

15.02.2022

Court : 04
Item : 01
Matter : **MAT**
Status : DISMISSED
Transcriber: nandy

MAT 24 of 2022

with

CAN 1 of 2022

Srijani Roy

Vs.

The State of West Bengal

Mr. Anindya Lahiri, Advocate

Ms. Pranati Das, Advocate

.....for the Appellant

Mr. Swapan Kumar Dutta, Advocate

Mr. Pradyut Kumar Das, Advocate

.....for the State

Mr. Indranil Roy, Advocate

Mr. Sunit Kumar Roy, Advocate

.....for the National Medical Commission

Ms. Rini Bhattacharya, Advocate

.....for the Union of India

Mr. D.N. Maity, Advocate

.....for the Respondent No. 6

Challenging the order dated December 13, 2021 passed in WPA 17671 of 2021 by which the writ-petition was dismissed not only on the ground of the locus of the writ-petitioner/appellant but also the plea of discrimination was ruled out.

The challenge was made to a Notification dated October 8, 2021 issued by the Government pertaining to the tenure/duration of three years of service in rural/difficult/remote areas as eligibility criteria as *ultra vires* to the Constitution. The point of demur was taken by the counsel appearing for the National Medical Council to the extent that the petitioner coming under the purview of open category is not entitled to challenge such

notification restricted to a in-service category candidate. The Single Bench further held that such notification dated October 8, 2021 is relateable to in-service quota in post-graduate medical and dental and post-doctoral medical counseling for the State quota seats in Government were in tune with the judgment of the Five Judge Bench of the Supreme Court in case of ***Tamil Nadu Medical Officers' Association & Anr. –vs- The Union of India & Ors.*** reported in ***2021 (6) SCC 568*** and therefore, cannot be said to be ultra vires. However, the Single Bench further held that the plea of discrimination raised in the writ petition is not entertainable as the further notification dated June 10, 2014 has not been challenged.

The sub-stratum of the impugned judgment is based on locus of the petitioner who challenged the notification dated October 8, 2021, which is restricted to in-service quota in the aforesaid courses.

Mr. Lahiri prevaricates his stand which he initially took before the Single Bench and harps upon the point that the fixation of a percentage reserved for in-service quota is arbitrary, whimsical, irrational, unreasonable and discriminatory in nature and, therefore, even if the

petitioner offering his candidature in the open category quota, can challenge such notification as it abridges the number of seats required to be reserved in open category quota and, therefore, the petitioner has a *locus standi* to challenge such notification.

The entire argument of the Counsels are founded upon the observations and the ratios laid down in case of ***Tamil Nadu Medical Officers Association (Supra)*** and reliance is placed upon the observations made therein, in several paragraphs in pursuit of the ultimate decision.

It is no longer *res integra* that the power of regulating the education emanates from List III Entry 25 of Schedule VII of the Constitution of India providing a concurrent power both to the State and the Union. There is no conflict between the powers of the Union and the State as the occupied field of the Union Legislation is relatable to a minimum standard of the medical education of the State to provide in-service quota without infringing and/or violating the prescribed minimum standards. The power of the State in relation to the subject matter of public health and hospital emanates from List III Entry 6 of Schedule VII of the Constitution of India which is exclusive. In exercise of such Constitutional power having

reserved upon the State, the West Bengal State Health Service Act, 1990 was promulgated reserving rule making power and in fact, in exercise of such powers, rule was framed imbibing the reservation in the seats of the medical courses of the State Universities for its officers under the West Bengal Health Service Act.

There has been a considerable debate and spat of litigation started pouring in different High Courts pertaining to a reservation having put forth in service quota. Ultimately, the writ petition was filed before the Supreme Court under Article 32 of the Constitution of India, where the notifications issued by the respective States earmarking the in service quota was under challenge. The point also emerged in course of the hearing pertaining to the power of the State to make a reservation and an argument was advanced that the same is arbitrary, discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India.

The Constitutional Bench held that the action of the State to provide for in service quota is in discharge of its constitutional obligation to bring better health care facilities for its citizens by upgrading the qualifications of the existing in service doctors so that the citizens may get more

specialised health care facilities, which is one of the ordain under Article 47 of the Constitution of India. Ultimately, the Apex Court held that the legislative competence of the State or authority to provide the separate source of entry in the post-graduate degree/diploma courses for in-service candidates is eminent and evident from the powers reserved under the Constitution as well as in exercise of the powers provided in List III Entry 25 of Schedule VII of the Constitution of India.

However, the Constitutional Bench observed that such candidates who have excelled the academic knowledge and benefited under the in-service quota must serve in rural, tribal and hilly areas of the respective states for a specified years upon obtaining the degree/diploma and if necessary they have to execute a bond. The observation made in paragraph 23.8 of the said judgment is quoted below :-

“23.8. That the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under List III Entry 25. However, it is observed that the policy must provide that subsequent to obtaining the postgraduate degree by the in-service doctors concerned obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper.”

There is no incongruity in the legislative powers and competence of the State to provide separate channel and path in such post-graduate courses for the candidate coming under the in-service quota which would further be evident from the object and the purpose for which the health sectors in the country are facing a gruesome time in the recent past during the declaration of pandemic as held by the Constitutional Bench over the legislative competence and the powers of the State to set up a separate in-service quota.

It is arduously submitted before us that there is no rationale nor *intelligible differentia* for setting up of 40% seats for the in-service quota. The power to create in- service quota is within the domain of the State emanating from the Constitutional provisions and, therefore, it is within the competence of the State to fix a percentage of the seats earmarked for in-service quota. Obviously, while fixing the percentage various factors are taken into consideration and the moment the State has decided to fix the percentage, the Writ Court should be slow and circumspect in interfering with the same unless it shock the conscience of the Court. In other words, there must be a strong evidence to be produced eroding the decision for fixing a percentage more particularly, for the lack of

intelligible reasons. Unless the decision of the State appears to be unreasonable, irrational, such decision cannot be interfered with.

Impetus can also be seen from the Constitutional Bench decision where a memorandum dated April 18, 2013, wherein such percentage fixed, was restored. Logical inference, which can be drawn therefrom, is that the said memorandum dated April 18, 2013 is restored in its entirety and the contents thereof was not interfered with.

The present appellant has not made out any case for interference in fixing of the percentage for in-service quota, nor any documentary evidence has been produced in this regard.

The reason for not interfering with the notification dated October 8 2021 can further be seen from another co-ordinate Bench decision in case of ***Tania Mukherjee & Ors. Vs. The State of West Bengal & Ors.*** (in MAT 146 of 2022 decided on February 10, 2022) wherein some of the in-service candidates challenged the aforesaid notification and the Division Bench held that such notification have, in fact, recited the observation of the Constitutional Bench of the Supreme Court in ***Tamil Nadu Medical Officers' Association (Supra)*** and therefore, cannot be

termed as *ultra vires*. The judicial discipline demands respect and adheres to a Constitutional Bench decision, unless the Court finds the same to be contrary to the statutory rules or the settled law accompanying the field. Even in such cases, it is open to the Co-ordinate Bench to refer the matter to the Chief Justice to constitute a larger Bench. Since, the aforesaid notification has been found in tune with the statutory provisions, legislative competence and in furtherance of the Constitutional Bench decision, we do not find any justification in taking a different view to what the Co-ordinate Bench has already been taken.

On the basis of the findings made hereinabove, we do not think that the petitioner is entitled to the relief claimed in the writ petition even without venturing to go into the plea of demur raised by the National Medical Commission.

We, thus, do not find any merit in the impugned appeal.

The same being **MAT 24 of 2022** is hereby **dismissed** without any order as to costs. The connected application being **CAN 1 of 2022** also stands **dismissed**.

(Harish Tandon, J.)

Rabindranath Samanta, J.)

