

v\237
SLP(C)No. 15647 OF 2003

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.15647 OF 2003

SHWETA GOYAL & ORS.

.....
APPELLANT(S)

:VERSUS:

A.B.V.P. & ORS.

.....
RESPONDENT(S)

WITH

SLP(C) Nos.16953/2003, 17454/2003, 16958/2003,
17455/2003, 17456/2003, 17290/2003, 17457/2003,
17458/2003 and I.A. Nos.1-2 in SLP(C) No...CC 8551/2003

O R D E R

All the above noted special leave petitions arise out of the Judgment and order passed by the Bombay High Court dated September 2, 2003. The SLPs have been preferred by different parties, namely, Akhil Bharatiya Vidyarthi Parishad, who is the petitioner in the public interest litigation filed in the Bombay High Court, the students who had undertaken entrance examination test for admission to the Dr. D.Y. Patil Vidyapeeth, Navi Mumbai and others, the State of Maharashtra and by the medical colleges as well. It may be indicated that Dr. D.Y. Patil Vidyapeeth, Pune, is one of the respondents in the appeals filed by the petitioners in the High Court.

In the present case the dispute relates to the admission to the MBBS/BDS courses in Dr. D.Y. Patil Vidyapeeth, Navi Mumbai and also relating to the admissions on the remaining unfilled seats of the Dr. D.Y. Patil Vidyapeeth, Pune. In the writ petition filed in the public interest litigation some other prayers also seems to have been made, namely, for withdrawal/cancellation of the status of the Deemed University conferred upon the aforesaid medical colleges as well as to set aside the exception made in favour of the Bharati Vidyapeeth. Some dispute relating to the fee structure is involved but the High Court, while disposing of the matter, has confined it to the admissions for the current year. The other two matters are yet to be considered and decided by the High Court.

The above noted three medical colleges, i.e. Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, the other at Pune and the Bharti Vidyapeeth are private unaided institutions. According to the norms prevailing, the session in the medical colleges are to start from July 1 every year. Any changes, if necessary, in the matter of admissions have to be finally completed by September 30, w hereafter it is not permissible at all.

Dr. D.Y. Patil Vidyapeeth, Navi Mumbai started its process of selection, by issuing advertisement in the month of March 2003. After the receipt of the applications, it appears that the entrance test was also held and the process continued when a petition in public interest litigation

ation was preferred in the Bombay High Court with a prayer, as indicated earlier, for cancellation of the Deemed University status of the aforesaid private medical colleges and that the admissions to those colleges should be made through State agencies. This petition was directed against Dr. D.Y. Patil Vidyapeeth, Navi Mumbai. An interim order was passed on 20th June 2003, to the effect that the selection process may go on but the final admissions shall not be made. At that stage, some students approached this Court by filing an SLP which is SLP(C) No.15647/2003. In the meantime, a decision in the case of Islamic Academy of Education & anr. vs. State of Karnataka & ors. [(2003) 6 SCC 697] was rendered by this Court on 14th August, 2003, with a view to clarify the position as emerged on the basis of the decision rendered earlier by a 11-Judge Bench in the case of TMA Pai Foundation & ors. vs. State of Karnataka [(2002) 8 SCC 481], which is commonly known as TMA Pai case.

The High Court took up the matter regarding admissions for the current year, considering the above noted two decisions, and found that private medical colleges were not supposed to conduct their own entrance tests. It should be done through State agency or jointly by all of them together. It was also considered that according to the decisions of this Court, some quota of seats for the management may be permissible but rest of the seats would be filled up by the State keeping in view the local position as well. Since the time was running out, the Court called upon the University Grants Commission (UGC) to suggest the ways and means to fill up the seats in these medical colleges. The learned counsel for the UGC on the basis of its instruction, informed to the Court on 26.08.2003 that the State Government would be designated as UGC agency for admissions for 2003-04 but merit and All India character of entrance test must be maintained.

The High Court came to the conclusion that in the circumstances as then existing, there were only two alternatives which were available, the first, to take into account the entrance test which is held by the Central Board of Secondary Education, for 15% seats of central pool, and list of such candidates who have not secured admission against that 15% quota, would be available and the candidates may be drawn for admission, from that list. The other alternative was that the UGC would nominate its agency for the purposes of holding an All India Entrance Test. The UGC nominated the State itself as its agency for the purpose. According to the norms of the UGC the entrance test should be held on All India basis. It is in so far as it relates to admissions to Dr. D.Y. Patil Vidyapeeth, Navi Mumbai.

As it regards to the other medical college, it was observed that since their session had already started with effect from July 1, and the students from different places as well as from other States and countries had joined the college and have been undergoing the courses, therefore, it was not feasible to disturb them. However, the seats which may have fallen vacant or may be available to be filled up, they would also be filled up according to the suggestions/alternatives indicated above for the purpose of admission in the case of Dr. D.Y. Patil Vidyapeeth, Navi Mumbai.

The main contention raised on behalf of these medical colleges and the students is that the Deemed Universities are governed by the provisions of the University Grants Commission Act. The entrance test of the Deemed University have to have a character of All India test. All these private medical colleges, as indicated by them, had held the tests on All India basis. Where as the list available with the State, in regard to the test held for the purpose of the admission in the State medical colleges, does not responds to All India criteria. Therefore, it cannot be made use of. So far as the remaining candidates, against 15% quota seats in the central pool are concerned, it was a test in which many do not opt to undertake that entrance test. That being the position, the students who had undertaken the test conducted by these private medical colleges, would be totally deprived of any opportunity and would be out of the consideration, which will amount to total denial of opportunity for the purpose of admission to the said medical colleges.

It is also indicated that in all, there are seven Deemed Universities in India which run private medical colleges. All other Deemed Universities have been allowed and have held their own entrance test and the students are studying in pursuance thereof. So far as the Dr. D.Y. Patil Vidyapeeth, Pune, is concerned there also the common entrance test was held and finally admissions were also made. The writ petition against the Bharati Vidyapeeth was filed only after admissions had been made and the session had already started on 7.7.2003. Therefore, one of the submissions, as advanced on behalf of the medical colleges and the selected candidates is that only exception cannot be made in regard to Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, whereas all other students in other Deemed Universities/medical colleges selected by the colleges themselves are being allowed to continue their studies.

It is, however, to be noted that Bharati Vidyapeeth was exempted by the State from proposed selection exercise by the State Government for admission to that college. It may be noticed that the Bharati Vidyapeeth is also one of the private medical colleges upon which the status of

Deemed University has been conferred. One of the submissions which has been advanced by the learned counsel for different parties is that if one such Vidyapeeth is given exemption, other Vidyapeeths should not be treated differently. Mr. Lalit, learned counsel indicated that it was so done since a petition in relation to Bharati Vidyapeeth Medical College is pending in this Court.

Mr. Uday Umesh Lalit, learned counsel appearing for the State of Maharashtra and learned senior counsel appearing on behalf of the Akhil Bharatiya Vidyarthi Parishad have submitted that according to the decisions rendered in the case of TMA Pai (supra) and the later decision of the Constitution Bench in Islamic Academy (supra), the private medical colleges are not entitled to hold their own entrance tests for admissions. Reliance has been heavily placed on paragraph 21 of the decision in Islamic Academy case where this Court has observed that looking to the time constraint, in the current session the admissions may be in ratio of 50%:50% for the State and the management seats except where any interim order was passed by this Court.

That being the position, it is submitted by Shri Lalit that in any case, 50% of the seats should be allowed to be filled by the State. It is also submitted that till the previous year, before the conferment of Deemed University status on these medical colleges, seats were filled up by the common entrance test held by the State. It was also indicated that as early as in April 2003, the State of Maharashtra had intimated to the private medical colleges that a common entrance test for admission shall be held by the State. Thereafter, directions were also issued by the Central Government on May 14, 2003. Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, had even filed a writ petition in Bombay High Court impugning such directions and instructions of the State Government but no interim order was granted by the High Court. Despite that, these private medical colleges brazenly continued with the admission process in violation of the directions/notifications issued by the State Government.

On behalf of Dr. D.Y. Patil Vidyapeeth, Pune, it has been submitted that a writ petition was filed jointly by some of the private medical colleges in the Nagpur Bench of the Bombay High Court. A detailed order was passed by way of an interim order permitting the private medical colleges to go ahead with the admissions. Its submission is that there was no interim order operating against Dr. D.Y. Patil Vidyapeeth, Pune. It is a different matter that interim order was not granted in the writ petition filed on their behalf but there was no injunction restraining the Vidyapeeth, Pune from holding the test. The same submission is also made on behalf of Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, according to which they were permitted to carry on selection process and only admissions were not to be given. Therefore, the submission is that it cannot be said that they had been carrying on the selection in violation of any Court order. It is submitted that the instructions were issued by the State Government as well as by the Central Government but it would be evident from the instructions issued by the Central Government that they would not be applicable to the Deemed Universities. One of the essential features on the basis of which the status of Deemed University is conferred on such institutions is that admission to such medical colleges is made on All India basis. Therefore, it was not possible for these institutions to accept any other method of selection which did not bear All India character. To indicate that the case of the Deemed University is different from the case of other private medical colleges our attention has been drawn to some of the provisions of the University Grants Commission Act.

Arguments have been advanced from both sides in some details. For disposal of the matter at this interim stage, we do not find it necessary to refer to the detailed arguments or to the decisions which have been cited by each side. The whole matter is yet to be decided on merits. Apparently, the matter seems to be quite arguable on merits from both sides. Presently we are called upon to take care of the admissions to be made in the current year, particularly keeping in mind the time constraint, since it is running out and learned counsel appearing on behalf of the MCI before us, had only stressed that the Court may see to it that the time schedule is not disturbed and all the admissions must be completed by the 30th of September. Learned counsel appearing on behalf of the UGC also submitted that in compliance to the order passed by the High Court, the UGC has sent communication relating to the list of the remaining candidates in the combined tests held for 15% central pool quota and it has also nominated the State Government as the agency for the admissions to the Deemed University. It is, however, submitted that it is essential to maintain All India character of the entrance test.

The factual position that emerges is that out of the seven Deemed Universities running medical colleges, they have held their entrance tests. It is indicated on behalf of the Dr. D.Y. Patil Vidyapeeth, Pune, that it had 17 centers at different places and the entrance tests held by these Deemed Universities bear All India character. Out of the 7 Deemed Universities, specific direction will be only in regard to Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, to fill up the seats opting any of the two alternatives indicated in the impugned judgment. Out of the two alternatives, learned counsel appearing for the State of Maharashtra submits that in any case, at least 50% of the seats, in view of paragraph 21 of this Court's decision in Islamic Academy (supra), should go to the State Government. That is, to say, an exception is to be made only

y in respect of the 50% of the seats of one of the seven Deemed Universities/medical colleges . We do not consider it feasible to do so. The two such reasons we would like to mention again are that the State list is prepared out of entrance test for the State medical colleges. It is not the entrance test of All India character and the other is that the remaining list available against 15% central pool quota, is out of the test which is held for a limited purpose of central pool seats, quite a number of candidates do not appear to undertake that test. In the event of acting upon any of the two alternatives, suggested by the High Court, the students who had not appeared in any of the selection tests, would get completely out of the picture without having any opportunity to compete for the seats of these private medical colleges since there is no likelihood of holding of any common entrance test by State as agency of UGC. There is no time left to hold any fresh selection.

We, therefore, provide that for the current year the admission to the MBBS/BDS courses in Dr. D.Y. Patil Vidyapeeth, Navi Mumbai, shall be made from the list of successful candidates in the combined entrance test/selection held by it. The directions given by the High Court for filling up the vacant seats, if available for any reason, in any of the other two institutions, namely, Dr. D.Y. Patil Vidyapeeth, Pune or Bharati Vidyapeeth the operation of that part of the judgment is also stayed and the available seats shall be filled from the select list prepared by the aforesaid medical colleges. It is clarified that this arrangement is only in regard to the current year.

It would, however, be desirable that the matter is heard and the controversy, which may still remain to be resolved, may be cleared well before ensuing session in respect of the selection process which may perhaps start some time by the month of March next year. We would, therefore, like to observe that, looking to the urgency in the matter, these matters may be posted for final disposal some time in the month of January, 2004, subject to the approval of Hon'ble the Chief Justice of India.

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)
NEW DELHI;
SEPTEMBER 25, 2003.

ITEM No.1
(PART-HEARD)

Court No.10

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.15647/2003

(From the judgement and order dated 20/06/2003 in WP 21321/03
of The HIGH COURT OF BOMBAY)

SHWETA GOYAL & ORS.

Petitioner (s)

VERSUS

A.B.V.P. & ORS.

Respondent (s)

(With Appln(s). for intervention and with prayer for interim relief)

With

SLP(C)No.16953/2003(With prayer for interim relief and Office Report)
SLP(C)No.16958/2003(With prayer for interim relief and Office Report)
SLP(C)No.17290/2003(With prayer for interim relief and Office Report)
SLP(C)No.17454/2003(With prayer for interim relief)
SLP(C)No.17455/2003(With prayer for interim relief and Office Report)
SLP(C)No.17456/20039(With prayer for interim relief)
SLP(C)No.17457/2003(With prayer for interim relief and Office Report)
SLP(C)No.17458/20039(With prayer for interim relief and Office Report)
I.A. 1-2 in SLP(C)...../2003 (CC 8551/2003)(For permission to file SLP and with prayer for int
erim relief)

Date : 25/09/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For the appearing
parties

Mr. Shanti Bhushan,Sr.Adv.
Mr. Anil Diwan,Sr.Adv.
Mr. Kapil Sibal,Sr.Adv.

Mr. Vikas Singh,Adv.
Mr. Yunus Malik,Adv.
Mr. K.K. Venugopal,Sr.Adv.
Mr. Dinesh Kumar Garg,Adv.
Mr. Sanjay K. Pathak,Adv.

Dr. Meera Agarwal,Adv.
Ms. R.C. Mishra,Adv.

Mr. Ajay Sharma,Adv.
Dr. Indra Pratap Singh,Adv.
Mrs. Rachna Gupta,Adv.

Mr. Ashok H.Desai,Sr.Adv.
Mr. Bhimrao Naik,Sr.Adv.
Mr. S.V. Deshpande,Adv.
Mrs, A. Rastogi,Adv.

Mr. Maninder Singh,Adv.
Ms. Pratibha M.Singh,Adv.
Mr. Ankur Talwar,Adv.
Mr. Angad Mirdha,Adv.....2/-

Mr. Balwant P. Apte, Sr. Adv.
Mr. Bhupender Yadav, Adv.
Mr. R.C. Kohli, Adv.

Mr. Amitesh Kumar, Adv.
Mr. Navin Prakash, Adv.

Mr. Rakesh Divedi, Sr. Adv.
Mr. Prashant Chaudhary, Adv.

Mr. Kapil Sibal, Sr. Adv.
Mr. Kailash Vasdev, Sr. Adv.
Mr. Satyajit Saha, Adv.
Mrs. V.D. Khanna, Adv.

Mr. Uday Lalit, Adv.
Mr. R.K. Adsure, Adv.

Mr. Gourab K. Banerjee, Adv.
Mr. Saurar Agrawal, Adv.
Mr. C.S. Ashri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties exhaustively.
The admissions to the MBBS/BDS courses are directed to be made in terms of the signed order.
These matters be posted for final disposal some time in the month of January, 2004, subject to
the approval of Hon'ble the Chief Justice of India.

(A.S. BISHT) (JANKI BHATIA)
COURT MASTER

COURT MASTER

(Signed order is placed on the file)