

PETITIONER:
DR. DINESH KUMAR & ORS.

Vs.

RESPONDENT:
MOTILAL NEHRU MEDICAL COLLEGE, ALLAHABAD & ORS.

DATE OF JUDGMENT 03/08/1987

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
DUTT, M.M. (J)

CITATION:
1987 AIR 2396 1987 SCR (3) 744
1987 SCC (4) 122 JT 1987 (3) 228
1987 SCALE (2) 169

ACT:
Professional Colleges--Medical Colleges--Admission to MBBS/ BDS Course--Implementation of Scheme and holding of All India Entrance Examination for filling up of 15% reserved seats--Directions of Court.

HEADNOTE:

Pursuant to this Court's directions regarding the reservation of seats for admission to different courses of study such as MBBS/BDS and Post Graduate Specialities and holding of an All India Entrance Examination therefor, contained in its judgment delivered in a group of writ petitions on June 22, 1984, a Scheme was prepared by the Medical Council of India, in consultation with various authorities, and submitted to the Court.

The Court considered the said Scheme along with objections and, by its order dated July 21, 1986 approved the Scheme and the syllabus with modifications and the States were directed to bring their syllabi for the 12th year in line with the syllabus approved by this Court. The Central Board of Secondary Education was directed to hold the All India Entrance Examination. The Scheme was intended to be implemented from the 1985-86 academic session but was deferred to 1986-87 academic session and later to 1987-88 academic session.

The revised Schemes in accordance with the Court's directions were not placed before the Court for confirmation/finalisation in the manner indicated by the Court and when the concerned authorities proceeded with making necessary arrangements for holding the All India Entrance Examination, several applications were moved objecting to the holding of the examination, in the absence of final clearance from this Court.

On 30th April, 1987 this Court restrained the States and their respective medical colleges from filling up the 15% reserved seats in the first year MBBS course until further orders, and the States which had not filed their objections were directed to do so.

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Several States filed objections. The common objection was that more time was needed to conveniently adapt to the

switch-over as contemplated by the Scheme and. therefore, implementation of the Scheme under the main judgment should be deferred at least for two more years. Another objection was that the syllabus-curriculum of study--in some of the States being different from the syllabus formulated under the orders of this Court, the students would be handicapped when taking the entrance examination. Yet another objection was that the medium of study in the qualifying course being the State language, it would be difficult for the students to take the All India Entrance Examination in English.

This Court, disposing of the objections,

HELD: 1.1 Ours is a large country and the level of education is not uniform throughout. Undoubtedly some States are more advanced than others in the field of education. The idea underlying the Scheme is to bring about a national cohesion and understanding and the Scheme has to be looked at from that stand point. In introducing a Scheme of this type which requires a switch-over from the prevailing pattern, there is bound to be some inconvenience. Whether it is introduced now or two years after, it would indeed bring about a feeling of anxiety and uncertainty till one gets used to it. This is a part of human nature. There is general welcome to the Scheme, but there is an objection to its implementation. The Scheme is intended to be implemented and if the Scheme is welcome, its implementation should also be received well. There could, therefore, be no room for objection at the threshold. [754E-F]

1.2 It would be appropriate to bring the Scheme into operation from the coming year so that all the preliminaries can be properly conducted and in regular course the students can seek admission to the 1988-89 session. Accordingly, the authorities will hold the examination in June, 1988. [755C]

It may be open to the State of Punjab to apply for directions of this Court when the Scheme is about to be implemented in case the present law and order situation continues. [754D]

1.3 As the Scheme syllabus had already been prepared, the Court had indicated in the order of July 21, 1986 that the courses of study at least for the 12th Class should be so changed as to fit into the syllabus. The State Government should have taken immediate steps for that purpose. Now that implementation of the Scheme is being deferred till the next session, a gap of almost two years would have intervened between the earlier order of the Court and the time when the Scheme would be implemented. The implementation of the Scheme cannot, therefore, be deferred any further beyond the coming session. [753A, C]

1.4 The medium of study of the MBBS course being in English, those students who propose to study the MBBS have got to be reasonably proficient in that language. Besides, the manner in which the entrance examination would be held does not require long answers to be written so that proficiency in English should become an absolute necessity so far as that examination itself is concerned. [753E-F]

1.5 By the time the Scheme is put into operation in 1988-89 session, all the States would have four years of notice of the judgment proposing the switch-over to the Scheme. Four years' period is certainly sufficient notice and no one can have any occasion to feel aggrieved that there is any hustling up in the implementation of the Scheme. [752F]

1.6 In view of the direction that the Scheme should be operative from the 1988-89 academic session, the order of injunction regarding the 15% seats is recalled. The respec-

tive institutions are now free to fill up these vacancies in accordance with their own procedure of admission. [755F]

JUDGMENT:

ORIGINAL JURISDICTION: Civil Misc. Petition No. 7667 of 1987.

IN

Writ Petitions Nos. 348-352 of 1985.

(Under Article 32 of the Constitution of India).

Madan Lokur for the Petitioners.

G. Viswanatha Iyer and P.K. Pillai for the State of Kerala.

J.R. Das and D.K. Sinha for the State of West Bengal.

A.K. Ganguli and Mariarputham for the State of Himachal Pradesh.

D.N. Dwivedi, R.P. Srivastava, Mrs. Halida Khatun and Ms. A. Subhashini for the Union of India.

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P.H. Parekh, E.K. Jose, Mrs. S. Dikshit, A.V. Rangam R. Rana, M. Veerappa, B.R. Agarwal, B.D. Sharma, R.C. Verma, C.V. Subba Rao, D.K. Sinha, J.R. Dass, M.E. Sardhana, S.K. Nandy, A.S. Bhasme, A.M. Khanwilkar, P.P. Singh, R.K. Mehta, T.V.S.N. Chari, A.K. Sanghi, M.N. Shroff, D. Goburdhan, Suryakant, H.K. Puri, M.K.D. Namboodiry, B.P. Singh, K. Ramkumar, E.M.S. Anam, T.V. Ratnam, L.R. Singh, D.R. Agarwal, R.S. Sodhi, Mrs. Sushma Suri, A. Subba Rao, Prabir Choudhary, D.N. Mukharjee, S.K. Mehta, M.K. Garg, P. Parmeshwarn, M. Karanjawala, L.K. Pandey, K. Rajindera Choudhary, P.C. Kapur, Pramod Swarup, T. Sridharan, Rajesh, N.M. Ghatate, Ravi P. Wadhvani, S.K. Gambhir, and D.N. Mishra for the Interveners.

The following Order of the Court was delivered by

ORDER

On June 22, 1984, a three-Judge Bench to which one of us was a party delivered the judgment in a group of writ petitions and while disapproving of the prevailing wholesale reservation on different scores in regard to admission of students into medical courses of study such as M.B.B.S. and Post Graduate specialities, proceeded to observe that "the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation based upon residence requirement within the State or on institutional preferences for students passing the qualifying examination." One of the considerations--perhaps the primary one--in formulating the scheme for creating a national forum for choice of candidates for the reserved seats was the growth of a broad-based national approach as against the prevailing State-based reservationist policy.

The Judgment was delivered during the long vacation of the court perhaps with the fond hope that the scheme evolved by this Court could be implemented in the educational session to follow. This Court had not then assessed what magnitude the task of implementation of the scheme would involve.

When the scheme did not become operative even in the following year (1985-86), this Court directed the Government of India to convene a meeting in which Medical faculties of universities, Health Secretaries of State Governments, representatives of the Medical Council of India, the Dental Council of India, National Board of Examinations, National Academy of Medical Sciences, the Central

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Board of Secondary Education and representatives of the Ministries of Education and Law were to participate with a view to scrutinising and giving shape to the scheme prepared

by the Medical Council of India under orders of this Court and finalise every detail regarding the holding of the All India Entrance Examination for the MBBS/BDS and Post Graduate Courses. This meeting was held on September 16, 1985, and after deliberations a shape was given.

The resultant scheme and certain objections came to be dealt by this Court in its order dated July 21, 1986. By this order the reservation of 30% indicated in the main judgment was reduced to 15% of the total seats for MBBS course in each medical college or institution without taking into account any reservations validly made and this Court observed:-

"This new formula is in our opinion fair and just and brings about real equality of opportunity in admissions to the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State."

This Court dealt at length with the objections to the syllabus and ultimately said:-

"We approve of the syllabus since it has been accepted by the Medical Council of India, the Government of India and all the State Governments except the State of Maharashtra which also did not make any submissions to the Court at the hearing of this case."

This Court further said :-

"Since as a result of the direction given by us on 2nd May, 1986, our judgment dated 22nd June, 1984, is going to be operative only with effect from the academic year commencing in 1987 and the first All India Entrance Examination for admission to the MBBS/BDS course would be held only in June, 1987, we would request the Education Department of each State as also the Board of Secondary and/or Higher Secondary Education in each State to take note of this syllabus which we have approved for the All India Entrance Examination and to suitably amend its syllabus or course for the 12th year (perhaps class)

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so as to bring it in line with the syllabus approved by us so that the students passing the qualifying examination of the 12th class may be properly equipped to face the All India Entrance Examination. It would be desirable if a common syllabus is adopted at +2 level throughout the country so that there may be uniformity in the educational pattern and the students in various States may be able to appear in the All India Entrance Examination on a footing of equality without any undue advantage to one as against the other."

By the same order, the Court held that the Central Board of Secondary Education would be the agency to conduct the All India Entrance Examination for admission to the MBBS course. It was further clarified that the scheme in the main judgment as modified later is meant to apply to medical colleges or institutions maintained or run by the Union of India, any State Government or Municipal or Local Authority. That order also directed that :-

"All India Entrance Examination for MBBS/BDS

course shall be held once in a year which may commence at any time between 15th July and 1st August each year. The dates indicated in paragraph 14 of the Scheme of All India Entrance Examination for MBBS/BDS course are quite in order but we would add one more date, namely, that the result of the All India Entrance Examination shall be declared sometime between the 15th and the 20th June. A list of successful candidates shall be prepared in order of merit and it shall comprise the names of as many students as the number of vacant seats available for admission plus 10% more and there shall also be a waiting list as indicated in paragraph 8 of the scheme. There shall also be an interval of time of at least three weeks between the date of publication of the list and the date of admission to the medical colleges or institutions covered by the scheme."

There is an apparent mistake in the working schedule in this part of that order. If the examination is to be held between July 15 and August 1, the result cannot be declared between the 15th and the 20th of June. We clarify this apparent error by directing that the examination shall be held between 16th May and 31st May and the results shall be notified between 15th and 20th June. The list of the candidates as directed in that order will be prepared within one week from the publication of the results and three weeks' time shall be allowed to

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intervene before actual admission starts. By the end of August such process having been completed, actual teaching should start from the beginning of September. In all medical colleges/institutions to which the scheme applies, teaching for MBBS/BDS course should start on the first working day of September and even those institutions which are outside the scheme might as well commence their academic sessions from September so that throughout the country there would be uniformity in that regard. In that order, this Court further held:-

"The schemes of examination for admission to MBBS/BDS course are therefore approved by us, subject to the various modifications discussed and formulated in this judgment. We would direct the Government of India to revise these schemes in accordance with the modifications directed in this judgment and to submit such revised schemes to this Court within two weeks from today. The Government of India will supply copies of the revised schemes to the learned advocates appearing on behalf of the State Governments, the Medical Council of India and the Bombay University so that if the revised schemes are not in accordance with the directions given by us in this judgment in any respect, they may be able to point out such discrepancies in the revised schemes."

The Writ Petitions were directed to be placed for hearing on 4th of August, 1986, for confirmation of the revised schemes prepared by the Government of India in accordance with the directions given in that judgment. The revised schemes were not placed for finalisation before the Court in the manner directed but ultimately the concerned authorities

proceeded with the making of arrangements for holding of the All India Entrance Examination. At that stage, several applications were moved objecting to the holding of the examination in the absence of a final clearance from this Court. In that order of 21st July, 1986, this Court had directed:-

"We would like to make it clear that students shall be entitled to appear at the All India Entrance Examination even if the result of the qualifying examination has not yet been declared, provided they have appeared at the qualifying examination but they cannot be admitted to the MBBS/ BDS course unless they have passed the qualifying examination."

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In the advertisement which was given calling for applications from candidates seeking admission to the entrance examination, eligibility was limited to successful candidates in the qualifying examination and the above direction of this Court was not reflected there. On 30th of April, 1987, this Court made the following order:-

"We understand that notice of the Scheme has been served on all the States. Some of the States have filed their objections to the proposed Scheme. The remaining States may file their objections by June 15, 1987 latest. The Registry of this Court will serve a copy of this Order on the Chief Secretary of each State to enable those States who have not filed objections to do so by the aforesaid date. Those States who do not have a copy of the Scheme with them will apply to the Registry within time for such copy. It is distinctly understood that no further time will be allowed to any State for filing objections. The Union of India will file its response to those objections by July 10, 1987. The matter shall be listed on July 14, 1987 for final disposal. Meanwhile, the examination scheduled for May 3, 1987 shall stand postponed. The postponement of the examination shall be notified publicly in all prominent newspapers, the All India Radio and Doordarshan immediately.

We also restrain the States and their respective medical Colleges from filling up 15% of the seats in the First Year M.B.B.S. Course until further orders."

In compliance with the said direction, the objections filed by the various States have been placed before us which are being disposed of by this order. The States which have filed their objections are the following:-

- (1) Assam
 - (2) Goa
 - (3) Gujarat
 - (4) Haryana
 - (5) Karnataka
 - (6) Kerala
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- (7) Orissa
 - (8) Punjab
 - (9) Rajasthan
 - (10) Tamil Nadu
 - (11) Uttar Pradesh

(12) West Bengal.

Apart from these States, the Bombay Municipal Corporation has sent some objections to the scheme.

Most of the States had a common objection, namely, some more time is needed to conveniently adapt to the switch-over as contemplated by the scheme and, therefore, implementation of the Scheme. under the main judgment should be deferred at least for two more years. We have already pointed out that the Scheme was intended to be enforced in 1985-86 academic session and when it was deferred to the next year, the Court was hopeful that it could be introduced in the academic session of 1986-87. We have indicated at length by quoting from the order of July 21, 1986, how under adverse circumstances it was not possible to enforce it in that academic session but the Court felt assured that the Scheme would be operative in the current academic session, namely, of 1987-88. Even in April, 1987 when injunction against filling the 15% of the seats was directed, this Court seems to have still been hopeful of the working out the Scheme in this session. For reasons which we shall indicate presently, it is not possible to enforce the Scheme in the current academic session of 1987-88. By the time the Scheme is put into operation in 1988-89 Session, all States would have four years of notice of this judgment proposing the switchover to the Scheme. Four years' period is certainly sufficient notice and no one can have any occasion to feel aggrieved that there is any hustling up in the implementation of the Scheme. We are, therefore, not impressed at all by the stand taken in the objections that more time necessary for implementing the Scheme and, therefore, its implementation should be deferred until 1990.

The next objection which most of the States have voiced is that the syllabus--curriculum of study--in some of these States being different from the syllabus formulated under the orders of this Court, the students would be handicapped when taking the entrance examination. Here again we see no force. We have extracted at considerable length from a part of the order of July 21, 1986, where this aspect was

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in the mind of the Court and as the Scheme syllabus was already prepared, the Court indicated that the courses of study at least for the 12th Class should be so changed as to fit into the syllabus. The State Governments should have taken immediate steps for that purpose. Now that we are deferring the implementation of the scheme till the next session, a gap of almost two years would have intervened between the earlier order of the Court and the time when the Scheme would be implemented. Those States who have not taken steps to bring their syllabi in line with the Scheme syllabus must be blamed for indifference but there is still time to remedy the situation. Such of the students who propose to sit at the entrance examination must from now on undertake an extended study of the subjects covered by the syllabus in case some portions from the approved scheme syllabus are not covered by their own. We do not consider this objection as a valid one for deferring the implementation of the Scheme any further beyond the coming session.

On behalf of some of the States like Rajasthan and Tamil Nadu, it was pointed out that the medium of study in the qualifying course being the State language, it would be difficult for the students to take the All India Entrance Examination in English. This is not the first time this objection has been raised. Even on an earlier occasion, it was claimed that the entrance examination should be held by adopting regional or State languages. On this count, the

Court had indicated the reasons and had refused to accept that request. We do not think there is any justification to take a different view of the situation. We would reiterate that the medium of study of the MBBS Course being in English, those students who propose to study the MBBS have got to be reasonably proficient in that language. Besides, the manner in which the entrance' examination would be held, does not require long answers to be written so that proficiency in English should become an absolute necessity so far as that examination itself is concerned. In these circumstances we do not see any real force in the objection relating to the language of the examination.

On behalf of the State of Assam, a plea was raised that the enforcement of the Scheme should be deferred for a period of five years. By way of justification for such a request, it was maintained that the State has suffered badly on account of the continuous agitation for about three to four years and during this period, the educational institutions were mostly closed and the State is still in a process of recovery. It is a fact that the State passed through a period of agitational cloud but we do not think there would be any justification to keep the

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State out from the national stream. It is quite possible that for the first year or two, some inconvenience may be experienced but we are sure, the young students from Assam would maintain high spirits and would match up to the national standards for competition in respect of the 15% seats. We are of the view that it would be in the interest of the State of Assam to quickly join the national stream.

A similar request has been made on behalf of the State of Punjab though on different grounds. It is stated that the prevailing situation of law and order in Punjab being what it is, it may be difficult for students from outside Punjab to be in Punjab for pursuing their courses of studies in the MBBS and equally unfavourably would be the position for youngsters from Punjab to go out to other institutions located in different parts of the country. We cannot shut our eyes to the realities of the situation but there is still almost a year for the Scheme to be implemented and we hope the present situation would not continue so long. In case the present situation continues, it may be open to the State of Punjab to apply for directions of this Court when the Scheme is about to be implemented. For the present we reject the request of the Punjab State'.

Ours is a large country and the level of education is not uniform throughout. Undoubtedly some States are more advanced than others in the field of education. The idea underlying the Scheme is to bring about a national cohesion and understanding and the Scheme has to be looked at from that stand point. In introducing a Scheme of this type which requires a switch-over from the prevailing pattern, there is bound to be some inconvenience. Whether it is introduced now or two years after, would indeed bring about a feeling of anxiety and uncertainty till one gets used to it. This is a part of human nature. We have found a general welcome to the Scheme but an objection to its implementation. The Scheme is intended to be implemented and if the Scheme is welcome, its implementation should also be received well. There could, therefore, be no room for objection at the thresh-hold.

Now that the objections are not entertained and the Scheme is finalised--and the syllabus was earlier approved---all formalities for the holding of the examination are complete.

The next question is as to when should the examination

be held. Learned counsel for the Union of India as also the Indian Medical Council suggested that it could be done in October this year so that the candidates selected at the entrance examination could join the 1987-88

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Session from November. In most of the colleges, admission in respect of 85% seats has been completed and actual teaching has either begun or is about to begin. By November a substantial part of the course would have been read. To meet the situation, learned counsel for the Union of India suggested that we should direct the colleges and institutions to have a supplementary course for the students admitted against the 15% vacancies. In the absence of consent from the institutions, it would be difficult to work out that. As it is, there exists a lot of confusion in the field and we do not propose to add to it by giving a direction of the type proposed. On the other hand it would be appropriate to bring the Scheme into operation from the coming year so that all the preliminaries can be properly conducted and in regular course the students can seek admission to the 1988-89 Session. We accordingly direct the authorities to hold the examination in the manner directed, in June, 1988. The Union of India, the Medical Council, the Dental Council, the several States, Universities and Medical Colleges or institutions who are covered by the Scheme are directed to comply with these orders in time so as to give full effect to what has been said here.

We have no intention to accept any application for further modification or alteration of our orders except in regard to the State of Punjab to the extent we have indicated in this order. We had put the parties appearing before us to notice of our intention and we reiterate it in our present order that no such application shall be entertained. We hope and trust that all concerned would cooperate in giving an easy workable switch-over to the Scheme to be implemented in the 1988-89 academic session so far as the MBBS/BDS course is concerned. In view of our directing the Scheme to be operative from the 1988-89 academic session, the order of injunction passed on 20th of April, 1987, regarding the 15% seats is recalled. The respective institutions are now free to fill up these vacancies in accordance with their own procedure of admission.

A copy of this order shall be communicated forthwith by the Registry to the Chief Secretary of every State and or Union Territory as the case may be.

N.P.V.

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