

CASE NO.:
Appeal (civil) 1966 of 2000

PETITIONER:
THE DEAN, GOA MEDICAL COLLEGE, BAMBOLIM, GOA

Vs.

RESPONDENT:
V.

DATE OF JUDGMENT: 03/09/2001

BENCH:
S.R.Babu, Doraiswamy Raju

JUDGMENT:

Raju, J.

The above appeal has been filed against the judgment dated 9.12.1999 of the High Court of Bombay at Goa, whereunder the claim of the first respondent came to be allowed with a direction that the case of the first respondent and other similarly situated students, who applied for the Post-graduate course in the Goa Medical Colleges in terms of the 1998 Rules, shall be considered keeping in view that the residency requirement as contained in Rule III (1)(iii) is directory. The effect of the said direction is to, in substance, dispense with or doing away with the eligibility requirement envisaging ten years residency in the State of Goa in the matter of selection of the candidates for admission to the Post-graduate courses in Medicine and MDS for the academic year 1999-2000. The relevant portion of the Goa (Rules for Admission for Post-Graduate Degree Courses of the Goa University at the Goa Medical College) Rules, 1998 (hereinafter referred to as "the Goa Rules 1998") reads as follows:-

"III. Eligibility, Preference and Order of Merit :-
(1) Eligibility :

Candidates applying for admission to the Post-graduate Degree courses shall :

(i) possess the M.B.B.S. degree of the Goa University or any other University recognized as equivalent thereto by the Goa University and the Medical Council of India.

(ii) Complete Compulsory Rotatory Internship of one year on or before the last date of receipt of application.

(iii) Have resided in the State of Goa for a minimum period of ten years preceding the last date of receipt of application."

The learned Judges of the High Court were of the view that merit being the only criterion for admission to Post-graduate courses such as M.D., M.S. and the like, the residency requirement cannot be

insisted upon in such cases where they want to pursue post-graduate studies in the institutions where they studied and obtained their M.B.B.S. degrees.

Heard Mr. Mukul Rohtagi, learned ASG, for the appellants. The first respondent was represented by Mr. M. Veerappa, Advocate. Apparently, conscious of the difficulties in sustaining the ratio of the judgment of the High Court, the learned counsel for the respondent placed strong reliance upon Section 58 of the Goa, Daman and Diu Reorganisation Act, 1987 to justify the relief already granted in favour of the first respondent. This claim is based on the fact that the first respondent was born in the year 1976 in the State of Goa, Daman and Diu and was governed by all laws then existing in the Union Territory of Goa, Daman and Diu till May, 1987 when Goa became a State, Daman and Diu remained a Union Territory. The first respondent belonged to the erstwhile Union Territory comprising of Goa, Daman and Diu and even after separation of Goa, continued to be a resident of the Union Territory of Daman and Diu.

We have carefully considered the submissions of the learned counsel appearing on either side. The learned Judges of the High Court have wholly misconstrued the ratio of the earlier decisions of this Court wherein what was really deprecated was the wholesale reservation of seats made by some of the State Governments on the basis of domicile or residence requirement within the States or on the basis of Institution preference, regardless of merit. In the decision reported in Dr. Parag Gupta Vs. University of Delhi & Ors. [(2000) 5 SCC 684], to which one of us (Rajendra Babu, J.) was a party, after a careful analysis of the earlier decisions in their proper perspective, has declared the correct position of law to be that the rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than 70% to 80% of the seats available. Indisputably, in this case 25% of the seats in the Post-graduate courses have been earmarked and allotted for being filled up on all-India basis on merit basis. In addition, we have directed that students who had obtained admission on the seats earmarked for All India quota in medical colleges in the State also can compete with the local students in 75% allocated to them in W.P.(C) No. 420 of 2000 (Dr. Prachi Almeida vs. Dean, Goa Medical College) disposed of today, thus, making further demands on the number of seats reserved for local students with the application of the Rule of 10 years residence. Consequently, we see no infirmity whatsoever in Rule III(1)(iii) of the Goa Rules 1998 and the same cannot be said to be merely directory or, for any reason, illegal. An eligibility criteria statutorily stipulated can by no means be held to be directory resulting in a nebulous state of affairs in the matter of selection of candidates for admission. There could be only two alternative courses, namely, either the rule is unconstitutional or illegal for any reason and, therefore, to be struck down or on the other hand valid and invariably and uniformly enforceable without any reservation whatsoever, as binding and mandatory in character. The reasoning of the High Court, therefore, does not deserve to be approved and the same is unsustainable.

So far as the alternate plea advanced on behalf of the first respondent to justify the ultimate relief granted in favour of the first respondent is concerned, the same has merit of acceptance in our hands. Section 58 of the Goa, Daman and Diu Reorganisation Act, 1987 provides that "on and from the appointed day, the Government of Goa shall, in respect of the technical institutions located in the State of Goa continue to provide facilities to the persons resident in the territories comprising the Union Territory of Daman and Diu which shall not in any respect be less favourable than those which were being provided to them immediately before that day" Though an attempt has been made by the learned counsel for the appellants

to urge that the words 'technical institutions' may not be appropriate to comprehend within it the medical colleges, the said plea does not appeal to us or commend for our acceptance. The word 'technical' is described in the Concise Oxford Dictionary to mean a particular art, science or of applied science or vocational training dealing with applied science. It is trite to say that when a word has many etymological meanings attributed to it, the same takes its true colour from the text and context. The dictionary meaning of the word 'technical' is also 'professional' and is used in contradiction with pure sciences to prepare professionals in applied sciences. If that is the textual meaning, the context is to extend facilities to all persons resident in the erstwhile Union Territory of Goa, Daman and Diu even after separation of State of Goa from the same. While that be the position, it cannot possibly or legitimately be contended that the medical college or studies in Post-graduate course does not involve applied science. That apart, we find that Section 58 is almost akin, in its purpose and object to Section 113 of the States Reorganisation Act, 1956. Though the said Act had a Schedule of its own enumerating the details of such matters, the Statement of Objects and Reasons pertaining to Section 113 makes it clear that those provisions were enacted with the object of continuing the facilities in certain classes of State Institutions such as Engineering Colleges, Medical Colleges, Government Hospitals, Research Institutions, etc. Keeping in view, therefore, the purpose and object of the provisions engrafted in Section 58 and having regard to the nature of the same to be protective in character, a liberal construction such as the one placed by us could only further the legislative intent and cannot be said to be, in any manner, unwarranted or unjustified. Except clarifying the correct position of law as indicated above, we do not consider it necessary on the facts of the case to deny the ultimate relief granted in the case in favour of the first respondent since it is not in dispute or controversy that if the domicile in the Union Territory during the earlier period is taken into account, he would satisfy the requirement of ten years residence.

The appeal is allowed only to the extent of declaring the correct position of law on the validity and enforceability of Rule III(1)(iii) of the Goa Rules 1998 as indicated above. The first respondent, since had already made his application, shall be considered for admission for the course said to be commencing in September, 2001. There will be no order as to costs.

.....J.

