

PETITIONER:
DR. JEEVAK ALMAST

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 12/08/1988

BENCH:
MISRA RANGNATH
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VENKATACHALLIAH, M.N. (J)

CITATION:
1988 AIR 1812 1988 SCR Supl. (2) 385
1988 SCC (4) 27 JT 1988 (3) 340
1988 SCALE (2) 215
CITATOR INFO :
D 1992 SC 932 (13)

ACT:
Professional Colleges-Admission to: Post Graduate
Medical Course- All India Entrance Examination- A.I.I.M.S.
Bulletin of Information clauses 11 and 15(g)-Validity of-
Unfilled seats-Directions issued by Court.

Constitution of India, 1950 Article 14- Judicial
determination not to be tested on the touch stone of this
provision.

HEADNOTE:

In compliance with the decision of the Supreme Court in Dr. Pradeep Jain etc. v. Union of India B Ors. etc., [1984] 3 SCR 942 and on the basis of the scheme approved by the Court, respondent No. 2 held an All India Entrance Examination for filling up 25 per cent seats in different Post Graduate Medical Colleges in the States and Union Territories and those run by public authorities. The scheme provided that cut off base should be 50 per cent marks. Out of about 2100 seats, only 500 could be filled.

In the Writ Petition filed before this Court, the petitioner, an unsuccessful candidate at the aforesaid examination sought (1) a direction that clauses 11 and 15(g) of the Bulletin of Information, published by respondent No. 2 in this regard were illegal, unconstitutional and incompetent, (2) a writ of certiorari to quash the list of successful candidates for admission within 25% reserved quota, and (3) a writ of mandamus to the respondents to admit the petitioner and similarly placed other candidates against the 1500 odd seats left out due to the arbitrary decision/action of the respondents, contending that no seat should go unfilled.

Disposing of the Writ Petition and a pending CMP in other disposed of Writ Petitions,

HELD: 1.1 It is well-settled that judicial determination is not to be tested by the touchstone of Article 14 of the Constitution. [388B]

In the instant case since the bulletin is in accordance with the scheme approved by this Court, and the examination

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has been held following the terms thereof, the petitioner is not entitled to ask for quashing a part of the bulletin and the list of selected candidates. There is no tenable challenge against the examination. [387H, 388A]

1.2 Since in the very first year of implementing the scheme, a stalemate has arisen, it is appropriate to give certain directions, which may in the facts and circumstances, be appropriate and adequate to meet the situation to the extent possible. Sufficient number of qualified doctors are not available. Every step should, therefore, be taken to turn out as many doctors with Post Graduate qualification as possible. Since about 1600 seats have reverted to the States and medical colleges located within them, and have to be filled up, it is in the interest of the parties that this should be done as quickly as possible so that the academic time-schedule may be stuck to. [388B-C, F, 389D]

1.3 Respondent No. 2 is directed to supply to each State and/or Union Territory from where candidates had appeared at the entrance test, candidate-wise particulars confined to such State. Once these particulars are available, the Selection Committee operating in the State and/or Union Territory or in the respective medical colleges covered by the scheme, as the case may be, shall draw up a list of the remaining candidates seeking admission as against the 75 per cent of the seats and the candidates who had taken the All India Entrance examination, but have not been found fit on the basis of the marks secured in their respective selection tests or at the MBBS examination, in States where there is no such selection test relating 75 per cent seats. This shall be on the footing that marks in the respective selection tests or the test and the examination are at par and admission would be on the basis of merit. No doubt, the All India Selection test had been a stricter one, but it would not be possible for this Court now to direct what weightage is to be added on that score. Once the common list is drawn up on the basis of performance, admission to remaining seats can be taken up. [389F-G]

[The admissions already effected inclusive of seats in the reserved quota shall continue. But further admissions in respect of unfilled seats as against the 25 per cent quota shall be deferred now and again taken up after the list of eligible candidates is drawn up as per the time schedule now indicated.] [389H, 390B]

Dr. Pradeep Jain etc. v. Union of India & Ors. etc., [1984] 3 SCR 942, referred to.

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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 467 of 1988.

(Under Article 32 of the Constitution of India.)

D.N. Dwivedi, B.D. Aggarwala, O.P. Khadaria, Sarva Mitter, Bagga, Mrs. S.K. Bagga, R.P. Srivastava, Ms. A. Subhashini, R.K. Mehta, Ms. Sushma Manchanda and Ms. Suman Rastogi for the appearing parties.

The following Order of the Court was delivered:

ORDER

This petition under Article 32 of the Constitution arises out of implementation of the decision rendered by this Court in Dr. Pradeep Jain's case [1984] 3 SCR 942.

The petitioner is an unsuccessful candidate for admission to the Post Graduate Medical Course in the All

India Entrance Examination held by the All India institute of Medical Sciences, respondent No. 2. In this application he has asked for a declaration that clauses 11 and 15(g) of the Bulletin of Information published by respondent No. 2 in regard to the Post Graduate Medical courses are illegal, unconstitutional and incompetent. He has also asked for a writ of certiorari to quash the list of successful candidates for admission in the Post Graduate Medical colleges within the 25 per cent reserved quota and for a writ of mandamus to the respondents to admit the petitioner and similarly placed other candidates against the 1500 and odd seats left out due to the arbitrary decision/action of the respondents. In Dr. Pradeep Jain's case (supra) this Court decided that admission to 25 per cent of the seats in the different Post Graduate courses in the medical colleges located in the States and Union Territories as also those run by public authorities should be filled up by an All India Entrance examination. Under the Court's directions made from time to time, a scheme was evolved by the Union of India in coordination with the Indian Medical Council and the State Governments, universities and medical institutions. This Court approved the scheme and directed that the same should be implemented from the Academic year 1988-89 by holding an All India Entrance Examination by the respondent No. 2. The scheme contained the provision that cut-off base for selection for admission shall be 50 per cent marks. The bulletin prepared by the respondent No. 2 is on the basis of the scheme. Since the bulletin is in accordance with the scheme approved by this Court, and the

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examination has been held following the terms thereof the petitioner is not entitled to the first two reliefs claimed by him, namely, quashing of a part of the bulletin and quashing of the list of selected candidates. We would like to make it clear that there is no tenable challenge against the examination. It is well-settled that judicial determination is not to be tested by the touch stone of Article 14 of the Constitution.

Since the matter has come before this Court and from the facts disclosed in the petition we find that in the very first year of implementing the scheme, a stalemate has arisen, we think it appropriate to give certain directions which may, in the facts and circumstances, be appropriate and adequate to meet the situation to the extent possible.

We gather that 25 per cent reservation as envisaged by the scheme would mean about 2050 to 2100 seats and these were intended to be filled up by the selection tests to be conducted by the respondent No. 2. It is said that about 30,000 candidates appeared at the selection test but the respondent No. 2 found only 500 students fit, strictly in terms of the scheme, for being admitted as against the 25 per cent reservation. As a result of this about 1600 seats could not be filled up in terms of the scheme.

The question for consideration is as to whether these unfilled seats should revert back to the respective States and/or institutions or what other method should be adopted to fill up the vacancies. It has been contended on behalf of the petitioner, and there is total unanimity amongst all the parties that no seat should go unfilled. It is well-known that our country does not have sufficient number of qualified doctors and every step should, therefore, be taken to turn out as many doctors with Post Graduate qualification as possible. The problem to be resolved, therefore, is as to what method should be adopted to fill up these unfilled reserved seats.

We had given a direction to the Union of India to find out the exact position in regard to the reserved seats. Mr. Dwivedi for the respondent No. 1 has not been able to give us complete details and has placed a statement in regard to the few States and institutions. At the Bar it has been stated that the total number of seats in regard to this disclosure may not exceed 300. We do not think any useful purpose would be served by further adjourning the matter particularly when respondent No. 1 wants a few more weeks to collect the same. We cannot lose sight of the fact that a tight frame of time has been fixed by the previous order of

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this Court in regard to admission as also commencement of studies. We have not the least intention to disturb that schedule.

It is appropriate at this stage to take note of the fact that one of the medical colleges of Uttar Pradesh moved this Court in the month of May, 1988, for a direction that the remainder of the seats from out of the 25 per cent reserved quota should revert back to the college to be filled up by candidates who had applied for the remaining 75 per cent of the seats and had not got admission. Mr. Dwivedi for the Union of India has informed us that there has been some confusion as that direction has been construed to be of general application by some and in the case of others instructions have been issued to move this Court to obtain similar orders.

Now that about 1600 seats have reverted to the States and the medical colleges located within them, these seats have got to be filled up. It is in the interest of the parties that the same should be done as quickly as possible so that the academic time-schedule may be stuck to. We are of the view that it would be in the interest of everyone if the respondent No. 2 is directed to supply to each State and/or Union Territory from where candidates had appeared at the entrance test, candidate-wise particulars confined to such State within 10 days from now. Once these particulars are available the Selection Committee operating in the State and/or Union Territory or in the respective medical colleges covered by the scheme, as the case may be, shall draw up a list of the remaining candidates seeking admission as against the 75 per cent of the seats and the candidates who had taken the All India Entrance examination but have not been found fit on the basis of the marks secured in their respective selection tests and in the event of there being no selection test in the States relating to the 75 per cent quota then at the MBBS examination. This shall be on the footing that the marks in the respective tests or the test and the examination are at par and admission would be on the basis of merit. There is no doubt that the All India Selection test had been a stricter one. Now it would not be possible for us to direct what weightage is to be added on that score. Once the common list is drawn up on the basis of performance, admission to the remaining seats in the Post Graduate courses can be taken up.

We make it clear that by our Order we do not propose to vacate the admissions already effected up to today, that is, 12th August, 1988 inclusive in respect of the seats in the reserved quota. The colleges will be closed for the next

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three days being Second Saturday, Sunday and the Independence Day and the possibility of further admission can only be on the 16th of August, 1988. Further admission in respect of unfilled seats as against the 25 per cent quota shall be deferred till the list of eligible candidates

on the basis of what has been stated above is drawn up. Since we have allowed ten days' time to the respondent No. 2 to supply the particulars, seven more days shall be allowed thereafter to the institutions including the State Government to finalise the lists and send out intimations to candidates quickly. In these circumstances admissions may again be taken up three weeks after for the remaining seats and may be kept open for ten days. The Director General of Health Services will communicate this part of the order to every medical college subject to the scheme as also the Governments telegraphically today. A copy of this order shall be made available to Mr. Dwivedi forthwith. We reiterate that we have no intention to interfere with the scheme which has been approved except to the extent that the dates of admission and commencement of classes may have to be varied to give effect to the present order.

We must take note of the situation that the concern which was shown by this Court while reserving 25 per cent of the total number of seats to be filled up on the basis of the All India Entrance examination has not been effectuated on account of only 500 students having been selected. We hope and trust that such a situation would not recur and a more practical view shall be taken by those who are incharge of the matter. We are cognizant of the position that our direction might give dis-satisfaction to some candidates, but in the back-drop and the present situation perhaps no other arrangement more equitable than what we have indicated could be done. At any rate we declare that this is a final order and no application for varying or modifying the same would be entertained by the Registry.

The writ petition is disposed of with these directions but without costs.

C.M.P. No. 19754 of 1988 is a miscellaneous application in Writ Petition Nos. 348 to 352 of 1985 which have long been disposed of. The directions which we have given in the writ petition shall operate to the extent applicable to the facts of the case.

N.P.V.

Petitions disposed of.