

DR. VIKRANT PARIHAR  
v.  
STATE OF JAMMU AND KASHMIR AND ORS.

SEPTEMBER 6, 2000

[DR. A.S. ANAND, CJ., DORAISWAMY RAJU  
AND SHIVARAJ V. PATIL, JJ.]

*Medical courses—State of Jammu and Kashmir—Post Graduate Entrance Examination conducted in 1995-96—No other entrance examination held—After select list was issued, such of the unsuccessful candidates, who had last participated in 1995 test continued to get selected for admission to various courses year after year—Consequently candidates who passed MBBS examination after 1996 had no chance to compete and pursue Post Graduate Courses—Writ petition filed by applicant in High Court of J.K. seeking enforcement of S.R.O. No. 158 dated 12th July, 1995—Said S.R.O. provided for holding of entrance examination every year and also prescribed the life of waiting list to be one month from the date of regular admission—Beside appellants other candidates also filed a writ petition—As a result of orders made in both the writ petitions, selections for admission, from amongst the 1995-96 candidates, on the waiting list, were stayed—Consequently State was required to hold Competitive Entrance Examination to fill seats in Post Graduate Courses for 1999-2000 Academic Session—Orders passed in both the writ petitions challenged in Letters Patent Appeals—The Division Bench gave two interim directions (1) the process for holding fresh Entrance Examination by Competent Authority for vacancies in P.G. Degree/Diploma Courses be stopped till otherwise directed (2) Candidates possessing higher merit than those who had already been admitted against direct and reserved categories be allowed admission, in case their merit is higher than those who had already been admitted in the respective disciplines to which the petitioners have applied—Both these directions impugned before this Court—Held both the directions cannot be sustained—All the Writ Petitions and Appeals pending in the High Court of Jammu & Kashmir shall be clubbed together and all such cases shall be heard and disposed of within the next three months—The competent authority shall conduct an entrance examination for selection of Doctors for admission to Post Graduate Degree and Diploma Courses on the basis of their merit expeditiously in accordance with SRO No. 158—All eligible candidates whether in the earlier selection*

**A** *list or not shall be entitled to take part in the said entrance examination—Rules relating to reservation of seats, to the extent permissible in law and applicable, shall be respected by the authorities at the time of making selections and admissions—These directions shall not be construed as setting aside the admissions already granted to candidates.*

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4935 of 2000.

From the Judgment and Order dated 17.2.2000 of the Jammu & Kashmir High Court in L.P. A. (SW) No. 34 of 2000.

**C** M.L. Verma, D.D. Thakur, Gopal Subramaniam, G.L. Sanghi, N. Ganpathy, Rohit Kapur, Sanjeev Puri, M.A. Goni Adv. General for (J.&K), J.A. Kawoosa, G.M. Kawoosa, Ashok Mathur, E.C. Agrawala, Rishi Agrawala, Mahesh Agrawala, Vivek Yadav, N.N. Bhatt, Ms. Purnima Bhat Kak, Ashwani Kumar, Sumeet Lal, A.V. Palli, Ms. Rekha Palli, Atul Sharma, Rajiv Talwar, L. Nageshwar Rao, Ramesh Babu M.R., Ms. Shabnam Lone and M.N. Shroff for the appearing parties.

**D** The following Order of the Court was delivered :

Leave granted.

Impleadment and Intervention Applications are allowed.

**E** This case presents a rather disturbing picture. Last Post Graduate entrance examination for admission to various medical courses in the State of Jammu & Kashmir was held on 31st December, 1995 and 1st January, 1996. It is an admitted case of the parties that after that examination, no other entrance examination has been held till date. After the select list was issued,

**F** such of the unsuccessful candidates, who had last participated in the 1995 Post Graduate Medical Entrance Examination, continued to get selected for admission to various courses year after year. As a consequence, all such candidates who passed their MBBS examinations after 1996, have had no chance to compete and pursue post graduate courses in various disciplines

**G** of medicine. According to Mr. M.A. Goni, learned Advocate General for the State of Jammu & Kashmir this situation has arisen mostly because of interim or final orders issued by various Benches of the High Court at the instance of the candidates who had participated in the 1995-96 entrance examination.

**H** The appellant herein filed a writ petition in the High Court of Jammu & Kashmir at Jammu, seeking enforcement/strict compliance with SRO No. 158

dated 12th July, 1995, which inter alia was issued by the State Government to regulate admission to Post Graduate Degree and Diploma courses in various government Medical Colleges in the State. SRO 158 inter alia provides for holding of an entrance examination every year and prescribes the life of the waiting list to be one month from the date of regular admission. It is the case of the appellant that annual entrance examination has not been held since 1995-96 and the waiting list has been operated from 1997 till date to the detriment of the candidates who passed their MBBS examinations between 1996 and 2000. Besides the appellant some other candidates also filed a writ petition in the Srinagar wing of the High Court of Jammu & Kashmir making similar allegations and seeking almost identical relief.

On 3rd November, 1999 following order came to be made by the learned Single Judge in the Srinagar wing of the High Court in the writ petition filed there:

“Admission of the candidates notified vide Annexure K&K- I will be subject to outcome of writ petition. Further selection on the basis of examination said to have been conducted in the year 1995 shall be stayed till next date before the Bench.”

In the Jammu wing of the High Court, an interim order came to be made on 30th December, 1999 in which, inter alia, it was directed that the State and its functionaries shall not fill up any of the seats of Post Graduate/Diploma courses of 1999-2000 academic session, *except by those who come on the basis of the ensuing competitive entrance examination*. As a result of the aforesaid order made at Srinagar and Jammu by the learned Single Judges, selections for admission, from amongst the 1995-96 candidates, on the waiting list, were stayed. The State was required to hold competitive entrance examination to fill the seats in post graduate courses for 1999-2000 academic session. Both these orders were put in issue through Letters Patent Appeals. The appeals were admitted and by way of interim directions, following order was made:

- (1) The process for holding fresh Entrance Examination by Competent Authority for vacancies in P.G. Degree/Diploma Courses be stopped till otherwise directed.
- (2) Candidates possessing higher merit than those who had already been admitted against direct and reserved categories be allowed admission, in case their merit is higher than those who had

A already been admitted in the respective disciplines to which the petitioners have applied.

Both these directions have been put in issue in this appeal.

We have heard learned counsel for the parties at length.

B Since, various Writ Petitions and Letter Patent Appeals are pending in the High Court of Jammu & Kashmir, either at Jammu or at Srinagar and all those petitions and appeals are concerned with admission to Post Graduate Medical Courses, we refrain from expressing any opinion on the merits of those cases. However, we cannot overlook the fact that by interim orders, C impugned herein, the Division Bench has virtually stalled the holding of competitive annual entrance examination as mandated by SRO 158 and has given new lease of life to the five year old waiting list to the prejudice of graduates of post 1996 era by issuing even a direction to accord admissions on the basis of that list. This is not an acceptable situation. It appears that D on account of some conflicting orders made at interim as well as final stage by different Benches of the High Court, confusion has been created and serious dislocation has been caused in according admissions as per rules and proclaimed norms. The future career of medical graduates has been put at stake and rendered nebulous. It therefore, appears appropriate to us to direct that all the Writ Petitions and Letters Patent Appeals, pending in the High E Court of Jammu & Kashmir, in either of the two wings, shall be clubbed together and all such cases shall be heard and disposed of by one Division or larger Bench, to be constituted and assigned for the purpose by Hon'ble the Chief Justice of the High Court of Jammu & Kashmir as he deem fit and proper. In view of the exigency of the matter, we request Hon'ble the Chief F justice of the Jammu & Kashmir High Court to constitute a Special Bench as indicated above and have the matters posted before that Bench, to be heard and disposed of as far as possible within the next three months. We are assured by learned counsel for the parties that no unnecessary adjournments shall be sought by the parties from the specially constituted Bench and parties shall take all steps to complete the pleadings as per directions of that G Bench and to assist the Bench to adhere to the time schedule.

In so far as the impugned directions are concerned, prima facie the first direction runs in the teeth of SRO No. 158, while the effect of the second direction is virtually to decide the writ petition itself at the interlocutory stage. These two directions, under the circumstances, cannot be sustained. We, H therefore, allow this appeal and set aside both the directions. As a result, any

follow up action taken, except to the extent covered or saved by our following directions, would also become invalid and inoperative. We, accordingly, direct as under : A

- (1) The competent authority shall conduct an entrance examination for selection of Doctors for admission to Post Graduate Degree and Diploma Courses in different disciplines in the medical colleges in the State of Jammu & Kashmir on the basis of their merit expeditiously in accordance with SRO No. 158 : B
- (2) All eligible candidates whether in the earlier selection list or not shall be entitled to take part in the said entrance examination: C
- (3) Rules relating to reservation of seats, to the extent permissible in law and applicable, shall be respected by the authorities at the time of making selections and admissions. C

We clarify that the above directions shall not be construed as setting aside the admissions already granted to candidates who are pursuing various post graduate courses, pursuant to orders made by different Benches of the High Court or by this Court and the ensuing entrance examination shall be held to fill the determined vacancies for 1999-2000 academic session for the postgraduate medical courses (Degrees and Diploma). D

Our directions shall also not disturb any order of admission of a candidate that has acquired judicial finality, provided such a candidate has been so admitted and is pursuing his course of post graduate study. E

Our first direction to the competent authority to conduct the next entrance examination shall be faithfully and punctually complied with, notwithstanding any order or direction made to the contrary by any of the Benches of the High Court of Jammu & Kashmir either in any writ petition or appeal. The said entrance examination shall be conducted within two months from the date of this order. F

The Advocate General may move the appropriate Bench for modification/vacation of the stay order in regard to operation of SRO 540 in view of the directions given by us above and as and when such a prayer is made, the Bench shall pass appropriate orders on its own merits. We express no opinion on it. G

We are unable to accede to the request of Mr. Thakur, learned senior H

- A** Advocate to confine the next entrance examination to fill vacancies, other than those of the intervenors, since they have been litigating all this time. They shall be at liberty to take the next entrance examination, if otherwise eligible to do so. Academic excellence and not litigative persistence has to be the criteria for admission to post graduate medical courses.
- B** Nothing said hereinabove shall, however, be construed as any expression of opinion on merits of the matters pending in the High Court of Jammu & Kashmir.

The appeal is disposed of with the above directions. No costs.

**C** T.N.A.

Appeal disposed of.