

CASE NO.:
Appeal (civil) 7112-7113 of 2001

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
DAYANAND MEDICAL COLLEGE AND HOSPITAL & ORS.

DATE OF JUDGMENT: 11/10/2001

BENCH:
S.RAJENDRA BABU & DORAISWAMY RAJU

JUDGMENT:

[With C.A.No.7115/2001 (@ SLP(C) No. 11014/2001), C.A.No. 7116 /2001 (@ SLP(C) No.12792/2001), C.A.No. 7117/2001 (@ SLP(C) No.12793/2001) and C.A.Nos. 7118-7119/2001 (@ SLP(C) Nos.13441-13442/2001)

J U D G M E N T

RAJENDRA BABU, J. :

Leave granted in all the SLPs.

The appellant-State issued a notification on 5.1.2001 regarding admission to post graduate medical courses in the State of Punjab. 60% of the seats in such courses were reserved for eligible candidates in Service, while 40% of the seats were kept open to all eligible candidates who were residents of the State of Punjab. Clause 5 thereto, which provides for determination of merit and eligibility for admission, reads as under:

1. IN CASE OF MEDICAL/DENTAL COLLEGES:

(a) The merit of the candidates will be determined by the University by holding the Postgraduate Entrance Test of eligible candidates, for admission to three years degree courses for the session 2001.

(b) There will be separate merit list for in service 60% quota candidates for Government Medical/Dental Colleges and a separate merit list for remaining who are not covered under in service category candidates. The merit list for open and reserve candidates will be combined and reserve candidates will be eligible for open seats also, as per their merit.

(c) Interview is compulsory for all candidates applying for the postgraduate admission. No separate interview letters will be issued.

(d) Candidates securing at least 40% marks in the competitive examination will be eligible for admission except for admission to the basic subjects viz. Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine where there will be no condition of minimum marks.

Interview for M.S./M.S./M.D.S courses will be held in the office of Vice Chancellor, Baba Farid University of Health Sciences Faridkot.

(e) One mark each to PCMs candidates for admission to postgraduate course under 60% quota for one completed year of rural service over and above the three years minimum rural service required for eligibility for admission under this quota shall be given in the following manner:

(i) The incentive of additional marks would be available only to those PCMs candidates who have obtained the minimum 40% qualifying marks.

(ii) The number of marks, which may be given as an incentive for additional rural service, will be limited to 3(five).

(iii) The completed year of rural service on the basis of which incentive will be given, must have been rendered at places which are at least 15 kms. or more beyond municipal/notified area committee limits.

The validity of the notification dated 5.1.2001 issued by the appellant-State was challenged in the High Court with respect to prescription of lower marks than were prescribed by Regulation 9 framed by the Medical Council of India.

On the basis of the contentions raised before the High Court, two questions were formulated for consideration, firstly, the notification issued by the appellant State on 5.1.2001 providing for appointment to the students for the postgraduate medical courses with less than 50% marks in the entrance examination is contrary to Regulation 9 of the Postgraduate Medical Education Regulations, 2000 [hereinafter referred to as the Regulations] framed by the Medical Council of India under the Indian Medical Council Act, 1956, on 22.8.2000, and secondly, as to the scope of reservations that would be made by the State Government.

On both these questions, the High Court held against the appellants and quashed the notification issued by the appellant State to the extent that it lowers the qualifying marks from less than 50% in the entrance examination and provides for reservations for admissions to the postgraduate medical courses and thereby, the High Court directed the University to hold fresh counseling and to admit students as per their merit in accordance with the Regulations framed by the Medical Council of India after excluding the students who had applied on the basis of reservation. Hence these appeals by State of Punjab and others.

Shri Altaf Ahmad, learned Additional Solicitor General appearing for the State of Punjab, submitted that the High Court has not understood the effect of the decision in Dr. Preeti Srivastava & Anr. vs. State of M.P. & Ors., 1999 (7) SCC 120; that this Court did not decide the question whether the Medical Council of India alone can prescribe reservations with respect to socially and economically backward classes or otherwise in post-graduate medical courses; that the conclusion that reservation made in the impugned notification is invalid is not correct; that on correct interpretation of Regulation 9 of the Medical Council of India Regulations the prescription of 40% marks by the State of Punjab is correct; and that the High Court ought not to have interfered with the same.

Shri Altaf Ahmad submitted that in the notification issued by the State for regulating the selection for admission there is no distinction between a general category candidate and a reserved category candidate so far as the required merit is concerned, except for their respective quota by which the requisite percentage of candidates was to be taken

from amongst their respective categories; that under Article 15(4) of the Constitution, the State Government and the University acting under the directions of the State have a right to issue executive orders making reservations and the Medical Council of India, which is a creature of the Medical Council of India Act, 1956 cannot have a right to exercise constitutional powers such as those contained in Article 15(4) or in any manner hamper and thwart the move of the State to exercise its powers under Article 15(4); that as per the decision in Dr. Preeti Srivastavas case (supra) not only reservation as set out in Article 15(4) of the Constitution but relaxation of norms to an extent of 10% of the marks is permissible to reserved classes of candidates. He further contended that the High Court had not correctly understood the scope of the decisions in Dr. Preeti Srivastavas case [supra], Dr. Narayan Sharma & Anr. vs. Dr. Pankaj Kumar Lehar & Ors., 2000(1) SCC 44 and Medical Council of India vs. State of Karnataka & Ors., 1998 (6) SCC 131.

Shri P.P.Rao, learned Senior Advocate appearing for the respondents, submitted that Regulation 9(1) requires admission to postgraduate courses in medicine to be done strictly on the basis of academic merit to be adjudged as per norms and standards laid down and that the first proviso to Regulation 9(2) mandates that the minimum percentage of marks for eligibility for admission shall be 50% for all the candidates who appeared for the entrance test and in the absence of prescription of a separate minimum percentage of marks for eligibility of backward classes, the logical inference would be that the Medical Council of India did not visualise any reservation of seats or different and separate standards for weaker sections in postgraduate medical courses as that would dilute standards; that in Dr. Preeti Srivastavas case [supra], this Court had expressly left it to the Medical Council of India as an expert body to decide, with the assistance of its Postgraduate Medical Education Committee whether there should be reservation in postgraduate courses or not and if so also to what extent. However, the Medical Council of India did not provide for any reservation in the Regulations; that it did not also prescribe a separate percentage of minimum marks at the entrance test for postgraduate admissions for eligibility of candidates belonging to reserved category; that the silence on the part of the Regulations on these two material aspects leads to the irresistible inference that the Medical Council of India did not contemplate and provide for any reservations at the level of admission to post graduate courses in any manner for the academic year in question; that the reservations made by the State Government in its notification dated 5.1.2001 not being based on the decision of an expert body such as the Medical Council of India with the Postgraduate Medical Education Committee mentioned in Section 20 of the Indian Medical Council Act, it is not in accordance with the law declared in Dr. Preeti Srivastavas case [supra], and, therefore, the conclusion arrived at by the High Court on questions referred to above is correct; that the prescription of 40% marks at the entrance test for all candidates as against 50% marks at the entrance test prescribed by the Medical Council of India for all students in the proviso to Regulation 9(2) is ultra vires and rightly struck down by the High Court.

A Five-Judge Bench of this Court in Dr. Preeti Srivastavas case [supra], made an exhaustive consideration of the scope of Entry 25 of List III in the Seventh Schedule to the Constitution and Entry 66 of List I in the Seventh Schedule to the Constitution. This Court made it clear that the States competence under List III Entry 25 to control or regulate higher education is subject to the standards so laid down by the Union of India and States have competence to prescribe rules for admission to postgraduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India or its delegate. Fixing minimum qualifying marks for passing the entrance test for admission to postgraduate courses is concerned with the standard of postgraduate medical education. Once minimum standards are laid down, States are competent to prescribe any further

qualifications for selecting better students as they would not adversely affect the standards so laid down by the Medical Council of India. Certain observations were made in that decision to the effect that it is for the Medical Council of India to determine the reservation of seats, if any, to be made for SCs/STs/OBCs, the extent thereof and lowering of qualifying marks in their favour on the basis of proper balancing of public interests and, on this aspect, one of the learned Judges dissented and stated that States are fully competent to control admission to postgraduate courses, provide for reservation of seats, and lay down criteria for short-listing of eligible candidates for postgraduate courses under Entry 25, List III in the absence of any Central legislation on these aspects. However, the majority of the learned Judges ultimately summed up their conclusions as follows:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education.
2. A common entrance examination envisaged under the regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.
3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest.
4. At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection.

It is clear from this summary of the conclusions that this Court was not concerned in that decision with the question as to whether reservations are permissible for postgraduate medical courses or not. This Court was only paying attention to the question of fixing lower minimum qualifying marks for reserved category candidates and it was stated that such question must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. This Court also stated that fixing of qualifying marks to be obtained at the percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest. However, it was noticed that even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at the level of postgraduate medical education. The obvious effect of these conclusions would be that this Court did not totally rule out the prescription of reservation in postgraduate courses nor did it say that such prescription couldnt be provided for with lower minimum qualifying marks. All that was stated was that if there is a reserved category and lower minimum qualifying marks are prescribed for them, such prescription should not give rise to a wide disparity between the lower minimum qualifying marks prescribed for the reserved category and for the general category. In our view, this is the correct position in law and the High Court obviously has proceeded on the basis

of certain observations made in the course of the judgment which have not culminated in the rationale behind the judgment in reaching the appropriate conclusions. When this Court has stated that it was not concerned with the question of reservation as arising under Article 15(4), to state that this Court had decided such a question is very difficult of acceptance.

Indeed the power to be exercised under Article 15(4) by the States is a power arising under the Constitution. Though in a sense the Medical Council of India could also be a State for certain purposes, such a body would not be suited to make the necessary reservation in respect of socially and educationally backward classes in terms of Article 15(4) of the Constitution because of the need or the necessity for prescription, taking into account several considerations such as different levels of social, economic and educational development of the State or different regions in the State. Such considerations arise in the context of Article 16 as well. It is well known that the States often do appoint Backward Classes Commission to identify the socially and educationally backward classes and the manner in which their conditions have to be ameliorated. These vital aspects of policy necessitated equally by great public and general importance can be properly appreciated by the Government, Central or State, rather than the Medical Council of India, though in the context of fixing the standards and the extent to which the difference in standards have to be maintained between the general category and the reserved category must be left to Medical Council of India as noticed in Dr. Preeti Srivastavas case [supra]. Therefore, whatever observations have been made by this Court in Dr. Preeti Srivastavas case cannot be considered in isolation and stretched beyond what this Court ultimately stated in its conclusions. The question whether the Medical Council of India Regulations excluded reservation to be made in favour of socially and educationally backward classes either expressly or by necessary implications does not arise for consideration in the view we have taken that the Government State/Central are better suited to exercise powers under Article 15(4) of the Constitution and hence we do not propose to examine that aspect of the matter.

Insofar as the provision for reservation made by the State of Punjab in respect of socially and educationally backward classes, no exception can be taken of because, as we have explained earlier, it is a prerogative and duty of the State to indulge in such an exercise in carrying out and implementing the constitutional policy declared in Article 46 of the Constitution armed with the enabling power under Article 15(4) of the Constitution and there has been no decision on the point including the decision in Dr. Preeti Srivastavas case [supra] to the effect that the Medical Council of India can alone or shall do so. If in a given case, the prescription of reservation for weaker sections by the State is to such an enormous extent as to reduce the candidates to be selected on the basis of merit performance in an examination from the general category to a very small number, then perhaps the Medical Council of India may have to take appropriate steps by stipulating specific standards for such reserved category candidates also and not otherwise. The observation of enabling Medical Council of India in setting the standards in medical education includes the extent of reservation for socially and educationally backward classes in Dr. Preeti Srivastavas case [supra] should be understood in this background. Thus, proper balance will have to be struck both by the Medical Council of India and by the Government, Central and State, in exercise of their respective powers. The Medical Council of India, a creature of a statute, cannot be ascribed with such powers to reduce the State Governments to nothing on and in respect of areas over which the States have constitutional mandate and goal assigned to them to be performed. The Medical Council of India cannot also purport to arm itself with powers to prescribe a standard, which is impossible of attainment by a candidate belonging to a reserved category or for that matter even general candidates and whatever is fixed, must be realistic and within attainable

limits. In conclusion, the finding of the High Court that the notification issued by the Appellant State is invalid to the extent of making reservation in terms of Article 15(4) of the Constitution is set aside.

Regulation No. 9 of the Regulations framed by the Medical Council of India reads as follows :

9. SELECTION OF POSTGRADUATE STUDENTS

(1) Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.

(2) 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 a centralized competitive 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 postgraduate/admissions is held by a State Government or a University or any other authorised examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical courses shall be fifty per cent for all the candidates:

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

Shri Altaf Ahmad submitted that under the Regulations framed by the Medical Council of India the State could adopt the following four modes of selection as provided in Regulation 9:

1. On the basis of merit as determined in a competitive test;
2. On the basis of merit as determined by a centralized competitive test held at the national level;
3. 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
4. Combination of 1 and 3 above.

The submission of Shri Altaf Ahmad in this regard is that the proviso to Regulation 9 of the Regulations would not be attracted to the present case; that the appellants adopted a hybrid procedure of combining merit in the competitive examination with cumulative performance at the first, second and third MBBS examinations; and when such a course has been adopted by the appellants, the prescription under the proviso that minimum percentage of marks of 50% to be obtained by a candidate as marks for eligibility would not be attracted at

all.

It is not clear whether all the candidates have passed the said three examinations in the MBBS from the same University so as to attract clause 2(iii) of Regulation 9 of the Regulations framed by the Medical Council of India. Further the basis of submission of Shri Altaf Ahmad is that all those candidates who have passed the MBBS examination, become eligible and that is the eligibility, which is taken into consideration and not the marks obtained in the entrance examination. Therefore, there is a combination of two modes in selecting the candidates for the postgraduate medical courses. In our view this argument is plainly fallacious as this submission appears to have ignored that in order to appear for the examination in question the minimum qualification one must have is a degree in MBBS [which could be possible only by passing the required examination therefor with 50% of marks in the subjects] without which a candidate would not become eligible to take the entrance examination. The notification issued by the State of Punjab clearly states that the merit of the candidates will be determined by the University by holding the postgraduate entrance test of eligible candidates for admission to three years degree courses for the session 2001. The object of holding the entrance examination is for providing admission to three years degree course and the mode of selection is by an entrance test and not as is suggested by the learned Additional Solicitor General by a combination of more than one criteria as stipulated by the Regulations. Therefore, we have no hesitation in rejecting this contention.

It is clear that in respect of subjects other than Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Social and Preventive Medicine at least 40% of the marks will have to be obtained in order to be eligible for admission and in respect of other subjects there is no such condition at all. In the counter affidavit filed in the High Court, it is stated that the percentage of marks has been reduced below 40% for the basic subjects like Anatomy, Physiology and Pharmacology because the candidates of higher merit are not opting for these subjects and as such the postgraduate seats in Departments of Anatomy, Physiology and Pharmacology keep lying vacant and thus leading to an acute shortage of teachers in these Departments. Further, the condition of 50% marks in the entrance test was reduced to 40% because 80% of the seats reserved for PCMS doctors remained unfilled because most of them could not secure 50% marks in PGET due to the fact that they do not get academic support in rural areas. It is submitted that the postgraduate entrance examination is held for those who have already passed in MBBS examination by securing at least 50% marks and, therefore, the candidates who had not secured 50% in the postgraduate entrance examination cannot be declared to be filled in MBBS. The lowering of the marks to less than 50% has the twin objective of safeguarding the interests of weaker sections of the Scheduled Castes and Backward classes and to meet the constitutional obligation. We are afraid, the approach of the State of Punjab in this regard results in stultifying the logic. What is contended is that suitable candidates are to be selected from amongst the eligible candidates and in that regard an entrance test is being held. When such an entrance test is held, a prescription has been made by the Medical Council of India fixing a standard in terms of Entry 66, List I of the Seventh Schedule to the Constitution and which cannot be diluted at all as has been held in a series of decisions including Dr. Preeti Srivastavas case [supra], Dr. Narayan Sharma vs. Dr. Pankaj Kumar Lehar [supra] and Medical Council of India vs. State of Karnataka [supra]. Therefore, it is not open to the University or the Government to dilute that standard by fixing marks lower than what is set out by Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the

Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be repository of the power to prescribe standards in Post Graduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council.

What we have now to see is whether the action taken by the appellants is consistent with the prescription made by the Medical Council of India to the extent of obtaining 50% marks in the entrance examination and on that basis operate their rosters. If they do so and if the candidates, who have secured 50% marks, would be admitted, no interference is called for in the matter. If, however, any of the students has secured less than 50% marks that admission alone will have to be cancelled and appropriate directions issued to select as against it another candidate belonging to the reserved category if there is a reserved category candidate who has secured such marks, and if no reserved category candidate is available, must then be selected from the general category.

We, therefore, find that the prescription made by the respondents reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored. If that is done and if the Regulations framed by the Medical Council of India are applied in toto, appropriate working will have to be made by the appellants as indicated, supra and the same will have to be given effect to.

Some of the learned counsel appearing for private colleges drew our attention to the scheme evolved in *Unni Krishnan, J.P. & Ors. vs. State of Andhra Pradesh & Ors.*, 1993 (1) SCC 645. In that scheme while providing for 50% of the seats to be filled by the nominees of the Government or University through a common entrance examination, the remaining 50% seats are to be filled by those candidates who made payment as prescribed. The criteria for eligibility of candidates who get merit seats and other candidates who come by making payment are common to both categories. It is made clear in the scheme that management of the college cannot have any quota reserved to itself but may provide for reservation of seats to constitutionally permissible classes with the approval of the University. Seats should be allotted keeping in view the reservation the private college may make. On this basis, they contend that it is not open to the Government to make reservation in respect of classes falling under Article 15(4) of the Constitution in private colleges. At any rate, so far as the 50% of the quota reserved for allotment by the Government is concerned, there cannot be any serious doubt that the reservation made could be made applicable to them. Insofar as the remaining 50% are concerned, also since allotments have to be made by the Government or the University, they have to bear in mind the constitutional scheme for reservation. How the scheme of reservation is to be worked out with reference to private colleges is not specifically raised before the High Court and we are at a disadvantage in not having sufficient factual data to decide this issue. On the material on hand, we are prima facie of the view, as stated now and that question need not be finally decided but can appropriately be thrashed out in any other suitable matter where sufficient data supported by pleadings is available.

The appeals stand allowed in the terms stated above. No costs.

...J.
[S. RAJENDRA BABU]

...J.

[DORAISWAMY RAJU]

OCTOBER 11, 2001.

JUDIS