

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2015

DATE OF DECISION : 21.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.A.No.754 of 2015 against WP.NO.11096/15
and
M.P.Nos.1 and 2 of 2015

- 1.The Chairman,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences,
Gorimedu,
Puducherry-605 006.
- 2.The Chief Secretary to Government-
cum-Vice Chairman,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences,
Gorimedu,
Puducherry-605 006.
- 3.The Dean,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences,
Gorimedu,
Puducherry-605 006. .. Appellants/Respondents

Vs.

- 1.Dr.B.Priakardiya
- 2.The Dental Council of India,
Aiwan-E-Galib Marg,
Kotla Road,
New Delhi-110 002.
- 3.The Registrar,
Pondichery University,
(A Central University),
Bharat Rathna Dr.B.R.Ambedkar
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry-605 014. .. Respondents/Petitioner/Proposed
Respondents

(R2 & R3 impleaded as party Respondents
vide order dated 26/06/15 in MP.3/15)

This Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 07.05.2015 passed in W.P.No.11096 of 2015.

WP.No.11096/15:The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents to admit the petitioner in the reserved category for the post graduation study in MDSPG Course through the PGDEE at Mahatma Gandhi Post Graduate Institute of Dental Sciences Gorimedu Puducherry for the academic year commencing from the year 2015-16.

For Appellant s : Mr.A.Tamilvanan, GA (Puducherry)

For respondents : Mr.V.Manohar for R-1
Dr.S.Seethalakshmi for R-2

JUDGMENT

SATISH K. AGNIHOTRI, J.

The writ petitioner / first respondent herein has obtained 79 marks out of 200 marks in the Post Graduate Dental Entrance Examination conducted by the appellants institute herein for admission to the MDS PG course for the academic year 2015-2016. The minimum required qualifying marks for admission for Scheduled Caste and Scheduled Tribe candidates is 40%. The petitioner secured only 39.50%. On being denied admission for the reason that she did not secure minimum qualifying marks, the writ petitioner approached this court under Article 226 of the Constitution of India in the instant petition, seeking a direction to the appellants herein to admit her in MDS PG Course.

2 The learned Single Judge, applying the principle of rounding off relying on the decisions of the Supreme Court in State of U.P. & another Vs. Pawan Kumar Tiwari ¹ and State of Punjab Vs. Asha Mehta ², held that 39.50% marks obtained by the writ petitioner be treated as 40% and the writ petitioner be admitted in the reserved category to the said course. Being dissatisfied, the respondents therein have preferred the instant appeal.

3 Mr.A.Tamilvanan, learned Government Advocate (Puducherry), appearing for the appellants would contend that the principles of rounding off is not applicable in the case of admission to professional courses when there is no provision, granting liberty to

1 (2005) 2SCC 10

2 (1997) 11SC 410

the authorities to exercise discretion for grant of concession in minimum qualifying marks fixed under the statutory regulations and notifications. It is also contended that the judgments relied on by the learned Single Judge was in respect of appointment in service, not admission to professional courses.

4 In response, the learned counsel for the first respondent / writ petitioner reiterates the submissions advanced by him before the learned Single Judge and relied on the same judicial pronouncements, as referred and cited by the learned Single Judge.

5 We have examined the issue on hand at length.

6 In State of U.P. Vs. Pawan Kumar Tiwari (supra), the facts involved therein was appointment to the post of Civil Judge (Junior Division) in the U.P. Judicial Service. Having regard to the number of reserved seats available, it was held that 46.50 should have been rounded off to 47 to fill up the vacancy of reserved seats.

7 In the matter of State of Punjab Vs. Asha Mehta (supra), again the question arose in respect of appointment. By way of one paragraph order, the Supreme Court rounded off the award of 32.50% to 33%.

8 In Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G.Hemlatha and others³, a candidate, having secured 54.71% marks, was claiming to apply the principle of rounding off to 55%. The Supreme Court, negating the contentions, held as under :

"12.No provision of any statute or any rules framed thereunder have been shown to us, which permit rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in MSc (Nursing). When the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that the learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission to the PG course. Such rounding-off is impermissible."

9 In cases of appointment in services, the Supreme Court in Orissa Public Service Commission and another Vs. Rupashree Chowdhary and another⁴ has taken a contrary view, referring to the judicial pronouncement rendered in State of U.P. Vs. Pawan Kumar Tiwari (supra), as under :

3 (2012) 8 SCC 568.

4 (2011) 8 SCC 108

"10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation. "

10 In the case on hand, the minimum percentage of marks for eligibility is prescribed by the Dental Council of India under Revised MDS Course Regulations, 2007 framed in exercise of its power conferred under Section 20 of the Dentists Act, 1948 by the Dental Council of India with the previous sanction of the Central Government. The selection for Postgraduate students thereunder provides as under :

"SELECTION OF POSTGRADUATE STUDENTS :

(1) Students for postgraduate dental courses (MDS) shall be selected strictly on the basis of their academic merit.

(2) For determining the academic merit, the university/institution may adopt anyone of the following procedures both for P.G. Diploma and MDS Degree courses:

(i) On the basis of merit as determined by a competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of universities in the same state; or

(ii) On the basis of merit as determined by a centralised competitive test held at the national level; or

(iii) On the basis of the individual cumulative performance at the first, second, third and Final

B.D.S. examinations, if such examinations have been passed from the same university; or

(iv)Combination of (i) and (iii);

Provided that wherever entrance test for Postgraduate admissions is held by a State Government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate Dental courses shall be 50% for general category candidates and 40% for the candidates belonging to Scheduled Castes and Scheduled Tribes:

Provided further that in non-Governmental institutions fifty per cent of the total seats shall be filled by the competent authority and the remaining fifty per cent, by the management of the institution on the basis of merit."

11 In line with the aforesaid statutory regulations, the appellants institute has issued an information bulletin for admission to Postgraduate dental courses, whereunder also the minimum percentage of marks has been provided as under:

"6.Merit List would be drawn category wise based on minimum percentage marks according to DCI regulations as given below:

Category

General (UR) / NRI	: 50 % marks
OBC / SC / ST	: 40 % marks

In order to be eligible for admission to any Postgraduate course at MGPGI, it shall be necessary for a candidate to obtain minimum of 50% marks in the PGDEE for the current academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes the minimum marks shall be 40%. Candidates who secure less than the minimum percentage of marks in the Entrance Examination will not be considered for admission and their names will not be included in the Merit List."

12 Fixing of minimum marks for eligibility for reserved category is statutory in nature, as held by the Supreme Court. There is no provision to dilute the minimum eligibility marks prescribed under the Rules. It is beneficial to refer to the observations of the Supreme Court in Bhanu Pratap Vs. State of Haryana and others ⁵, as under :

"17. There is no power provided in the statute nor was any such stipulation made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory Rules for providing or giving the benefit of rounding off or relaxation."

13 The question as to whether minimum qualifying marks can be reduced to fill up the vacancy available for reserved category, came into consideration in a case of Visveswaraiiah Technological University and another Vs. Krishnendu Halder and others ⁶, wherein the Supreme Court negating the submissions held as under :

"16. The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff, etc.). But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it be argued by the colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to "fill the seats" will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialisation of education in the last few years should be a matter of concern for the central bodies, States and universities."

⁵ (2011) 15 SCC 304.

⁶ (2011) 4 SCC 606

14 For the reasons and analysis stated herein-above, we are of the considered opinion that the authorities have no jurisdiction to dilute the minimum marks for eligibility for admission by applying the principle of rounding off in professional colleges, wherein the hallmark is excellence and quality in education. This is a case of admission to Postgraduate course and as such, no rounding off is permissible.

15 As an upshot, the impugned order of the learned Single Judge is set aside and the writ appeal is allowed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Dental Council of India,
Aiwan-E-Galib Marg,
Kotla Road,
New Delhi-110 002.
- 2.The Registrar,
Pondichery University,
(A Central University),
Bharat Rathna Dr.B.R.Ambedkar
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry-605 014.

+1 cc to Mr.A.Tamilvanan, Government Advocate (Pondy)
sr.44603

+1 cc to MS.S.Seethalakshmi Advocate sr.44645

+1 cc to Mr.V.Manohar Advocate sr.44685

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