

PETITIONER:
STATE OF RAJASTHAN & ANR.

Vs.

RESPONDENT:
DR. ASHOK KUMAR GUPTA & ORS.

DATE OF JUDGMENT 11/10/1988

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1989 AIR 177 1988 SCR Supl. (3) 493
1989 SCC (1) 93 JT 1988 (4) 176
1988 SCALE (2) 909
CITATOR INFO :
E&R 1989 SC1194 (16)
R 1992 SC1475 (4,5)

ACT:
Constitution of India, 1950-Article 14-Equality doctrine'--Ordinance No. 278-E(d)(ii)--Of University of Rajasthan Ordinance-Held void--Admission to P. G. Course in Medical Colleges in Rajasthan--5% marks addition to aggregate marks obtained in competitive examination in case of students who obtain MBBS degree of Rajasthan University--Offends 'equality doctrine'.
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Professional Colleges--Admission to: Ordinance of University of Rajasthan Ordinance No. 278-E(d)(ii)--Admission to P.G. Course in the five Medical Colleges in State of Rajasthan--Addition of 5% marks to aggregate marks in the competitive examination by way of institutional preference if candidate has obtained MBBS degree from the same Medical College for which selection sought--Held offends 'equality doctrine' and Constitutionally void.

HEADNOTE:

The respondents had sought admission to post-graduate courses in the five medical colleges affiliated to the Rajasthan University through a competitive examination which was common for all these five colleges. They were not able to secure admission in any discipline even though they had secured more marks as compared to the successful candidates who had been granted additional marks on the basis of Ordinance 278-E(d)(ii) of the Ordinance of University of Rajasthan. Under this proviso the successful candidates were entitled to a uniform addition of 5% marks in the percentage of aggregate marks if they had passed the final M.B.B.S. examination from the same institution for which selection was being made. The respondents challenged this provision as violative of the equality principle enshrined in Article 14 of the Constitution. The High Court struck down as unconstitutional the impugned provision embodied in note (d)(ii) of Ordinance 278-E.

Dismissing the appeal, it was,

HELD: (1) The aggregate marks for all subjects put

together is 2750. 5% of these marks would work out to 137.5 marks. In the result, a candidate from the same college will have an advantage of 137.5 marks over candidates from other

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colleges. In medical courses where there is intense competition and candidates run neck to neck so often with a difference of a mark or two, a difference of 137.5 marks by way of college-wise institutional preference would virtually make a mockery of the merit criteria. [498C-D]

(2) This factor coupled with other factors leave no room for doubt that while on the face of it the impugned rule appears to extend or accord equal treatment of 5% weightage to the students of each of the five Medical College, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of apparent equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive 'reality' [502B-C]

(3) Admission to post-graduate courses at SMS College at Jaipur being considered as most advantageous, a candidate from Jaipur College will get admission in P.G. Course at Jaipur in preference to the other more meritorious candidates merely because he passed the M.B.B.S. examination at Jaipur even though all of them secured their marks at the identical competitive examination to all the Colleges. It needs no argument that Article 14 is seriously shattered. [498D]

(4) What may 'appear' to be equal treatment accorded in obedience to the equality doctrine embodied in Article 14 of the Constitution in its application in 'reality' may result in denial of equality and may accordingly be liable to be condemned for defying the equality doctrine. [495B]

(5) Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Art. 14 of the Constitution of India. [502C-D]

Nidamarti Mahesh Kumar v. State of Maharashtra, AIR 80 SC 1362--(1980) 3 SCR 1302, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2461-2463 of 1987.

From the Judgment and Order dated 7.8.1987 of the Rajasthan High Court in D.B.C. Writ Petition Nos. 1374, 1987 and 1453 of 1987.

Badri Das Sharma for the Appellants.

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Tapas Ray and S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

THAKKAR, J. What may 'appear' to be equal treatment accorded in obedience to the equality doctrine embodied in Article 14 of the Constitution in its application in 'reality' may result in denial of equality and may accordingly be liable to be condemned for defying the equality doctrine. This has been illustrated by the provision embodied in Ordinance No. 278-E (d)(ii) of the Ordinance of University of Rajasthan which provides for uniform addition of 5% marks to the students applying for admission to the post-graduate course in any one of the five Medical Colleges provided the student has passed his final MBBS Examination from the College to which admission in post-graduate course is sought. The said provision has been held to be unconstitutional and in our opinion the

conclusion reached by the High Court is right though the reasoning which has commended itself to this Court is somewhat different.

Three Writ Petitions were instituted in the Rajasthan High Court, (Jaipur Bench) by the Writ Petitioners who sought admission to post-graduate courses in the Colleges affiliated to the Rajasthan University. There are five such Medical Colleges at five different centres in Rajasthan, viz Jaipur, Bikaner, Udaipur, Jodhpur and Ajmer. It appears that for the purpose of securing admission to these Colleges the applicants seeking admission have to appear at a competitive examination called PMG. The passing of this Examination is a pre-condition for securing admission to the PMG course any one of the aforesaid five Colleges in Rajasthan. The PMG competitive examination is 'common' for all the five Medical Colleges. There one syllabus and one combined examination is conducted by the University. The successful candidates are entitled to addition of 5% marks in the percentage of aggregate marks by way of institutional preference if the concerned candidates had passed the final MBBS Examination conducted by the Rajasthan University. A further addition of 5% of marks by way of institutional preference in the sense of preference dependent on the particular Medical College at which the concerned candidate has passed his final MBBS examination is also provided. It is this college-based institutional preference which has given rise to the present controversy. Such preference is rooted in the impugned provision namely Ordinance 278-E(d) which deserves to be quoted:

"(d) The total marks so obtained shall be converted into
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percentage. The percentage so obtained shall be increased as follows:

(i) By 5 if the applicant passed the final M.B.B.S. Examination from the Rajasthan University.

(ii) By another 5 if the applicant passed the Final M.B.B.S. Examination from the same institution for which selections are being made."

The Writ Petitioners contended that this provision violated the equality principle enshrined in Article 14 of the Constitution of India and was accordingly unconstitutional. It appears that while each of the five Medical Colleges in Rajasthan is conducting post-graduate courses in specified specialities and super specialities, the Doctors who have graduated from all the Medical Colleges in Rajasthan by and large consider admission to post-graduate courses at SMS College at Jaipur as most advantageous. In other words securing admission in post graduate course at Jaipur in SMS College is considered to be achievement and the courses at Jaipur are the most sought after courses. The reasons underlying this keenness to secure admission in Jaipur College are understandable inasmuch as:

(i) there are many more seats available for PG courses; and

(ii) there are many more specialities available at the Jaipur College as compared to other Colleges;

A Tabular statement reflecting the positions of seats in the five Medical Colleges may best scrutinized:

Subject	S.M.S.	S.N.	R.N.T.	S.P.	J.I.N.	Total
	Medical College	Medical College	Medical College	Medical College	Medical College	
	Jaipur	Jodhpur	Udaipur	Bikaner	Ajmer	
1.Genl. surgery	17(4)	10(2)	8(2)	8(2)	8(2)	51(12)
2. Genl. Medicines	21(5)	9(2)	10(3)	10(2)	11(3)	61(15)

3. T.B.&C.D.	2(1)	1(0)	1(0)	0(0)	(0)	4(1)
4 Skin & V.D.	2(())	1(1)	0(0)	0(0)	0(0)	3(1)
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5 Psychiatry	3(1)	0(0)	0(0)	11(0)	0(0)	4(1)
6. Gyne. &Obst.	18(4)	8(2)	8(2)	8(2)	8(2)	50(12)
7. Paed. Medicine	11(3)	5(1)	4(1)	4(1)	4(1)	28(7)
8. Anaesthesia	11(3)	4(1)	4(1)	4(1)	4(1)	27(7)
9. Radio-Diagnosis	2(0)	2(1)	2(1)	2(1)	2(0)	10(3)
10. Radio-Therapy	1(1)	0(0)	0(0)	1(0)	0(0)	2(1)
11. E.N.T.	2(0)	1(1)	1(0)	1(0)	1(1)	6(2)
12. Ophthalmology	6(1)	2(0)	2(1)	2(0)	2(1)	14(3)
13. Orthopaedics	8(2)	2(1)	2(0)	2(1)	2(0)	16(4)
14. Pathology	4(1)	1(0)	1(0)	1(1)	1(0)	8(2)
15. Microbiology	2(1)	1(0)	1(1)	1(0)	1(0)	6(2)
16. P.S.M.	2(0)	1(0)	1(0)	1(1)	1(0)	6(1)
17. Physical Medicine & Rehabilitation	1(0)	0(0)	0(0)	0(0)	0(0)	1(0)
18. Anatomy	1(1)	0(0)	0(0)	0(0)	0(0)	1(1)
19. Physiology	0(0)	1(0)	0(0)	0(0)	0(0)	1(0)
20. Bio-Chemistry	0(0)	0(0)	1(0)	0(0)	0(0)	1(0)
21. Pharmacology	0(0)	0(0)	0(0)	1(0)	0(0)	1(0)
	114(28)	49(12)	46(12)	47(12)	45(11)	301(75)
B. DIPLOMA	I	II	III	IV	V	VI
D .A.	6(1)	0	6(2)	6(1)	0	1(4)
DCH.	6(2)	0	6(1)	6(2)	0	1(5)
D.P.H.	6(1)	0	0	0	0	6(1)
D.G.O.	6(2)	0	6(1)	(0)	0	12(3)
D.M.R.D.	6(2)	0	(0)	(0)	0	6(2)
Total:	30(8)	0	18(4)	12(3)	0	60(1)

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Note: The figures shown in bracket are the seats reserved for being filled up on all India basis in the year 1988.

The facility for the specialities from serial No. 18 to 21 i.e. Anatomy, Physiology, Bio-Chemistry and Phannacology, are available in all the five Medical Colleges in Rajasthan. But from the year 1988, the facility in these specialities will be provided by rotation.

Now it has to be realized that the aggregate marks for all subjects put together is 2750. 5% of these marks would work out to 137.5 marls. In the result a candidate from the same College will have an advantage of 137 5 marks over candidates from other Colleges. In Medical courses where there is intense competition and candidates run neck to neck so often with a difference of a mark or two. a difference of 137.5 marks by way of College-wise institutional preference would virtually make a mockery of the merit criteria. A candidate, say from Jaipur College, who secures 137.5 marks less than a candidate from Jodhpur, Bikaner, Udaipur or Ajmer will get admission in P. Course at Jaipur in preference to the other more meritorious candidates merely because he passed the M.B.B.S. ;Examination at Jaipur even though all of them secured their marks at the identical competitive examination to all the Collages. It needs no argument that Art. 14 is seriously shattered.

Statements filed by the parties in this Court further go to show that some disciplines are available only in particular Colleges and not in other Colleges. For instance:

1. M.D. in Physical Medicine and Rehabilitation is available only in S.M.S. College. Jaipur.

2. T.B. and C.D.' is not available in Ajmer Medical College.

3. 'Skin and V.D.' is not available in Udaipur and Ajmer Colleges.

4. 'Psychiatry' is available only in Jaipur and Bikaner Colleges and not in others

5. M.D. in 'Radio therapy' is available only in Jaipur and Bikaner and not in other Colleges.

An analysis of the data reflected in the aforesaid statement and its impact on the fortunes of the students

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aspiring for the Post Graduate courses reveal:

(i) that a student passing his final degree examination in MBBS from Jaipur would steal a march over the students passing from the remaining four Colleges for with 5% weightage a student from Jaipur would have a far better chance of securing admission in a post-graduate course at Jaipur inasmuch as there are as many as 114 seats at the Jaipur Medical College as compared to the number of seats ranging between 45 and 49 in each of the remaining Medical Colleges regardless of the superior merits of students from other colleges.

(ii) a student passing his final degree examination in M.B.B.S. from Jaipur aspiring for admission in P.G. course would have a far better chance of securing admission in the subject of his choice vis-a-vis students from all other Colleges inasmuch as in each subject the number of seats in the Jaipur College is much larger than in any of the remaining Colleges regardless of his superior merits.

(iii) a candidate from any of the four Colleges other than Jaipur College would have practically no chance of securing admission in certain disciplines such as:

- (a) Physical Medicine and Rehabilitation
- (b) Anatomy, (subject to rotation after 1988)
- (c) Radio therapy and
- (d) Psychiatry etc.

regardless of his superior merits.

(iv) A candidate with special aptitude for a particular discipline would not get admission in PG course in that discipline unless he belongs to College in which the particular discipline is available regardless of his superior merits.

The merit position in relation to the students would also undergo a vast change as is revealed by the tabular statement reproduced hereunder:

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MERIT POSITION OF RESPONDENTS WITH AND WITHOUT 'COLLEGE-- WISE' INSTITUTIONAL WEIGHTAGE;

Sl. No.	Name	with 5% Institutional weightage	Merit Position without 5% Institutional weightage
S1.No.	Name		Merit Position
1.	Dr. Ashok Kumar Gupta	207	171
2.	Dr. Rajeev Ahuja	226	209
3.	Dr. Ashwani Kumar Singh	201	162
4.	Dr. Ishwar Das	177	131
5.	Dr. Ratan Lal Tiwari	215	181
6.	Dr. Madhu Sanwal	97	45

The fortunes of the candidates would thus undergo a sea change. Those who are more meritorious having secured more aggregate marks than others would not get admission to PG courses anywhere in Rajasthan, whereas those with lesser merits would get admission by reason of the 5% College-wise preference. To take the case of the appellants, they having secured aggregate marks of 1650, 1638, 1624, 1617 and 1613 have not been able to secure admission in any discipline. As

against this candidates have secured much less marks already secured admission in one or the other of the 5 Medical Colleges. In order to illustrate the point, the tabular statements reproduced hereinbelow may be glanced at:

Medical College	Aggregate marks of last candidate	Discipline allotted
Jodhpur	1548	M.D. (Anaesthesia)
Udaipur	1626	M.S. (Surgery)
Jaipur	1602	M.D. (Anaesthesia)
Bikaner	1622	M.D. (Microbiology)

Statement showing list of candidates, less meritorious (that the appellants) who have secured admission:

College	Aggregate marks	Discipline allotted
Jodhpur	1610,	M.D. (Medicine)
	1605	
	1601	(Skin & V.D.)
	1606, 1595,	
	1590	
	1576,	
	1577	
	1582, 1570,	
	1548	
		M.S. (Surgery)
		M.S. (Orthopaedics)
		M.D. (Anaesthesia)
1638		M.D. (Medicine)
1637, 1635, 1626		M.D. (In TB & CD,)
1629, 1610, 1604		Psychiatry (Skin & V.D.)
		M.S. (Surgery)
1620		M.S. (Orthopaedics)
1617, 16()3, 1602		M.D. (Anaesthesia)

What emerges from the above statements is that while one of the appellants who has secured 1650 marks in the common competitive examination has not been able to secure admission in P.G. Course in any College in Rajasthan, a

candidate who secured about 100 marks less (1548 marks) in the very same examination has been able to secure admission, the rest of the appellants have not been able to secure admission anywhere though they have demonstrably secured more marks and are more meritorious than the aforesaid 22 persons. This analysis exposes the extremely unfair and unjust impact of the impugned rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of it the impugned rule appears to extend or accord equal treatment of 5 weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of 'apparent equality' is pierced to the offensive 'reality'. Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as

unconstitutional being violate of Art. 14 of the Constitution of India.

The High Court has struck down as unconstitutional the impugned provision embodied in note (d)(ii) of Ordinance 278-E mainly on the ground that coupled with the institutional preference accorded under clause (i) it would virtually amount to making 100% reservation in favour of the students of the Rajasthan University in the sense that no other student of any other University would have any reasonable chance to secure admission to these courses. relying in the principle enunciated in Nidamarti Mahesh Kumar v. State of Maharashtra & Ors., AIR 1980 SC 1362-(1980) 3 SCR 1302, the reasoning is reflected in the following passage extracted from paragraph 25 of the judgment under appeal:

"Thus after having given 5% weightage on the ground of institutional preference that a candidate has passed his final MBBS Examination from the University of Rajasthan, further 5% weightage on the ground that he has passed his MBBS final examination from the Medical College where he seeks admission. in Post Graduate course, is unreasonable able and arbitrary and does not stand the touchstone of Article 14 of the Constitution. If 10% weightage is given as aforesaid it will come to 275 marks and with this increase in marks no candidate from University other than University of Rajasthan can get admission to Post Graduate course in any one of the medical colleges. It is against the equality clause as it amounts to cent per cent reservation as 105 weightage in admission to Post Graduate course to a student, 5% weightage on the University basis

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and 5% on the institutional basis, amounts to total exclusion of candidates of other Universities. We have already referred to the admissions for the years 1986 and 1987 and at the cost of repetition we may say that a look at Schedules 'A' and 'B' regarding admissions in SMS Medical College, Jaipur in Post Graduate courses for the years 1986 and 1987 respectively will show that not a single candidate from the University other than University of Rajasthan could seek admission. "

Since however a number of seats are now (since 1988) reserved in each College for candidates on an All India basis as disclosed by the tabular statements reproduced in the earlier part of this judgment. we prefer to rest our decision on the reasoning indicated earlier. These, are the reasons which impelled us to pass the final order as under on July 21 1988:

"ORDER

I

The appeals fail and are dismissed.

II

Ordinance 278-E(d)(ii) of the Ordinances of the University of Rajasthan is declared as unconstitutional and quashed.

III

Admissions to the Post Graduate Degree Courses in all the Medical Colleges at all centres in Rajasthan shall hereafter be made in accordance with the decision of the High Court rendered on August 7, 1987 in the Writ Petitions giving rise to the present appeals which is hereby confirmed.

IV

Future vacancies including unfilled vacancies to the Post Graduate Degree Courses in all the Medical Colleges in Rajasthan shall hereafter be filled on the basis that Ordinance 278-E(d)(ii) is invalid provided however that

those students who have been admitted to Post Graduate
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courses pursuant to the interim order of this Court will not
be disturbed and will be permitted to complete their
courses.

Unfilled vacancies may be filled in accordance with and
in the light of this order even at this juncture if it can
be so done.

VII

Reasons will follow.

VII

There will be no order as to costs."

R.S.S.

Appeal dismissed.

JUDIS