

U.P. Junior Doctors' Action ... vs Dr. B. Sheetal Nandwani And Ors. Etc on 22 November, 1991

Equivalent citations: 1991 SCR, SUPL. (2) 384 1992 SCC SUPL. (1) 680, AIR 1992 SUPREME COURT 671, 1992 AIR SCW 333, 1992 ALL. L. J. 224, 1992 (1) SCC(SUPP) 680, (1992) 1 JT 571 (SC), (1992) 2 UPLBEC 1331, (1992) 2 PAT LJR 36, (1992) 2 SERVLR 94

Author: Rangnath Misra

Bench: Rangnath Misra, G.N. Ray

PETITIONER:

U.P. JUNIOR DOCTORS' ACTION COMMITTEE AND ORS. ETC.

Vs.

RESPONDENT:

DR. B. SHEETAL NANDWANI AND ORS. ETC.

DATE OF JUDGMENT 22/11/1991

BENCH:

MISRA, RANGNATH (CJ)

BENCH:

MISRA, RANGNATH (CJ)

RAY, G.N. (J)

ANAND, A.S. (J)

CITATION:

1991 SCR Supl. (2) 384 1992 SCC Supl. (1) 680

JT 1992 (1) 571 1991 SCALE (2) 1103

ACT:

Admission to Professional (course, ---post-graduate courses in Medical Colleges--Reasonable period of study--prescription by the Medical Council--Dates of admission and commencement of courses--Directions of Court--To be followed strictly--Interlocutory orders for provisional admission--Not to be granted unless for special reason to be indicated in clear terms.

Practice & Procedure:

Main relief prayed for---As a rule not to be granted at the interlocutory stage.

HEADNOTE:

These matters relate to admission in post-graduate courses in the Medical Colleges in Uttar Pradesh.

On a Writ Petition, which later turned out to be fake, the High Court had ordered that admission could be effected on the basis of the MBBS Examination. This has been disputed in appeal before this Court.

In another Writ Petition, pending hearing, the High Court directed that provisional admission be given to two candidates, one in MS (Surgery) and another in MD (Medicine). The Principal of the Medical college and others preferred an appeal against the High Court's order.

It was contended that granting admission, though provisional, at an interlocutory stage in a pending proceeding creates a lot of adverse consequences and indiscipline in the system of imparting education.

Dismissing the matters, this Court,

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HELD: 1.1 It transpires that the proceedings before the High Court were totally fraudulent and no one by the name given in the petition as petitioner could really be identified. This Court had clearly indicated that no admission should be permitted on the basis of the MBBS results. Nothing survives now, as the High Court's order has already been reversed. [386 F,G]

2.1 It is already settled that admission for 25 per cent of the seats in post-graduate courses should be regulated on the basis of all-India selection and in regard to the remainder of 75 per cent the States were left to decide the procedure for admission. [387-E]

2.2 Unless there is a sincere and thorough educational discipline to be gone through as a precondition to the grant of the requisite certificate the lives of citizens would be at peril. The Indian Medical Council has prescribed a reasonable period of study, on expert advice, and upon taking into consideration the experience over the years as to how much study is necessary for the requisite qualification to be gathered. This Court has also indicated the dates of admission and commencement of the courses of study. These are prescriptions for a purpose and are not intended to be empty formalities to be violated. [387 G, H; 388-A]

Dr. Pradeep Jain & Ors. v. Union of India & Ors., [1984] 3 S.C.C. 654, relied on.

3. It is a well-known rule of practice and procedure that at an interlocutory stage, a relief which is asked for and is available at the disposal of the matter, is not (generally) granted. To have it granted at the threshold creates a lot of difficulties. In a case where the petitioner ultimately loses in a case of this type a very embarrassing situation crops up. If he has by then read for two to three years, there is a claim of equity raised on the plea that one cannot reverse the course of time. In a case of this type, equities should not be claimed or granted. Unless there is any special reason to be indicated in clear terms

in an interlocutory order, as a rule no provisional admission should be granted and more so into technical courses. [388 C, D]

4.1 The order of the High Court in the instant case should be reversed but this is not being done so, on account of the fact that nine similarly placed medical graduates have already been given admission pursuant to such interlocutory orders by the respondents

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without even raising a challenge. The order was made as early as in February, 1991 and for nine months no steps have been taken by the appellants to comply with the order and they are in fact facing a contempt proceeding. [388-F]

4.2 Notice had been issued to the Principals of the seven medical colleges who have appeared and given written undertakings to the Court by way of affidavit that there was some misunderstanding in regard to the requirement of a selection test for post graduate admission. Though there was hardly any scope for being misled, the benefit of doubt is being given to the Principals. The contempt proceedings are discharged, but their undertakings are kept on record. [388 G, H; 389-A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: I.A. No 1 IN C.A. No 4444 of 1990 etc. etc..

From the Judgment and Order dated 25.5.90 of the Allahabad High Court in CWP No. 5267 of 90.

Yogeshwar Prasad, Gopal Subramaniam, S.K. Mehta, Dhruv Mehta, Arvind Verma, Aman Vachher, Pradeep Misra and R.B. Misra for the appearing parties.

The following order of the Court was delivered:

The dispute in these cases relates to admission in post-graduate courses of the medical wing. There are seven medical colleges in the State of Uttar Pradesh. Sometime back in a fake writ petition the High Court of Allahabad made an order that admission could be effected on the basis of the MBBS results. That can counter to the decision of this Court and on being looked into it transpired that the proceedings before the High Court were totally fraudulent and no one by the name given in the petition as petitioner could really be identified. This Court at that stage had clearly indicated that the prescription by this Court has been that there should be a selection test for post-graduate admission as admission has become very competitive and to have compliance of Article 14 of the Constitution a broad-based arrangement should be made. On that account this Court had clearly indicated that no admission should be permitted on the basis of the MBBS results. In view of the fact that the Allahabad High Court's order has already been reversed, nothing more

need be done.

SLP (C) of 1990 This petition is directed against the order of the learned Single Judge of the Allahabad High Court dated 25.5.1990. U.P. Junior Doctors' Action Committee in their special leave petition which has not yet been numbered challenge the order referred to above where the petitioner could not be identified and challenge was to the decision of the High Court dated 25.5.1990 which permitted admission on the basis of MBBS results. Since we have already clarified the position and reiterated the requirement of a selection test the order of the High Court must be taken to have already been vacated. It is not necessary to entertain this special leave petition.

Special leave granted.

In this appeal by special leave Principal of the Agra Medical college along with some others is the appellant. The High Court by the impugned order required provisional admission in M.S. (Surgery) and in M.D. (Medicine) to be given to respondents 1 and 2 respectively in the Medical College of Agra while the writ petition was yet to be heard. The contention raised before us is that granting admission at an interlocutory stage in a pending proceeding even by styling it as provisional creates a lot of adverse consequences and leads to indiscipline in the system of imparting education. Admission into post-graduate degrees in the medical wing throughout the country has become very competitive and it has become clear that strict regulation is necessary. This Court by its judgement in *Dr. Pradeep, Jain & Ors. v. Union of India & Ors* [1984] 3 SCR 654 indicated that admission for 25 percent of the seats in post-graduate courses should be regulated on the basis of all-India selection and in regard to the remainder 75 per cent of the States were left to decide the procedure for admission. Appropriate knowledge and expertise are a prerequisite for a person to be allowed to register himself as a medical practitioner. Very often, health problems require expert treatment. If anyone is authorised in society to practise medicine or undertake medical-care without the appropriate qualification, society exposes itself to health hazards. The prescriptions by the Indian Medical Council and the attempts made by Government for regulating the medical study are for establishing basically uniform knowledge to be imparted to the students before they can be entrusted with the nation's medicare. Unless there is a sincere and thorough educational discipline to be gone through as a precondition to the grant of the requisite certificate the lives of citizens would be at peril.

The Indian Medical Council has prescribed a reasonable period of study on expert advice and upon taking into consideration the experience over the years as to how much study is necessary for the requisite qualification to be gathered. This Court has also indicated the dates of admission and commencement of the courses of study. These are prescriptions for a purpose and are not intended to be empty formalities to be violated.

One of the prescriptions of the Medical Council is also the ratio between the teachers and the students. That again is a factor which cannot be brushed aside.

It is a well-known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted. The writ petitioners wanted admission into postgraduate course as the main relief in the writ petition. To have it granted at the threshold creates a lot of difficulties. In a case where the petitioner ultimately loses in a case of this type a very embarrassing situation crops up. If he has by then read for two to three years, there is a claim of equity raised on the plea that one cannot reverse the course of time. In a case of this type equities should not be claimed or grained. 'Faking an overall picture of the matter we are of the view that unless there is any special reason to be indicated in clear terms in an interlocutory order as a rule no provisional admission should be granted and more so into technical courses.

On the basis of what we have said the order of the High Court should be reversed but we are not doing so on account of the fact that nine similarly placed medical graduates have already been given admission pursuant to such interlocutory orders by the respondents without even raising a challenge. The order was made as early as in February, 1991 and for all these nine months no steps have been taken by the appellants to comply with the order and they are in fact facing a contempt proceeding. While on principle we indicate that such provisional admission should not be granted. We dismiss this special leave petition and sustain the order not on merits but for the reason indicated. The interlocutory application in the civil appeal need not be further dealt with in view of what we have said above.

We had issued notice to the Principals of the seven medical colleges. They have appeared and have given a written undertaking to the Court by way of affidavit that there was some misunderstanding in regard to the requirement of a selection test for post-graduate admission. There were two-year and three-year courses running simultaneously for some period and some confusion was there as to whether the two-year course students were covered by the direction of this Court. Though we are of the view that there was hardly any scope for being misled, we are prepared to give the benefit of doubt to the Principals. The contempt proceedings are withdrawn but the undertaking are kept on record.

G.N.
dismissed.

Appeals