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GUJARAT UNIVERSITY

v.

RAJIV GOPINATH BHATT AND ORS.

MAY 1, 1996

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[A.M. AHMADI, CJ, N.P. SINGH AND B.N. KIRPAL, JJ.]

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Constitution of India 1950—Article 14—Admissions—Super speciality courses—Rule framed by University that out of merit list prepared, preference to be given for admission to the students of that University—Whether can be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution—Held No—Education—Higher Education—Admission to super speciality courses.

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For admission in the super speciality course of M.Ch. (Master of Chirurjee) in Onco surgery, considering the limited number of seats, the appellant University in its rules for selection of the candidates for admission provided that first preference would be given to the students of the appellant-university and though the students from other Universities were not denied admission they would rank next to the students of the appellant-university.

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The appellant invited applications for admission to two years' super speciality courses of D.M. and M.Ch. The respondent was denied admission on the ground that he was not a student of the appellant-university. In the writ petition filed on his behalf, the High Court directed the appellant university to grant admission to the respondent in the super speciality courses of M.Ch. in Onco surgery. It was held that students who passed M.D./M.S. examination either from appellant university or from any other university recognised by the appellant university were eligible for being admitted to the super speciality courses in question and the clause saying that preference will be given to the students of the appellant university was violative of Article 14 of the Constitution of India. The High Court observed that the court cannot allow excellence to be compromised for any other consideration. This appeal had been filed against the order passed by the High Court.

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Allowing the appeal, this Court

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HELD : .1.1. Object of any institution while selecting applicants for

admission is to select the best amongst the applicants, regional and other consideration which do not satisfy the test of Article 14 of the Constitution should not affect the merit criteria. But from time to time, this Court taking into consideration the local regional compulsion has been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super speciality courses arises, in which the seats are limited in number. Therefore if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the university in question *per se* it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution. [187-E-F; 188-D]

1.2. As the object and purpose of the part of the impugned rule which provides "any vacancy remaining after this shall remain unfilled" has not been explained, this part of the rule cannot be held rational. It is only just and proper that the university should examine and give a fresh look to the said rule making provision for filling up even such vacancies which are not filled for one reason or the other : of course within the time schedule prescribed for the super speciality courses. [188-E-F]

Jagdish Saran v. Union of India, [1980] 2 SCC 768, distinguished.

Pradeep Jain v. Union of India, [1984] 3 SCC 654; *Dinesh Kumar v. Motilal Nehru Medical College*, [1986] 3 SCC 727 and *Anant Madaan v. State of Haryana*, [1995] 2 SCC 135, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7565 of 1996.

From the Judgment and Order dated 30.9.91 of the Gujarat High Court in S.C.A. No. 4215 of 1991.

R.R. Kumar and P.H. Parekh for the Appellant.

Ms. Kiran for Vineet Kumar for the Respondent No. 1.

Yashank Adhyaru for R. Sasiprabhu, for the Respondent No. 2.

The Judgment of the Court was delivered by

A **N.P. SINGH, J.** Leave granted.

B This appeal has been filed on behalf of the Gujarat University (hereinafter referred to as the university) for setting aside an order dated 30.9.1991, passed by the Court directing the appellant-university to grant admission to the respondent No. 1 (hereinafter referred to as the respondent) in the super speciality course of M.Ch. (Master of Chirurgee) in Onco surgery, in the session which commenced from 1.7.1991.

C It appears that the appellant-university invited applications for admission to two years' super speciality courses of D.M. and M.Ch. commencing from 1.7.1991. An entrance examination was also conducted to select the students for admission in the aforesaid courses. The number of seats in the super speciality courses are very limited, because of in which the rule framed by the appellant-university it has been provided that the first preference shall be given to the students of the appellant-university. The students from other universities are not denied admission but they D have to rank next to the students of the appellant-university. As the respondent aforesaid was denied admission on the ground that he was not a student of the appellant-university, a writ petition was filed on his behalf, before the High Court, which as already stated above was allowed by the impugned order.

E When the appeal was taken up for hearing, counsel appearing for the parties, informed the Court that this appeal has become infructuous, because on basis of the order passed by the High Court, the respondent was allowed to join the course and he has already completed the course. In this background, this Court is not actually required to examine the grievance made on behalf of the appellant-university in respect of the directions given by the High Court. However, the learned counsel, appearing for the university drew the attention of the Court to the relevant rule for selection of the candidates for admission in the super speciality courses: F

G "O.M.S. - 16 : Selection for super-specialities courses (i.e. M.Ch and D.M.).

H 1. First preference will be given to candidates from Gujarat University. Second preference will be given to candidates from other Universities of Gujarat State. Any vacancy remaining after this shall remain unfilled.

2. Post-graduate degree qualification i.e. M.D. or M.S. is essential. A

3. The Vice-Chancellor will arrange thereby examination for the candidates, preferably objective. No practicals will be held. The result of this examination will be sole criterion for admission and decision of the Vice-Chancellor will be final". B

The stand of the university in the affidavit in reply filed before the High Court, was that the basis of the admission is merit; only preference is to be given to the students of the appellant-university. The High Court has pointed out that students who have passed M.D./M.S. examination either from the appellant- university or from any other university recognised by the appellant-university are eligible for being admitted to the super speciality courses in question, and the clause saying that preference will be given to the student of the appellant-university was violative of Article 14 of the Constitution of India. In this connection reference was made by the High Court to the judgments of this Court in the cases of *Jagdish Saran v. Union of India*, [1980] 2 SCC 768 and *Pradeep Jain v. Union of India*, [1984] 3 SCC 654, where it has been observed that the court cannot allow excellence to be compromised for any other consideration. C D

Without examining that question in detail it may be pointed out that the aforesaid judgments were not in connection with the admission in super speciality course. At the same time, we reiterate that object of any institution while selecting applicants for admission is to select the best amongst the applicants, regional and other considerations which do not satisfy the test of Article 14 of the Constitution should not affect the merit criteria. But from time to time, this Court taking into consideration the local and regional compulsions have been making efforts to strike a balance so that the students who have pursued the studies in a particular State and have been admitted in the medical colleges of that State are not suddenly thrown on the street when question of their admission in super speciality courses arises, in which the seats are limited in number. In the case of *Pradeep Jain v. Union of India*, (supra) this Court has observed : E F G

"We are, therefore, of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and H

- A not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State....."

B The same question was again examined in the case of *Dinesh Kumar v. Motilal Nehru Medical College*, [1986] 3 SCC 727. Recently, in the case of *Anant Madaan v. State of Haryana*, [1995] 2 SCC 135, it was said :

- C The eligibility condition, therefore, which requires that the candidate should have studied 10th, 10 + 1. and 10 + 2 classes from a recognised institution in the State of Haryana is neither arbitrary nor unreasonable and the Punjab and Haryana High Court has rightly upheld the same."

- D Therefore, if a rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the university in question perse it cannot be held to be arbitrary, unreasonable or violative of article 14 of the Constitution.

- E The learned counsel, appearing for the appellant-university, could not explain the object and purpose of part of the impugned rule which provides "any vacancy remaining after this shall remain unfilled". This part of the rule cannot be held to rational. It is only just and proper that the university should examine and give a fresh look to the said rule making provision for filling up even such vacancies which are not filled for one reason or the other; of course within the time schedule prescribed for the super speciality courses.

The appeal is accordingly allowed to the extent indicated above. In the facts and circumstances of the case, there shall be no orders as to cost.

- G R.A. Appeal allowed.