

A DR. MUNEEB UL REHMAN HAROON AND ORS.

v.

GOVERNMENT OF JAMMU AND KASHMIR STATE
AND ORS.

B August 13, 1984

[Y.V. CHANDRACHUD, C.J., A. VARADARAJAN AND AMARENDRA
NATH SEN, JJ.]

C Constitution of India 1950, Articles 14 and 19

*Medical Colleges—No admissions made to Post—Graduate medical course
for three consecutive semesters—Action of authorities whether arbitrary and
violative of fundamental rights.*

D Practice and Procedure—Mala fides—Plea of—Bald assertion in writ
petition—Insufficient—Specific facts to be alleged.

E The petitioners in the writ petitions were medical graduates who
applied for admission to the Post-graduate course in the Medical College,
Srinagar for the semester beginning in July 1970, appeared for an entrance
test but the result was not declared officially. They contended in their
writ petitions that the refusal of the Government to admit any student at
all for the Post-Graduate course for the three semesters which commenced
in July 1980, November 1980 and July 1981 was violative of the funda-
mental rights guaranteed under Articles 14 and 19 of the Constitution,
besides being *mala fide*.

F The State Government contested the writ petitions contending that
the rules which were in operation in July, 1980 governing admission to the
Post-Graduate Medical Course, were prejudicial to the interests of the
students of Jammu Medical College and were to an extent discriminatory
and that was why no admissions were made to the July 1980 semester,
that the amendment of the rules of admission were initiated so as to
bring them in conformity with the requirements of the Constitution, and
that this took a long period of 18 months.

G Dismissing the writ petitions,

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HELD : There is no violation of any of the fundamental rights of the petitioners nor is the action of the State authorities arbitrary or *mala fide*. [348C]

Mala fides cannot be assumed while dealing with a question which has far-reaching consequences. No specific facts have been alleged on the basis of which a finding can be recorded that the decision not to admit any student at all for three consecutive semesters was actuated by a *mala fide* intention on the part of the State Government. There is only a bald assertion in the writ petitions that a total ban was placed on admission to the three consecutive semesters in order to favour some persons. [347H-348A]

In the instant case, until the year 1973 there was only one Medical College in the State of Jammu & Kashmir, which was at Srinagar. The Medical College at Jammu was started in 1973. The Jammu Medical College was affiliated to the Jammu University while the Srinagar Medical College was affiliated to Kashmir University. The statutes of Jammu University did not correspond to the statutes of the Kashmir University for admission to the Post-graduate course, thereby causing discrimination in favour of those fulfilling the requirements under the statutes of the Kashmir University as against those eligible under the statutes of the Jammu University. That was why, the State Government had to take action for curing the defects which were inherent in the prevailing procedure for selection to the Post-Graduate Medical Course in the two medical colleges. The Kashmir University statute was amended so as to introduce uniformity in the rules of admission. According to clause 3 of the 1980 Notice of Admission, it was necessary for the candidates to have completed one year's Compulsory House Job in the concerned speciality, as provided in the statutes of the Kashmir University. Under the amended provisions which came into force in 1981 candidates had to complete one year's House Job in a recognised institution in the concerned subject or six months' House Job in the concerned subject and six months' House Job in an allied subject. The amended rule conforms to the rule which prevailed in other parts of the country and was in accordance with recommendations of the Medical Council of India. [347C-G]

ORIGINAL JURISDICTION : Writ Petition No. 1742 & 3129 of 1981.

Under article 32 of the Constitution of India.

Vimal Dave for the Petitioner.

A *Altaf Ahmed* for the Respondent.

The Judgment of the Court was delivered by

B CHANDRACHUD, C. J. These Writ Petitions are not maintain-
able under article 32 of the Constitution because they do not involve
the violation of any fundamental right of the petitioners. The
petitioners applied for admission to the Medical College, Srinagar,
for the Post-graduate Course of the Kashmir University for the
semester beginning in July 1980. They appeared for an entrance
test but the result of that test was not declared officially. The
C petitioners seem to possess information to the effect, and they have
so alleged in their petitions, that they have passed the test. No
admissions were made either to the July, 1980 semester or to the
two following semesters beginning in November, 1980 and July 1981.
An entrance test was held for admission to the semester beginning
in November 1981 and the result of the test has been announced.
D We are informed that 16 out of 17 petitioners in these two Writ
Petitions appeared for that test.

E There is a vague averment in the petitions that the refusal of
the Government to admit any student at all for the July, 1980 seme-
ster is violative of the petitioners' fundamental rights under articles
F 14 and 19 of the Constitution and is also *mala fide*. We are unable
to see how. The petitioners have not been picked and chosen for
hostile treatment as compared with other candidates similarly
circumstanced. They are also not deprived of their right to practise
any profession, or to carry on any occupation. They are all quali-
fied doctors, they have passed their M.B.B.S. examination, almost
all of them have appeared for the entrance test held for the
November, 1981 semester and they are all serving and practising
as doctors.

G Shri T.U. Mehta, who appears on behalf of the petitioners,
says that the wholesale non-admission of students to the Post-
graduate Course for the three semesters which commenced in July
1980, November 1980 and July 1981 is an arbitrary act which offends
against the guarantee of fairness implicit in article 14. The answer
of the State Government is that the rules which were in operation
in July 1980, governing admission to the Post-graduate Medical
Course, were prejudicial to the interests of the students of the
Jammu Medical College and were, to an extent, discriminatory.
That is why, no admissions were made to the July 1980 semester.

There is apparently no reason for doubting the veracity of this explanation though, we do not know why the amendment of the rules of admission, so as to bring them in conformity with the requirements of the Constitution, took as long as 18 months. The red-tape correspondence between the Health Department Commissioner, the Principal of the Srinagar Medical College, the Vice-Chancellor of the Kashmir University and the Ministry of Health consumed a long time.

Until the year 1973, there was only one Medical College in the State of Jammu & Kashmir, which was at Srinagar. The Medical College at Jammu was started in 1973. The Jammu Medical College is affiliated to the Jammu University while the Srinagar Medical College is affiliated to the Kashmir University. The statutes of Jammu University did not correspond to the statutes of the Kashmir University for admission to the post-graduate course, thereby causing discrimination in favour of those fulfilling the requirements under statutes of the Kashmir University as against those eligible under the statutes of the Jammu University. With more and more candidates from the Jammu Medical College becoming eligible for selection to the post-graduate medical course, the discriminatory procedure prescribed by the statutes of the Kashmir University became conspicuous. That is why the State Government had to take action for curing the defects which were inherent in the prevailing procedure for selection to the post-graduate medical course in the two medical colleges. The Kashmir University statute was amended so as to introduce uniformity in the rules of admission. According to clause 3 of the 1980 Notice of Admission, it was necessary for the candidates to have completed one year's Compulsory House Job in the concerned speciality, as provided in the statutes of the Kashmir University. Under the amended provision which came into force in 1981, candidates have to complete one year's House Job in a recognised institution in the concerned subject or six months' House Job in the concerned subject and six months' House Job in an allied subject. The amended rule conforms to the rule which prevails in other parts of the country and is in accordance with the recommendations of the Medical Council of India.

In so far as the allegation of *mala fides* is concerned, no specific facts have been alleged on the basis of which we can record a finding that the decision not to admit any students at all for three consecutive semesters was actuated by a *mala fide* intention on the

A part of the State Government. There is a bald assertion in the Writ Petitions that a total ban was placed on admission to the three consecutive semesters in order to favour some persons. Who those persons are we do not know. How they stood to gain by a total ban on admissions to the post-graduate course for a year and half is not clear. And, we cannot assume while dealing with a question which has such far reaching consequences as the question of *mala fides*, that the State Government had some particular persons in mind, to favour whom, every one of the students was denied the benefit of post-graduate education. How, by denying admission to all, favour was shown to a few is difficult to understand, especially when those few favourites are in obscurity and remain unidentified.

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Since there is no violation of any of the fundamental rights of the petitioners, nor indeed is the action of the State authorities arbitrary or *mala fide*, the petitions must fail and are dismissed. There will be no order as to costs.

D

N.V.K.

Petitions dismissed.