

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 11.07.2013  
Judgment pronounced on : 16.07.2013

+ W.P.(C) 3465/2011

DR. SANJAY KUMAR YADAV & ORS. .... Petitioners

Through Mr. Nitin Gupta and Mr. M.D.  
Sharma, Advs.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE, NEW  
DELHI & ANR. .... Respondents

Through Mr. Sumit Babbar, Adv. for R-1.  
Mr. Neeraj Chaudhari, CGSC with  
Mr. Ravjyot Singh, Adv. for R-2.

And

+ W.P.(C) No.6300/2011

AJAY KUMAR YADAV AND ORS ..... Petitioners

Through Mr. Nitin Gupta and Mr. M.D.  
Sharma, Advs.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES NEW  
DELHI AND ANR ..... Respondents

Through Mr. Sumit Babbar, Adv. for R-1.  
Mr. Neeraj Chaudhari, CGSC with Mr. Ravjyot  
Singh, Adv. for R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**  
**V.K. JAIN, J.**

The petitioners are doctors, who are pursuing their post graduation with respondent No. 1-All India Institute of Medical Sciences (AIIMS). All of them were admitted against the seats meant for sponsored/foreign candidates. The petitioners were subjected to the same examination in which the other doctors pursuing post graduate courses in AIIMS were subjected. They fulfilled all the eligibility norms, prescribed by respondent No. 1 and no concession in merit or otherwise was accorded to them. A combined list of sponsored/foreign national candidates is prepared and seats are allotted purely on merits on the basis of performance in the entrance test. The candidates who are permanent employees of Central/State Government or the Armed Forces can be sponsored by the respective Government or Defence Authority. No sponsored candidate is paid any emolument by the Institute during the training period, such payment being the responsibility of the sponsoring authority, i.e., Central/State Government or Defence Authority. The candidates joining these Post Graduate courses such as MD/MS/MDS are called Junior Residents in the Clinical Disciplines and Junior Demonstrators in Basic Clinical Disciplines. The Junior Residents/Demonstrators (three years tenure period) are paid a sum of Rs

15,600 + 5400 Grade Pay + LPA and other allowances, as admissible under the Rules in the first of year of residency.

2. The grievance of the petitioners before this Court is that they are being treated at par with sponsored candidates and no emoluments are being paid to them though such emoluments are being paid to other Junior Residents/Demonstrators, except those who are admitted as sponsored candidates. Their contention is that they are as much qualified as the other Junior Residents/Demonstrators and perform the same duties and functions and, therefore, the refusal to pay emoluments being paid to other Junior Residents/Demonstrators, to them amounts to contravention of their fundamental right under Article 14 of the Constitution. This is also their contention that they cannot be treated at par with sponsored candidates because the obligation to pay such emoluments to the sponsored candidates rests with the concerned Government/Defence Authority. The petitioners are accordingly seeking the following reliefs:-

(i) Setting aside the clauses 2 (c) and (f) under Section VIII in prospectus of respondent No. 1 as null and void, being violative of Articles 14 and 21 of the Constitution of India;

(ii) Directing Respondent No. 1 to confer same economic and monetary benefits upon the Petitioners as given to the Indian National candidates, under the heading of 'emoluments', and also treat Petitioners equally with Indian National candidates, with immediate effect;

(iii) Directing Respondent No. 1 to pay emoluments and other allowances to the Petitioners, for the services rendered by them since the date of their admission, which are equivalent to that given to Indian National candidates;

3. In its counter-affidavit, respondent No.1-All India Institute of Medical Sciences has not disputed the averments made in the petition, but has taken the plea that the sponsored/foreign national Post Graduate seats in each Department has been created on the basis that there is no financial implication on the part of the Institute. This is also their contention that the term regarding non-payment of emoluments to foreign candidates having been incorporated in the prospectus itself and the petitioners having taken admission on the basis of the terms and conditions contained in the prospectus, it is not open to them to question the denial of emoluments to them in terms of clause 2(c) and (f) of the prospectus. According to respondent No. 1, it was made clear in the prospectus itself

that the foreign candidates will be treated at par with sponsored candidates and therefore, they are not entitled to any emoluments from the Institute.

4. In its counter-affidavit, Respondent No. 2-Union of India has taken the stand that it is only forwarding the applications of the foreign students to respondent No. 1 and the terms and conditions of their admission are decided by the said respondent, without any role being played by the Government.

5. Article 14 of the Constitution mandates that the State shall not deny to 'any person' equality before the law or the equal protection of the laws within the territory of India. As pointed out by Supreme Court in *Chairman, Railway Board and Others and Chandrima Das (Mrs) and Others* (2000) 2 SCC 465, the fundamental rights guaranteed under our Constitution are available to all the 'citizens' of the country, but a few of them are also available to the 'non-citizen'. As observed by the Apex Court, Article 14, which guarantees equality before law or the equal protection of law within the territory of India, is applicable to a 'person' which would include the 'citizens' of the country and 'non-citizen' both. There are Articles such as 15, 16 and 19 where the expression 'citizen'

and not the expression 'person' has been used, meaning thereby that the rights guaranteed under the aforesaid Articles are not available to non-citizens. Thus, the enforcement of fundamental right guaranteed under Article 14 of the Constitution can be claimed not only by an Indian citizens, but also by a foreign citizen, to the extent such enforcement is sought in the territory of India. Therefore, the foreign nationals, who are pursuing Post Graduate Courses in All India Institute of Medical Sciences are entitled to equal treatment in the matter of grant of emoluments unless it can be shown on account of some factors or circumstances they belong to a different class which can be subjected to a different treatment. The concept of equality allows differential treatment, but prevents distinctions that are not properly justified. The question which then arises for consideration is as to whether it would be a reasonable classification to treat the foreign citizens pursuing Post Graduate courses in AIIMS as a separate well-defined class which can be subjected to a differential treatment. In order to withstand the test of permissible classification, two conditions needs to be fulfilled, namely, i) the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out from the group and

ii) the differentia must have a rational relation to the object sought to be achieved by the Statute in question. The Court would be entitled to interfere only where the classification results in a pronounce inequality not otherwise.

6. When a Statute is challenged on the ground that it denies equal protection guaranteed under Article 14 of the Constitution, the question which falls for determination by the Court is not whether it has resulted in equality, but whether there is some difference which bears a just and reasonable relation to the object of the Statute. Article 14 of the Constitution can be said to be violated only when it is shown that differentiation is unreasonable or arbitrary and does not rest on any rational basis, having regard to the object which the Statute has in view.

7. A perusal of the prospectus issued by respondent No. 1-All India Institute of Medical Sciences for admission to Post Graduate Courses would show that the foreign nationals are considered against the seats advertised under the sponsored category and no seats in any discipline are reserved for them (except the bilateral agreement between the Government of India and any other nation). All of them are required to appear in the entrance test and are selected purely on merit. This is also

not the case of the respondents that they are employees of some Government/organization, which pays emoluments/ salary to them or that Government of the country to which these persons belong is meeting all their expenses during the period they study in AIIMS. Therefore, in all respects, including qualification, eligibility and merit they are equal to other doctors pursuing Post Graduate Courses in AIIMS, who are getting emoluments, while working as Junior Residents/Demonstrators. Not only are they studying, they are also required to work in the hospital during the period of their residency. Therefore, I find no reasonable basis for treating such doctors as an altogether different class, which can be subjected to a differential treatment in the matter of payment of emoluments by respondent No. 1-All India Institute of Medical Sciences, which is 'State', within the meaning of Article 12 of the Constitution. It is true that sponsored candidates with whom the petitioners are equated are not paid any emoluments by All India Institute of Medical Sciences, but a perusal of the prospectus would show that such candidates are permanent employees of the concerned Government/Defence Authority and the payment of emoluments to such candidates is the responsibility of the Sponsoring Authority, i.e., Central/State Authorities or Defence

Authority. The sponsored candidates being permanent employees who get salary/emoluments from their employer can certainly be treated as a different class from those who are not likewise employed and do not get salary/emoluments from their employers, but to treat the foreign nationals even when they are not employed and do not get salary/emoluments from any one, including their Government, cannot be said to be reasonable or justified. Denial of emoluments to such students, in my view, is wholly arbitrary and unreasonable, thereby violating Article 14 of the Constitution.

8. In *J. Denis Winston vs. the Academic Officer*, W.P.(C) No. 5458/2012 and M.P. No. 1/2012, decided on 16.07.2012, the petitioner before Madras High Court, after completing MD course from a college in Russia, was enrolled as CRRI Trainee with Stanley Medical College, Chennai. After being enrolled by Medical Council of India, when he applied for NOC for undergoing CRRI training, his request was accepted, but he was not shown as a non-stipendiary intern. The aforesaid condition, contained in the NOC was challenged by the petitioner on the ground that it violated Article 14 of the Constitution and was discriminatory since he was performing the same duties as were being

performed by the other interns. The respondent before the High Court took the plea that no stipendiary condition was imposed in view of an order issued by Government of India, Ministry of Health and Family Welfare, stipulating collection of fee in lump sum from students from the foreign countries. The stand taken by the Government of Tamil Nadu was that the candidates of other University do not have the skills or the standards of the students of Tamil Nadu and the object of the training was to give abundant clinical knowledge to them so as to bring them at par with the students who had studied in Tamil Nadu. The contentions of the respondents before the High Court was that the petitioner could not allege discrimination since he along with foreign students formed a class separate from that of the interns who had passed their MBBS from the college affiliated to the University in Madras. Rejecting the contentions of the respondents, the High Court, inter alia held as under:-

“17. The petitioner therefore, is having the same qualification as others Interns, who have done their MBBS from Dr. MGR University, specially when it is not disputed, that the petitioner as well as other interns are performing the same duties as CRRI trainees.

18. It is not permissible for the respondents to discriminate between similarly situated persons, on the ground of their having acquired qualification from different sources. The students from the Foreign

Universities, who have cleared the examination, conducted by the National Board of Medical Examinations and students from other States undergoing internship, i.e., CRRI training forms one class, therefore, action of the respondents in discriminating similarly situated persons cannot be sustained, being violative of Article 14 and 16 of the Constitution of India.

19. The Government orders, on which reliance has been placed, are merely Government instructions, which do not have statutory force of law. It is not disputed, that the Medical Council of India does not categorize the foreign students, who have cleared examinations conducted by the Medical Board of Examinations of the Medical Council of India, to be different from the students, who have acquired their MBBS qualification from the State Universities are projected. The Government orders on which the reliance is place being violative of Article 14 of the Constitution, deserve to be declared as unconstitutional.”

9. It is true that the petitioners have taken admission knowing fully well under the terms contained in the prospectus that they would not be getting any emoluments from All India Institute of Medical Sciences, but, when the matter involves violation of their fundamental right guaranteed even to ‘non-citizens’ under Article 14 of the Constitution, it cannot be said that having taken admission knowing fully well that they will not be paid any emolument, they cannot seek enforcement of the fundamental right available to them. Ordinarily the terms and conditions stipulated in the prospectus are binding upon the applicants, but when it comes to

enforcement of a valuable fundamental right such as the right of equality, guaranteed even to the non-citizens, and results in denial of payment to them while taking work from them in the hospitals, and making such payment to others who are similarly situated, it would be a denial of justice to non-suit them on this ground alone. A wholly arbitrary and irrational act on the part of the State cannot be defended solely on such a ground.

10. For the reasons stated hereinabove, the respondent No. 1-All India Institute of Medical Sciences is directed to pay, to the petitioners emoluments to the extent they are being paid to other students, except sponsored students, who had taken admission in the Post-Graduate Courses in the said Institute. Such payment shall be made from the date of filing of the writ petitions. The arrears shall be worked out and paid within 12 weeks, from today. The writ petitions stand disposed of.

**V.K.JAIN, J**

**JULY 16, 2013**

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