Article 29(2).

It is obvious that all these decisions are based on the specific provisions of Article 29(2), which, as pointed out by the Supreme Court in 1955-1 SCR 568 : AIR 1954 Supreme Court 561 (cit. supra) is a protection against a particular species of wrong, namely denial of admission into educational institutions. The learned counsel also referred to *Bhanjee v. State of Bombay*,¹⁰ *C. S. S. Motor Service v. Madras State*,¹¹ *Ramayya v. State of Andhra*,¹² *Narendra Kumar v. Appellate Board*,¹³ and *Bhai Singh v. State*,¹⁴ It is sufficient to say that these cases deal with equal treatment in similar circumstances in violation of the provisions of a statute or statutory rules which directly attract Article 14 of the Constitution. The case of *Prescott v. Birmingham Corporation*,¹⁵ also relates to the powers of a local authority constituted by a statute. The only case which lends some support to the petitioner is *K. Ganganna v. Principal, Andhra Medical College*¹⁶ There a candidate for admission to a Medical College was denied admission on what was held to be a disregard of the rules regulating admission of students into Medical Colleges. The learned Judges observed :-

"The Government Pleader counters this argument by stating that the rules are only administrative directions given by the Government and that non-compliance with the rules does not confer on the petitioner any right to compel the respondents to proceed in strict conformity with the rules. The contention of the Government is a double-edged weapon and it cuts both ways. The rules framed by the Government lay down a scheme for the selection of students to the Medical College in an attempt to provide an equitable distribution of seats for different regions and to different strata of the population in the State without violating the provisions of the Constitution.

If the rules can be ignored, the entire selection of candidates would be bad for every candidate then will have the right to take his chance in the common pool. The Government, therefore, cannot rely upon the scheme embodied in the rules to sustain the selections and to ignore it to defeat the claims of the petitioner. The scheme, therefore, till it is suitably modified by the Government must be taken as the basis for ascertaining the right of the petitioner."

'With all due respect, we are unable to agree with those observations which proceed upon an assumption that there was a violation of the provisions of the Constitution. In *Sadasiva Iyer v. State of Kerala*,¹⁷ where the nature of the Madras Educational Rules was considered, Ganganna's case, AIR 1958 Andhra Pradesh 470 was distinguished and it was pointed out that there the objection that the rules were administrative in character was overruled for a collateral reason.

9. Article 14 of the Constitution ensures equality before the law and equal protection of the laws. That Article is in form an admonition addressed to the State and does not directly confer any right on any person. The obligation thereby imposed ensures for the benefit of all persons because a necessary result of its operation is that they all enjoy equality before the law. That is, however, the indirect, though necessary and inevitable, result of the mandate : *Bheshar Nath v. Commr. of Income Tax Delhi and Rajasthan*,¹⁸ It comes into operation only when there is law, that is, statute or other law.

"Law" has been widely defined in Article 13, as including any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of Law. Even if that definition is adopted for the purposes of Article 14 it does not embrace within its ambit executive or administrative instructions in a field not covered by any law. In *Nagendra Nath Bora v. Commissioner of Hills Division*¹⁹ the Supreme Court observed at page 1271 (of SCR) : (at p. 413 of AIR)

"But all these are only Executive Instructions which have no statutory force. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the power of the Appellate Authority to make its own selection, or affect the validity of the order passed by it."

In *Ram Krishna Dalmia v. Justice Tendolkar*,²⁰ a notification was challenged. Although it was observed that Article 14 protected all persons from discrimination by the legislative as well as by the executive organ of the State, it was pointed out that the notification was "law" as defined in Article 13. In *Abdulla Rowther v. State Transport Appellate Tribunal, Madras*,²¹ the Supreme Court observed at p. 899 :

"It is not and cannot be seriously disputed that if the Government Order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of Certiorari. The executive orders properly so called do not confer any legal enforceable rights on any persons and impose no legal obligations The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law.

10. In the instant case, it is obvious and is also not disputed that "Medical Colleges in Madhya Pradesh Rules for Admission, 1960" are merely executive or administrative instructions in a field which is not covered by any statute. If they had been statutory rules, we would not have hesitated to strike down such of those rules as offend against the provisions of Article 14 or quash any discriminatory action taken in pursuance, or even in disregard, of those Rules.

Since these Rules are merely executive instructions and cannot be classified as law, they do not attract the principle of equality before the law embodied in Article 14. *Om Prakash v. State of Punjab*,²² In this connection, we may also point out that petitions like the one before us founded upon equality before the law were dismissed by this Court in 3 earlier cases. *Vinaya Kumar Gupta v. The Secretary to Government Madhya Pradesh*,²³ *Anand Kumar Jain v. State of M.P.*,²⁴ and *Prakash Chandra v. State of M.P.*,²⁵

11. It was conceded that the petitioner was not denied admission on any ground mentioned in Art 29(2). It was also not urged before us that this was a matter relating to any employment or appointment to any office under the State and the petitioner was denied in that matter equality of opportunity ensured by Article 16(1). That being so, the petitioner cannot derive any assistance from these two provisions of the Constitution.

12. For the foregoing reasons, we are constrained to dismiss this petition which was argued with some warmth and vehemence perhaps justified on the facts. But we hope that the full discussion in open Court of the matter of evenhanded justice in admission to the Medical Colleges and of the departure of the Executive from the principles formulated by it, has not been fruitless. The result is that this petition is rejected. The petitioner shall bear his own costs and pay out of the security amount the costs of the respondents 1 and 2. The remaining amount of security shall be refunded to the petitioner. Counsel's fee Rs. 50/-.

Application dismissed.

Cases Referred.

1. ILR 1954 Mad 426 : (AIR 1954 Mad 67)
2. ILR 1951 Mad 149 : (AIR 1951 Mad 120) (FB)
3. 1951 SCR 525 : AIR 1951 SC 226
4. 1955-1 SCR 568 : AIR 1954 SC 561
5. AIR 1954 Mad Bha 119
6. 1955-1 SCR 1215 : AIR 1955 SC 334
7. AIR 1959 And 129
8. AIR 1958 And Pra 569
9. AIR 1960 Mysore 338
10. AIR 1952 Bom 476
11. AIR 1953 Mad 279
12. AIR 1956 Andh 217
13. AIR 1960 Ass 100
14. AIR 1960 All 369
15. 1954-3 All England Reporter 698
16. AIR 1958 And Pra 470
17. AIR 1960 Ker 327
18. AIR 1959 SC 149.
19. 1958 SCR 1240 : AIR 1958 SC 398
20. AIR 1958 SC 538
21. AIR 1959 SC 896
22. AIR 1951 Punjab 93
23. Misc. Petn., No. 231 of 1957 D/d. 21.1.1958 (MP)

24. 1959 MP LJ 541 : AIR 1959 Mad Prad 265

25. Misc. Petn. No. 55 of 1960 D/d. 14-10-1960 (MP)