

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 810 OF 2014

1. Dr. Chaturbhuj Mishra S/o Sheshnath Mishra, aged about 36 years, R/o H2/95, Narmada Nagar, Bilaspur, P.S. Civil Line, Distt. Bilaspur (C.G.)
2. Dr. Shashikant Swarnakar S/o Shri Aishram Swarnkar, aged about 37 years, C/o Awadhram Patel, Tekar Bori, Dhamdha, P.S. Dhamdha, Distt. Durg. (C.G.)
3. Manmit Kumar Thawait S/o Shri Ramkumar Thawait, aged about 33 years, R/o Ward No.1, in front of Railway Station, Bilha, P.S. Bilha, Distt. Bilaspur (C.G.)

... Petitioners

Versus

1. State of Chhattisgarh, through the Principal Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. The Director, Health Services, Raipur (C.G.)
3. The Director, Medical Education, Raipur (C.G.)
4. Ujjwala Goswami S/o Shri Vinayak Goswami, through the Director, Medical Education, Raipur (C.G.)
5. Smita Tiwari D/o Shri K.P. Tiwari, through the Director, Medical Education, Raipur (C.G.)
6. Ruchi Verma D/o Shri S.K. Shrivastava, through The Director, Medical Education, Raipur (C.G.)
7. Smita Rai D/o Shri Mohan Rai, through The Director, Medical Education, Raipur (C.G.)

... Respondents

For Petitioners : Mr. Prateek Sharma, Advocate.
For Respondents 1, 2, 3 : Mr. Prafull Bharat, Additional Advocate General.
For Respondents 4 to 7 : Mr. Kshitij Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

03/05/2016

1. Learned Counsel for the Petitioners acknowledges that the writ petition has become infructuous in so far as Petitioner No.3 is concerned as he was not declared eligible to be considered as an in-

service candidate and to which no challenge has been laid out in the writ petition. The writ petition is dismissed with regard to Petitioner No.3 as being without merit.

2. Petitioners No. 1 and 2 after completing their MBBS course and Internship joined the Health Services of the State Government and are said to have worked in remote rural areas also. The State Government framed the Chhattisgarh Medical and Dental Post-Graduation Entrance Rules, 2013 (hereinafter referred to as 'the Rules of 2013'). Rule 5(2) provided for reservation of seats for in-service candidates. In-service candidates were defined in Rule 2(9) as persons in the services of the State Government including those from the Health Department as also the Medical Education Department. It further provided that preference was to be given to candidates from the Health Department in admission and if vacancies remained thereafter then only candidates from the Medical Education Wing could be considered for grant of admission as in-service candidates. Rule 11 provided for grant of bonus marks to in-service candidates based on the criterias provided therein.

3. Learned Counsel for the Petitioners submitted that advertisement was published by the official Respondents when the Rules of 2013 were in force. The examination was held on-line from 24.11.2013 to 6.12.2013. The results were published on 29.1.2014. Before the first counseling was held on 27.3.2014, the Respondents amended the rules on 6.2.2014 and did away with that part of Rule 5(2) providing preference in admission to in-service candidates from the Health Department first only after which the remaining vacancies could be filled up by in-service candidates from the Medical Education Wing. It was submitted that once the advertisement had been published, the examination held and the results published, the criterias for selection of

in-service candidates could not have been changed. The writ petition was filed without delay on 16.4.2014 immediately after the first round of counseling on 27.3.2014. The next submission was that the Chhattisgarh Medical Colleges Admission to Post-Graduate Entrance Act, 2002 (hereinafter referred to as 'the Act') provided in Section 4(2) that the rules framed thereunder were required to be laid before the Vidhan Shabha. The subject rules have never been laid before the Vidhan Sabha. In support of the latter submission, reliance was placed on AIR 2000 SC 2870 (Quarry Owners Association v. The State of Bihar) to submit that even if it did not invalidate the rules nonetheless the State is required to comply with the Act by placing the Rules before the Vidhan Sabha as otherwise it is left to the arbitrary discretion of the State to ignore statutory acts and rules. Special emphasis was laid on discussion contained in paragraph 48 of the judgment.

4. Learned Additional Advocate General submitted that the Petitioners participated in the first round of counseling on 27.3.2014 and he has further instructions to state that though they were offered admission it was declined because they did not get their choice disciplines. Thereafter, the Petitioners did not participate in the second and third round of counseling. It was next submitted that the 2014 Rules do not change the eligibility criteria, the marks to be obtained, the procedure for selection or even for grant of bonus marks to in-service candidates. It was felt necessary to make such changes even before the first counseling commenced as anomaly was noticed. Under the Rules as framed in 2013, less meritorious candidates from the Health Department would get admission in the post-graduation course at the cost of a more meritorious candidate from the Medical Education Wing. If the course was specialized in nature, to churn out better qualified

Doctors for the benefit of the society, it stands to reason that more meritorious candidates would undoubtedly turn out to be better Doctors and more beneficial to the society.

5. Having participated in the first round of counseling under 2014 Rules, the Petitioners could not have turned around and challenged the entire process itself. Reliance was placed on AIR 2015 SC 3643 (Dr. S. Anandhi & others v. Dr. K. Sivasubramaniyan & others).

6. We have considered the submissions on behalf of the parties.

7. The only issue emerging for determination is the change under the 2014 Rules, removing the preference clause for in-service candidates of the Health Department and making it a common category of in-service candidates from the Health Department and the Medical Education Wing.

8. The examinations were undoubtedly held when the Rules of 2013 were in force and the results were also published. The 2014 Rules were published on 6.2.2014 much before the first counseling held on 27.3.2014. It is not the case of the Petitioners that any change has been made in the 2014 Rules with regard to eligibility, procedure for selection and consequent to which those who may have been declared eligible and passed are now sought to be declared ineligible or failed. The controversy is limited to in-service candidates now forming a common class instead of two separate categories with preference to one over another irrespective of merit. The change was only procedural in nature with a laudable objective of selecting more meritorious candidates rather than those inferior on preferential basis.

9. The admissions related to post-graduate course which comes under the category of specialisation. The persons clearing the course would then be professional qualified doctors with expertise to render

services to the society. Given the complexity of the Medical profession it cannot be said that merit has no part to play in it at all. Under the earlier Rules, even if a candidate from the Health Department secured lesser marks, yet he was entitled to a preferential right for admission denying it to an in-service candidate from Medical Education Wing who may have had higher marks. This, in our opinion, was clearly an anomaly to be avoided. In any system of selection based on examination pattern the importance of marks cannot be undermined and made redundant. There can be no two opinions that a person securing higher marks in the entrance examination has to be considered as more efficient, better suited and more eligible for admission to the post-graduate course as compared to a person with lesser marks.

10. The first round of counseling was held after the amended Rules had been brought into force which in our opinion affected the Petitioners only to a limited extent. The Petitioners are stated to have participated in the first round of counseling on 27.3.2014. Their pleadings that they did so under protest in paragraph 8.9. of the writ petition leaves us dissatisfied. Be that as it may, it was submitted by the learned Additional Advocate General that the Petitioners had been offered another discipline which was not accepted by them. This fact is not in dispute. Surely, if the Petitioners had got admission in a discipline of their choice, they would not have complained that the 2014 Rules were wrongly sought to be relied upon. The primary grievance therefore appears to be the inability to obtain admission in a choice discipline. It is not in dispute that the Petitioners had not participated in the second and third round of counseling also.

11. We therefore find no merit in the writ petition to that extent warranting interference in any manner.

12. Having said so, we do find substance in the submission made on behalf of the Petitioners that even if laying of the rules before the Vidhan Sabha was not mandatory, so long as the Act provided for the same it has to be complied with as observed in Quarry Owners Association (supra) as follows:-

“**48.** In a democratic set-up, every State Government is responsible to its State Legislature. When any statute requires mere laying of any notification or rule before the legislature its executive, viz., the State Government comes under the scrutiny of the legislature concerned. Every function and every exercise of power, by the State Government is under one or the other Ministry which in turn is accountable to the legislature concerned. Where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same, each member of the House, subject to its procedure gets the right to discuss the same, they may put questions to the Ministry concerned. Irrespective of the fact that such rules or notifications may not be under the purview of its modification, such Members may seek explanation from such Ministry of their inaction, arbitrariness, transgressing limits of their statutory orbit on any such other matter. Short of modification power, it has a right even to condemn the Ministry. No doubt in the case where the House is entrusted with power to annul, modify or approve any rule, it plays a positive role and has full control over it, but even where the matter is merely placed before any House, its positive control over the executive makes even mere laying to play a very vital and forceful role which keeps a check over the State Government concerned. Even if submission for the appellants is accepted that mere placement before a House is only for information, even then such information, inherently in it makes the legislature to play an important role as aforesaid for keeping a check on the activity of the State Government. Such placement cannot be construed to be non est. No act of Parliament should be construed to be of having no purpose. As we have said, mere discussion and questioning the Ministry concerned or authority in the House in respect of such laying would keep such authority on guard to act with circumspection which is a check on such authority, specially when such authority is even otherwise answerable to such legislature.....”

13. Mandamus is therefore issued to the Respondents to comply with Section 4(2) of the Chhattisgarh Medical Colleges Admission to Post-Graduate Entrance Act, 2002 by laying of the rules before the Vidhan Sabha without unnecessary delay.

14. The writ petition is allowed only to the extent indicated.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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