

A DR. SAURABH DWIVEDI AND ORS.

v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 8268 of 2017)

B JUNE 07, 2017

**[ASHOK BHUSHAN AND DEEPAK GUPTA, JJ.]**

*Education/Educational Institutions:*

C *Medical Council of India Post Graduate Medical Education Regulations, 2000 – Regn. 9(IV) – Procedure for selection of candidate for Post Graduate Courses in Medical Colleges – Weightage to in-service doctors, who have worked in remote or difficult areas – High Court set aside the institutional preference in Aligarh Muslim University and Banaras Hindu University-Central Universities – Issuance of direction that the PG seats in these institutions to be filled up only from those students who have passed MBBS from Institutions, Universities and Colleges in State of U.P.; and that the benefit of service rendered in remote/difficult areas to be given only to those doctors of the Provincial Medical Health Services (PMHS) who have cleared MBBS examination from a college within the State of U.P.– Justification of – Held: State can have no control over the seats in the medical colleges which are part of the central universities/institutions – These seats have to be filled up on the basis of merit and institutional preference could be given to the extent permissible i.e. 50% – Benefit of weightage in terms of Regn. 9(IV) is available to medical officers belonging to F PMHS cadre, who have served in remote and difficult areas, irrespective of the State of graduation – High Court overstepped its jurisdiction while issuing the said directions – Order of High Court as also direction issued by it, set aside.*

G **Disposing of the appeals, the Court**

**HELD: 1.1 Both Aligarh Muslim University-AMU and Banaras Hindu University-BHU are central universities. The State Government had issued a circular on 31.03.2017 clarifying that students, who had done their MBBS/BDS final year from AMU and BHU would be entitled for counselling only in the seats**

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available in their own institutes-AMU and BHU. In the central universities 100% admissions for MBBS course are based on all India examination. There is no State quota for seats in central universities like AMU and BHU or other central institutions like All India Institute of Medical Sciences etc. It is, thus, apparent that the State can have no control over the seats in those medical colleges which are part of the central universities/institutions. These seats have to be filled up on the basis of merit and institutional preference could be given to the extent permissible i.e. 50%. [Para 11][293-C-E]

1.2 The 50% institutional reservation in AMU and BHU, which had been reflected in their prospectus, was not challenged by any body before the High Court. AMU and BHU were not parties before the High Court. The MCI and the Union of India were also not parties before the High Court. The selected candidates were not joined as respondents. The High Court did not take into consideration the judgment of this Court in the case of *Saurabh Chaudri* and other cases upholding institutional preferences in central universities. The High Court did not also take into consideration the fact that the State had no power to control admissions to these universities. Therefore, the High Court overstepped its jurisdiction and went beyond the scope of the writ petition while issuing the direction relating to AMU and BHU. The order of the High Court is erroneous and is liable to be set aside. [Para 12][294-B-D]

1.3 Regulation 9(IV) of the Medical Council of India Post Graduate Medical Education Regulations, 2000 clearly provides that an incentive at the rate of 10% of the marks for each year can be provided to those in service candidates, who have served in remote or difficult areas subject to the condition that the highest incentive will be of 30% marks. The power to notify the remote and difficult areas is vested with the State Government. The purpose behind Regulation 9(IV) is that those doctors who willingly served in remote and difficult areas should be given some preference while considering them for admission to post-graduate courses. The intention is to benefit those who left the comforts of towns and cities and are willing to work in difficult conditions in remote and difficult areas. [Paras 13, 14][294-D-E, G-H]

A           **1.4 The circular issued by the State of U.P. clearly mentions that benefit of Regulation 9(IV) of the 2000 Regulations shall be available to medical officers belonging to PMHS cadre, who have served in remote and difficult areas. No distinction has been made between those who have graduated from within the State of U.P. or those who have graduated from outside the State of U.P. Once the graduate doctors, whether they have qualified their MBBS/ BDS examination from within the State of U.P. or from any other part of the country, are selected and join the medical health service in the State of U.P., they form part of one service, i.e. PMHS. Thereafter, when these doctors are posted to remote or difficult areas they are posted as doctors of PMHS and not on the basis as to which State they have done their graduation from. Therefore, there is no reason as to why the benefit of weightage in terms of Regulation 9(IV) should be limited to those in service candidates of the PMHS category, who have graduated from within the State of U.P. This is a totally artificial distinction drawn up by the High Court. In fact, the State of U.P. had also not made any such distinction and the affidavit of the Chief Secretary was categorical that the 2000 Regulations had not created such a divide or distinction. [Para 15] [295-D-G]**

E           **1.5 The High Court erred in deciding that only those in service doctors who had cleared their MBBS examination from within the State of U.P., were only entitled to the benefit of Regulation 9(IV) of the 2000 Regulations. Not only the High Court transgressed its jurisdiction and went beyond the scope of the writ petition but by the impugned order set at naught the entire selection process only two days before the last date of admissions making it virtually impossible to comply with the direction of the High Court within the short period of two days. [Paras 16, 17][296-C-D]**

G           **1.6 In view of the order dated 18.01.2016 passed by this Court in *\*Ashish Ranjan's* case, normally this Court would be reluctant to extend the time. However, the instant case has some peculiar facts of its own. The High Court has, on a totally erroneous basis, set aside a substantial portion of the counselling on 29.05.2017 which would have resulted in fresh counselling and, therefore, some seats which could be filled up on 30<sup>th</sup> or**

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31.05.2017 could not be filled up. That process which would have taken only 2 days' time, would now require a minimum of 5 or 6 days' time because action would have to be taken afresh. [Para 20][296-H; 297-A-B] A

1.7 The judgment and order of the High Court, all directions issued by it and all consequential action taken by the State of U.P. and/or any other authority pursuant to that order, is set aside. Those who were counselled and granted admission prior to the impugned judgement of the High Court would be permitted to continue in their respective courses. The time for filling up the vacant seats, if any, in AMU, BHU and Government run medical colleges/institutions in the State of U.P. is extended. [Paras 18, 21][296-E; 297-C-D] B C

*State of U.P. & Ors. v. Dinesh Singh Chauhan* 2016 (8) SCALE 16; *Saurabh Chaudri & Ors. v. Union of India & Ors.* (2003) 11 SCC 146 : [2003] 5 Suppl. SCR 152; \**Ashish Ranjan v. Union of India & Ors.* (2016) 11 SCC 225 – referred to D

Case Law Reference

2016 (8) SCALE 16	referred to	Para 9	
[2003] 5 Suppl. SCR 152	referred to	Para 11	E
(2016) 11 SCC 225	referred to	Paras 19, 20	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8268 of 2017.

From the Judgment and Order dated 29.05.2017 of the High Court of Judicature at Allahabad in Writ-C No. 17183 of 2017 F

WITH

Civil Appeal Nos. 8269, 8270, 8271, 8272, 8273 and 8274 of 2017.

Maninder Singh, Ajay Kumar Mishra, ASG, R. S. Suri, Subramonium Prasad, Salman Khurshid, Indu Malhotra, Vivek Tankha, Ajit Kr. Sinha, Sr. Adv., Ajay Kumar Mishra, S. S. Shamshery, AAG, Arun Bhardwaj, Ashish Pandey, Sumit Sharma, Gauraan Bhardwaj, Vishwa Pal Singh, Abhay Kumar, Khalid Akhtar, Bilal Khan, Saurabh Mishra, Himanshu, Aamir Hassan, Indra Sen Singh, Sarvesh Singh, Pushkar Prehar, K. V. Jagdishvaran, Mrs. G. Indira, Imtiaz Ahmed, Anish H

- A Dayal, Zafar Khurshid, Miss Subhi Sharma, Miss Mithali Chauhan (for Ashok Anand), Varun Singh, Tanvir Nayas, Ardhendumauli Kr. Prasad, Vrindavan Mishra, Gaurav Sharma, Ms. Amandeep Kaur, Prateek Bhatia, Ms. Vara Gaur, Shubranshu Padhi, Kush Chaturvedi, R. K. Rathore, Ms. Alka Agrawal, Ms. Rekha Pandey, Ajay Kumar Sharma (for G. S. Makkar), Shrivandan Mishram, S. Udaya Kumar Sagar, B Amr̄t Sharma, Ankit Raj (for Ms. Ruchi Kohli), Devansh Mohta, Raghav Dwivedi and Ms. Rashmi Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- C **DEEPAK GUPTA, J.** 1. Applications for permission to file special leave petitions are allowed. Applications for impleadment/intervention are also allowed.

2. Leave granted in all the special leave petitions.

- D 3. By this order we are disposing of all the aforesaid civil appeals as well as interlocutory application(s) relating to the State of Uttar Pradesh in Writ Petition (C) No. 76 of 2015. Keeping in view the urgent nature of the dispute, the appeals and the interlocutory application (s) relating to the State of Uttar Pradesh in the Writ Petition (C) No. 76 of 2015 are taken up for final hearing with the consent of the parties.

4. Two questions arise for decision in these cases:

- E (i) Whether the High Court was justified in setting aside the institutional preference in the Aligarh Muslim University (for short "AMU") and Banaras Hindu University (for short "BHU") and further directing that the post-graduate seats in these institutions shall be filled up only from those students who have passed MBBS from Institutions, Universities and F Colleges in the State of Uttar Pradesh;
- G (ii) Whether the High Court was justified in issuing a direction that the benefit of service rendered in remote/difficult areas should be given only to those doctors of the Provincial Medical Health Services (for short "the PMHS"), who have cleared MBBS examination from a college within the State of U.P.

5. The impugned order has been challenged by the appellants, some of whom are persons who have been admitted in AMU and BHU and whose admissions are now sought to be cancelled on the basis of

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the impugned order. Some of the appeals have been filed by in service A  
doctors who have graduated from outside the State of U.P. Appeals  
have also been filed by the AMU and the BHU.

6. Briefly stated the facts of the case are that a writ petition being B  
Writ Petition (C) No. 17183 of 2017 was filed by certain doctors in  
which their only claim was that the benefit of Regulation 9(iv) of the  
Medical Council of India Post Graduate Medical Education Regulations, C  
2000 (hereinafter referred to as "the 2000 Regulations") was only  
available to those doctors serving in the Uttar Pradesh PMHS (hereinafter  
referred to as "in service doctors"), who had passed their MBBS  
examination from a university/institution situate within the State of Uttar  
Pradesh. No other issue was raised in this writ petition.

7. This matter was taken up by the High Court on 15.05.2017 and  
in its order dated 15.05.2017, the High Court made reference to various D  
circulars issued by the State of Uttar Pradesh from time to time and the  
Court raised certain queries in this order. Though the High Court in the  
writ petition was only concerned with one issue i.e. whether in service  
doctors of PMHS cadre, who had obtained their MBBS degree from  
outside the State of U.P. were entitled to benefit of Regulation 9(iv) of  
the 2000 Regulations, the High Court framed a number of questions  
pertaining to admission to post-graduate courses in medical colleges and  
asked the Chief Secretary to file a reply to the same. The High Court, E  
without any material before it, also raked up the issue with regard to  
admissions to AMU and BHU and raised a query whether students,  
who had passed their MBBS/BDS final examination from colleges within  
the State of U.P. were entitled for admission to AMU and BHU on the  
basis of their merit in the competitive examination.

8. The Chief Secretary filed an affidavit stating that the medical F  
education is governed by the Medical Council of India (for short "the  
MCI"), which is a statutory body set up under the Medical Council of  
India Act, 1956. Reference was made to Rule 9(iv) of the 2000  
Regulations, which reads as follows:

**"9. Procedure for Selection of Candidate for Post Graduate G  
Courses shall be as follows:-**

- |      |     |     |     |
|------|-----|-----|-----|
| (i)  | xxx | xxx | xxx |
| (ii) | xxx | xxx | xxx |

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A (iii) xxx xxx xxx

(iv) The reservation of seats in Medical Colleges/Institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An All India merit list as well as State-wise merit list of eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility cum Entrance Test and candidate shall be admitted to Post Graduate courses from the said merit list only;

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Provided that in determining the merit of candidate who are in service of Government/Public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive @ 10% of the marks obtained for each year of service in remote and/or difficult areas up to a maximum of 30% of the marks obtained in National Eligibility Cum Entrance Test. The remote and difficult areas shall be as defined by the State Government/Competent authority from time to time.....”

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9. In State of U.P. & Ors. v. Dinesh Singh Chauhan, 2016 (8) SCALE 16, this Court held that Regulation 9 of the 2000 Regulations was a complete Code in itself to determine inter se merit of the candidates and that the State was entitled to make a provision for giving weightage of marks as incentive to those in service candidates who have worked in notified, remote or difficult areas in the State. The challenge in Dinesh Singh Chauhan’s case was to the preference/advantage given by Regulation 9(iv) of the 2000 Regulations. This challenge was rejected. The Chief Secretary in his affidavit clearly stated that all in service candidates, who have worked in the notified, remote or difficult areas in the State were eligible for benefit of Regulation 9(iv) and no distinction could be made between those in service candidates, who have done their graduation from within the State of U.P. or those who had done the graduation outside the State of U.P. Despite the clear cut stand of the State, the High Court held that the circulars giving institutional preference to students of AMU and BHU are contrary to 2000 Regulations. The High Court further went on to held that weightage of marks under Rule 9(iv) was available only to those candidates, who had passed their MBBS examination from universities/institutions situated within the State of U.P.

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10. Admission to post-graduate courses in medical colleges is done on the basis of NEET. 50% of the seats are filled on merit on all India

basis and 50% of the seats are filled on merit drawn on State-wise basis. Within the State merit list there is a provision for providing weightage to in service doctors as per Regulation 9(iv) to those doctors who have worked in remote or difficult areas.

11. As far as the first question raised before us is concerned, we are clearly of the view that the High Court has over-stepped its jurisdiction and went beyond the scope of the writ petition while issuing the direction relating to AMU and BHU. This issue was admittedly not raised by the appellants/petitioners. These two universities were not even parties before the High Court. The selected candidates were not joined as respondents. Both these universities are central universities. The State Government had issued a circular on 31.03.2017 clarifying that students, who had done their MBBS/BDS final year from AMU and BHU would be entitled for counselling only in the seats available in their own institutes viz., AMU and BHU. It would be pertinent to mention that in the central universities 100% admissions for MBBS course are based on all India examination. There is no State quota for seats in central universities like AMU and BHU or other central institutions like All India Institute of Medical Sciences etc. It is, therefore, apparent that the State can have no control over the seats in those medical colleges which are part of the central universities/institutions. These seats have to be filled up on the basis of merit and institutional preference could be given to the extent permissible i.e. 50%, as has been held by a catena of decisions including the Constitution Bench judgment of this Court in the case of Saurabh Chaudri & Ors. v. Union of India & Ors., (2003) 11 SCC 146, wherein this Court held as follows:

“72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain v. Union of India, (1984) 3 SCC 654 should be reiterated in preference to Dr. Dinesh Kumar (II) v. Motilal Nehru Medical College, (1986) 3 SCC 727. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.

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74. AIIMS is an institution of excellence. It is a class by itself and pride. We are, therefore, of the opinion that in AIIMS and the medical colleges of the Central University, merit should have

A primacy subject of course to institutional preference to the extent of 50% of the total seats in the MBBS course. In all other respects the decision of this Court in *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428 shall operate."

B 12. The 50% institutional reservation in AMU and BHU, which had been reflected in their prospectus, was not challenged by any body before the High Court. As stated earlier, AMU and BHU were not parties before the High Court. The MCI and the Union of India were also not parties before the High Court. The High Court did not take into consideration the judgment of this Court in the case of *Saurabh Chaudri* (supra) and other cases upholding institutional preferences in central universities. The High Court did not also take into consideration the fact that the State had no power to control admissions to these universities. Therefore, as far as the first issue is concerned, we are clearly of the view that the High Court overstepped its jurisdiction and the order of the High Court is erroneous and is liable to be set aside.

D 13. As far as the second issue is concerned, Rule 9(iv) clearly provides that an incentive at the rate of 10% of the marks for each year can be provided to those in service candidates, who have served in remote or difficult areas subject to the condition that the highest incentive will be of 30% marks. The power to notify the remote and difficult areas is vested with the State Government. This power has been upheld by this Court in *Dinesh Singh Chauhan's* case (supra). It would be pertinent to mention that in this case, this Court only upheld this power and held that Rule 9 (iv) of the 2000 Regulations is a complete Code in itself. This Court was not dealing with the question as to whether the benefit of weightage of marks for having served in remote or difficult areas could be given only to local in service doctors or to the entire category of in service doctors.

G 14. In fact, Rule 9 (iv) itself only provides for weightage being given for each year of service rendered in remote and difficult areas. The purpose behind this rule is that those doctors who willingly served in remote and difficult areas should be given some preference while considering them for admission to post-graduate courses. The intention is to benefit those who left the comforts of towns and cities and are willing to work in difficult conditions in remote and difficult areas. The State of U.P. had also issued a Circular which inter alia reads as follows:

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“9. Benefit of Weightage/reservation to Medical Officers belonging to PMHS category: A

In accordance with the judgment passed by Hon’ble Supreme Court and Regulations framed by Medical and Health Department of the State as per MCI guidelines, the State Department shall issue no objection certificates to the MBBS Degree Holding Doctors belonging to PMHS Cadre for counselling by giving weightage as per rules and the merit list shall be accordingly modified and they shall be given admission in the Government Medical Colleges/Universities/Private Medical Colleges. B

The proceedings for the PMHS category Medical Officers for Government Medical Colleges/Universities shall be taken in accordance with the Post Graduate Regulation, 2000 and policy framed vide Govt. Order No. 4197/med-3-16-G-179/2005 dated 23.12.2016 issued by Medical Department.” C

15. The aforesaid circular clearly mentions that benefit of Rule 9(iv) of the 2000 Regulations shall be available to medical officers belonging to PMHS cadre, who have served in remote and difficult areas. No distinction has been made between those who have graduated from within the State of U.P. or those who have graduated from outside the State of U.P. Once the graduate doctors, whether they have qualified their MBBS/BDS examination from within the State of U.P. or from any other part of the country, are selected and join the medical health service in the State of U.P., they form part of one service, i.e. PMHS. Thereafter, when these doctors are posted to remote or difficult areas they are posted as doctors of PMHS and not on the basis as to which State they have done their graduation from. We, therefore, see no reason as to why the benefit of weightage in terms of Regulation 9(iv) should be limited to those in service candidates of the PMHS category, who have graduated from within the State of U.P. This is a totally artificial distinction drawn up by the High Court. In fact, the State of U.P. had also not made any such distinction and the affidavit of the Chief Secretary was categorical that the 2000 Regulations had not created such a divide or distinction. In this regard, we may make reference to the following portion of the affidavit of the Chief Secretary: D

“14. That since the Hon’ble Supreme Court has upheld the validity of Regulation 9 and has categorized it as a complete code and a H

A provision for determining inter-se merit and grant of weightage to  
in-service candidates who have worked in notified, remote or  
difficult areas in the state, and there is nothing in the Post Graduate  
Medical Education Regulations 2000 to create a divide or a  
distinction between such of the in-house candidates who may have  
done their graduation from outside the State, therefore, no such  
divide is created at the level of the Director General Medical and  
Health while considering the cases of in-house candidates and  
giving weightage to them and thereafter recommending the name  
to the Director General Medical Education for counselling.”

C 16. We, therefore, hold that the High Court erred in deciding that  
only those in service doctors who had cleared their MBBS examination  
from within the State of U.P., were only entitled to the benefit of  
Regulation 9(iv) of the 2000 Regulations.

D 17. We are also of the view that not only the High Court  
transgressed its jurisdiction and went beyond the scope of the writ petition  
but by the impugned order set at naught the entire selection process only  
two days before the last date of admissions making it virtually impossible  
to comply with the direction of the High Court within the short period of  
two days.

E 18. In view of the above discussion, we set aside the order dated  
29.05.2017 passed by the High Court and all directions issued by it. We  
also set aside all consequential action taken by the State of U.P. or any  
other authority or institution pursuant to the directions of the High Court.

F 19. The State of Uttar Pradesh has filed I.A. No. 45327 of 2017  
in Writ Petition (C) No.76 of 2015 praying for extension of the last date  
of admission as laid down in *Ashish Ranjan v. Union of India & Ors.*,  
(2016) 11 SCC 225 for a period of one month to comply with the directions  
issued by the High Court. Since we have set aside the judgment of the  
High Court, there is no need to re-draw the merit list.

G 20. The learned counsel for the AMU has urged that the time for  
filling up the seats be extended since on account of the confusion created  
by the order of the High Court a large number of seats are still lying  
vacant in the AMU. Similar request has also been made by the learned  
counsel for the State of Uttar Pradesh on behalf of the Government run  
medical colleges/institutions. In view of the order dated 18.01.2016  
passed by this Court in Writ Petition No. 76 of 2015 and connected  
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matters titled Ashish Ranjan v. Union of India & Ors., (2016) 11 SCC 225, normally we would be reluctant to extend the time. However, the present case has some peculiar facts of its own. The High Court has, on a totally erroneous basis, set aside a substantial portion of the counselling on 29<sup>th</sup> May, 2017 which would have resulted in fresh counselling and, therefore, some seats which could be filled up on 30<sup>th</sup> or 31<sup>st</sup> May, 2017 could not be filled up. That process which would have taken only 2 days' time, would now require a minimum of 5 or 6 days' time because action will have to be taken afresh. A B

21. In view of the above discussion, we set aside the judgment and order of the High Court and all consequential action taken by the State of U.P. and/or any other authority pursuant to that order. It is clarified that those who were counselled and granted admission prior to the impugned judgement of the High Court shall be permitted to continue in their respective courses. The time for filling up the vacant seats, if any, in AMU, BHU and Government run medical colleges/institutions in the State of U.P. is extended up to 12<sup>th</sup> June, 2017 in the peculiar facts and circumstances of the case. We further permit the AMU, BHU and Government run medical colleges/institutions in the State to fill up the seats in the post graduate courses in the AMU, BHU and Government run medical colleges/institutions up to 12.06.2017. C D

All the civil appeals as well as the interlocutory application(s) relating to the State of Uttar Pradesh in Writ Petition (C) No. 76 of 2015 are disposed of in the aforesaid terms. Pending application(s), if any, also stand(s) disposed of. E