

PETITIONER:
DR. SADHNA DEVI & ORS.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 19/02/1997

BENCH:
B.P. JEEVAN REDDY, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SEN, J.

The petitioners are medical graduates. They are desirous of getting admitted to Post Graduate Courses. Some of the petitioners took the test conducted by the Government of Uttar Pradesh in January, 1995 for admission to Post Graduate Courses in Medicine and Surgery. The others wanted to take the examination to be held in January, 1996. They have moved this Writ Petition under Article 32 of the Constitution to challenge a notification issued by U.P Government providing for reservation of SC/ST/OBC candidates in Post Graduate Speciality and Super-Speciality Courses such as M.D and M.S. The main contention is that this notification violates the fundamental right of the petitioners under Articles 14,15 and 21 of the constitution.

It may be noted that a similar Writ Petition was earlier moved challenging the reservation of seats for SC/ST/OBC candidates for admission to Post Graduate Courses in Medicine by some other persons. That Writ Petition (W.P. No. 771 of 1994) was heard along with another Writ Petition (W.P.No.631 of 1994 - Ashok Kumar Thakur v. State of Bihar). There the challenge was to the criteria followed by the State of Bihar for determining the creamy layer among the backward classes. The criteria followed by the State of Bihar and Uttar Pradesh in determining the creamy layer was struck down by a judgment dated 4th September, 1994. In the aforesaid two cases, however, this Court did not have to consider the question of reservation to Post Graduate Courses in Medicine. Liberty was given to raise the question in appropriate proceedings in the following manner|-

"Mr. Venugopal, the learned Counsel appearing for the petitioners stated that there are various other law points of this Writ Petition which were not raised and he sought liberty to raise the same in appropriate proceeding, if necessary. We order accordingly."

Pursuant to the liberty granted in the aforesaid judgment this Writ Petition has now been moved. The

petitioners contend that they belong to open category. They are all from the State of Uttar Pradesh. They have completed their M.B.B.S. Course. Petitioners 1,2 and 3 have already taken their Post Graduate Medical Entrance Examination held in January, 1995. They have been successful in getting the qualifying marks in the examination and are likely to be called for 'Counselling'. Petitioners 4 to 6 are medical graduates who intended to take the examination to be held in January, 1996.

In the State of Uttar Pradesh by virtue of executive instructions issued from time to time the following reservations have been made for admission to Post Graduate Degree and Diploma Courses|-

Scheduled castes ...	21%
Scheduled Tribes ...	2%
Backward Classes ...	27%

This practice has been in force for some time. What gives rise to the present dispute is a circular/letter dated 31.8.95 written by the Principal Secretary, U.P. Government, to the Director General Medical Education and Training, Uttar Pradesh. In that circular, requirement of minimum qualifying marks, which was 35% for written examination, has been cancelled for the reserved seats. The contention of the petitioners is that even if these special category candidates fail to score any mark in the test, they will be eligible for admission as long as there are vacancies in the special categories.

It has been contended on behalf of the petitioners that the ultimate power to fix norms and standards for admission to medical colleges vests in Medical Council of India under the Indian Medical Council Act, 1956 read with Indian Medical Council (Amendment) Act, 1993. So far as admissions to medical colleges are concerned, the Regulations framed by the Medical Council of India under Section 33 of the Act will prevail over any law or executive instructions made by any State Government.

The ultimate power to fix norms for admission to post-graduate medical courses vests in the State Government. Section 20 of the Act states that the Medical Council may prescribe standards for Post Graduate Medical Education for the guidance of Universities in the matter of securing uniform standards for Post Graduate Medical Education throughout India. For this purpose the Central Government has been empowered to constitute a Post Graduate Medical Education Committee. The committee had gone into the matter of admission to Post Graduate courses and recommended that the students of Post Graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate courses. All selections for post graduate courses should be conducted by the Universities. The executive instructions of Uttar Pradesh Government have done away with the requirement of obtaining the minimum qualifying marks in the written examination for admission to post-graduate medical courses for the candidates of reserved categories and are not in consonance with the guidelines set by Medical Council of India.

When this Writ Petition was moved, notice was issued confined to the question whether removing the minimum marks altogether for the SC/ST/OBC candidates by the Government of U.P. vide letter dated 31st August, 1995 was permissible in law. Time was allowed for filing counter affidavit was extended by six weeks finally and it was directed that the matter would be disposed of on the next date of hearing.

However, when the matter was taken up on 13.12.96, it was found that counter affidavits had not been filed. Time

to file counter affidavit was extended once again with the following directions|-

"List the matter on 24.1.97.

No further time shall be granted .

Meanwhile, counter affidavits, if any, may be filed by the State of U.P. and Medical Council of India."

However, no counter affidavit had been filed by the respondents even when the case was taken up for hearing on 24.1.97.

The right of the State Government to reserve admission to Post Graduate Medical Courses for SC/ST and members of OBC classes is not in the dispute. The only dispute is that whether the state Government is entitled to do away altogether with the system of obtaining minimum qualifying marks for getting admission to these courses. By the impugned circular the State Government has dispensed with the requirement of obtaining at least 35% marks in the written examination held for admission to Post Graduate Degree and Diploma Courses.

The validity of this circular has to be judged bearing in mind the various decisions given by this Court from time to time in the matter of admission to post-graduate courses.

In the case of State of M.P. V. Kumari Nivedita Jain, (1982) 1 SCR 759, 15% of the seats for various categories of medical courses in Madhya Pradesh had been reserved for Scheduled Castes and another 108 seats were reserved for Scheduled Tribes. When the result of pre-Medical Examination was published only 18 seats in the category of Scheduled Castes and 2 seats in the category of Scheduled Tribes could be filled because the other candidates could not acquire the qualifying marks laid down under Rule. 20. 90 seats remained vacant in the reserved category for the Scheduled Castes. Likewise, 106 seats remained vacant in the category of seats reserved for the Scheduled Tribes. Thereafter, the Government relaxed the requirement of qualifying marks by 7%. As a result of this seven more candidates in the category of Scheduled Castes and one more in the category of Scheduled Tribes got admitted. Faced with the situation that even after relaxation a large number of seats reserved for Scheduled Castes and Scheduled Tribes remained vacant, the State Government passed an order on 9th September, 1980 for completely relaxing the condition relating to the minimum qualifying marks for these two categories. The Government Order was as under|-

"The Government has taken a decision that the candidates belonging to the Scheduled Tribes be admitted to the Medical colleges in the seats reserved for them in accordance with the merit to be determined on the basis of the marks obtained by them in the pre-Medical Examination and that for this purpose, the condition relating to the obtaining of minimum qualifying marks be removed."

The High Court held that the order violated Regulations of the Central Medical Council. The executive power of the State under Article 162 could not be exercised so as to override the statutory provisions, especially when the said provision was in a field occupied by the Union List. It was observed that the executive power could be used to

supplement a law but not to supplant it. The High Court observed that the total relaxation of minimum marks for the candidates belonging to these reserved categories could not be supported under Article 15(4) being violated of the Regulations framed by the Medical Council.

This Court, on appeal after referring to the provisions of the Indian Medical Council Act reversed the decision of the High Court and held|-

"Regulation I prescribes the eligibility of a candidate for admission to medical courses. For maintaining proper standards in medical colleges and institutions it comes within the competence of the Council to prescribe the necessary qualification of the candidate who may seek admission into the Medical Colleges On the other hand the language in Regulation II which relates to selection of candidates clearly goes to indicate that the Council itself appears to have been aware of the limitation on its powers to frame any such regulation regarding the procedure or process of selection of candidates for admission.The council itself appears to have apprehended that what is contained in Regulation II is merely in the nature of a recommendation and this is evident from the language used in Regulation II particularly when the same is contrasted with the language used by the council in Regulation I. Regulation II begins with the words "selection of students in a medical college should be based solely on merit". We are of the opinion that the use of words "should be" in Regulation II is deliberate and is intended to indicate the intention of the Council that it is only in the nature of a recommendation."

It was held that the authority of the Council extended to the sphere of maintaining proper medical standards in the medical colleges or institutions necessary for obtaining recognised medical qualifications. In other words, the eligibility of a candidate who may seek to get minimum education qualifications required of a student for getting admission into a medical college. In other words, the eligibility of a candidate who may seek to get admission into a medical college for obtaining a recognised medical qualifications may be prescribed by the Council. But how the selection was to be made out of the eligible candidates for admission into the medical college was a matter which had necessarily to depend on circumstances and conditions in a particular state.

It was further held, "Though the question of the eligibility for admission into the medical college curriculum may come within the power and jurisdiction of the Council, the question of selection of candidates out of candidates out of eligible to undergo the medical course

does not appear to come within the purview of the Council. The process of selection of candidates eligible for admission for filling up the limited vacancies had no real bearing on the question of eligibility or qualification for admission or on the standards of medical education."

The medical Council has not laid down that for the purpose of admission to post-graduate medical courses, a further test will have to be conducted nor has it laid down any qualifying marks which will have to be obtained in such tests.

The position in law that emerges from this judgment is that all candidates who have successfully completed their MBBS course are eligible for admission to the post-graduate courses. But the Council has not done that. There may be more candidates than seats available for admission to the post-graduate courses. For this purpose, the State Government decided to hold tests for selection among the eligible candidates. By reserving seats in these courses for certain categories of persons the State Government has departed from the norm of merit being the only criterion for selection. Eligible candidates of lesser merit may be admitted to the post-graduate courses if they belong to any of the three categories mentioned in the Government Notification. But what is essential is that even the candidates of the three special categories must have an MBBS degree and must obtain the requisite marks in the test to gain admission to MS, MD and other courses. Here, the State Government has drawn a distinction between the special category of candidates and candidates belonging to the open category. All the candidates seeking admission to post-graduate medical courses will have to pass a further test. The MBBS degree obtained by the candidates is the minimum qualification required for taking the test. Even thereafter, the candidates will have to secure a minimum percentage of marks in the admission tests to qualify for admission to the post-graduate medical courses. If in the test the special category candidates obtained lesser marks than the general category candidates, even then they will be eligible for admission within their reserved quotas provided they have secured the minimum qualifying marks in the admission test. They do not have to compete equally with the candidates belonging to the general category.

But the Government has gone one step further. It has now laid down that it will not necessary for the special category candidates to obtain even the minimum qualifying marks in the admission tests in order to gain admission to the post-graduate medical courses. In other words, the seats reserved for the three special categories of candidates will be filled up by the candidates will be filled up by the candidates belonging to these three candidates special categories even if they fail to obtain the minimum qualifying marks in the tests held. In other words, the candidates belonging to the three special categories who have passed the MBBS examination will have to take the test for admission to post-graduate medical courses but that will be an idle formality because they will qualify for admission to the post-graduate medical courses even though they do not secure the minimum qualifying marks in the tests.

In our view, this rule come in conflict with the direction given by the Post Graduate Medical Education Committee that students for post-graduate training should be selected strictly on merit. It was open to the State Government to say that selection to the post-graduate medical courses should be on the basis of the performance of the candidates in the MBBS examination only. But the State

Government has chosen to hold a test among the persons who have passed the MBBS examination in order to select candidates for post-graduate courses. It has laid down minimum qualifying marks for admission. Candidates belonging to the three special categories who secure the minimum qualifying marks will have to be admitted as long as their quota of seats is not filled up. But if the special category candidates fail to secure the minimum marks in the tests held, it is not open to the Government to say that even then the special category of candidates must be selected for the post-graduate courses. If this is done, the merit will be sacrificed together.

In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them.

This Court had occasion to go into this question in the case of *Ajai Kumar Singh and Others v. State of Bihar and Others*, 1994 (4) SCC 401, in which one of us (B.P. Jeevan Reddy, J.) was a member. It was held in that case, after considering the judgment of this Court in the case of *State of M.P. v. Kumari Nivedita Jain*, (supra), that the state will regulate the admission policy and at the same time adhere to the standards determined by the Indian Medical Council. It was further observed in that case that the impugned provisions of State of Bihar provided a uniform eligibility criterion of 50 per cent for general candidates and for candidates belonging to "other backward classes" and 40 percent for members of Scheduled Castes and Scheduled Tribes. Only when students in requisite number were not available, the said criterion was reduced to 40 and 30 per cent respectively. The small distinction in eligibility criteria can, by no stretch of imagination, be said to impinge upon the determination or coordination of standards in institutions of higher learning.

There can be no doubt that the State may, if it feels necessary to do so, encourage the backward classes by reserving the seats at the under-graduate level for persons belonging to Scheduled Castes, Scheduled Tribes and other backward classes. We have some reservation as to whether this policy of reservation can be extended to the post-graduate level. It was held in the case of *Dr. Jagadish Saran and Others v. Union of India*, (1980) 2 SCC 768. that |

"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.d., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-making is a national loss, the considerations we have expanded upon as important lose their potency... we may here extract the

Indian Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration |

"Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate studies should be conducted by the universities."

The importance of merit being the only criterion for admission to post-graduate medical courses viz. MD, MS and the like was also emphasised in the case of Dr. Pradeep Jain and Others V. Union of India and Others, (1984) 3 SCC 654

But this line of inquiry need not detain us here in this case because the case of the petitioners is not that there should be no reservation for the candidates belonging to the three special categories mentioned hereinabove at the post-graduate level. Their contention is that candidates belonging to the three special categories must be able to secure the minimum qualifying marks in the admission tests in order to gain admission to post-graduate medical courses. If they fail to secure even the minimum qualifying marks, then the seats reserved for them should not be allowed to go waste but should be made available to the candidates belonging to general category. This contention must be upheld. Otherwise, to borrow the language used in Dr. Jagdish Saran Case (supra), this will be a "national loss"

Before we part with this case, we may refer to another judgment of this Court in Mohan Bir Singh Chawla V. Panjab University, Chandigarh, 1996 (9) SCALE 351, in which it was observed after a review of the case law that "the higher you go, in any discipline, lesser should be the reservations - of whatever kind".

In that view of the matter, this writ petition succeeds. The decision contained in the letter dated 31.8.1995 addressed by the Principal Secretary, Uttar Pradesh Government to the Director General, Medical Education and Training, Uttar Pradesh directing that there shall be no minimum qualifying marks for Scheduled Castes/Scheduled Tribes/Other Backward Classes candidates in the written examination for admission to post-graduate and diploma courses is quashed. It is directed that if the seats reserved for SC/ST/OBC candidates cannot be filled up on account of failure of the candidates belonging to obtain the minimum qualifying marks, then such seats should be made available to the candidates belonging to the general category.

This writ petition is disposed of with the above direction. There will be no order as to costs.