

OMBIR SINGH AND OTHERS ETC. ETC. A

v.
STATE OF U.P. AND ANOTHER ETC. ETC.

JULY 30, 1992

[LALIT MOHAN SHARMA AND N.M. KASLIWAL, JJ.] B

Education—Post-Graduate Medical Entrance Examination—Percentage of marks prescribed for admission—Legality of—Recommendation to Government to relax to fill up the vacancies.

Constitution of India, 1950—Article 14—Post-Graduate Medical Entrance Examination—Different percentage of marks prescribed for students of general and SC/ST categories—Legality of—Recommendation to Government to relax to fill up the vacancies.

The writ-petitioners-doctors, after passing the M.B.B.S. examination, appeared for the Post-Graduate Medical Entrance Examination in the year 1992. They were unsuccessful, as they secured less than 50% marks, which were necessary for the students of general category and 40% marks for SC/ST according to the rules for admission applicable for Post-Graduate course. D

The present writ petitions were filed challenging the rules for admission. E

The petitioners contended that as a result of the application of the admission rule a large number of seats remained vacant and in view of the observations made in *Dr. Ambesh Kumar etc. etc. v. Principal, LLRM Medical College Meerut and Ors. etc. etc.*, [1984] 1 SCR 661 such a situation must be avoided and the remaining seats should be filled up by applying different criteria; that there were 439 seats available in the General category, out of which only 300 candidates secured minimum qualifying marks, i.e. 50% marks and 139 seats were lying vacant; that in case of reserved category for SC/ST there were 96 seats out of which only 18 candidates secured 40% minimum qualifying marks and as such 78 seats were lying vacant; that in all 217 seats were lying vacant; that there was a great dearth of Post-Graduate doctors in the country and it would not only be a sheer wastage of money in paying salaries and other emoluments to

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A the teachers but also in the maintenance and upkeep of infra-structure available for teaching in the various disciplines of Post-Graduate Courses; and that it would not only be in the interest of the petitioners but also in the national interest, if the vacant seats were filled by lowering the minimum percentage of qualifying marks in the entrance examination;

B Dismissing the writ petitions, this Court,

HELD: 1.01. So far as the validity of the admission rules fixing 50% for the general category candidates and 40% marks for the SC/ST category candidates to be obtained at the entrance examination as minimum

C qualifying marks for being eligible for admission to the Post-Graduate medical courses, the same are not subject to any challenge. [700C]

1.02. The rule laying down minimum qualifying marks for admission to post-Graduate medical courses is legal and no exception can be taken to the same. [701B]

D 1.03. Once having held that the rule prescribed by the State Government laying down minimum qualifying marks in the entrance examination is valid and the State Government having followed the rule in granting admission in Post-Graduate courses, it cannot be held that such action is illegal. There is no infringement of any legal right much less of any

E fundamental right of the petitioners. [703B]

Dr. Ambesh Kumar etc. etc. v. Principal, LLRM Medical College, Meerut and Ors. etc. etc., [1987] 1 S.C.R. 661, explained.

F *Ajay Kumar Agrawal and Others v. State of U.P. and others, [1991] 1 S.C.C. 636 and State of Uttar Pradesh and Others v. Dr. Anupam Gupta etc., A.I.R. 1992 S.C. 932, referred to.*

G 1.04. The rule of minimum qualifying marks for admission to Post-Graduate courses was in vogue for the last many years and large number of seats remained vacant in earlier years also. [702 C]

1.05. It was for the State Government to have taken note of such situation and to have amended the rules for admission so as to fill all the seats available for Post-Graduate courses. [702 D]

H 1.06. The State Government is recommended to take suitable steps

for redressing the long felt grievance of the doctors to fill up all the vacant seats for Post-Graduate courses and which would be a step in the larger public interest also. The State Government may do so for admission to Post-Graduate courses for 1992 and in that case, the State Government would take immediate steps without any loss of time so that the candidates may also join the 1992 academic session for Post-Graduate studies without any disadvantage. [703D]

1.07. The State Government would be free to issue fresh order relaxing the requirement of minimum marks to such extent which may meet the necessity of maintaining academic standards for admission to Post-Graduate Courses as well as the regulations prescribed by the Medical Council of India in this regard. This would be perfectly within the powers of the State Government and would not be violative of Article 14 of the Constitution. The above observations relate only in respect of the vacant seats of Post-Graduate courses of 1992 and not in relation to any vacancies for the earlier years. [703F]

ORIGINAL JURISDICTION : Writ Petitions (Civil) Nos. 451, 454, 525, 545 of 1992.

(Under Article 32 of the Constitution of India).

Yogeshwar Prasad, Mrs. Rachna Gupta, Prashant Kumar, Pradeep Misra, Sudhir Kulshreshtha and Dr. Neena Raizada for the Petitioners.

Dr. Ghatare, R.B. Misra, Vishwajit Singh and Ajay K. Agrawal for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J. All the above writ petitions have been filed by the doctors who after passing the M.B.B.S. examination, appeared for the Post-Graduate Medical Entrance Examination (PGMEE) held by the Lucknow University in the year 1992, but remained unsuccessful as they secured less than 50% marks which were necessary for the students of general category and 40% marks for SC/ST according to the rules for admission applicable for Post-Graduate course. On 14.7.1992 we passed a detailed order and so far as the admission rules fixing 50% of the marks to be obtained at the entrance examination as minimum qualifying marks for admission to the Post-Graduate medical courses are concerned the

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A same were held to be legal and it was further held that no exception can be taken to the same. It was however, contended on behalf of the petitioners that as a result of the application of the aforesaid rule a large number of seats have remained vacant and in view of the observations made in *Dr. Ambesh Kumar etc. etc., v. Principal, LLRM Medical College Meerut and Ors. etc. etc.* [1987] 1 SCR 661 such a situation must be avoided

B and the remaining seats should be filled up by applying different criteria, the cases were postponed for further hearing.

We have heard learned counsel for the parties and have thoroughly gone through the record. So far as the validity of the admission rules fixing

C 50% marks for the general category candidates and 40% marks for the SC/ST category candidates to be obtained at the entrance examination as minimum qualifying marks for being eligible for admission to the Post-Graduate medical courses, the same are not subject to any challenge as we have already held the same to be legal in our order dated 14.7.1922. Learned counsel for the petitioners made strenuous effort to persuade us

D to take a different view, but they failed in the said attempt. It may be further mentioned that this Court in *Ajay Kumar Agrawal and Others. v. State of U.P. and others*, [1991] 1 SCC 636 observed as under :—

E "It is not disputed that in Uttar Pradesh the prevailing practice was a 50 per cent base for allowing Post Graduate Study to doctors with MBBS qualifications but taking their University examination as the base without any separate selection test, it is not the case of any of the parties before us that the selection is bad for any other reason. We are of the view that it is in general interest that the 50 per cent cut-off base as has been adopted should be sustained."

F The matter again came up for consideration before this Court and in *State of Uttar Pradesh and Others v. Dr. Anupam Gupta etc.*, AIR 1992 S.C. 932, it was held as under :

G "Thus it could be seen that this Court consistently laid down the criteria for conducting entrance examination to the post graduate degree and diploma courses in Medicine and the best among the talented candidates would be eligible for admission. 50% cut off marks was also held to be valid to achieve excellence in post graduate speciality. Accordingly we uphold the

prescription of 50% cut off marks to general candidates and 40% to SCs and STs together with 1.65% weightage of total marks i.e. 50 marks in total in entrance examination as constitutional and valid".

Thus, we further hold that any challenge to the above rule laying down minimum percentage of marks for eligibility for admission to Post-Graduate courses is no longer res-integra.

Learned counsel appearing for the petitioners then submitted that admittedly there were 439 seats available in the General category, out of which only 300 candidates secured minimum qualifying marks i.e. 50% marks and 139 seats are lying vacant. Similarly in case of reserved category for SC/ST there were 96 seats out of which only 18 candidates secured 40% minimum qualifying marks and as such 78 seats are lying vacant. It has been contended that in all 217 seats are lying vacant and large number of Professors and Readers meant for imparting teaching in the various disciplines of Post-Graduate courses shall remain idle and the Government shall have to unnecessarily spend large funds for meeting their emoluments. It was also submitted that there is a great dearth of Post-Graduate doctors in the country and it would not only be a sheer wastage of money in paying salaries and other emoluments to the teachers but also in the maintenance and upkeep of infra-structure available for teaching in the various disciplines of Post-Graduate Courses. It has been further submitted that it would not only be in the interest of the petitioners but also in the national interest if the vacant seats are filled by lowering the minimum percentage of qualifying marks in the entrance examination. It has been submitted that the number of seats lying vacant is not small but it is large being 217 out of the total 535 seats. Learned counsel for the petitioners in this regard placed reliance on the following observations made by this Court in *Dr. Ambesh Kumar etc. etc. v. Principal, LLM Medical College Meerut and Ors. etc. etc.*, [1987] 1 SCR 661.

"It is pertinent to mention in this connection that the number of seats allotted to each of the prescribed courses is on the basis of two seats per professor and there is a crying necessity in the State for more experts in various disciplines in Medicine and Surgery etc. It is incumbent on the State Government to see that all these seats earmarked for each of these disciplines or courses are filled up. It appears from Annexure D to the

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A petition in C.A. No. 6119 of 1983 that quite a considerable number of seats in various disciplines were kept vacant as the applicants did not fulfil the eligibility qualification framed by the State Government by its aforesaid order and as a result several Professors and Assistant Professors who are meant for imparting teaching in these disciplines were kept idle though a considerable fund had to be expended for meeting their emoluments. It is for the State to consider and to see that the seats are filled up in all the disciplines and they are not left vacant in spite of a large number of applicants applying for admission in the various disciplines and the State Government has to evolve such criteria of eligibility that all the seats in different M.D., M.S. degree and diploma courses are filled up".

We have given our thoughtful consideration to the aforesaid submission. It may be noted that the aforesaid rule of minimum qualifying marks for admission to Post-Graduate courses was in vogue for the last many years and large number of seats remained vacant in earlier years also. It was for the State Government to have taken note of such situation and to have amended the rules for admission so as to fill all the seats available for Post-Graduate courses. So far as any mandamus or direction to be given by this Court is concerned, we refrain from doing so because this Court has repeatedly held that the rule laying down minimum qualifying marks for admission to Post-Graduate medical courses is legal and no exception can be taken to the same. Even in Dr. Ambesh Kumar's case (*supra*) the rule laying down minimum of 55% and 52% marks in MBBS respectively for admission to Post-Graduate degree and diploma courses was held to be valid. An argument was raised in the aforesaid case that the State Government had no power to lay down further eligibility qualification for being considered for admission in the Post-Graduate courses, in addition to the eligibility criteria laid down by the Medical Council in its regulations but the aforesaid contention was negatived and it was held as under :-

"The order in question merely specifies a further eligibility qualification for being considered for selection for admission to the post-graduate courses (degree and diploma) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. This does not in any way encroach upon the Regulations that have been framed under the provisions of Section 33 of the Indian Medical Council Act.

On the other hand in order to promote and further the determination of standards in institutions for higher education, the State Government who runs these colleges provide an additional eligibility qualification".

Thus, we are clearly of the view that once having held that the rule prescribed by the State Government laying down minimum qualifying marks in the entrance examination is valid and the State Government having followed the aforesaid rule in granting admission in Post-Graduate courses, it cannot be held that such action is illegal. There is no infringement of any legal right much less of any fundamental right of the petitioners.

We can only recommend that the State Government may take suitable steps for redressing the long felt grievance of the doctors to fill up all the vacant seats for Post-Graduate courses and which would be a step in the larger public interest also. The State Government may do so for admission to Post-Graduate courses for 1992 and in that case, the State Government would take immediate steps without any loss of time so that the candidates may also join the 1992 academic session for Post-Graduate studies without any disadvantage. It is further made clear that in doing so such candidates who having secured more than 50% marks and having already been allotted the specialities would not be disturbed in any manner. The vacant seats would however be filled strictly in accordance with merit in the entrance examination and according to the combined merit list of the whole State of Uttar Pradesh. The State Government would be free to issue fresh order relaxing the requirement of minimum marks to such extent which may meet the necessity of maintaining academic standards for admission to Post-Graduate courses as well as the regulations prescribed by the Medical Council of India in this regard. This, in our view, would be perfectly within the powers of the State Government and would not be violative of Article 14 of the Constitution. The above observations relate only in respect of the vacant seats of Post-Graduate courses of 1992 and not in relation to any vacancies for the earlier years of 1990 or 1991. With the aforesaid observations, we dismiss all these petitions with no order as to costs. The application for intervention No.2 in Writ Petition No.454 of 1992 also stands dismissed automatically.