

Association Of Medical Super ... vs Union Of India on 19 August, 2019

Equivalent citations: AIR ONLINE 2019 SC 873, 2019 (8) SCC 607, (2019) 11 SCALE 40, (2019) 4 PAT LJR 395, (2019) 4 SCT 145

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Bench: Hemant Gupta, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. 376 of 2018

Association of Medical Super Speciality
Aspirants and Residents & Ors.

.... Appellant (s)

Versus

Union of India & Others

....Respondent (s)

WITH

Writ Petition (Civil) No. 946 OF 2018
Civil Appeal No. 6379 of 2019
Arising out of SLP (Civil) No. 2387 of 2019
Civil Appeal No. 6380 of 2019
Arising out of SLP (Civil) No. 1116 of 2019
Civil Appeal No. 6381 of 2019
Arising out of SLP (Civil) No. 10 of 2019
Civil Appeal No. 6382 of 2019
Arising out of SLP (Civil) No. 10007 of 2019
Civil Appeal No 6383 -6385 of 2019
Arising out of SLP (Civil) Nos.16814-16816 of 2019
(Diary No. 19100 OF 2019)
Civil Appeal No.6386 of 2019
Arising out of SLP (Civil) No. 15688 of 2019

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The controversy in these cases pertains to the compulsory bonds to be executed for admission to post-graduate medical courses and super speciality courses. The Association of Medical Super Speciality Aspirants and Residents has filed Writ Petition (Civil) No.376 of 2018 seeking a writ of mandamus for quashing the compulsory bond conditions, as imposed in the super speciality courses by the States of Andhra Pradesh, Goa, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Telangana and West Bengal respectively. A further direction is sought for returning the original mark-sheets, certificates and other documents retained by the respective State authorities after the completion of the concerned speciality courses.

2. Writ Petition (Civil) No.946 of 2018 is filed challenging the Notification dated 10.06.2014 issued by the Government of West Bengal by which every post-graduate trainee was directed to execute an Indemnity Bond to serve the State Government for a period of three years after successful completion of post- doctoral/MD/MS course and for a period of two years after successful completion of the PG Diploma course. If the trainees fail to serve the State Government as mentioned above, they shall be liable to recompense the State Government a penalty amount of Rs.10 Lakhs for each defaulting year. The Appellants seek release of original documents without insisting on the payment of Rs.30 Lakhs as envisaged by the Notification dated 10.06.2014.

3. Notifications issued by the Department of Health and Family Welfare, Government of West Bengal imposing the condition of execution of compulsory bond at the time of admission to post-graduate courses and super speciality courses were challenged in the High Court of Calcutta. Notification dated 31.07.2013 which was assailed in the High Court required the Appellant-doctors to work in the Multi-Speciality/ Super Speciality Hospitals, Secondary and Tertiary Level Hospitals in West Bengal for a period of one year after completion of their post-graduate and post-doctoral education in State Medical Teaching Institutions in West Bengal. Execution of bond at the time of admission to post-graduate courses and super Speciality courses, providing that they shall serve the State Government for a period of one year on successful completion of the courses, failing which they will be liable to recompense the State Government a penalty amount of Rs.10 Lakhs, was made compulsory. Partially modifying the Notification dated 31.07.2013, the Government of West Bengal issued a Notification on 10.06.2014 by which the condition pertaining to one year service was increased to two years. The compensation in case of failure by the Doctors to serve in the State was enhanced to Rs. 30 Lakhs. 139 Doctors who have acquired Degree of Bachelor of Medicine and Bachelor of Surgery from various universities in the country challenged the aforementioned Notifications in the High Court. The learned Single Judge of the Calcutta High Court by a judgment dated 03.11.2017 upheld the Notification dated 31.07.2013. However, the Notification dated 10.09.2014 was held to be arbitrary and unreasonable. Aggrieved by the judgment of the learned Single Judge, the State of West Bengal filed an appeal before the Division Bench of the High Court. Some of the Writ Petitioners who were aggrieved by the judgment insofar as it related to the Notification dated 31.07.2013 being upheld also filed appeals. By the impugned judgment, a Division Bench of the Calcutta High Court held that both the Notifications dated 31.07.2013 and 10.09.2014 are neither unreasonable nor arbitrary. The Division Bench set aside the judgment of the learned Single Judge insofar as it related to the Notification dated 10.09.2014 being quashed. The points urged before the High Court of Calcutta and the findings recorded therein shall be dealt with later.

4. The Appellants seeking admission to post-graduate courses in Armed Forces Medical College, Pune were required to execute a similar bond to serve in the Armed Forces Medical Services as Short Service Commission Officers for a period of five years on completion of the post-graduate courses. In case of failure to serve for five years, the Appellants were required to recompense the college with Rs.25 Lakhs. The above condition was included in the brochure for admission to Post-Graduate Medical Courses for the year 2014-2015. A writ petition was filed in 2017 by Appellants who were admitted in the post- graduate courses in the year 2014-2015 challenging the validity of Clause 12 of the Information Bulletin which required them to serve for five years in the Armed Forces Medical Services. They sought a further direction for return of their original documents without insisting on compulsory service condition. The Writ Petition was dismissed by a Division Bench of the Bombay High Court by judgment dated 02.04.2019 with costs quantified at Rs.1 Lakh per petitioner. Aggrieved by the said judgment, SLP Nos.10007 and 2387 of 2019 have been filed.

5. We proceed to refer to the various contentions raised by the Appellants before the High Courts and judgments of the High Courts':

Calcutta High Court:

As stated above, the Division Bench of the Calcutta High Court was concerned with two Notifications dated 31.07.2013 and 10.09.2014 issued by the Government of West Bengal imposing a condition of compulsory service in the State of West Bengal for admission to post-graduate and super Speciality courses in Government Medical Colleges in the State. It was contended on behalf of the Appellants that they became entitled for admission to post-graduate and super Speciality courses in the government medical colleges in the State of West Bengal on the basis of their merit in the All India Post Graduate Medical Entrance Examination (AIPGMEE). According to them, additional eligibility conditions cannot be introduced by the State Government in respect of All India Quota candidates. Imposition of a condition of compulsory service infringes their fundamental rights under Articles 14, 19 and 21 of the Constitution of India. In any case, introduction of compulsory bonds can only be by way of legislation and not by an executive order. They relied on a judgment of this Court in *Harsh Pratap Sisodia v. Union of India*¹ to buttress their submission relating to the bar on the State in fixing addition eligibility criteria. In this connection, they placed reliance on an order passed by this Court in *Anand Biji v. State of Kerala*.² They further contended that the insistence of a condition to serve in the State compulsorily would result in reservations being made by 1 (1999) 2 SCC 575 2 (2001) 6 SCC 665 the State, which would be contrary to the judgment of this Court in *Dr. Pradeep Jain v. Union of India*.³ They further submitted that the service bonds executed by the Appellants fall foul of Section 27 of the Indian Contract Act, 1872. The Notifications that were issued by the State Government were also challenged on the ground of unconstitutionality as the State Government lacked competence to issue such notifications. It was argued that all matters pertaining to medical education are covered by the Medical Council of India Act, 1956. As the field was already occupied by a Union Legislation, the State Government does not have the

competence to legislate on the same subject matter. In view of the lack of legislative competence, the State Government does not have the power to issue executive orders in respect of compulsory bonds.

On behalf of the State of West Bengal, it was argued that it was well within the competence of the State Government to issue executive instructions if the field was not occupied. The judgment of this Court in *Rai Sahib Ram Jawaya Kapur v. State of Punjab*⁴ and *Bhishambar Dayal Chandra Mohan v. State of Uttar Pradesh*⁵ were cited in support of the said proposition. It was submitted by the State before the Division 3 (1984) 3 SCC 654 4 (1955) 2 SCR 225 5 (1982) 1 SCC 39 Bench that the decisions of this Court in *Harsh Pratap Sisodia (supra)* and *Anand Biji (supra)* did not relate to the compulsory bonds and hence, were not applicable to the facts of the case. The stand of the State was that none of the fundamental rights under Articles 14, 19 and 21 were violated as the Appellants chose to be admitted in government colleges in the State of West Bengal without any protest or demur, and they cannot be permitted to assail the conditions on their admissions at the fag end of their courses.

The following issues were framed for consideration by the Division Bench:

“(i) Could the State Government have introduced the bond system by issuing the notifications which are under challenge in the present proceeding or was legislation necessary for that purpose?

(ii) Do the notifications impinge upon the freedom of the petitioners to practice any profession, or to carry on any occupation, trade or business guaranteed under Art.19(1)(g) of the Constitution?

(iii) Were the writ petitioners aware of the bond system before opting for West Bengal as their academic destination for post graduate medical studies?

(iv) Is the bond system in restraint of a lawful profession, trade or business and is thus violative of Sec.27 of the Indian Contract Act?

(v) Is there any such infirmity in the judgment and order impugned before us as would warrant interference by this Court?”

The first issue was answered in favour of the State by the Division Bench holding that the provisions of Article 166 (1) & (2) were being complied with before the Notifications were issued. The Division Bench held that the Notifications issued by the State Government did not impinge on the freedom of the Appellants to practice any profession or to carry on any occupation, trade or business guaranteed by Article 19(1)(g) of the Constitution of India. Article 162 of the Constitution refers to the extent of the executive power of the State Government and that power is not

restricted only to matters on which legislation has already been passed. The Division Bench observed that the State Government has the right to fill the vacuum which exists due to the absence of any legislation and which can be filled by the executive instructions in the form of circulars/notifications. The Division Bench was of the opinion that there is no fundamental right to pursue post-graduate medical education, especially in government colleges where higher education is subsidized. The Division Bench concurred with the findings of the learned Single Judge that the Appellants, who secured admissions in post-graduate medical colleges after taking an informed decision to receive education at a highly subsidized rate, cannot be permitted to question the compulsory medical service bonds. The point raised by the Appellants about the disability of the State Governments in introducing additional eligibility criteria was rejected by the Division Bench on the ground that the judgments of this Court in Harsh Pratap Sisodia (supra) and Anand Biji (supra) were not applicable to the facts of this case. The Division Bench stressed the point relating to the primacy of public health when it comes in conflict with private interest. It relied upon a judgment of this Court in Sayyed Ratanbhai Sayeed (D) thr.

LRs & ORs. V. Shirdi Nagar Panchayat & Anr. 6 to hold that the notion of public interest is synonymous with collective welfare of the people and public institutions, and is generally informed by the dictates of the public trust doctrine – *res communis* (i.e. everyone is common). The Division Bench rejected the point raised by the Appellants that the compulsory bonds were in violation of Section 27 of the Contract Act. It was held that the post-graduate medical courses and the service bond were a package. The Division Bench sought support from 6 (2016) 4 SCC 631 the judgment of the High Court of Bombay in Dr. Vinod Shankarlal Sharma & Ors. v. The State of Maharashtra & Anr⁷. to uphold the constitutionality of the Government Resolutions imposing service bond. On the basis of the above findings, the Division Bench upheld the Notifications dated 31.07.2013 and 10.09.2014.

Karnataka High Court:

The Government of Karnataka insisted that the Appellants who have completed post-graduate degrees/diploma courses in government medical colleges should serve the Government for one year. Sub-rule (7) of Rule 15 of the Karnataka Conduct of Entrance Test for Selection and Admission to Postgraduate Medical and Dental Degree and Diploma Courses Rules, 2006, framed under Section 14 (1) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, imposes a penalty of Rs.50 Lakhs and Rs.25 Lakhs respectively for Postgraduate Degree and Postgraduate Diploma students on their failure to serve the Government on completion of their respective courses. All the Writ Petitioners executed the obligation bond at the time of their admission. On completion of their courses, they filed a writ petition in the High Court questioning the bonds on several grounds. The points raised by 7 2013 AIR Bom. 1 them relating to the undertaking being vitiated by coercion and violation of Article 23 of the Constitution and other fundamental rights have been answered against them. The submission of the Appellants that they should

be exempted from the bond obligations as they were admitted from the All India Quota was also rejected by the High Court.

Kerala High Court:

A Division Bench of the High Court of Kerala dealt with the issue pertaining to compulsory bonds and held that there is no restriction imposed on the medical students from practicing the profession. The restriction was only regarding their choice of place of practice for one year. After dealing with all the points pertaining to restriction from trade or profession and the public policy, Seshadri Naidu, J. speaking for the Court stated that those Appellants who were benefited by subsidised medical education must repay their debt/gratitude. High Court of Judicature at Bombay :

Writ Petitions filed by the students of super speciality courses were considered by a Division Bench of the High Court of Judicature at Bombay. Imposition of a condition that the Appellants should serve in the Government medical colleges for a period of one year failing which they have to pay a penalty was found to be neither arbitrary nor unreasonable. Dr. D.Y. Chandrachud, J. (as he then was) was of the firm opinion that the judgment of this Court in Dr. Pradeep Jain (supra) which pertained to reservations on the basis of domicile status had no connection with service bonds. The Division Bench of the Bombay High Court held that the compulsory bond requiring each Appellant to serve for one year is also not disproportionate. It was observed in the said judgment that the State has a legitimate interest in ensuring the students who benefitted from the infrastructure created by it must contribute back to the community by public service. The Division Bench took note of the fact that post-graduate and super Speciality doctors were being posted as Registrars and Senior Residents. After examining the need for the Government to utilize the services of the post-graduate and super Speciality doctors, the Division Bench gave a direction that they should be allotted to posts which are commensurate with their qualifications. Gujarat High Court:

The learned Single Judge of the Gujarat High Court took a view different from the one taken by Calcutta High Court, Kerala High Court, Karnataka High Court and the Bombay High Court. Execution of bonds by the doctors was a result of coercion as per the judgment of the learned Single Judge of the Gujarat High Court, who declared the bond agreement as unreasonable and unconscionable. Ergo, the bond agreement was opposed to public policy and violative of Article 14 of the Constitution. We are informed by the learned counsel appearing for the State of Gujarat that an appeal has been filed against the said judgment which is pending consideration before a Division Bench of the Gujarat High Court.

Pleadings

6. Having taken note of the judgments of the High Courts, it is time to consider the submissions that are made before us.

Mr. Prashanto Chandra Sen, learned Senior Counsel appearing for the Writ Petitioners in Writ Petition (Civil) No.376 of 2018 argued that the doctors who have completed the post-graduate courses and super Speciality courses are national assets. Their services should be utilized in the best possible manner in places where there are facilities and they should not be wasted in rural areas. Their presence in institutions at the national level would be beneficial to the society apart from providing an opportunity to them to hone their skills. He stated that additional conditions in the nature of bonds cannot be imposed by the State Government which would disturb the balance stipulated by the Medical Council of India Regulations. He submitted that the conditions imposed by the State Government are onerous and he commended for our acceptance that a reasonable exit clause should exist.

7. Mr. Krishnamohan Menon, learned counsel appearing for the Appellants in SLP (Civil) No.2387 of 2019, SLP (C) No.10 of 2010 and SLP (C) No. 19100 of 2019 in the Appeals arising out of the judgment of the Calcutta High Court questioned the Notifications as being unconstitutional and violative of Articles 14, 19(1)(g) and 21 of the Constitution. He urged that the notifications would not constitute “law” within the meaning of Article 13 of the Constitution. He submitted that the Appellants have freedom to carry on trade and profession guaranteed under Article 19(1)(g) of the Constitution which can be restricted only by a law made by the State Legislature in the interest of the general public. Any restrictions to be placed on the freedom to carry on trade and profession should be reasonable. According to him, the bonds imposed by the Notifications failed the test of reasonableness. He submitted that the post-graduate and super Speciality Doctors are not equipped to handle health needs in rural areas, and by not utilizing the skills of these specialists, the Government would be doing disservice to the society. He referred to instances in which specialists in Cardiology, Pathology and Pediatrics were asked to take care of the primary medical health care. He voiced his concern for the need to balance the academic career and personal incentives for Appellants with public interest. He also complained of arbitrariness in imposition of bond conditions. He dealt with the point of the Notifications suffering from the vice of lack of jurisdiction on the part of the State Government.

8. Mr. Huzefa Ahmadi, learned Senior Counsel appearing for the Appellants in the Appeals arising out of SLP (C) No.10007 of 2019 contended that the condition imposed for rendering compulsory service in the Army is violative of Articles 19(1)(g) and 23 (1) read with Article 21 of the Constitution. The compulsory bond is violative of Section 27 of the Indian Contract Act, 1872 apart from being barred by Section 14 of the Specific Relief Act, 1963. According to Mr. Ahmadi, insistence of compulsory service in the Army for five years is ‘forced labour’ which is prohibited under Article 23 of the Constitution. People’s Union for Democratic Rights v. Union of India⁸ was cited in support of the said proposition. He further asserted that Article 23(2) is an exception to Article 23(1). Compulsory 8 (1982) 3 SCC 235 employment provided under Article 23(2) can be introduced only by way of legislation and not by a mere executive instruction. By referring to Section 14 of the Specific Relief Act, Mr. Ahmadi submitted that a contract of personal service is not enforceable. He also commended that there should be a reasonable exit clause. Ms. Radhika Gautam, learned

counsel appearing for the Appellants in the Appeal arising out of SLP (C) No. 15688 of 2019 adopted the submissions made by Mr. Ahmadi and sought for the release of original documents which were taken from the Appellants at the time of their admission to post-graduate courses to enable them to participate in the counselling for admissions into the super Speciality courses.

9. Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the State of West Bengal submitted that the executive power of the State Government is co-extensive to the power of the State Legislature to legislate, as medical education falls under Entry 25 of List III of the 7th Schedule to the Constitution. Mr. Dwivedi posited that the State Government has a role to play in admissions unless the field is completely occupied by a Central Legislation. In support of the submission that the State has always the power to supplement and not supplant the provisions of a statute, he relied upon *Ch. Tikaramji v. State of Uttar Pradesh*⁹ and *Modern Dental College and Research Centre v. State of Madhya Pradesh*.¹⁰ According to Mr. Dwivedi, the subject matter relating to compulsory bonds is not a subject matter of any legislation made by the Parliament. He further contended that in furtherance of the right to health which falls under Article 21 read with Article 14 of the Constitution, there is a duty cast on the State Government to provide medical facilities. He sought support of the judgments of this Court in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*¹¹, *State of Punjab v. Ram Lubhaya Bagga*¹² and *Union of India v. Moolchand Khairati Ram Trust*.¹³ Mr. Dwivedi urged that the source from which the doctors are selected for post-graduate courses and super Speciality courses is not relevant to decide the validity of the compulsory bonds on the touchstone of Article 14 of the Constitution. No special status can be assigned to doctors who are admitted in seats allotted to All India Quota as they lose their birthmarks after admission to their colleges. He stated that treating All India Quota students as a separate class can result in unreasonable classification and hostile discrimination against the State Quota students. Mr. Dwivedi argued that the 9 AIR 1966 SC 676.

10 (2016) 7 SCC 353 11 (1996) 4 SCC 37 ¶9 & 16 12 (1998) 4 SCC 117 ¶ 26, 27 & 35 13 (2018) 8 SCC 321 policy of the State Government is neither arbitrary nor unreasonable. He submitted that an amount of Rs.23,93,784/- is spent on each Doctor at the post-graduate level by the Government of West Bengal and hence the requirement of the penalty of Rs.10 Lakhs for each defaulting year is neither excessive nor disproportionate. There is no fundamental right to pursue post-graduate medical education for which reason no complaint can be made by the Appellants for violation of Article 19(1)(g) of the Constitution. While dealing with the submissions of infringement of Article 23(1) of the Constitution, he submitted that imposition of compulsory service for public purposes is permitted by Article 23(2) of the Constitution. He referred to a Report of World Health Organisation (WHO) released in 2010 which also recommended compulsory service of health professionals in rural and remote areas. Compulsory services varying from one to nine years are prevalent in about 70 countries. Utilizing the services of talented and skilled doctors is in conformity with the National Health Policy 14. Mr. Dwivedi further submitted that the point pertaining to Section 14(1)(b) of the Specific Relief Act does not arise for our consideration as the State Governments are not seeking specific relief of enforcement. He asseverated that compulsory service 14 World Health Organization (2010). Increasing access to health workers in remote and rural areas through improved retention. Geneva: World Health Organization. bond is a part of the integral package for providing highly subsidized medical education at post-graduate level and that retention of the documents to ensure

compliance with the conditions of the compulsory service bonds is permissible.

10. Mr. Atmaram Nadkarni, learned Additional Solicitor General appearing for the State of Goa provided information relating to the amounts spent on doctors receiving post-graduation education in the State of Goa. The State of Goa spends an amount of Rs.50 Lakhs for a student per annum for specialization. The amount of fee that is charged from each student is Rs.77,500/-. The students undergoing super Speciality courses are paid a monthly stipend of Rs. 86,927/- for the first year, Rs. 89,495/- for the second year and Rs. 92,191/- for the third year. The doctors who receive highly subsidized medical education are obligated to render public service and the State has a legitimate right to insist on the doctors serving the State for a short period of time. The bond condition in the State of Goa is that doctors who receive education in Government colleges should serve for three years in the State, in default of which they are liable to pay Rs.10 Lakhs. He supported the policy of the State Government being in public interest.

11. Mr. K.M. Nataraj, learned Additional Solicitor General for the Union of India and the Armed Forces Medical College requested us not to interfere with the judgment of the Bombay High Court as the Appellants who were admitted to the post- graduate courses after executing the bond cannot be permitted to question the requirement of the compulsory bond on completion of the course. He contended that the requirement of compulsory service in the Army is in public interest. He further submitted that the judgment in Harsh Pratap Sisodia (supra) and the order passed in Anand S. Biji (supra) were not related to the bond conditions and cannot be taken advantage of by the Appellants. He also stated that the requirement of the bond to serve for five years does not deserve any relaxation.

12. Dr. Manish Singhvi, learned Senior Counsel appearing for the State of Rajasthan contended that there is no fundamental right to receive higher education and the question of violation of Article 19(1)(g) does not arise. He fairly submitted that the executive instructions and notifications issued by the Government necessitating the compulsory bond do not fall within the expression “law” under Article 13 of the Constitution. But, as there is no violation of any fundamental right, no fault can be found with the notifications issued by the State Government in exercise of their powers under Article 162 of the Constitution. He argued that the beneficiaries of Government funds form a different class and it is permissible for the State Government to impose conditions for admission into government colleges.

13. Ms. Deepanwita Priyanka, learned counsel appearing for the State of Gujarat submitted that there are six colleges in the State of Gujarat imparting education in super speciality courses. In all, there are 122 seats out of which 76 seats are in the government colleges and 46 seats in the private colleges. A nominal fee of Rs.40,000/- is charged from the doctors who are paid a stipend of Rs.72,000/-, Rs.75,000/- and Rs.80,000/- per month for their first year, second year and third year courses respectively. There is a high demand for super Speciality doctors in the State of Gujarat in view of the large number of patients in departments of Oncology, Cardiology and Nephrology in the super Speciality hospitals. In view of the health need of the patients and the acute shortage of super specialists, the State Government decided to introduce the compulsory bond. The super specialists are posted only in the four super Speciality hospitals run by the Government.

14. Mr. Shibashish Misra, learned counsel appearing for the State of Orissa brought to our notice that all the 45 seats in the super Speciality courses in the State are filled up on the basis of merit in the All India Counselling. The fee charged in the Government colleges is Rs. 45,000/- per year and the stipend of Rs.56,826/- is paid to the doctors undergoing super Speciality courses. There is serious shortage of super Speciality doctors in the State and the Government's decision to introduce the bond system is in public interest.

15. Mr. Balaji Srinivasan, learned Additional Advocate General appearing for the State of Tamil Nadu stated that there are 334 super Speciality seats in 24 Government medical colleges run by the State Government. The Government is charging only Rs.30,000/- per annum from the doctors undergoing super Speciality courses. An amount of Rs.21 Lakhs is spent on each post-graduate student by the Government. Earlier, the bond required super specialists to serve for 10 years in the State and pay Rs.2 Crores in default. The State reviewed the policy and reduced the bond amount to Rs.50 Lakhs. The period of service to be rendered by the doctors who have undergone training in Super Speciality courses has been reduced to two years from ten years. It is also brought to our notice that about 217 candidates have violated the bond conditions. Analysis:

16. The main points that require consideration are:

- I. Jurisdiction of the State Government,
- II. Violation of Fundamental Rights,
- III. Contract of Personal Service, and
- IV. Restraint on Profession.

- I. Jurisdiction of the State Government:

17. Entry 66 of List I of the 7 th Schedule to the Constitution refers to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Entry 25 of List III of the 7 th Schedule deals with education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I. Legislations can be made by the State Legislature relating to medical education subject to the legislation made by the Parliament. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject matter of compulsory bonds. Therefore, the States are free to legislate on the subject matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State legislature has the power to legislate. The Notifications issued by the State Governments imposing a condition of execution of compulsory bonds at the time of admission to post- graduate courses and super Speciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory

employment is not covered by any Central Legislation. Therefore, the submissions made on behalf of the Appellants that the States lacked competence to issue the notifications as the field is occupied are rejected.

II. Violation of Fundamental Rights:

Article 14 :

A. Arbitrariness

18. The Appellants are aggrieved by the decision of the State Governments imposing conditions for their admission in the post-graduate courses and super Speciality courses. According to them, the State Governments have understood the decision of this Court in *Harsh Pratap Sisodia* (supra) to be a restraint on the exercise of their power in matters relating to eligibility criteria for admission to medical course. Suddenly, the introduction of the compulsory bonds after 15 years of the judgment in *Harsh Pratap Sisodia* (supra) is the result of decision taken by the State Governments which is dubbed by the Appellants as arbitrary. This Court in *Harsh Pratap Sisodia* (supra) was concerned with the additional eligibility criteria being introduced by the State Governments for the 15% All India Quota students. The decision taken by the State Governments to impose a condition of compulsory bond for admission to post-graduate courses and super Speciality is on the basis of relevant material. Huge infrastructure has to be developed and maintained for running medical colleges with post-graduate and super Speciality courses. The amount of fees charged from the students is meagre in comparison to the private medical colleges. Reasonable stipend has to be paid to the doctors. Above all, the State Governments have taken into account the need to provide health care to the people and the scarcity of super specialists in their States. Consequently, a policy decision taken by the State Governments to utilize the services of doctors who were beneficiaries of Government assistance to complete their education cannot be termed arbitrary.

B. Reasonableness

19. Reasonableness is a ground that pervades through the submissions made by the counsel on both sides. In the State of West Bengal, the requirement of a compulsory bond was initially a service of one year in the State in default of Rs.10 Lakhs was to be paid. This was enhanced to three years and Rs.30 Lakhs by a Notification dated 09.10.2014. In the State of Tamil Nadu, the bond condition was that a doctor has to serve for ten years in the State and in default of which, the doctor was to pay Rs.2 Crores. This was reduced to two years and Rs.50 Lakhs. The Armed Forces Medical College imposes a condition of five years compulsory service in the Army for post-graduate and super Speciality doctors who prosecuted their study in the college. They have an option of not serving for five years by recompensing the Government by paying Rs.25 Lakhs. The main contention of the counsel appearing for the Appellants is that the condition of a long period of service that is imposed is unreasonable. The basis for the submission is that they have already served the society by working in Government hospitals while undergoing their course. Further conditions imposed on them would impede the progress of their careers. Restrictions placed on their choice of place of work are also unreasonable according to them. An alternate submission made by the counsel appearing for the

Appellants is that the imposition of the condition of compulsory bond should be reasonable and the exit clause should be relaxed. Notifications issued by the State Governments imposing a condition of compulsory service and a default clause are per se not unreasonable. However, we are in agreement with the learned counsel for the doctors that the period of compulsory service and the exit should be reasonable. The State Governments and the Armed Forces Medical College are directed to consider imposing the condition of compulsory service period of two years in default of which the Doctors shall recompense the Government by paying Rs. 20 Lakhs. Article 19:

20. According to the Appellants, the right to carry on their profession which is guaranteed by Article 19(1)(g) is violated by the compulsory bonds. They contend that the compulsory bonds place a restriction on their right to carry on their profession on completion of their course. It is also submitted that any restriction on their right to carry on their profession by the State Government can be made only by a “law” as per Article 19(6) of the Constitution. Consequently, the Notifications that were issued by the State Governments fall foul of Article 19(1)(g). The compulsory bond executed by the Appellants is at the time of their admissions into post-graduate and super Speciality courses. Conditions imposed for admission to a medical college will not directly violate the right of an individual to carry on his profession. The right to carry on the profession would start on the completion of the course. At the outset, there is no doubt that no right inheres in an individual to receive higher education. Violation of a right guaranteed under Article 19(1)(g) does not arise in a case pertaining to admission to a college. There is no doubt, that the condition that is imposed has a connection with the professional activity of a doctor on completion of the course. However, the Appellants have, without any protest, accepted the admissions and executed the compulsory bonds. Execution of bonds is part of a composite package. We are in agreement with the judgment of the Calcutta High Court that the Appellants have not been able to succeed in their attempt of assailing the Notifications for being violative of Article 19(1)(g) of the Constitution. We uphold the said finding of the Division Bench.

Article 21

21. The Appellants contended before the Calcutta High Court that their liberty is curtailed by the compulsory bonds. The scope of liberty which has been enhanced by this Court includes personal autonomy to take decisions relating to their profession. It was contended that the condition requiring them to compulsorily work for a certain period of time with the Government corrodes their liberty, affecting their right to life. They relied upon judgments of this Court in *Kharak Singh v. State of U.P.*¹⁵ and *K.S. Puttaswamy v. Union of India*¹⁶ while advancing this submission. Referring to a judgment of this Court in *Sayyed Ratanbhai Sayeed* (supra), the High Court held that private rights, when in conflict with public interest, have to take a back seat. The High Court also recalled what Marcus Tullius Cicero said about the good of the people being the chief law.

22. Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his

right guaranteed under Article 21 of the Constitution.¹⁷ Therefore, in a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.¹⁸ 15 AIR 1963 SC 1295 16 (2017) 10 SCC 1 17 Paschim Banga Khet Mazdoor Samity v. State of W.B. (1996) 4 SCC 37 18 Vincent Panikurlangara v. Union of India (1987) 2 SCC 165

23. Article 47 of the Constitution reiterates the constitutional obligation imposed on the State to improve public health. The Directive Principle provides as follows:

“47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

24. In Akhil Bharatiya Soshit Karamchari Sangh v. Union of India¹⁹ it was held that maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. It was further observed in the above judgment that attending to public health, therefore, is of high priority- perhaps the one at the top.

25. It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting ¹⁹ (1981) 1 SCC 246 lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is also the duty of the Government²⁰.

26. Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities ²¹. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair ²⁰ State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117 ²¹ State of Punjab & Ors. v. Mohinder Singh Chawla (1997) 2 SCC 83 and just procedure established by law which stands the test of other fundamental rights²².

27. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasizing, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to

the individual by Part III of the Constitution. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence 23.

28. The State's obligations are not satisfied solely by refraining from imposing limitations on the right to human dignity. The State must also take action to protect human dignity and to facilitate its realization. The constitutional right to dignity is intended to ensure human beings' political and civil liberties as well as their social and economic freedoms²⁴.

29. Dr. A. K. Sikri, J. in *K.S. Puttaswamy v. Union of India*²⁵ observed that the realisation of intrinsic worth of every human being as a member of society is an indispensable condition, and has been recognised as an important human right. Truly speaking, this is directed towards the deprived, downtrodden 22 *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 23 *K.S. Puttaswamy* (supra) 24 Aharon Barak, *Human Dignity: the Constitutional Value and the Constitutional Right* in Christopher McCrudden (ed.), *Understanding Human Dignity*, Proceedings of the British Academy, 192, pp. 361-80 at p. 367. 25 *K.S. Puttaswamy v. Union of India*, (2019) 10 SCC 1 [AADHAAR 5JB]. and the have-nots. He further held that the humanistic concept of human dignity which is to be accorded to that particular segment of the society has to be kept in mind. Their human dignity is based on the socio-economic rights that are read into the fundamental rights. The importance of the communitarian approach along with the individualistic approach to human dignity was addressed by Dr. A.K. Sikri, J. in the above judgment. The learned Judge emphasised on the role of the State and community in establishing collective goals and restrictions on individual freedoms and rights on behalf of a certain idea of the good life.

30. We accept the submission of Mr. Rakesh Dwivedi, learned Senior Counsel for the State of West Bengal that the positive obligation of the State to uphold the dignity of a larger section of the society is to protect the rights conferred on them by Article 21 of the Constitution. The immediate need of the deprived sections of the society to have proper health care was the reason behind the policy decision of the Government. The objective of the policy is to ensure that specialist health care is extended to the have-nots also.

31. The next question that arises is whether there is a conflict between the rights of the community and the rights of the Appellants. As stated earlier, the right that is claimed by the Appellants is to make an individual choice to carry on their profession which might be hindered by the decision of the Government. On the other hand, the basic idea behind the Government's decision is larger public interest. The judgment of this Court in *Sayyed Ratanbhai Sayeed* (supra) relied upon by the High Court is to the effect that private interest has to take a back seat when pitted against public interest. In *Mr. X v. Hospital 'Z'*,²⁶ Saghir Ahmad J speaking for this Court, held that:

44....Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall

known as the courtroom, but have to be sensitive, “in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day.” [emphasis supplied].

32. The Universal Declaration of Human Rights (UDHR) recorded in the Preamble its recognition of the inherent 26 (1998) 8 SCC 296 dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of every person to the enjoyment of the highest attainable standard of physical and mental health. ICESCR mandates the States Parties to achieve full realization of the aforementioned right through the creation of conditions which would assure to all, medical service and medical attention in the event of sickness, inter alia.

33. The above discussion leads us to the conclusion that right to life guaranteed by Article 21 means right to life with human dignity. Communitarian dignity has been recognised by this Court. While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity. The laudable objective with which the State Governments have introduced compulsory service bonds is to protect the fundamental right of the deprived sections of the society guaranteed to them under Article 21 of the Constitution of India. The contention of the Appellants that their rights guaranteed under Article 21 of the Constitution of India have been violated is rejected.

Article 23

34. Article 23 reads as follows:

23. “(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

35. The submission of Mr. Huzefa Ahmadi, learned Senior Counsel for the Appellants is that the conditions of the bond per se amount to ‘forced labour’ and thus are violative of Article 23 (1) of the Constitution. Mr. Dwivedi expostulated the said submission by referring to Article 23 (2) which confers power on the State to impose compulsory service for public purpose. Reliance was placed upon the Constituent Assembly Debates by Mr. Dwivedi explaining the scope of compulsory employment for public purpose under Article 23 (2) of the Constitution of India. The Appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform ‘forced labour’, especially after the Appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidized education. By no means, the service rendered by the Appellants in Government hospitals would fall under the

expression of 'forced labour'.

36. The 13th Amendment to the U.S. Constitution prohibits slavery and involuntary servitude. The Supreme Court of the United States held that compulsory employment for public purpose does not amount to 'involuntary servitude' in *Robertson v. Baldwin*²⁷ and *Butler v. Perry*²⁸. Article 23 (2) of the Constitution enables the State Governments to require the Appellants to do compulsory service in the Government hospitals which is undoubtedly for the benefit of the public.

III. Contract of Personal Service

37. Section 14 of the Specific Relief Act, 1963 prohibits the enforcement of contracts of personal service. The submission of Mr. Ahmadi that the contract of personal service, in the form of a compulsory bond, is not enforceable was dealt with by Mr. Dwivedi, who argued that the State Governments do not intend to enforce the contract in a court of law. It is trite law that Courts do not ordinarily enforce performance of contracts of personal character, such as a contract of employment 29. 27 165 U.S. 275 (1897) [US Supreme Court] 28 (1916), 240 U.S. 328, 329.

29 *Nandganj Sihori Sugar Co. Ltd. Rae Bareli & Anr. v. Badri Nath Dixit & Ors.* (1991) 3 SCC 54 Reference can be made to the judgment of Jessel, M.R., in *Rigby v. Connol*³⁰ wherein he held that:

"The courts have never dreamt of enforcing agreements strictly personal in their nature, whether they are agreements of hiring and service, being the common relation of master and servant"

38. Specific performance of contract for personal service is not permissible under the Specific Relief Act, therefore, there cannot be a decree for specific performance of a contract of personal nature. None of the State Governments have made an attempt to enforce the contracts entered into by them with the Appellants through the service bonds. We are not in agreement with the submission of Mr. Ahmadi that the compulsory bonds fall foul of the Specific Relief Act.

IV. Restraint on Profession

39. The argument advanced on behalf of the Appellants that compulsory bonds placed a restraint on their profession and thus, would be contrary to Section 27 of the Indian Contract Act, 1872. The High Court of Calcutta repelled this submission by holding that the compulsory bond does not amount to any restraint on the professional activity of the Appellants. The High Court observed that the Appellants are offered the job of 30 (1880) 14 Ch D 482, 487 Medical Officer in the State of West Bengal and that the covenant in the compulsory bond operates only during the period of such employment. Relying upon the dictum of Lord Morris in *Esso Petroleum v. Harper's Garage (Stourport) Ltd.*,³¹ that "if A made a contract under which he willingly agreed to serve B on reasonable terms for a few years and to give his whole working time to B, it would be surprising indeed, if it were sought to describe the contract as being in restraint of trade; in fact, such a contract would very likely be for the advancement of trade", the High Court concluded that a contract entered into by Appellants to serve the government for a few years under reasonable terms cannot be described as one in restraint of trade. We are in agreement with the findings recorded by

the High Court of Calcutta. Therefore, we are of the considered opinion that the conditions of compulsory bonds for admission to post-graduate and super-Speciality courses in government medical colleges are not in violation of Section 27 of the Indian Contract Act, 1872.

40. The upshot of the above discussion is that the Writ Petitions and the Appeals deserve to be dismissed. Consequently, all the Doctors who have executed compulsory bonds shall be bound by the conditions contained therein. 31 1967 1 All ER 699.

41. Taking note of the fact that certain State Governments have rigid conditions in the compulsory bonds to be executed by the Appellants and the felt need of uniformity in the matter pertaining to the compulsory bonds, we suggest that suitable steps be taken by the Union of India and the Medical Council of India to have a uniform policy regarding the compulsory service to be rendered by the Doctors who are trained in government institutions.

42. The Writ Petitions and the Appeals are dismissed.

.....J. [L. NAGESWARA RAO]J. [HEMANT GUPTA] New
Delhi, August 19, 2019