

A NATIONAL BOARD OF EXAMINATIONS
v.
G. ANAND RAMAMURTHY AND ORS.

MAY 19, 2006

B [DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

C *Education—Medical Super Specialities—Diplomate of National Examination (DNB)—Entrance test—Eligibility—Change in Schedule of the Examination by the Institute—Challenged by candidates—Candidates not fulfilling eligibility condition as per Rule 7 (12) of Bulletin of Information—Candidates relying on past practice of the Institute for permission to appear in the examination—Permission granted by High Court—In appeal, held : Candidates not eligible to appear in the examination—They did not fulfil the eligibility under the Rule—Past practice cannot override Statutory Rules— High Court not justified in directing the Board to hold examination against its policy—Bulletin of Information issued by National Board of Examination—Rule 7(12).*

E *Constitution of India, 1950—Art. 226—Writ jurisdiction—Interference with academic matters—Merging of past practice of academic institution and its policy decision—Permissibility—Held: Not permissible for High Court to interfere with academic matters and merge the past practice with the decision of the institute.*

F Respondents herein had filed Writ Petition before High Court seeking direction to the petitioner to hold entrance examination for Medical Super Speciality as per the Schedule mentioned in the Bulletin of 2003. High Court passed the order directing it to hold the examination for the respondents according to the Schedule mentioned in the Bulletin of 2003. Hence the present appeal.

G Appellant-Board contended that the respondents were not qualified or eligible to appear in the examination as per Rule 7(12) of Bulletin of Information issued by the National Board of Examination.

H Respondents contended that as per past practice of allowing the candidates for Super Speciality examinations, they were eligible to appear in the examination.

Disposing of the appeal, the Court

HELD : 1. A past practice as argued before the High Court has not been pleaded at all. This apart, the alleged past practice cannot override the statutory rules and regulations since the respondents are not qualified as per Rule 7 (12) of Bulletin of Information issued by National Board of Examination. Therefore, respondents are not permitted to sit for the Examinations in June, 2006 as directed by the High Court. [776-F-G]

2. High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner institution impugned before it to give relief to the respondents herein. [776-H, 777-A-B]

3. High Court was also not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. [777-B]

4. High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. In view of categorical and explicit disclosures made in the Bulletin, the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions which would encompass and include all instructions relating to schedule of examinations. There could be no embargo in the way of the petitioner *bonafidely* changing the Examination Schedule, more so

A when it had admittedly and categorically reserved its rights to do so to the notice and Information of the respondent nos. 1 and 2. In any event, the completion of three years training is a necessary concomitant for appearing in the DNB final examination. [777-B-H]

B 5. No *Malafide* has been alleged against the petitioner in the writ petition. The Governing Body of the petitioner in the larger interest of the candidates as well as of the petitioner, and medical education in general, has decided to change the current practice of conducting the examinations on biannual basis for all the disciplines of modern medicine with the revised policy to conduct the biannual examination only in those streams where number of candidates is more than 100, from June 2006 onwards to curtail its expenditure. The above policy decision cannot at all be faulted with. [778-B-D]

C
D CIVIL APPELLATE JURISDICTION : Petition for Special Leave to Appeal (Civil) No. 8506 of 2006.

From the Judgment and Order dated 27.4.2006 of the High Court of Delhi at New Delhi in L.P.A. NO. 661/2006.

E Gopal Subramaniam, A.S.G. Rudreshwar Singh, Rakesh Gosain and Dinesh Chandra Pandey, Advs., with him for the Appellant.

S. Bala Krishnan, Sr. Adv., Sanjay Bhatt and Amit Kumar (for respondent 1 & 2) Advs. with him for the Respondents.

F The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : By consent of parties the special leave petition itself is taken up for final hearing.

G This special leave petition is directed against the final judgment and order of the High Court of Delhi on 27.4.2006 passed in LPA No.661 of 2006, which was in turn directed against the judgment of the learned Single Judge of the High Court of Delhi dated 21.4.2006 passed in W.P.(C) No.5565-66 of 2006, whereby the writ petition filed by the respondents was
H allowed.

We have heard Mr. Gopal Subramaniam, learned Addl. Solicitor General for the petitioner and Mr. S. Bala Krishnan, learned Senior Advocate for the respondents. The matter was argued at length. A

We have perused the Bulletin of Information issued by the National Board of Examinations and also the Bulletin of Information cum Application Form for Diplomate of National Board (Final Examination), Centralised Entrance Test for the relevant post. Our attention was also drawn to Rule 7.12, which deals with eligibility for appearing in super specialities, and reads thus: B

“7.12 Eligibility for appearing in Super Specialities: C

****Medical Super Specialities and Surgical Super Specialities (refer Para 1.2)**

(i) Candidates should be in possession of a recognised Postgraduate degree qualification as specified under each speciality given in the syllabus for Medical and Surgical super specialities respectively. D

(ii) Candidates should have completed the prescribed three years training in the speciality after postgraduate degree, in an institution recognised by the MCI/NBE/University as specified under each speciality. E

(iii) Candidates should be in possession of a certificate of training from the Head of the department duly countersigned by the Head of the institution and produce necessary records as may be required. F

***Note: There will be three years training in each Super Speciality for all the subjects listed under clause 1.2 of this Bulletin with effect from January, 2000.* G

(iv)

(v) Every candidate will be required to produce performance record (log book) containing details of work done by him/her H

A duly certified by the supervisor, and countersigned by the administrative Head of the Institution at the time of their Practical Examination failing which he/she will not be allowed to take the practical examination. However, a certificate to this effect has to be attached alongwith application form for eligibility purposes. The supervisor would also offer his remarks on the training received by the candidate in the log book. Honorary staff members, who are recognised as supervisors by their institutions or the local university will also be recognised by the NBE."

B

C According to Mr. Gopal Subramaniam, the respondents herein are not eligible to sit for examination and, therefore, the permission granted by the High Court permitting to sit for the examination is not proper and not called for. Rule 7(12) specifically provides that the candidates should be in possession of the recognised postgraduate degree qualification as specified under each speciality given in the syllabus for Medical and Surgical super specialities respectively. Clause 7(12), sub-clause (ii), stipulates that candidates should have completed the prescribed three years training in the speciality after postgraduate degree, in an institution recognised by the MCI/NBE/ University as specified under each speciality. According to Mr. Gopal Subramaniam, the respondents will be completing three years training only by 30th June, 2006. They are not qualified and eligible to appear for June 2006 examination.

E

F Mr. S. Bala Krishnan, learned Senior Counsel for the respondents, *per contra* submitted that the stand of the petitioner herein was totally inconsistent not only in terms of the eligibility criteria but also as per past practice. According to him, the petitioner Institution has been allowing the candidates for taking the super speciality examinations, which were conducted in the month of June. But the facts remain that such a past practice as argued before the High Court has not been pleaded at all. This apart, the alleged past practice cannot override the statutory rules and regulations since the respondents are not qualified as per Rule 7(12). We are, therefore, not permitting them to sit for the Examinations in June, 2006 as directed by the High Court.

G

H We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified

in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates are requested to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no unascertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the Governing Body of the petitioner from time to time. Hitherto Examinations were being conducted twice a year i.e. in the months of June and December, 2006. There could be no embargo in the way of the petitioner *bonafidely* changing the Examination Schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of the respondent nos.1 and 2. In any event, the completion of three years training is a necessary concomitant for appearing in the DNB final examination.

A Likewise, the bare perusal of clause 4 of the Bulletin of Information, June 2006, it manifest that the petitioner has reserved right to change the guidelines/practice and further it has been made absolutely clear that the candidate shall be governed by the Bulletin of Information for the session in which the candidate appears.

B No *malafide* has been alleged against the petitioner in the writ petition. The Governing Body of the petitioner in the larger interest of the candidates as well as of the petitioner, and medical education in general, has decided to change the current practice of conducting the examinations on biannual basis for all the disciplines of modern medicine with the revised policy to conduct the biannual examination only in those streams where number of candidates is more than 100, from June 2006 onwards to curtail its expenditure. The above policy decision, in our opinion, cannot at all be faulted with.

D In the result, we set aside the order passed by the learned Single Judge as affirmed by the learned Judges of the Division Bench of the High Court of Delhi. In view of this, nothing further survives in this special leave petition. The special leave petition is accordingly disposed of.

E We also place on record the statement made by the learned Additional Solicitor General that any student who was admitted consequent to the Bulletin of Information published for the year June, 2003/ August, 2003 and have opted to undergo training for a period specified is not being offered any relaxation and no student is being permitted to sit for any examination contrary to the said requirement.

F K.K.T. Appeal disposed of.