

# RAJASTHAN HIGH COURT

Rajiv Mangal

Vs.

Rajasthan University of Health Sciences

Civil Spl. Appeal (Writ) No. 241 of 2007

(R. M. Lodha and R. S. Chauhan, JJ.)

30.05.2007

## JUDGEMENT

### **R. M. Lodha and R. S. Chauhan, JJ**

1. Dr. Rajiv Mangal filed the writ petition in challenging the action of the respondents in not declaring him successful in the Pre-PG Medical Examination-2007. He passed MBBS course in the year 2002 and was thereafter appointed on contract basis as Medical Officer on 3-3-2003. He served for about three years in the rural areas and obtained a certificate from the Director, Medical and Health Services to that effect.

2. Rajasthan University of Health Sciences, Jaipur notified Pre-PG Medical Examination-2007 for admission to MD/MS/Diploma Courses to be held on 28-1-2007. Instruction booklet provided for seats and reservations and eligibility for admission for various categories including the in-service candidates. That as per the seats and reservations, 72 seats were available for in service general category candidates is not in dispute. Inter alia, the eligibility for admission provided that candidate must have secured at least 50% marks in the general category at the Pre-PG Medical Examination-2007.

3. The petitioner secured 595 marks out of 1200 marks in the Pre-PG Medical Examination-2007 and was, therefore, declared unsuccessful.

4. Up-set thereby, he approached this Court and prayed for the following reliefs in the writ petition:

- (i) Hold the petitioner entitled to be declared pass and eligible for admission in the examination by granting benefit of rounding off of the marks as an in-service candidate;

(ii) Declare condition No. 4(m) directing deduction of one mark; relating to more than one answer indicated against a question in spite of the same being struck off, as bad in law and hold the petitioner entitled to be given the benefit of the correct answer given in question No. 141.

5. The writ petition was dismissed by the Single Judge on 19-2-2007 by the following order:

After hearing learned counsel for the petitioner, I have carefully gone through the record. It is total discretion of the experts to lay down criteria for examination for admission to a particular course. No interference, whatsoever, is called for by this Court in such academic matters under writ jurisdiction, moreso, when the criteria so fixed has been applied to all the candidates. The writ petition is dismissed accordingly as having no merits.

6. Hence, the appeal.

7. We heard Mr. Sanjeev Prakash Sharma, the counsel for the appellant and Mr. R. A. Katta, the counsel for the respondent No. 1 at quite some length.

8. With regard to the prayer (ii) aforequoted, challenging legality and constitutionality of Condition No. 4(m), we are of the view that the appellant-petitioner is stopped from challenging the said clause.

9. Clause 4(m) of the Instruction Booklet reads thus:

Each answer with correct response shall be awarded four marks. Negative marking will be adopted for incorrect responses. One mark will be deducted for each incorrect response. Zero mark will be given for the question not answered. More than one answer indicated against a question will be deemed as incorrect and one mark will be deducted accordingly.

10. When the petitioner appeared in the examination, he was well aware that the negative marking shall be adopted for incorrect responses; one mark shall be deducted for each incorrect response and if more than one answer was indicated against the question, it shall be deemed as incorrect and one mark shall be deducted accordingly. The petitioner took conscious decision for appearing in Pre-PG Medical Examination-2007 that provided for negative marking and all the answer books were examined with that touchstone. It is too late for the petitioner to challenge the legality and validity of clause 4(m).

11. The whole focus of the debate centered around whether the petitioner could get

benefit of rounding off when he secured more than half of the fraction namely; 49.58%.

12. The counsel for the petitioner would submit that the benefit of rounding off has been repeatedly given in diverse professional courses to the candidates securing more than half of the fraction. Besides few decisions by the Single Judge, the star case on which reliance was placed by the counsel for the petitioner is the Division Bench order dated 12-1-2006 in the case of *DB Jai Narain Vyas University and another v. Budha Ram Choudhary*<sup>1</sup> and connected appeal. That case related to admission to LL. B. Course. As per the guidelines provided by the Bar Council of India candidate was required to secure not less than 45% marks in the qualifying examination i.e. Bachelor's examination to the LL. B. Course. One of the candidates secured 44.61%. Dealing with the said question, the Division Bench observed thus:

The dispute relates to admission to LL. B. Course. As per the guidelines laid of the Bar Council of India the candidate is required to secure not less than 45% marks in the qualifying examination i.e. Bachelor examination for admission to the LL. B. Course. The respondents herein secured 44.61% and 44.83% marks respectively. The learned Single Judge following the decisions in the cases of Dinesh Singh and Parul Agarwal and others, reported in 2005 WLC (Raj) UC 13 and 2002 (5) WLC (Raj) 824 : (AIR 2002 SC 70) respectively, allowed them the benefit of rounding off and accordingly held that they were eligible for admission to the course.

Shri Deep Chand Sharma, learned counsel appearing for the appellant does not deny that where the marks secured by the candidates is more than half of the fraction he may be given the benefit of rounding off but according to him such benefit can be given in terms of marks and not percentage. He stated that in the case of Budha Ram, respondent in DB Civil Special Appeal No. 30/2006 marks was less by seven. The distinction sought to be made out of the shortage between marks and percentage is ill-conceived. If the marks secured by the respondent fell short by seven it was because the total marks was 1800. Had the total marks been 100 and the respondent had secured 44.61 marks, on the own saying of the counsel, he would have been allowed 45 marks giving him benefit of rounding off.

Counsel also submitted that the direction of the learned Single Judge amounts to interfere with the academic standards fixed by the Bar Council of India. We do not find any merit in this submission either. System of rounding off is well-accepted norm of assessment. The learned Single Judge simply directed rounding off of the marks

without compromising with the norm fixed by the Bar Council.

13. The counsel for the appellant also relied upon the judgment of the Supreme Court in the case of *State of U. P. and another v. Pawan Kumar Tiwari and Others* <sup>2</sup> wherein dealing with the rule of rounding off, the Supreme Court in paragraph 7 of the report held thus:

The rule of rounding off based on logic and common sense is : if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates had been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

14. The question that falls for our determination is whether the rounding off can be made applicable to a case where entrance test for Post Graduation admission to Medical Course is held and minimum percentage of marks for eligibility for admission to PG Medical Course is prescribed by the regulations framed by the Medical Council of India and also provided in the Instruction booklet for the Pre-PG Medical Examination-2007.

15. Regulation 9 of the Regulations framed by the Medical Council of India reads thus:

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

For determining the academic merit, the University/Institution may adopt any one of the following procedures both for degree and diploma courses:

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

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

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

(iv) Combination of (i) and (iii) :

Provided that whatever entrance test for post-graduate admission is held by a State Government or a University or any other authorized examining body, the

minimum percentage of marks for eligibility for admission to post-graduate medical course shall be fifty per cent. for all the candidates :

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

16. Regulation 9 provides for determining the academic merit based on one of the procedures prescribed therein, *inter alia*, one of the procedures being the basis of merit as determined by centralized test held at the national level. It provides in unmistakable terms by appending a proviso thereto that whatever entrance test for postgraduate admissions is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to post-graduate medical course shall be fifty per cent for all the candidates.

17. In the case of *State of M. P. and others v. Gopal D. Tirthani and others* <sup>3</sup> the purpose of eligibility test i.e. Pre-PG test is explained in paragraph 25 of the report thus :

The eligibility test, called the entrance test or the pre-PG test, is conducted with dual purposes. Firstly, it is held with the object of assessing the knowledge and intelligence quotient of a candidate whether he would be able to prosecute post-graduate studies if allowed an opportunity of doing so; secondly, it is for the purpose of assessing the merit *inter se* of the candidates which is of vital significance at the counseling when it comes to allotting the successful candidates to different disciplines wherein the seats are limited and some disciplines are considered to be more creamy and are more coveted than the others. The concept of a minimum qualifying percentage cannot, therefore, be given a complete go-by. If at all there can be departure, that has to be minimal and that too only by approval of experts in the field of medical education, which for the present are available as a body in the Medical Council of India.

18. That there cannot be any compromise or departure from the minimum qualifying marks prescribed by the Medical Council of India as stated by the Supreme Court in paragraph 26 of the report thus :

The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%.

19. The Three-Judge Bench of the Supreme Court in a recent decision in the case of *Mridul Dhar (minor) and another v. Union of India and others* <sup>4</sup> of course was

concerned with the question of all- India quota of MBBS/BDS courses, but while dealing with that issue, also issued directions in the matter of granting admission to the effect that the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode. Surely, the rule of rounding off, if applied to the marks obtained or determined in the competitive examination shall be one of the modes that may result in tinkering with the competitive examination which is not permissible. When the Supreme Court says that the merit determined by the competitive examination shall not be tinkered with by making a provision of any other mode, the Court, by applying interpretative process, cannot provide a mode that would result in tinkering with the merit determined in the competitive examination. The merit determined in the competitive examination for admission to the post-graduate medical sciences examination is solemn and cannot and must not be allowed to be tinkered with by applying an equitable rule of rounding off.

20. In the light of the authoritative decision of the Supreme Court in the afore-referred case, we have no hesitation in holding that the expression "the minimum percentage of marks ..... shall be 50%" has to be read to mean at least 50% of the total marks and by applying the process of rounding off, the eligibility cannot be provided which a candidate failed to achieve in the competitive examination. The rule of rounding off though founded on logic and common sense would not be attracted in the context of Regulation 7 framed by the Medical Council of India.

21. It is true that the Division Bench judgment of this Court in the case of admission to LL.B. course has held that where the marks secured by the candidate is more than half of the fraction, he may be given the benefit of rounding off and that is also the view of the two single Benches in the cases of *Miss Parul Agarwal and others v. University of Rajasthan and others*, <sup>5</sup> (relating to admission to MBA examination) and the case of *Dinesh Singh*, 2005 WLC (Raj) UC 13 (relating to admission to LL. B. Course). But in so far as the present case is concerned, it relates to PG admission through entrance test for which minimum percentage of marks for eligibility for admission is provided in Regulation 9 framed by Medical Council of India and Regulation 9 or for that matter Rule 2(I)(3) of the Instructions Booklet for Pre-PG Medical Examination-2007, in our considered view, does not admit of rule of rounding off.

22. The appeal, therefore, has to be dismissed and is dismissed accordingly.

23. In view of the fact that one seat for in-service general category has been kept vacant in view of the interim order, Mr. R. A. Katta, the counsel for the respondent No. 1 fairly submitted that if an application is made by the appellant for confirming the seat to the appellant, the respondent No. 1 shall consider it sympathetically. We observe accordingly.

Appeal dismissed.

Cases Referred.

1. Civil Special Appeal No. 30/2006
2. (2005) 2 SCC 10: (AIR 2005 SC 658)
3. (2003) 7 SCC 83: (AIR 2003 SC 2952)
4. (2005) 2 SCC 65: (AIR 2005 SC 666)
5. 2002 (5) WLC (Raj) 824: (AIR 2002 SC 70)