Rajesh Kumar Verma vs State Of M.P on 21 January, 1994

Equivalent citations: 1995 AIR 1421, 1995 SCC (2) 129, AIR 1995 SUPREME COURT 1421, 1995 (2) SCC 129, 1995 AIR SCW 2102, (1995) JAB LJ 281

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, N Venkatachala

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           PETITIONER:
RAJESH KUMAR VERMA

        Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT21/01/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
VENKATACHALA N. (J)

CITATION:
 1995 AIR 1421            1995 SCC  (2) 129
 1995 SCALE  (2)448


ACT:



HEADNOTE:



JUDGMENT:
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ORDER

1. I.A. Nos. 1-3 are allowed.

2. Special leave granted.

3. A group of writ petitions came to be disposed of by a Division Bench of the Madhya Pradesh High Court speaking through Giani, J., on 21-8-1993, which related to admission to the Medical and

Dental Colleges in the said State. The present special leave petitions are directed against the Miscellaneous Petition No. 1904 (which was the main petition in which the judgment was rendered) and Miscellaneous Petition No. 1744 of 1992. Admission to the Medical courses was governed by the rules made by the State Government in that behalf, Chapter 3 whereof is relevant for our purpose. Rule 3.3 provides for reservation of seats. It posits that a minimum of 15 per cent seats shall be reserved each for Scheduled Caste and Scheduled Tribe candidates. In pursuance of this rule, out of the total number of seats available, 87 seats were reserved for Scheduled Caste candidates and an equal number for Scheduled Tribe candidates. Rule 3.3.3 provided that in case eligible candidates to the extent of reservation in any reserved category are not available, the vacancies of the reserved category will be filled from the waiting list of candidates in general category, if considered necessary. Rule 3.5 provides the mode of selection. Rule 3.5.2 is relevant for our purpose and may be extracted for ready reference.

> "3.5.2 Qualifying marks in PMT.-- For admission to Medical and Dental courses candidates of various categories will -have to secure minimum aggregate percentage of marks in PMT as mentioned in the following table:
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> S.No. Course Categorywise Percentage G SC ST MP FF
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> ---
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> 1. Medical 50 35 25 50 50
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> 2. Dental 35 30 25 35 35
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> Note:The above percentage of minimum qualifying marks for admission to MBBS/BDS is in respect to aggregate. This will not be relaxed further. No minimum qualifying marks are prescribed in individual subjects.

Aggregates for these courses will consist of the marks obtained in PCBZ only. Thus, marks obtained in GE will not be added in the aggregate but a candidate must secure at least 25% marks in GE to qualify for admission to these courses."

The abbreviation PCBZ stands for Physics, Chemistry, Botany and Zoology. Rule 3.8 confers on the State Government the right to amend any rule/procedure for admission to Medical and Dental Colleges and says that any modification so made shall be binding. On a plain reading of Rule 3.5.2 it becomes clear that the percentage of minimum marks indicated for various categories of students in PCBZ subjects will not be relaxable but so far as General English is concerned the minimum qualifying marks are prescribed to be 25% but those marks will not be added in the aggregate.

4. It so happened that out of the 87 seats available to Scheduled Caste candidates only 40 students qualified for admission; whereas in the Scheduled Tribes category out of 87 seats available only 30 qualified for admission under the above rules. The result was that out of 174 seats reserved for SC/ST candidates only 70 could be utilised leaving 94 unutilised seats. Ordinarily, these unutilised seats would have gone to the general category by virtue of Rule 3.3.3. However, the State Government by the order dated 9-9-1992 intervened and reduced the minimum qualifying marks in English subject for Scheduled Castes at 15 per cent and for Scheduled Tribes at 10 per cent. On this reduced percentage of qualifying marks in the General English category additional SC/ST candidates were offered admission to the Colleges on the unutilised reserved seats. The order dated 9-9-1992 appears to have been made in exercise of power conferred by Rule 3.8 referred to earlier. It must be clarified that this relaxation, if one may call it so, was restricted to the General English subject only and there was no relaxation granted in regard to PCBZ subjects. The State Government realising that the SC/ST students who would secure admission by virtue of the relaxation would not be possessing requisite knowledge of English, further provided in the said order that they shall receive special coaching in English in the first year. Thus, the State Government was quite conscious and alive to the fact that the students admitted to the Medical and Dental courses by virtue of this relaxation would be weak in English and they would, therefore, have to be given special coaching in English to prop them up. The question then is whether this relaxation by the State Government is legally sustainable.

5. In the group of writ petitions which came up for decision before the Division Bench of the High Court, the High Court placing special reliance on this Court's decision in Director General, Telecommunication v. TN. Peethambarami came to the conclusion that it was not open to the State Government to reduce the minimum qualifying marks in General English and the seats made available to SC/ST candidates by virtue of the said relaxation would revert to the general category students. It may here be mentioned that in taking this view the Division Bench departed from the view taken by another Division Bench of the same High Court in Amrit Bajpai v. State of Mp2, which judgment is produced as Annexure 111 at page 42 of the paper-book. This decision was brushed aside on the plea that it had not taken into consideration the decision rendered by this Court in Peethambaram case1. Needless to say that in such a situation the proper course is to refer the matter to a larger Bench, a course which the subsequent Division Bench did not follow.

6. The question at issue in the present case in our opinion is concluded by three decisions of this Court, viz., (1) State of M.P v. Kumari Nivedita Jain3, (2) Aarti Gupta v. State of Punjab4 and (3) Ombir Singh v. State of U.p5 In Nivedita case3 the factual situation was more or less similar. In that case 9400 candidates sought admission to the Medical Colleges for the academic year 1980-81. Out of these, 623 candidates belonged to the Scheduled Castes and 145 belonged to the Scheduled Tribes. On the result of the pre-medical examination, only 18 seats in the category of Scheduled Castes and 2 seats in the category of Scheduled Tribes could be filled up; others belonging to these categories having failed to secure the minimum qualifying marks prescribed by Rule 20. The Selection Board, in exercise of power under note (1) to that rule, gave relaxation of 5 per cent, whereupon 7 more candidates belonging to the Scheduled Castes, one more candidate belonging to the Scheduled Tribes, secured admission, still leaving a balance of 83 seats under SC quota and 105 seats under ST quota to be filled as per Rule 9. But the State Government intervened and by its

order dated 9-9-1980 removed the condition relating to minimum qualifying marks in favour of candidates from SC/ST categories. Those belonging to the general category who had secured the minimum qualifying marks but had failed to secure admission challenged the Government order inter alia on the grounds that it contravened Regulation 2 of the Medical Council of India and was therefore, hit by Section 19 of the Indian Medical Council Act, 1956 thereby exposing the Medical Colleges to the risk of being de-recognised and that the order of the Government lowered the standard of education, in that, less qualified and less deserving candidates would fill up the vacancies thereby violating the 1 (1986) 4 SCC 348: 1986 SCC (L&S) 780: (1986)1 ATC 552: AIR 1987 SC 162 2 M.P. No. 3164 of 1992, decided on December 15, 1992 3 (1981) 4 SCC 296: (1982) 1 SCR 759 4 (1988) 1 SCC 258: 1988 SCC (L&S) 322: (1988) 2 SCR 244 5 1993 Supp (2) SCC 64: AIR 1993 SC 975 equality clause in Articles 14 and 15 of the Constitution and that even otherwise the order contravened Ordinance 94 of the University of Jabalpur. Repelling of these contentions this Court held that the executive order of 99- 1980 completely relaxing the condition relating to minimum qualifying marks for entry into Medical Colleges in the State with respect to SC/ST candidates did not violate either Article 14 or Article 15 of the Constitution, since the relaxation could not be said to be unreasonable. That is because of the constitutional philosophy for the upliftment of the people belonging to the SC/ST/OBC category. It was pointed out that in the absence of any law to the contrary it was open to the State Government to relax the rule prescribing the minimum qualifying marks to ensure that the interests of these category of students was protected and they received State protection to the extent it was necessary for their upliftment. Insofar as the contentions based on Regulation 2 of the Indian Medical Council was concerned, their Lordships pointed out that the said regulation was merely directory and in the nature of a recommendation and did not have any statutory force to set at naught the executive order of the State Government.

7. In the case of Aarti Gupta4 100 seats were reserved for the SC/ST candidates for admission to the MBBS/BDS courses for whom the Indian Medical Council had prescribed by its Regulation 2 a minimum of 40 per cent marks for admission eligibility. Government of Punjab lowered the percentage of pass marks to 35 per cent as against the minimum of 50 per cent for the general category candidates. On the basis of the selection test, only 32 candidates qualified for admission under the reserved category. Ordinarily, the remaining seats would have reverted to the general category but the State Government intervened by an order dated 28-7- 1987 whereby the minimum qualifying marks for SC/ST candidates was lowered to 25 per cent. This order of the State Government was put in issue in a writ petition filed by Aarti Gupta4. This Court reiterated that Regulation 2 of the Indian Medical Council was merely recommendatory in nature. In taking this view reliance was placed on the decision in Nivedita Jain case3. While upholding the order of the State Government this Court observed as under:

> "[T]he standard of medical profession should not be compromised in the national interest. There has been a perceptible fall in the national standards and general efficiency of the professional men. While it is not necessary for us to say anything against reservation, we approve of the concern shown by the Indian Medical Council that high standards of efficiency should be maintained, and that can only be possible if the State and the Council cooperate to maintain a high standard. This aspect should

be kept in view when the guidelines are prescribed for the selection of the students for the medical courses."

8. In Ombir Singh case5 the question was concerning admission to postgraduate medical course, wherein also it was conceded that it is open to the State Government to relax the requirement of minimum marks and the Court cannot issue a mandamus or direction against it to the State Government.

9.It will thus be seen from the discussion in the abovesaid three decisions that this Court has consistently held that the State Government is empowered to relax the minimum qualifying marks requirement to ensure that candidates belonging to the SC/ST/OBC category secure admission to professional courses. The same view was expressed by a Division Bench of the M.P High Court comprising Faizan Uddin and Naolekar, JJ. in Amrit Bajpai v. State of M.p2 Despite that another Division Bench of the same High Court comprising Gyani and Deo, JJ. while hearing a batch of petitions upturned by the judgment impugned in the present appeal on the plea that this Court's observations in the case of Peethambaram1 departed from the earlier view. We think, with great respect, that the distinction is sought to be drawn where none exists. That was a case where the relevant rule did not employ the expression 'aggregate' and an effort was made to inject that concept in the said rule through interpretation which would have led to absurd results. That decision had nothing to do with the issue which was directly and substantially in issue before the Division Bench. None of the three decisions referred to earlier was cited for the obvious reason that the point under consideration was wholly different and turned on the interpretation of the relevant rule. With respect we think that the Division Bench of the High Court which rendered the impugned judgment laboured to find a distinction or reason to depart from a consistent view where none existed.

10.For the foregoing reasons we allow these appeals, set aside the impugned order dated 21-8-1993, of the Division Bench of the High Court to the above extent and direct that the miscellaneous petitions be treated as dismissed with no order as to costs.