

PETITIONER:
AARTI GUPTA AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 09/12/1987

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
OZA, G.L. (J)
VENKATACHALLIAH, M.N. (J)

CITATION:
1988 AIR 481 1988 SCR (2) 244
1988 SCC (1) 258 JT 1987 (4) 613
1987 SCALE (2) 1273

ACT:
Competitive Entrance Examination for admission to the M.B.B.S./ B. D. S. Courses—Lowering of percentage of pass marks for the scheduled castes and scheduled tribes candidates for admission thereto challenged.

HEADNOTE:
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One hundred seats out of the total seats available in the M.B.B.S./B.D.S. courses were reserved for the Scheduled Castes and Scheduled Tribes candidates, for whom the Indian Medical Council had prescribed by its Regulation II a minimum of 40 per cent marks for eligibility of admission. The Government of Punjab by a notification (dated May 8, 1987) lowered the percentage of the pass marks for the said candidates from 40 per cent to 35 per cent as against a minimum of 50 per cent marks for the general category candidates.

on the basis of selection test held, only 32 qualified candidates of the reserved category were available. The prospectus published by the university for the competitive examinations provided that the seats left vacant in any reserved category owing to the non-availability of the eligible candidates may be filled up from the eligible candidates of the general category. Accordingly, the remaining seats (out of 100) should have reverted to the general pool of the eligible candidates. But the government issued an order (dated July 28, 1987) whereby the percentage of pass marks for the Scheduled Castes and Scheduled Tribes candidates was lowered from 35 per cent to 25 per cent (for the 1987 session only).

The appellants challenged the above-said orders of the government before the High Court which dismissed the Writ Petition filed by them. The appellants appealed this Court by special leave.

Dismissing the appeal, the Court,

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HELD: If the Regulation 11 of the Indian Medical Council is found to be binding, then the impugned orders of

the government would be bad, but the Regulation is merely in the nature of a recommendation and the language used in the Regulation is deliberate, intended to indicate the intention of the Council, as inter alia held by a three-Judge Bench of this Court in *The State of M.P. and Anr. v. Kumari Nivedita Jain and Ors.*, [1982] 1 SCR 759. That was a similar case as this one, and the appellants are not entitled to make any grievance on this score. [249D: 250]

The State Government had intended that 100 seats should go to the candidates of the scheduled castes and scheduled tribes. When that number of the candidates has not available, reduction in the qualifying marks had to be effected, and the government's action cannot be said to be arbitrary. [251 D-E]

After the percentage in the qualifying standard was reduced, all the remaining 68 seats have been filled up by the scheduled castes and scheduled tribes candidates and teaching has begun. These 68 candidates are not before the Court, not having been impleaded. It is not open to the Court to cancel their admission behind their back, nor would it be possible to require the State Government to create additional seats to accommodate the appellants. [251F]

OBSERVATION: The standard of medical profession should not be compromised in the national interest. There has been a perceptible fall in the national standards and general efficiency of the professional men. While it is not necessary to say anything against reservation, the Court approves of the concern shown by the Indian Medical Council that high standards of efficiency should be maintained, and that can only be possible if the State and the Council cooperate to maintain a high standard. This aspect should be kept in view when the guidelines are prescribed for the selection of the students for the medical courses. The impugned notification of the State Government shows that the reduction is confined to one year 1987 only. It is hoped there would be no necessity for a repetition of this action. [251G-H; 252A-B]

State of M.P. and Anr. v. Kumari Nivedita Jain and Ors., [1982] 1 SCR 759; *State of Kerala v. Kumari T.P. Roshana & Anr.* [1979] 2 SCR 974 and *Krishna Priya Ganguly etc. v. University of Lucknow & 246 Ors. etc.*, [1984] 1 SCR 302, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3556 of 1987.

From the Judgment and order dated 2.9.1987 of the Punjab and Haryana High Court in C.W.P. No. 5781 of 1987.

L.M. Singhvi, H.M. Singh, A.M. Singhvi, R.S. Yadav and N. Waziri for the Appellants.

Kuldeep Singh, Additional Solicitor General, C.M. Nayar B..R. Agarwala, and Ms. Sushma Manchanda for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal is by special leave and is directed against the decision of the Punjab and Haryana High Court dismissing a writ petition of the appellants in limine. On 8th of May, 1987, the Government of Punjab, Respondent No. 1, notified in the State Gazette the criteria for holding of Competitive Entrance Examination for selection of candidates for admission to MBBS/BDS course in the three medical colleges and two dental colleges within

the State. The Notification, inter alia, provided:

"(1) Admission shall be given on the basis of the relative merit of candidates determined on the result of the Competitive Entrance Examination. In the case of reserved seats relative merit of the candidate shall be determined within each category of reservation except that in the category of Sportsmen/Sportswomen admission shall be made out of eligible candidates on the basis of their gradation done by the Department of sports (Punjab) and in the category of children/widow of the defence personnel candidates of sub category vii (b) given in para III(d) infra, shall be admitted only if eligible candidates of sub category vii(a) are not available. A candidate, however, must secure minimum of 50 per cent marks in the competitive Entrance Examination to qualify for the admission. However, candidates belonging to the Scheduled Castes/Scheduled Tribes, Sportsmen/Sports-

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women, children/grand children of political sufferers and handicapped categories shall be eligible only if they secure minimum 35 per cent marks in the Entrance Examination. "

100 seats out of total available seats in the MBBS/BDS Courses were reserved for Scheduled Castes and Scheduled Tribes candidates. There is no dispute that on the basis of the selection test only 32 qualified candidates of the reserved category were available. The prospectus published for the Competitive Examination by the Punjabi University, Patiala, in a Note below Para III(a) (ii) under the heading of Distribution of Seats provided:

"Seats left vacant in any reserved category, owing to non-availability of eligible candidates, may be filled from the eligible candidates belonging to General Category."

On 28.7.1987, the following order was made:

"The President of India is pleased to lower down the percentage of pass marks in P.M.T. for Scheduled Castes and Scheduled Tribes candidates for admission to MBBS/BDS Courses in the State Medical/Dental Colleges from 35 per cent to 25 per cent during the session 1987 only.

Para III (a)(i) of the Punjab Government Notification No. 2373-5 HB Ill-87/10493 dated 8.5.1987 stands modified to this extent."

Challenge before the High Court as also before this Court is against this Notification and four contentions have been advanced:

(1) The Government order and the University Prospectus having provided that 35 per cent would be the minimum qualifying marks for the reserved categories named therein, it was not open to the respondents to make the impugned Notification. The Note referred to above which provided that upon candidates in the reserved category not being found, the remaining seats would revert to the general pool; lowering of the qualifying percentage of marks prejudices the candidates in the general category, who would have got the benefit of the

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Note is an arbitrary act and cannot be sustained.

(2) The prospectus contained an offer and after the candidates have appeared in the examination on the

basis of such offer and representation, a new basis cannot be brought in.

(3) The Regulation made by the Indian Medical Council prescribes a minimum of 40 per cent marks and the regulation is binding on the University as also the Government and a qualification lower than what has been prescribed by the Medical Council in exercise of its Regulation Making Power is contrary to law and against the spirit of the scheme.

(4) Doctors have got to be adequately qualified and professional standards must be high as they deal with human lives. Lowering standard on the plea of reservation of a sizeable portion of the seats for the backward classes is against the interest of the nation and detrimental to profession standards.

We shall first deal with the prescription of the Medical Council by Regulation. The Secretary of the Medical Council of India has filed an affidavit. Regulation II prescribes:

"In respect of candidates belonging to Scheduled Castes/Scheduled Tribes, the minimum marks required shall be 40 per cent in lieu of 50 per cent for general candidates. "

In his affidavit the Secretary has further averred that:

"The Medical Council of India has fixed these minimum marks for admission to Medical Courses on the recommendation of the Expert Body who had taken all facts and circumstances into consideration. The main factor before the Council in framing the Regulations was that marks below 40 per cent will adversely affect the studies and such candidates would not have full benefit of medical education along with the candidates with higher capability. In view of the fact that various Governments were resorting to methods to reduce the minimum marks in case of Scheduled Castes and Scheduled Tribes

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students, again discussions took place in the Executive Committee of the Medical Council of India on 5.3.1982 and this issue was fully considered and a recommendation was recorded on this aspect."

The Regulation referred to above is said to have been made in exercise of powers under Section 33(J) of the Indian Medical Council Act, 1956.

Dr. Singhvi for the appellants has very much relied upon the stand taken by the Indian Medical Council in support of the claim of the appellants that the action of the respondents in reducing the qualifying marks to 25 per cent as against the minimum of 40 per cent is wholly wrong and cannot be sustained. We have taken up the last contention first because if the Regulation is found to be binding then certainly both the original as also the subsequent Notification would be bad. As against the basic requirement of 40 per cent for scheduled castes and scheduled tribes candidates the original Notification had put the requirement of 35 per cent five per cent below the minimum and the subsequent Notification reduced it by 10 per cent more. The question as to whether the Regulation of the Council is binding came for determination before a three-Judge Bench of this Court. In the case of State of M.P. & Anr. v. Kumari Nivedita Jain & Ors [1982] 1 SCR 759, the Court found that:

"Regulation II of the Council is merely in

the nature of a recommendation. Regulation II begins with the words 'selection of students in medical college should be based solely on merit'. Language used in Regulation II is deliberate and is intended to indicate the intention of the Council that it is only in the nature of a recommendation .

The Court further went into the matter and observed that:

"The authority of the Council extends to the sphere of maintaining proper medical standards in Medical Colleges or institutions necessary for obtaining recognised medical qualifications. By virtue of this authority it may be open to the Council to lay down the minimum educational qualifications required of a student who may seek

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admission into a Medical College. In other words, the eligibility of a candidate who may sit to get admitted into a medical college for obtaining recognised medical qualifications may be prescribed by the Council. All the candidates who are eligible for admission into medical colleges or institutions for getting themselves qualified as medical practitioners are entitled to seek admission into a medical college of institution. As to how the selection has to be made out of the eligible candidates for admission into the medical college is a matter which has necessarily to depend on circumstances and conditions prevailing in particular State. Though the question of eligibility for admission into the medical curriculum may come within the power and jurisdiction of the Council, the question of selection of candidates out of the candidates eligible to the medical course does not appear to come within the purview of the Council."

The view of a coordinate Bench is binding upon us and we find it difficult to differ from what has been held in the aforesaid judgment. It is true that there is an observation of a two-Judge Bench in *State of Kerala v. Kumari T. P. Roshana & Anr.*, [1979] 2 SCR 974 that the Regulations of Medical Council are binding but that observation made by Iyer, J. was in passing while in *Nivedita's case* (supra) the matter directly fell for consideration. Dr. Singhvi also relied upon the observations of Fazal Ali, J. in a three-Judge Bench decision in *Krishna Priya Ganguly etc. v. University of Lucknow & Ors. etc.*, [1984] I SCR 302 but here again it was an obiter; at any rate reference to *Nivedita Jain's case* was not made.

It is interesting to note that in *Nivedita Jain's case* (supra), in a situation almost similar as here, the State Government fully deleted the prescription of the percentage of marks in the selection examination. That certainly was a worse situation than the one before us. Yet that action was upheld. In that view of the matter, we do not think the appellants are entitled to make any grievance on this score.

Now that this legal ground has failed, the other three questions raised by learned counsel for the appellants may be examined. As

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pointed out in *Nivedita Jain's case* the selection is at two stages. The Medical Council prescribed a percentage of marks as the basic minimum to be obtained in the qualifying examination (conducted by the University) and qualified candidates only applied for admission. Since the seats

available are much less than the candidates seeking admission. a further selection becomes necessary to eliminate candidates in excess of the available seats. The candidates belonging to the Scheduled Castes and the Scheduled Tribes who applied for admission and were to be subjected to selection must have secured appropriate marks in the qualifying examination and otherwise they could not have applied. The plea which is raised before us, namely, that there would be an element of estoppel and the action would be branded as arbitrary would certainly have arisen in [he case of Nivedita Jain (supra), but the Court did not find the total abolition of the percentage qualification as either arbitrary or hit by rules of estoppel. Reservation is not in dispute The State government had really intended that 100 seats should go to the candidates of Scheduled Castes and Scheduled Tribes. When in the selection test that number of candidates was not available, the question of reduction of the qualifying marks arose. In the facts of the case, we are not prepared to accept the contention of Dr. Singhvi that Government's action is arbitrary. In fact, the short affidavit filed by the respondents indicates clearly under what circumstances the variation was made. We do not think that there is any force in the plea of estoppel.

It is not disputed that after the percentage was reduced in the qualifying standard all the 68 seats have been filled up by Scheduled Castes and Scheduled Tribes candidates and teaching has begun from September. It is a fact that these 68 candidates are not before us as they have not been impleaded. It would not be open to us to cancel their admission behind their back, nor would it be possible to require the State Government to create additional seats to accommodate the appellants therein.

Before we part with the appeal we think it appropriate to indicate that the standard of medical profession should not be compromised in national interest. There has been perceptible fall in national standards and general efficiency of the professional men. While it is not necessary for us to say anything against reservation, we approve of the concern shown by the Indian Medical Council that high standards of efficiency should be maintained and that can only be

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possible if the State and the Council cooperates to maintain a high standard. This aspect should be kept in view while guidelines are prescribed for selection of students for the medical courses. The impugned Notification of the State Government shows that the reduction is confined for this year. We hope there would not be necessity for a repetition of this action.

The appeal fails and is dismissed. We make no order as to costs.

S.L.

Appeal dismissed.

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