

Parmesh Pachar Vs. Convener, Central Undergradutate Admission Board and Principal and Controller of S.M.S. Medical College and Attached Hospitals

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SooperKanoon Citation : sooperkanoon.com/758160

Court : Rajasthan

Decided On : Apr-10-2003

Reported in : RLW2003(4)Raj2284; 2003(3)WLC137

Judge : Anil Dev Singh, C.J. and; S.K. Keshote, J.

Acts : [Constitution of India](#) - Article 226; [Indian Medical Council Act, 1956](#)

Appeal No. : D.B. Civil Writ Petition (PIL) No. 5438 of 2001

Appellant : Parmesh Pachar

Respondent : Convener, Central Undergradutate Admission Board and Principal and Controller of S.M.S. Medical Coll

Advocate for Def. : Narendra Jain and; P.K. Sharma, Adv.

Advocate for Pet/Ap. : R.D. Rastogi, Adv.

Disposition : Writ petition allowed

Judgement :

Anil Dev Singh, C.J.

1. By this writ petition the petitioner seeks following reliefs :-

' (i) issue an appropriate writ, order or direction declaring the petitioner fully eligible to get admission in M.B.B.S./BDS course in view of his merit standing;

(ii) issue an appropriate writ, order or direction directing the respondent not to interfere in any manner whatsoever with the admission that has been granted to the petitioner in M.B.B.S. Course at Mahatma Gandhi National Institute of Medical Sciences, Jaipur;

(iii) issue an appropriate writ, order or direction directing the respondent that a candidate suffering from colour blindness cannot be held disqualified for admission to MBBS/BDS course;

(iv) any other appropriate order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the present case may kindly be passed in favour of humble petitioner including award of cost of this writ petition.'

2. The petitioner who belongs to OBC category, appeared in the RPMT held in May, 2001 under Roll No. 6011. He secured 870 marks. His name was placed in the list of successful candidates. On 30.8.2001, first counselling was held at the S.M.S. Medical College, Jaipur, as a result of which, the petitioner was allotted a seat in the BDS Course and was assigned to S.M.S. Medical College. Subsequently, on 28.9.2001, when second counselling took place, the petitioner was offered a seat in the MBBS Course in the Mahatma Gandhi National Institute of Medical Sciences, Jaipur. The petitioner in acceptance of the offer deposited a sum of Rs. 46,950 as Tuition Fee & other charges. A receipt evidencing payment of the aforesaid sum of money was issued by the college. On deposit of the aforesaid sum of money, the petitioner was granted admission in the MBBS Course and he started attending the classes. Petitioner was even allotted hostel accommodation by the college. Before the grant of admission to the MBBS Course, the petitioner was medically examined on 7.9.2001. Later, on 16.10.2001 the petitioner was notified that he was found medically unfit as he was unable to recognize the red and green colours when subjected to Edridge green lantern test with 13 and 1.3 mil. aperture. After the receipt of the aforesaid notice, the

petitioner on 18.10.2001 requested the College for conducting a fresh medical examination of his eyes. The respondent acceding to the request of the petitioner constituted a second Medical Board vide order dated 31.10.2001 read with order dated 6.11.2001: On 7.11.2001 the petitioner was re-examined by the Board but was again declared medically unfit. Thereupon the petitioner, by an application dated 10.11.2001 to the respondent, requested for copies of the medical reports. It appears that copies of the medical reports were not given to the petitioner. As a result of the opinion of the Medical Boards his admission to the MBBS Course was cancelled. Aggrieved by the action of the respondent, the petitioner has filed the instant writ petition.

3. In response to the writ petition, the respondent filed its reply. Along with the reply, the respondent has filed the medical report of the second Medical Board. The report reads as follows:-

'ToThe Principal SMS Medical College,Jaipur.Ref: You office order No. MC/GS/RPMT-ADM/2001/3425 dated 31.10.2001 Respected Sir, In reference to your above mentioned office order, we the member of Board have examined Mr. Parmesh Pachar s/o Shri Suraj Bhan Singh for his colour perception today, the 1st Nov., 2001. We have found that Mr. Parmesh Pachar has not been able to appreciate red and green colour on Ishihara colour vision chart and also not able to appreciate red and greed colour on Edirich green lantern with wide aperture (13 mm) so he has colour blindness for red and green colour both. This is for your approval and necessary action.

sd/- sd/- sd/-(Dr. Indu Arora) (Dr. P.K. Mathur) (Dr. Anita Khunteta)Prof., of Prof., of Ophth. Prof., of Ophth.Ophthalmology Member MemberConvenor' (The above extract of the report has been reproduced as it exist on the record)

Notwithstanding the aforesaid report, this Court on 5.7.2002, directed the respondent to re-examine the case of petitioner for admission to the MBBS Course. Pursuant thereto, the case of the petitioner was placed before the Central Undergraduate Admission Board for consideration. The Admission Board, on 19.7.2002 took the following decision :-

'5. Regarding case of Parmesh Pachar whose admission was cancelled in 2001 pm account of being medical unfit, the board members decided to decide eligibility as per Govt. of Rajasthan Service rule and since he is unfit as per Rajasthan Service Rules he is unfit for medical course also.' (The above extract of the decision has been reproduced as it exist on the record).

On 16.9.2002 a further direction was issued by this Court to the respondent to obtain specific opinion from medical experts with regard to the question as to how colour blindness of the petitioner will hamper or cause hindrance in pursuing the MBBS Course. In compliance with the direction, a fresh Medical Board was constituted by the respondent on 14.10.2002. The Board, on 14.10.2002 took the following opinion incorporated in the letter :

'The Principal, SMS Medical College, Jaipur Sub : Opinion of medical board regarding colour blindness of Mr. Parmesh Prachar Ref : Your office order No. FGS/PN/MC Ad-2001/Col. bnd/dt. 4.10.2002. Dear Sir,

Regarding the matter cited above we the board members submit that all the students admitted to MBBS Course are subjected to Medical Board examination including colour vision examination.

The medical board has perused the documents provided by the candidate in the writ petition. Mr. Parmesh Prachar has severe colour blindness and cannot identify two primary colour (Red & Green) on wide aperture on Edrich G lantern test. Reading and writing will not be affected by colour blindness, but medical studies also require labouratory and clinincal work-up where colour differentiation is important criteria, like, to identify various tissue cells under microscope, to identify different structure during surgery etc. Regarding ophthalmology, he may not differentiate between artery and vein during funds examination. As Mr. Parmesh Prachar has severe colour blindness, this will hamper his normal MBBS studies. However further guideline may be taken from Medical Council of India for admission criteria.

sd/- sd/- sd/-(Dr. Subhash Sharma) (Dr. Indu Arora) (Dr. P.K. Mathur)convenor & PHOD Member & Prof. Member & Prof.sd/- sd/-(Dr. Anila Khuteta) (Dr. Kamlesh

Khilnani)Member & Professor Member & Assoc. Prof.' (The above extract of the opinion of the Board has been reproduced as it exist on the record).

4. We have heard the learned counsel for the parties.

5. The question which arises for consideration is whether the petitioner, who is suffering from colour vision deficiency, could be debarred from pursuing MBBS Course. The respondent, while cancelling the admission of the petitioner to the MBBS Course, proceeded on the basis that the petitioner suffers from severe colour blindness. Since medical studies require laboratory and clinical work-up where colour differentiation is an important criteria, his deficiency will hamper his normal MBBS studies. The Undergraduate Admission Board rejected his eligibility for the medical course on the touch stone of Service Rules of the State of Rajasthan. At the first blush, the reason given for rejecting his eligibility for admission to the MBBS Course, appears to be based on relevant considerations. But on a closer scrutiny, the reason cannot stand the test of reasonableness, fair play and justice. Besides, the reasoning is arbitrary. It may be noticed that in case the petitioner is given admission and qualifies as an MBBS doctor and is registered as such, he can engage himself in private practise as a general physician. To deny admission on the basis that the petitioner will not be able to qualify for government service was not a valid ground for depriving the petitioner of the seat in the MBBS Course. As a general physician in private practise he can treat patients and prescribe medicines. The Central Undergraduate Admission Board applied a wrong test for debarring the petitioner from pursuing the MBBS Course. It is difficult to imagine as to how the Admission Board could reject the candidature of the petitioner on the ground that since he was unfit for service as per Rajasthan Service Rules, he was unfit for medical course as well. The petitioner had not applied for a job with the State Government. He had applied for admission to a medical course. Medical Board was not right in deciding the eligibility of the petitioner on the aforesaid criteria, which has no legal basis at all. All the MBBS doctors do not take up government jobs. Some of them take to teaching after post graduation, and others join private hospitals and clinics. Large number of them also set up their own practises. The test applied by the Admission Board is arbitrary and violative of the equality clause. The petitioner has been

unfairly treated by the Admission Board.

6. The petitioner is a meritorious student. He was selected first for the BDS Course; which he had to give up on his selection to the MBBS Course. He even joined the Medical College and paid a sum of Rs. 46,950 as Tuition fee and other charges. It is correct that in some of the areas of medicine, a student suffering from colour blindness will encounter difficulty. A pathologist with colour vision deficiency will not be able to examine colour slides under a microscope. Therefore, the petitioner, since he is having colour vision deficiency, cannot be allowed to become a pathologist. But there are other disciplines of medicine where colour blindness is not a handicap. In psychiatry, anesthesiology and preventive community medicines, colour blindness is not a hurdle. The Delhi High Court in *Dr. Kunal Kumar v. Union of India and Ors.*(1), analysing colour blindness, observed as follows :-

'13. Before dealing with this aspect, few words about colour blindness :-

Colour blindness is a misnomer as it refers to blindness which is normally understood as inability to see. In case of a colour blind person, the person is able to see colours, but has a reduced spectrum and there is inability or deficiency to distinguish colours. Colour blindness is a malfunction of the retina, which converts light energy that is then transmitted to the brain. This conversion is accomplished by two types of photoreceptor cells in the retina; rods and cones. The retina has about 120 million rods and about 6 million cones. Colour blindness occurs when the cones, which are used for distinguishing colours either become deficient or some of them, are non functional. It should appropriately be called colour vision deficiency, rather than colour blindness. Colour deficient patients are not completely red or green blind. Compared to persons with normal colour vision, they have some troubles differentiating between certain colours, but the severity of the colour deficiency is variable.'

Thus, a person suffering from colour vision deficiency, is able to see colours but he may have difficulty in distinguishing them. A person suffering from colour vision deficiency is not completely blind to Red and Green colours.

7. The petitioner has placed on record material to show that in various foreign universities and colleges, students suffering from colour vision deficiency are allowed admission in medicine.

The Assistant Dean, Admissions & Student Affairs in Dalhousie University- Faculty of Medicine, Halifax, Nova Scotia, Canada, in his letter dated 14.5.2002 to the petitioner has stated that colour blindness, by itself, cannot be held against the petitioner if he was applying to Dalhousie Medical School.

Associate Dean, Admissions in Faculty of Medicine of McGill University, Montreal, Canada, in his letter dated 22.4.2002 to the petitioner has pointed out that colour blindness would not make him ineligible to apply if he was applying to Faculty of Medicine, McGill University.

Admissions and Outreach Counselor, Stanford University School of Medicine, Stanford, Canada, in his Email message dated 26.6.2002 to the petitioner, has categorically stated that colour blindness does not make the petitioner ineligible to apply for admission, however, it will limit his choices in terms of choosing an eventual specialisation.

Professor Roger Robinson, Retired Professor of Paediatrics at Guy's Hospital Medical School, London, U.K., in his Email dated 28.6.2002 to the petitioner stated as follows :-

'Dear Parmesh,

To me it is incomprehensible that anyone should even consider red-green colour blindness to be a bar to admission to medical school. As far as I know, such a thing is unheard of in any British medical school, and would be regarded as wholly unacceptable discrimination. The usual figure quoted for the frequency of red-green colour blindness in males (I guess in white Europeans) is around 7% to 8%. Since UK medical schools certainly don't apply any selection in relation to colour vision, the proportion must be about the same among male British doctors. I have never heard it suggested that they have any problems in clinical or other work.

I am red-green colour blind myself, and never found this any problem in clinical medicine : my last fifteen years before I retired were spent as Professor of Paediatrics at Guy's Hospital Medical School (now part of King's College London). My very best wishes for your appeal.

Yours sincerely

Roger Robinson'

An Email from Liverpool Medical School, Liverpool, U.K., dated 17.6.2002 addressed to the petitioner, confirms that colour blindness would not affect his application to study at Liverpool Medical School.

Admissions Officer, School of Medicine & Dentistry, Queen Mary University of London, U.K., in his Email dated 24.6.2002 to the petitioner has confirmed that colour blindness would not preclude the petitioner from applying in medical course at the School of Medicine & Dentistry, Queen Mary University of London.

University of New South Wales, Sydney, Australia, in its Email to the petitioner on 18.6.2002, informed the petitioner that colour blindness will not be a problem for medical program.

In yet another Email dated 14.6.2002 from James Cook University, Australia, the petitioner was informed that his colour blindness would not exclude him from applying to the medical course offered by the University.

To the same effect are the several other Emails from the various foreign universities viz. University of Bristol, U.K., University of Tasmania, Australia, University of Melbourne, Australia, University Western Australia, Australia, Washington University, U.S.A., Albany Medical College, Albany, New York, U.S.A., Columbia University, U.S.A., Indiana University, U.S.A., University of Virginia, U.S.A. New York University, U.S.A., University of Missouri, U.S.A., University of szeged, Hungary; University of Edinburgh, U.K., King's College, London, U.K., University of Glasgow, U.K., University of Dundee, U.K., etc.

8. Thus, it is clear that in British, American, Australian and Canadian medical schools, a student suffering from colour blindness is not barred from being admitted. In the opinion of Professor Roger Robinson, Retired Professor of Paediatrics at Guy's Hospital Medical School, London, as expressed in his letter dated 28.6.2002 (referred to above), denial of admission to a candidate by a medical school on the basis of red-green colour blindness is unacceptable and discriminatory.

9. It is interesting to note that the Medical Council of India has recognised medical degrees of various foreign universities even though they are admitting students with colour vision deficiency or colour blindness. The Second Schedule to the [Indian Medical Council Act, 1956](#), reveals that Bachelor of Medicine and Bachelor of Surgery from University of Bristol, University of Leeds, University of Liverpool, University of London, University of Oxford, University of Sheffield, University of Wales, University of Edinburgh, University of Glasgow, University of Dundee, University of New South Wales, University of Melbourne, Dalhousie University etc., are recognised.

10. It is queer logic that while a colour blind student can seek admission in the aforesaid foreign universities, he cannot seek admission in the home University. In case he qualifies in Bachelor of Medicine or Bachelor of Surgery in spite of his colour vision deficiency, his qualification will be recognised in India just because he has the stamp of a foreign university. The deficiency which is considered to be a handicap for the purposes of grant of admission in a home university, no longer remains a debarring factor. This hypocritical policy has no logic and relevancy.

11. It is significant to note that neither the advertisement nor regulations of the Medical Council of India laid down a condition that a candidate with colour blindness will not be eligible for admission. If there is no such condition in the advertisement inviting applications for admission to the RPMT or in the Medical Council of India Regulations, the Central Undergraduate Admission Board could not nullify the admission of the petitioner on the ground that he was suffering from colour blindness. Colour blindness is not considered to be handicap in the foreign universities. This is in recognition of the fact that there are many disciplines in

medicine where colour blindness is not a handicap.

12. It needs to be noted that modern technology provides lenses to aid those who are colour blind, which to some extent overcomes the abnormality of the eyes ability to distinguish colours. The colour max, colour vision enhancement lenses are being marketed as a corrective and for red and green colour blindness. The Medical Board has not taken into consideration the possibilities of a student adopting technology for colour vision enhancement.

13. In the circumstances, therefore, the writ petition succeeds. The rule is made absolute. The respondent is directed to grant admission to the petitioner in Mahatma Gandhi National Institute of Medical Sciences, Jaipur, in the next session of the MBBS Course.

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