

R.K. KHANDELWAL

v.

STATE OF U.P. & OTHERS

August 11, 1981[Y.V. CHANDRACHUD, C.J., A. VARADARAJAN AND
AMARENDRA NATH SEN, JJ.]*Constitution of India, 1950, Articles 226 and 136—Admission to M.D. Course—Change in the practice of admission—Whether discontinuance of a mere practice will sustain a charge of injury to legal rights.**Appeal by special leave—New Point—Discrimination not taken in writ petition—Not argued in High Court—Not mentioned in S.L.P.—Plea not permitted.*

The appellant applied for admission to the M.D. (Paediatrics) Course for the academic year 1979-80. He had passed his M.B.B.S. Examination in December, 1976. There were other students who had applied for admission along with the appellant. Some of them had passed their M.B.B.S. Examination prior to December 1976 and had secured higher marks than the appellant. The number of seats being limited, admissions were given according to merit and four students who had secured the highest number of marks were given preference to others regardless of the year in which they had passed their M.B.B.S. Examination.

The appellant filed a writ petition in the High Court challenging the decision of the college by which he was denied admission. The petition was dismissed summarily by a Division Bench on the ground that the relief of mandamus could not be granted since the appellant had failed to establish that any of his legal rights was violated.

In the appeal to this Court it was contended on behalf of the appellant that : (a) For many years in the past candidates who had passed the D.C.H. Examination were preferred for admission to the M.D. Course but that the University suddenly discontinued that practice, as a result of which he had to compete with others who had passed their M.B.B.S. Examination, and (b) the ratio 1:1 between teachers and students was relaxed from time to time by the University and that the appellant was discriminated against by the arbitrary refusal of the authorities to relax the ratio in his favour.

Dismissing the appeal,

HELD : The appellant has failed to make out a case of injury to any of his legal rights. Because of interim orders passed by this Court directing the College and the University to admit the appellant to M.D. Course in Paediatrics, the College cancelled the appellant's admission to the D.C.H. Course. If the appellant has passed the M.D. Examination, he should be declared to have passed it like any other student. He should not be subjected to any disadvantage for the

A reason that he was not entitled initially to be admitted to the M.D. Course in Paediatrics. If he has failed, he should be permitted to take the examination again (or again and again) in accordance with the rules of the University. Since the result of the other students, who had appeared for the M.D. Examination along with the appellant, was declared in February, 1981 the appellant's result to be declared forthwith. [287 B-F]

B (a) There was no rule at any time requiring that an applicant seeking admission to the M.D. Course in Paediatrics had to pass his D.C.H. Examination. That such a practice was recognised over many years or that such was the understanding of all concerned has been denied on behalf of the College. Besides discontinuance of a mere practice cannot sustain a charge of injury to legal rights. The practice had not ripened into a rule and the University was under no obligation to admit only those who had passed their D.C.H. Examination.

C The appellant therefore cannot make a grievance of a change in the practice for admission to the M.D. Course. [285 G-286 B]

In the instant case no one was admitted to the M.D. Course who had secured lesser marks than the appellant. He was sixth in order of merit and there were only four seats available. [286 E]

D (b) If there is a power to relax the ratio, that power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some students and to disfavour some others. [286 G]

In the instant case this point of discrimination was not taken in the writ petition filed in the High Court, not argued in the High Court, and not even mentioned in the Special Leave Petition. The question as to whether the authorities have the power to relax the ratio and the further question as to whether that power has been exercised arbitrarily raise new points into which it is difficult to enquire for the first time. This plea cannot therefore be entertained. [286 H-287 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2324 of 1980.

F Appeal by special leave from the judgment and order dated the 23rd April, 1979 of the Allahabad High Court in Civil Misc. Writ No. 2228 of 1979.

Dr. L. M. Singhvi, and *S. K. Verma* for the Appellant.

G *Mrs. Shobha Dikshit* for Respondent Nos. 1 & 2.

S. N. Kacker and *B. R. Agarwala & P. G. Gokhale* for Respondent No. 4.

The Judgment of the Court was delivered by

H CHANDRACHUD, C. J. : The question which arises for consideration in this appeal is whether the appellant, *Dr. R. K.*

Khandelwal, is entitled to be admitted to the M. D. Course in Paediatrics of the Agra University and whether in denying him that opportunity, the State has violated any of his legal rights.

The appellant passed his M.B.B.S. Examination from the S. N. Medical College, Agra, in December 1976 and completed his internship in December 1977. Being desirous of prosecuting post-graduate studies in Paediatrics, he took a year's house-job in the Paediatrics Department of the S. N. Medical College Hospital, which he completed in January 1979. He then applied for admission to the M. D. Course in Paediatrics for the academic year 1979-80. He was admitted to the D.C.H. Course but he was refused admission to the M.D. Course on two grounds : First, that amongst the applicants for the M. D. Course in Paediatrics there were four students who had secured higher marks than him in the M.B.B.S. Examination, and second, that on the basis of the 1:1 ratio between teachers and students, there were only four seats available for the post-graduate course in Paediatrics.

The appellant filed a writ petition in the High Court of Allahabad challenging the decision of the College by which he was denied admission to M.D. (Paediatrics). That petition was dismissed summarily by a Division Bench of the High Court on the ground that the relief of mandamus sought by the appellant could not be granted to him since he had failed to establish that any of his legal rights was violated. This appeal by special leave is directed against the High Court's order dated April 23, 1979.

The appellant, as stated earlier, was admitted to the D.C.H. Course after he had finished his house-job in Paediatrics. His case is that for many years in the past, candidates who had passed the D.C.H. Examination were preferred for admission to the M.D. Course but that the University suddenly discontinued that practice, as a result of which he had to compete with others who had passed their M.B.B.S. Examination. There is no substance in this contention and in any case the appellant cannot make a grievance of a change in the practice for admission to the particular course. Admittedly, there was no rule at any time requiring that an applicant seeking admission to the M.D. Course in Paediatrics had to pass his D.C.H. Examination. All that is alleged is that such a practice was recognised over many years or at least, that such was the understanding of all concerned. Both the practice and the understanding have been denied on behalf of the College. But apart from that,

A discontinuance of a mere practice cannot sustain a charge of injury to legal rights. The practice had not ripened into a rule and the University was under no obligation to admit only those who had passed their D.C.H. Examination. We also feel some difficulty on the facts before us in accepting the contention of the appellant that passing the D.C.H. Examination was a passport for admission to the M.D. Course. It may, at the highest, be said that it was easier for students to get admitted to the M.D. Course after passing the additional examination of D.C.H. after the M.B.B.S. Examination.

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C The appellant applied for admission to the M.D. (Paediatrics Course for the academic year 1979-80. He had passed his M.B.B.S. Examination in December 1976. There were other students who had applied for admission to the M.D. Course in Paediatrics along with the appellant. Some of them had passed their M.B.B.S. Examination prior to December 1976 and had secured higher marks than the marks obtained by the appellant in the December 1976 Examination. The number of seats being limited, admissions were given according to merit and the four students who had secured highest number of marks were given preference to others regardless of the year in which they had passed their M.B.B.S. Examination. No one was admitted to the 1979-80 academic year for the M.D. Course in Paediatrics, who had secured lesser marks than the appellant. The four students who secured admission had obtained marks varying between 60.06% to 65.80% while the appellant had secured 58.56% marks only. He was sixth in order of merit amongst the applicants and there were only four seats available, bearing in mind the ratio of 1:1 between the teachers and the students.

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F Dr. Singhvi, who appears on behalf of the appellant, raised a further contention that the ratio 1:1 was relaxed from time to time by the University and that the appellant was discriminated against by the arbitrary refusal of the authorities to relax the ratio in his favour. We are prepared to accept that if there is a power to relax the ratio, that power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some students and to disfavour some others. But the difficulty in the way of the learned counsel is that this point of discrimination was not taken in the Writ Petition which was filed in the High Court, it was not argued in the High Court and is not even mentioned in the Special Leave Petition before us. The question as to whether the authorities have the power to relax the ratio and the further question as to whether that power has been exercised arbitrarily in this case raise new points

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into which it is difficult for us to enquire for the first time. We are therefore unable to entertain the submission made by the counsel.

The appellant has thus failed to make out a case of injury to any of his legal rights, for which reason the appeal must fail. The appeal is accordingly dismissed. But considering that under interim orders passed by this Court from time to time the appellant has appeared for the M.D. Examination on the completion of the Course, we hope that the University and the S.N. Medical College will take a sympathetic view of the appellant's case and have his result declared. It may be mentioned that because of the interim orders passed by this Court directing the College and the University to admit the appellant to the M.D. Course in Paediatrics, the College cancelled the appellant's admission to the D.C.H. Course. That may have been right because no student can do the D.C.H. Course and the M.D. Course simultaneously. But the point of the matter is that if this Court were not to direct as an interim measure that the appellant should be allowed to prosecute his studies in M.D. Paediatrics (subject to the result of this Appeal), the appellant might have completed his D.C.H. Course and, subject to being admitted to the M.D. Course within a year or so from now he would have taken his M.D. Examination after passing the D.C.H. Examination. The authorities concerned will bear in mind that the appellant should not be placed in a worse position than he would have been in, had he not filed this appeal. Therefore, if the appellant has passed the examination, he should be declared to have passed it like any other student. He should not be subjected to any disadvantage for the reason that he was not entitled initially to be admitted to the M.D. Course in Paediatrics. If he has failed, he should be permitted to take the examination again (or again and again) in accordance with the rules of the University. Since the result of the other students, who had appeared for the M.D. Examination along with the appellant, was declared in February 1981, we hope that the appellant's result would be declared forthwith.

There will be no order as to costs.

N.V.K.

Appeal dismissed.