

HADIBANDHU RAUTARAO AND ORS ETC. ETC.

v.

STATE OF ORISSA AND ORS. ETC. ETC.

July 1, 1985

[Y.V. CHANDRACHUD, C.J., R.S. PATHAK AND
SABYASACHI MUKHARJI, JJ.]

Constitution of India, Article 32—Admission to Post Graduate courses in medical colleges—Substantial change in the scheme of granting admissions to Post Graduate Courses—Whether constitutes infringement of fundamental right to admission—Scheme formulated.

Until the academic session 1978-79, the Post Graduate Medical course in the State of Orissa was envisaged as a course of three years duration which period included an appointment for one year on the Resident House Staff. Admission to the three year course was made through an Entrance Examination, and after completing the Resident House Staff appointment, there was no further examination for admission to the Post Graduate course. The scheme was changed with effect from the session 1978-79 and the Resident House Staff course was delinked from the Post Graduate course. Accordingly, separate competitive examinations were prescribed for recruitment to the Resident House Staff and the Post Graduate course. A candidate appearing in the entrance examination for Post Graduate course should have passed the final M.B.B.S. examination, satisfactorily completed the internship, acquired full registration and in addition should have completed the Resident House Staff term in a subject during one year.

The petitioners/medical graduates from the State of Orissa filed writ petitions in Supreme Court challenging the new scheme, under which it became necessary for the candidates seeking provisional admission to a Post Graduate course to appear again at an examination for such admission after completing the Resident House Staff appointment. They contended that under the original scheme they were entitled to take the Entrance Examination for recruitment to the Resident House Staff at any recognised institution in the country, even though it lay outside the State of Orissa and on completing that course they were entitled without more to admission to a Post Graduate Medical course in a Medical College in Orissa. Some of the petitioners had already taken the examination for recruitment to the Resident House Staff in a Medical College in Orissa and successfully completed that course and they also objected to the requirement envisaged by the new scheme.

Disposing of the Writ Petitions, the Court,

HELD : 1. It is consistent with reason and justice that those petitioners before the Supreme Court who were either pursuant to the relief granted by the High Court or in compliance with interim order made by the Supreme Court, granted admission to a Post Graduate Medical course and have since completed that course and after having appeared in the examination for the academic year 1981-82 been declared successful, should not be disturbed and should be allowed the benefit of the success at the examination. Therefore, these admissions are affirmed. [815 D-E]

2. The provisional admission of some of the petitioners to a Post Graduate course by the Medical Colleges in Orissa in compliance with the interim orders of this Court made on different dates, should be regarded as an admission of final validity entitling them to its consequential benefits, since they have completed the Post Graduate Course. [815 F-G]

3. There are writ petitions in which this Court directed the provisional admission of the petitioners but they could not be admitted because of the non-availability of seats and in some of the writ petitions no order for provisional admission of the petitioners has been made by the Supreme Court. They are disposed of as follows :—

Since the scheme respecting admission to the Post Graduate Medical course has been modified again and the present position, enunciated in the prospectus for the year 1982-83 is that medical graduates who have appeared and been selected at the examination for recruitment to the Resident House Staff are entitled automatically, on successfully completing that term of appointment, to admission to the Post Graduate course, and no Entrance Examination specifically for such examination is now contemplated, this Court directs that those petitioners who have successfully completed the term of one year as Resident House Staff in the medical Colleges of Orissa will be entitled without having to appear at any further Entrance Examination to admission to the relevant Post Graduate course. However, those petitioners who have completed the term as Resident House Staff in approved Medical institutions in India other than the Medical Colleges in Orissa should be permitted to appear at the Entrance Examination prescribed for appointment to the Resident House Staff, and that if they are successful in the said Entrance Examination, they will be entitled to admission to the relevant Post Graduate course for the next following session without being obliged to work on the Resident House Staff in the Medical Colleges in Orissa. This arrangement entitling these petitioners to admission to a Post Graduate course without having to fill a Resident House Staff appointment will obtain only if they appear for the entrance examination for appointment as Resident House Staff in the same subject in which they claim to have already served as Resident House Staff earlier. If, however—and it will be open to them to do so—they appear at the entrance examination in a different subject, and are successful therein they shall be obliged to serve for the stipulated term in a Resident House Staff appointment in relation to that subject before being entitled, of the completion of that term, to admission in the corresponding Post Graduate course. [816A; 819 C-E; 817 A-D]

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A ORIGINAL JURISDICTION : Writ Petition No. 1756 of 1981 etc.
etc.

Under Article 32 of the Constitution of India.

B *G.L. Sanghi, V.M. Tarkunde, B.P. Maheshwari, B.P. Singh, A.K. Panda, Mrs. Uma Jain, M.A. Firoz, Dr. B.S. Chuahan, J.R. Das, M.C. Dhingra, Ambrish Kumar, R.B.B. Ray, V.B. Joshi, B. Parthasarthi and C.S.S. Rao* for the appearing Petitioners.

R.N. Keshwani for the Respondent Nos. 3 to 10.

C *M.K. Banerjee*, Additional Solicitor General, *D.P. Mahapatra* and *R.K. Mehta* for the Respondent. (State of Orissa)

The Judgment of the Court was delivered by

D **PATHAK, J :** The petitioners are medical graduates who took the M. B. B. S. degree in the year 1978 from Medical Colleges in the State of Orissa. In the year 1979 they underwent a one year period of internship at the Medical Colleges from which they had graduated. The petitioners allege that thereafter, having passed the pertinent examination for recruitment to the Resident House Staff, they completed the one year term of appointment either in the Willingdon Hospital, New Delhi, or in the Post Graduate Institute of Medical Sciences, Chandigarh. Upon the conclusion of their term on the Resident House Staff by the end of the year 1980, the petitioners contend that they became entitled to admission to a Post Graduate course at a Medical College in Orissa. The duration of that course, according to the petitioners, is two years. The grievance of the petitioners is that the Medical Colleges in the State of Orissa have new put into force a different scheme, under which it has become necessary for candidates seeking admission to a Post Graduate course to appear at an examination for such admission after completing the Resident House Staff appointment. The petitioners urge that they are not obliged to appear at any such examination and are entitled as of right to admission in the Post Graduate course.

H It appears that until the academic session 1978-79 the Post Graduate course was envisaged as a course of three years duration, which period included an appointment for one year on the Resident House Staff. Admission to the three year course was made through

an Entrance Examination, and after completing the Resident House Staff appointment there was no further examination for admission to the Post Graduate course. The scheme was changed with effect from the session 1978-79, purportedly to give effect to the recommendation of the Indian Medical Council that the Resident House Staff course should be delinked from the Post Graduate course. Accordingly, two separate Prospectuses were envisaged, one for the Resident House Staff course and the other for the Post Graduate course. A competitive examination was held for recruitment to the Resident House Staff, and all candidates who had passed the final M.B.B.S. examination and had completed their Compulsory Rotating Internship and had obtained full registration were eligible to appear at that competitive examination. There was a separate entrance examination for admission to the Post Graduate Courses. A candidate appearing thereat should have passed the final M.B.B.S. examination, satisfactorily completed the internship, acquired full registration and in addition should have completed the Resident House Staff term in a subject during one year. It appears that in some subjects, where there was a dearth of candidates and the posts in the colleges were not being filled in, it was convenient to prescribe only one examination, the entrance examination for recruitment to the Resident House Staff, and in those subjects the second entrance examination specifically intended for the post Graduate course was not prescribed. The students in those subjects, on completing the one years Resident House Staff appointment, were automatically admitted to the Post Graduate course.

These changes evidently caused considerable dismay among those medical graduates who had already taken the M.B.B.S. degree from a Medical College in Orissa and had embarked on a course of conduct, consistent with the terms of the original scheme, which would suffice to secure them admission to a Post Graduate course in the Medical colleges of Orissa. The petitioners say that under the original scheme they were entitled to take the entrance examination for recruitment to the Resident House Staff at any recognised institution in the country, even though it lay outside the State of Orissa, and on completing that course they were entitled without more to admission to a Post Graduate Medical Course in a Medical College in Orissa. There were also students who had taken the examination for recruitment to the Resident House Staff in a Medical College in Orissa and had successfully completed that course, and they objected to the

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A requirement envisaged by the new scheme that they should appear for a separate entrance examination for admission to a Post Graduate course in the Medical Colleges of the State. This discontent among the Medical Graduate body led to litigation in the High Court of Orissa. Eight medical graduates, who had taken the M. B. B. S. degree at a Medical College in Orissa, had completed the period of internship and thereafter had also completed a period of one year on the Resident House Staff in Medical Colleges in Orissa, filed a writ petition, *Dr. Sidhartha Das & Others v. State of Orissa*, (1) challenging the validity of the requirement in the Prospectus for the year 1978-79 requiring candidates for admission to a Post Graduate course in certain subjects to appear at an entrance examination for that purpose. On March 5, 1981, the High Court allowed the writ petition and directed the respondents to permit those petitioners to enter upon the relevant Post Graduate course without any further entrance examination. In compliance with the judgment and order of the High Court all the eight petitioners were admitted to the Post Graduate course desired by them.

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A number of other writ petitions were filed in the High Court by medical graduates but they were opposed on the ground that those petitioners had been admitted to Resident House Staff appointments under the Prospectus for the year 1978-79 and, therefore, they were obliged to appear for the second selection examination. It was pointed out that they formed a different class from the medical graduates who had succeeded in the earlier writ petition and were, therefore, not entitled to the benefit of the decision concluding that case. The High Court declined to enter into the merits of the controversy because it was found that even if relief was granted there were no seats available for accommodating those petitioners.

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The hearing in the present cases was marked by much learned argument on the part of counsel for the petitioners and the Additional Solicitor General of India appearing for the State of Orissa. The respondent Universities, the Behrampur University, the Sambalpur University and the Utkal University had been served with notice but did not enter appearance. During the hearing it became evident that a proper solution of the controversy lay not in

(1) A.I.R. 1981 Orissa 97.

an adjudication on the merits of the points raised thereby but in formulating a scheme designed and defined by the equitable realities of the situation. In appreciation of this perspective, learned counsel suggested several alternatives. After carefully weighing them, we propose to dispose of the cases before us in the following terms.

The petitioners in these cases can be classified into four groups.

Groups A consists of Writ Petitions Nos 2756, 2829, 3782 and 4489 of 1981 etc. The medical graduates in all these cases consist of petitioners who either pursuant to the relief granted by the High Court or in compliance with interim orders made by this Court were granted admission to a Post Graduate Medical course and have since completed that course, and after having appeared in the examination for the academic year 1981-82 they have been declared successful. It is consistent with reason and justice that they should not be disturbed and should be allowed the benefit of their success at the examination. Accordingly, we direct that while the admission of the medical graduates made in compliance with the order dated March 5, 1981 of the High Court is affirmed the interim orders made by this Court in other cases directing the provisional admission of the petitioners therein should now be translated into a final order disposing of the writ petitions and giving final legal status to their admission.

Group B consists of Writ Petitions Nos. 2692, 3863, and 7031 of 1981 and 2237 of 1982. etc. This group consists of medical graduates who were granted provisional admission to a Post Graduate course by the Medical Colleges in Orissa in compliance with the interim orders of this Court made on different dates. We are informed that the petitioners have completed the Post Graduate course and in the circumstances we are not inclined to disturb their admission. We direct that the provisional admission of those petitioners should be regarded as an admission of final validity entitling them to its consequential benefits.

Group C consists of Writ Petitions Nos. 4356, 4357-58, 5013, 5014-16, 5037-38, 5039-40, 5103-04, 5109-10, 5460-64, 5457-59, 5483-84 of 1982 etc. They are cases in which this Court directed

A the provisional admission of the petitioners, but the petitioners could not be admitted because of the non-availability of seats. Indeed, an application has been filed by the respondents for recalling the order directing provisional admission.

B Group D consist of Writ Petitions Nos. 5505, 5629, 5630-34 5635-36, 5692-93, 6492, 6803, 8029, 9348, 9349, and Transfer Petition No. 195 of 1982 etc. They are cases where no order for provisional admission of the petitioners has been made by this Court.

C In regard to groups C and D there was considerable debate between learned counsel for the parties on whether any relief was admissible in favour of the petitioners comprising these two groups and, if at all, what should be the nature and content of such relief. It is admitted, however, by the learned Additional Solicitor General that the scheme respecting admission to the Post Graduate Medical courses has been modified again and the present position, enunciated in the Prospectus for the year 1982-83, is that medical graduates who have appeared and been selected at the examination for recruitment to the Resident House Staff are entitled automatically, on successfully completing that term of appointment, to admission to a Post Graduate course, and no entrance examination specifically for such admission is now contemplated. We direct, in the circumstances that those petitioners who have successfully completed the term of one year as Resident House Staff in the Medical Colleges of Orissa will be entitled, without having to appear at any further entrance examination, to admission to the relevant Post Graduate course. There are other petitioners in these groups who have completed the term as Resident House Staff but have done so in approved medical institutions in India other than the Medical Colleges in Orissa, and some may have done so after successfully appearing at an entrance test prescribed for admitting them to those appointments. It is contended that they are not entitled to join a Post Graduate course in the Medical Colleges of Orissa without first appearing successfully at the entrance test prescribed for appointment to the Resident House Staff in those Medical Colleges. We have considered the several alternatives placed before us by the parties, and it seems that having regard to the considerable constraints imposed by the guidelines framed by the Indian Medical Council, to which our attention has been drawn, and the limited number of seats permitted accordingly, the only feasible solution must be that which we formulate now. We direct that the petitioners falling in Group C

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and Group D should be permitted to appear at the entrance examination prescribed for appointment to the Resident House Staff, and that if they are successful in the said entrance examination they will be entitled to admission to the relevant Post Graduate course for the next following session without being obliged to work on the Resident House Staff in the Medical Colleges in Orissa. They may, of course, offer themselves, without being obliged to do so, for Resident House Staff appointment before admission to the Post Graduate course, if there are vacancies occasioned by the exigencies of medical administration. At the same time, we make it clear that the arrangement entitling these petitioners to admission to a Post Graduate course without having to fill a Resident House Staff appointment will obtain only if they appear for the entrance examination for appointment as Resident House Staff in the same subject in which they claim to have already served as Resident House Staff earlier. If, however and it will be open to them to do so— they appear at the entrance examination in a different subject, and are successful therein, they shall be obliged to serve for the stipulated term in a Resident House Staff appointment in relation to that subject before being entitled, on the completion of that term, to admission in the corresponding Post Graduate course.

The writ petitions are disposed of accordingly. There is no order as to costs.

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