

Dr. Ambesh Kumar vs Principal, L.L.R.M. Medical College, ... on 19 December, 1986

Equivalent citations: AIR 1987 SC 400, 1986(2) SCALE 1211, 1986 SUPP(1) SCC 543, [1987] 1 SCR 661, 1987(1) UJ 139(SC)

Author: B.C. Ray

Bench: A.P. Sen, B.C. Ray

JUDGMENT

B.C. Ray, J

1. All these matters involve a common question of law as to whether the notice dated 15.12.1982 issued by the Government of Uttar Pradesh laying down the qualification regarding eligibility of a candidate to be considered for admission to the post-graduate degree in M.D., M.S. and diploma course in M.D., M.S. etc. on the basis of merit in accordance with the Regulations made under the Indian Medical Council Act is invalid as it trenches upon Entry 66 of List I of the Seventh Schedule to the Constitution.
2. Civil Appeal No. 6119 of 1983 is against the judgment and order dated 22.4.1983 made in Civil Misc. Writ Petition No. 946 of 1983 by the High Court of Allahabad dismissing the writ petition holding that it was within the competence of the State Government to issue the aforesaid notice laying down the qualification of eligibility for being considered for admission to the post-graduate course by issuing notice dated 15.12.1982 and that the said notice is not repugnant to or encroach upon the field covered by Entry 66 of the List I of the Seventh Schedule to the Constitution.
3. Special leave petition No. 7925 of 1983 out of which Civil Appeal No. 6016 of 1983 arises is also directed against the order dated 3.5.1983 summarily dismissing the writ petition No. Nil raising the identical question i.e. challenging the aforesaid notice dated 15.12.1982 issued by the State of Uttar Pradesh.
4. The other writ petitions have been filed before this Court challenging also the power of the State of U.P. to such notice dated 15.12.1982 and raising the similar question of law.
5. The salient facts of all these cases in brief are as follows:

In accordance with the provisions of Section 33 of the Indian Medical Council Act, 1956, the Medical Council with the previous sanction of the Central Government made the Regulations laying down the standards for proficiency to be obtained and the practical training to be undertaken in medical institutions for grant of recognised medical qualification. The said Regulations as approved by the Central Government

lay down the criteria for selection of candidates for post-graduate training as follows:

(a) Students of post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities.

(b) The candidates should have obtained full registration i.e. they must have completed satisfactorily one year of compulsory rotating internship after passing the final MBBS examination and must have full registration with State Medical Council.

(c) They must subsequently have done one year's house- manship prior to admission to the post-graduate degree or diploma course. House-manship should preferably be for one year in the same subject or at least six months in the same department and the remaining six months in an allied department provided that in departments like Radiology/ Anaesthes; biology/physical medicine and Rehabilitation where suitable candidates who have done housemanship in Medicine and/or in the surgery may be considered as sufficient.

Must have alternatively worked as a Full time postgraduate student in a manner equivalent to housemanship requirements, in the department concerned before taking up the post-graduate courses.

6. The post-graduate Committee was of the opinion that in order to determine the merit of a candidate for admission to post-graduate medical courses, (i) his performance at the MBBS examination; (ii) his performance during the course of internship and housemanship for which a daily assessment chart be maintained and (iii) the report of the teachers which is to be submitted periodically may be considered.

7. Alternatively the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses.

8. The period of training for M.D., M.S. shall be three years after full registration including one year of house job or equivalent thereof.

9. The State Government issued a notice on 15.10.1982 inviting applications for admission to the various post-graduate courses in degree and diploma in the different specialities of the medical colleges. In para 4 of the said notice it has been specifically stated that the minimum eligibility qualification of the applicants would be according to the recommendations of Medical Council of India. There are other terms and conditions regarding filling up of the seats of the various disciplines which being not relevant for consideration in these matters, are not mentioned herein. The terms and conditions of the said notice clearly stated that the admission will be made as per existing rules and regulations of the Government and the college and recommendations of the Medical Council of India. Thereafter a Government Order dated 15.12.1982 was issued by the Government wherein it has been provided in para 6 to the following effect:

No candidate shall be eligible for admission to postgraduate Degree or Diploma Course, who has obtained less than 55% and 52% marks respectively, for the two courses (Degree & Diploma) in merit calculated in accordance with para 2 of the said notice

10. Para 2 of this notice lays down the manner of determining the merit of a candidate for the purpose of considering his admission to the post-graduate course in State Medical Colleges.

11. In accordance with the said Government Order dated 15.12.1982, a candidate in order to be eligible for consideration for admission to the post-graduate course on merit must have secured 55% marks for admission to post-graduate degree course and 52% marks for admission to the post-graduate diploma course. Thus a candidate having not secured the requisite marks in MBBS examination will be ineligible for consideration on the basis of merit for admission to the various post-graduate courses in medical college. The unsuccessful candidates who are not eligible for consideration according to this Government Order have questioned the power of the State Government in making the aforesaid order on the ground that the Medical Council by its Regulations has already laid down the requisite criteria or standards for admission to the post-graduate courses in the Medical Colleges in accordance with the merits of the candidates concerned and as such the State Government is not competent to lay down further eligibility qualification for the candidates for being considered for admission in the post-graduate courses both in the degree and diploma courses. It has also been contended that the State Government is not competent to lay down or prescribe the said qualification which, it is alleged, encroaches upon the power of the Central Government as provided in Entry 66 of List 1 of the Seventh Schedule. It has also been pleaded in the petition that Entry 25 of List III of Seventh Schedule to the Constitution is subject to the provisions of Entry 66 of List I and as such the said Government Order being repugnant to the Regulations made by the Indian Medical Council and approved by the Central Government pursuant to Section 33 of the Indian Medical Council Act, is invalid.

12. The writ petition was heard and was dismissed on 22nd April, 1983 by the High Court of Allahabad holding that the State Government is competent to make the Order under Entry 25 of List III of the Seventh Schedule to the Constitution in exercise of its executive power under Article 162 of the Constitution of India.

13. It was further held that the said Government Order does not, in any way, encroach upon or conflict with the power of the Central Government to make orders under Entry 66 of List I of Seventh Schedule to the Constitution, as the screening envisaged on the basis of the minimum percentage of marks acts in further implementation of the Regulations made under the Indian Medical Council Act. It was also held that the notification in question is prospective in its terms as it applies to all candidates who sought admission on or after 15.12.1982.

14. It is against this judgment and order the Civil Appeal No. 6119 of 1983 has arisen by special leave. Similarly Civil Appeal No. 6016 of 1983 has also arisen by special leave against the judgment and order of High Court of Allahabad dated 3.5.1983 made in writ petition No. nil of 1983.

15. Both these Civil Appeals as well as the writ petitions concern the admission of students in the post-graduate courses in the Medical Colleges for the session commencing on 1st April, 1983 and ending on 31st of March, 1984, in case of diploma course or ending on 31st March, 1985 in case of Degree course. Undoubtedly, this session has long expired and as such the applicants in the writ petitions or the appellants in the said appeals will not be benefited even if the decision is rendered in their favour. However, we deem it fit and proper to dwell upon the only contention raised before this Court regarding the validity of the Government order dated 15.12.1982 whereby the Government of Uttar Pradesh have specifically laid down in para 6 of the Order the eligibility qualification i.e. obtaining of 55% marks or 52% marks for being eligible for consideration for admission in the postgraduate degree or diploma courses respectively in accordance with the Regulations made by the Indian Medical Council for consideration strictly on merit for admission to the said post-graduate courses both degree and diploma. It has been urged with some vehemence that it is within the province of Medical Council to make recommendations under Section 33 of the Indian Medical Council Act prescribing the standards or criteria for selection of candidates for post-graduate training and the Central Government accepted them by framing Regulations. The State Government by its order dated 15.12.1982 prescribed a further criteria or standard of eligibility for the candidates to be considered for admission to post-graduate degree or diploma course and this is in conflict with the Regulations and as such it is invalid as it encroaches upon the power of the Central Government provided in Entry 66 of List I of the Seventh Schedule of the Constitution.

16. In order to consider and determine this question it is relevant to look into the Regulations made by the Indian Medical Council under Section 33 of the said Act. The Regulations have been enumerated at pages 4-5. These Regulations thus provide that the students of postgraduate training are to be selected strictly on merit judged on the basis of academic record in the under-graduate course and that all selections for post-graduate studies are to be conducted by the Universities besides looking to the other criteria regarding rotating internship, housemanship etc. The Government of Uttar Pradesh issued a notice on 15.10.1982 inviting applications in prescribed form for admission to the post-graduate degree and diploma courses for the different Medical Colleges of the province. In para 4 of the said notice it has been specifically provided that the minimum eligibility qualification of the applicants would be according to the recommendations of the Medical Council of India. On 15.12.1982, the Government issued another order laying down the policy and procedure to be followed with regard to the admission of candidates to the post-graduate courses (both degree and diploma) in State Medical Colleges. In this order in para 6 it has been specifically provided that "no candidate, shall be eligible for admission for post-graduate degree or diploma course who has obtained less than 55% and 52% marks respectively for the two courses (degree and diploma) on merit to be calculated in accordance with para 2 of the said order." It is this eligibility criteria laid down in the said Government order which is the subject matter of challenge in these appeals and writ petitions before this Court.

17. The said order modifies to a certain extent the earlier notification issued on 15.10.1982 inviting applications for admission to the post-graduate courses as per notification dated 3.12.1980. In the notification dated 3.12.1980, the criteria for admission to the post-graduate courses was on the basis of merit only. In para 2 of the said order the manner how the merit is to be determined has been laid down. In that order there was no such criteria laid down as mentioned in the Government order

dated 15.12.1982. Two questions arise for our consideration which are firstly whether the State Government is competent to make the aforesaid order in question in exercise of its executive powers under Article 162 of the Constitution. This Article specifically provides that the executive powers of the State shall extend to matters with respect to which the legislature of the State has power to make laws. Entry 25 of the Concurrent List i.e. List III of the Seventh Schedule to the Constitution provides as follows:

Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

18. The State Government can in exercise of its executive power make an order relating to matters referred to in Entry 25 of the Concurrent List in the absence of any law made by the State Legislature. The impugned order made by the State Government pursuant to its executive powers laying down the eligibility qualification for the candidates to be considered on merits for admission to the post-graduate courses in Medical Colleges in the State, is valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List I. Entry 66 of List I is in the following terms:

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

19. The only question to be considered is whether the impugned order is repugnant to or encroaches upon or is in conflict with the power of the Central Legislature to make laws in respect of matters specified in Entry 66 of List I of the Seventh Schedule to the Constitution. The Indian Medical Council pursuant to Section 33 of the Indian Medical Council Act had made certain recommendations which have been embodied in the Regulations made by the Central Government laying down the criteria or standards for admitting the candidates to various post-graduate disciplines in the Medical Colleges of the State. These Regulations, as has been quoted hereinbefore, clearly prescribe that the candidates should be selected strictly on merit judged on the basis of academic record in the undergraduate courses i.e. MBBS Course and this selection should be conducted by the University. There are also other eligibility qualifications provided in the said Regulations namely the candidates must have obtained full registration i.e. they must have completed satisfactorily one year of compulsory rotating internship after passing the final MBBS examination and also they must have done one year's housemanship prior to admission to the post-graduate degree or diploma course.

20. The impugned Government order dated 15.12.1982 lays down the criteria or eligibility qualification i.e. obtaining of 55% marks by candidates seeking admission in the post-graduate degree course and obtaining of 52% marks by candidates seeking admission to postgraduate diploma course for being considered for selection. Entry 25 conforms on the State Government as well as the State Legislature the power to make orders in respect of matters mentioned in Entry 25 of List III of the Seventh Schedule to the Constitution i.e. with regard to medical education the only

limitation being that such order of the State legislature will be subject to the provisions of Entry 66 of List I i.e. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. 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. A similar question crept up in the case of State of A.P. and Ors., v. Lavu Narendranath and Ors. etc. . In that case the Government of Andhra Pradesh prescribed for the first time in July, 1970 an entrance test for admission to the Medical Colleges and also prescribed the standard for eligibility for the test. The validity of this order prescribing the entrance test was challenged by some unsuccessful candidates on the ground that it encroaches upon the central subject listed in Entry 66 of List I of Seventh Schedule to the Constitution. It was held by the Court that this test prescribed by the Government in no way militated with the powers of the Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. It was also held that the Entry conferred power on the Parliament to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It had no relation to a test prescribed by Government or by a university for selection of a number of students from out of a large number applying for admission to a particular course of study.

21. In the instant case the number of seats for admission to various post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates undoubtedly apply for admission to these courses of study. In such circumstances the impugned order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the said courses on the basis of the merit as specified by Regulations made under the Indian Medical Council Act, cannot be said to be in conflict with the said Regulations or in any way repugnant to the said Regulations. It does not in any way encroach upon the standards prescribed by the said Regulations. On the other hand by laying down a further qualification of eligibility it promotes and furthers the standard in an institution.

22. The Government who runs these colleges has the right to prescribe a test of eligibility as has been held by this Court in the case referred to above.

23. Similar question came up for consideration before this Court in the case of R. Chitrlekha and Anr. v. State of Mysore and Ors. . In that case the Government of Mysore appointed one Selection Committee for settling the admissions to the Engineering Colleges and another such committee for settling admissions to Medical Colleges. By a letter the Government of Mysore intimated the Director of Technical Education that 25% of the maximum marks for the examination in the optional subjects shall be fixed as interview marks for making selection of candidates for admission to the Engineering Colleges. The Selection Committee fixed the minimum marks for interview at 75. On the basis of the marks obtained by the candidate in examination as well as in interview, selections were made. This was challenged as infringing upon the power of the Parliament to make

laws under Entry 66 of List I of the Seventh Schedule to the Constitution. It had been held that if the State Legislature prescribed a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it could not be held that such an order directly encroached upon the field covered by Entry 66 of List I of Seventh Schedule to the Constitution. The State Government was held to be within its rights for prescribing qualifications for admission to colleges so long as its action did not contravene any other law.

24. Similar observation has been made also by this Court in the case of *Minor P. Rajendran v. State of Madras and Ors.* .

25. On a consideration of the aforesaid decisions we are unable to hold that the impugned order dated 15.12.1982 has in any way contravened or encroached upon the power of the Central Legislature to make laws or the Central Government to make orders in regard to matters provided in Entry 66 of List I of Seventh Schedule to the Constitution. There is no conflict between the Regulations and also the order in question. The State Government by laying down the eligibility qualification namely the obtaining of certain minimum marks in the MBBS examination by the candidates has not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the central power provided in the Entry 66 of List I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility, qualification. We are in full agreement with the reasoning and conclusion of the High Court in this respect. This contention therefore, in our considered opinion, is without any merit. 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 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.

26. For the reasons aforesaid, the judgments and orders made by the High Court of Allahabad on April 22, 1983 and May 3, 1983 are confirmed and both the Civil Appeals as well as all these writ petitions are dismissed. There will however, be no order as to costs.