$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7349/2024, CM APPL. 30679/2024 and CM APPL. 30680/2024

AJAY ..... Petitioner

Through: Mr. Pravesh Sharma and Mr. Sanjay Kumar, Advs. with petitioner in person

Versus

EMPLOYEES STATE INSURANCE CORPORATION & ANR. ..... Respondents

Through: Mr. Shlok Chandra, SC with Mr. Sudarshan Roy, Advs. with Mr. Dinesh Kumar, SSO for R-1

Mr. Sanjay Khanna, SC, Ms. Pragya Bhushan, Mr. Karandeep Singh and Mr. Tarandeep Singh, Advs for R-2/NTA

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% 03.06.2024

W.P. (C) 7349/2024

1. The petitioner is the ward of an Insured Person ("Ward of IP") within the meaning of Employees' State Insurance Act, 1948.

2. The petitioner applied for participation in the NEET UG 2024, for obtaining admission to MBBS courses conducted by medical colleges across the country. Some of these medical colleges are run

by the Employees State Insurance Corporation (ESIC). Dependant "Ward of IP" are entitled to a preferential quota for admission into MBBS courses provide by such medical and dental colleges, subject to qualifying in the NEET UG on merit.

3. The ESIC has restricted the entitlement of reservation to dependent male "Ward of IP" to candidates who had yet to attain the age of 21 years by 10 April 2024. The petitioner is aggrieved thereby. He complains that, by virtue of fixing of 10 April 2024 as the date by which a dependent male "Ward of IP" would have had to be less than 21 years of age, the petitioner has become disentitled to the reservation available to "Ward of IP", as per the policy of the ESIC, as he crossed the age of 21 years before 10 April 2024.

4. Except for the fact that fixing of the cut-off date has rendered the petitioner ineligible to the "Ward of IP" reservation provided by the ESIC, there is precious little to justify the filing of this writ petition.

5. I have heard Mr. Pravesh Sharma, learned Counsel for the petitioner as well as the petitioner, who also sought to advance certain submissions, in person.

6. To a query from the Court as to the basis on which this Court should declare the fixing of 10 April 2024 as the cut-off date as arbitrary, the only submission of Mr. Pravesh Sharma is that, had an earlier cut-off date being fixed, more persons would have benefitted.

Fixing of the cut-off date as 10 April 2024 has resulted in persons such as the petitioner, who have crossed the 21 years of age before 10 April 2024, becoming disentitled to the benefit of "Ward of IP" reservation, provided by the ESIC.

7. It needs to be noted, even at this juncture that the fixing of the aforesaid cut-off date does not, in any manner, impact the petitioner's right to participate in the NEET UG 2024 or to secure admission to a medical college as per his rank in the said examination. All that it may be said to affect is the petitioner's claims to reservation as a "Ward of IP", as per the policy of the ESIC, for the admission to MBBS or BDS courses in medical/dental ESIC hospitals.

8. A brief overview of the facts would be appropriate at this juncture.

9. The National Testing Agency (NTA) issued three Public Notices, inviting applications from candidates who desired to participate in the NEET UG 2024.

10. The first Public Notice was issued on 9 February 2024, fixing the last date for submission of application as 9 March 2024. The petitioner applied in pursuance of this Public Notice on 22 February 2024.

11. Thereafter, by Public Notice dated 9 March 2024, the last date for submission of NEET UG 2024 application was extended to 16 March 2024.

12. *Vide* a third Public Notice dated 8 April 2024, the last date was further extended to 10 April 2024.

13. The ESIC, who also runs MBBS courses in medical and dental colleges, to which admission is made through the NEET UG 2024, provides reservation to "Ward of IP", who are insured under the ESIC. By the impugned admission notice dated 24 April 2024, the "Ward of IP", who had undertaken/were undertaking the NEET-UG 2024, were permitted to apply for reservation under the said category. Clause 7.9 of the said Public Notice, which affects the petitioner, reads thus:

> "7.9 The critical cut-off date for determining:
>
> 7.9.1 Eligibility of Insured person for availing benefit under the 'Seats allocated for wards of insured persons (IPs)' for his / her child / children would be **30th September 2023,** i.e. only a person who is 'Insured Person' as per the Act, as on **30.09.2023** would be eligible for availing benefit under the 'Seats allocated for wards of insured persons (IPs)' for his / her child / children.
>
> 7.9.2 **The age of dependent male 'Ward of IP'** for eligibility under the 'Seats allocated for wards of insured persons (IPs)' should not be more than 21 years as on the **last date of submission of application form for NEET-UG 2024 i.e. 10.04.2024.**
> *The said date would not apply to dependent unmarried female 'Ward of IP' as per provisions of the ESI Act, 1948."*

14. The petitioner is aggrieved by Clause 7.9.2, which provides that the age of a dependent male "Ward of IP" should not be more than 21 years as on 10 April 2024, which is the last date for submission of the NEET UG 2024 application, in order for him to be eligible for "Ward of IP" reservation.

15. The submission of Mr. Pravesh Sharma, which is also the basis of the writ petition, is that, had the last date for submission of the application to appear in the NEET UG 2024 been adopted from the first Public Notice dated 9 February 2024, instead of the last Public Notice dated 8 April 2024, the petitioner would also have been eligible for the "Ward of IP" reservation.

16. The Court understands the disappointment of the petitioner in not being able to secure the "Ward of IP" reservation as a result of fixation of the cut-off date for the candidate to be 21 years of age as 10 April 2024. Unfortunately, between 9 March 2024 and 10 April 2024, the petitioner has crossed the age of 21 years. Had 9 March 2024 been fixed as the cut-off date for reckoning the age of 21 years, the petitioner would have been eligible. By fixing the cut-off date as 10 April 2024, the petitioner has become ineligible for the "Ward of IP" reservation quota.

17. The law, however, cannot soothe every wound. For a litigant to obtain relief from the Court, the litigant has to make out a clear case for an enforceable right in his favour. *Ubi jus, ibi remedium*[1].

[1] Where there is a right, there is a remedy.

Equally, for a litigant to succeed in a challenge to an executive decision, it has to be pointed out that the executive decision is either contrary to law or is otherwise manifestly illegal or arbitrary.

18. There is no inherent right in anyone to "Ward of IP" reservation. "Ward of IP" reservation is provided by the ESIC as a beneficial dispensation, and the ESIC is well within its rights in fixing a cut-off date when reckoning the age of persons who may be seeking to avail the said benefit. There may be several legitimate considerations which govern the decision of the ESIC in that regard. Among such considerations which the Court may conceive of, could be the financial implications, availability of seats, and other such issues. It is not necessary for this Court to enter into that arena, as no case whatsoever has been made out, by the petitioner, to sustain the plea that the fixation of the cut-off date for reckoning the age of the applicant seeking the "Ward of IP" reservation as 10 April 2024 is, in any way, arbitrary or illegal.

19. Fixation of cut off dates has been held, by the Supreme Court, to be permissible in several decisions, and is largely immune from judicial scrutiny, unless the person aggrieved makes out a positive case of arbitrariness or discrimination thereby.

20. In ***Shikhar v. National Board of Examinations***[2], doctors, who were aspirants of the NEET PG 2022, challenged the fixation of a cut off date for completion of internship as an eligibility condition to

[2] **2022 SCC OnLine SC 425**

appear in the examination. The Supreme Court addressed the issue thus:

> "9. While we understand that the present cut-off date for the completion of the internship would put certain students at a disadvantage, we are conscious that it is the domain of the executive and regulatory authorities to formulate appropriate eligibility standards for admission. In ***Indian Institute of Technology Kharagpur v. Soutrik Sarangi***[3], a three-judge Bench of this Court held that courts should be circumspect in exercising their powers of judicial review in matters concerning academic policies, including admission criteria. In that case, this Court refused to interfere with the eligibility criteria for appearing in JEE (Advanced) 2021 which prevented a candidate who had secured a seat in one of the IITs from competing in a subsequent examination. This Court relied on ***All India Council for Technical Education v. Surinder Kumar Dhawan***[4], where it was observed that judicial interference motivated by concerns of mitigating the hardship faced by students may result in unintended consequences adversely affecting the education system. This Court held thus:
>
> > "19. The reasoning of the High Court of Criterion 5 not permitting IIT students to participate in IIT (Advanced) for the second time being arbitrary, in the opinion of this Court is not supportable. **This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts' scrutiny in judicial review has to be careful and circumspect.** Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university[5]. It was held by this court in ***All India Council for Technical Education***.
> >
> > > "16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical

[3] **2021 SCC OnLine SC 826**
[4] **(2009) 11 SCC 726**
[5] **(2021) 5 SCC 638**

education. **If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education**."

20. Given this general reluctance of courts to substitute the views of academic and expert bodies, the approach of the High Court in proceeding straightaway to characterize the rationale given by the IIT in fashioning the Criteria No. 5 cannot be supported."

(Emphasis supplied)

10. In ***Rachna v. Union of India***[5] a petition under Article 32 of the Constitution was instituted before this Court with a prayer to grant one additional attempt to clear the Civil Services (Preliminary) Examination 2020 to petitioners who were otherwise not eligible to participate in subsequent examinations due to their exhausting available attempts or because of crossing the age bar. The petitioners pleaded that on account of the unprecedented Covid-19 pandemic, they had faced difficulties in preparing for the examination. The petitioners also argued that the government had previously granted such a relaxation in 2015. This Court dismissed the petition and held that policy decisions are taken by the executive considering the prevailing circumstances. The Court further observed that the petitioners cannot invoke the writ jurisdiction of the Court to direct the government to come out with a specific policy granting relaxation to certain candidates as a matter of right. The following observations of this Court are relevant:

"45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The

> court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right."

11. In the previous proceedings when this Court passed an order dated 8 February 2022, the Court was conscious of the fact that any extension of cut-off dates pertains to the policy domain. The decision was hence left to the expert agencies of the Union of India. However, having regard to the hardship which was faced by the petitioners and similarly placed persons, we left it open to them to submit a representation to the Union Government. Responding to the request, an extension of the cut-off date has been granted from 31 May 2022 to 31 July 2022.

12. Whenever a cut-off is extended, some students are likely to fall on the other side of the dividing line. In ***State of Bihar v. Ramjee Prasad***[6], the State had prescribed that applicants applying for the post of Assistant Professors must have three years of experience. In the preceding year, the cut-off date for the receipt of applications was set in June, however, in the year in question, the date was fixed in January making certain candidates ineligible owing to their failure to meet the three-year requirement. *This Court held that the cut-off date cannot be held to be arbitrary unless it is shown that it is unreasonable, capricious or whimsical even if no reasons are forthcoming as to the choice of date.* This Court observed thus:

> "8. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as January 31, 1988. Those who had completed the required experience of three years by that

[6] **(1990) 3 SCC 368**

date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.** It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. **Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational.** We are, therefore, of the opinion that the High Court was clearly in error in striking down the government's action of fixing the last date for receipt of applications as January 31, 1988 as arbitrary."

(Emphasis supplied)

13. Recently in ***Hirandra Kumar v. High Court of Judicature at Allahabad***[7], a two-judge Bench of this Court, of which one of us (DY Chandrachud, J) was a part held that the cut-off date *or an age limit* does not become arbitrary and violative of Article 14 of the Constitution merely because certain candidates fall on the wrong side of it. *A cut-off date or an age bar would always exclude some candidates. This Court emphasised that the determination of the cut-off date is within the sphere of the executive and the court cannot assume that function.* This Court observed:

"21. The legal principles which govern the determination of a cut-off date are well settled. *The power to fix a cut-off*

[7] **(2020) 17 SCC 401**

> *date or age-limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age-limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.*
>
> 27….the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. *Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not takeover the function for itself. Plainly, it is for the rule-making authority to discharge that function while making the Rules*."
>
> (Italics and underscoring supplied)

21. ***Hirandra Kumar***, on which the Supreme Court relied in ***Shikhar***, expressed the same view, thus (leaving out the passages reproduced in ***Shikhar***):

> "22. Several decisions of this Court have dealt with the issue. In ***Ami Lal Bhat v. State of Rajasthan***[8], a two-Judge Bench of this Court dealt with the provisions contained in the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rule 11(1) prescribed that a candidate for direct recruitment should not have attained the age of 35 years on the first day of January following the last date fixed for the receipt of applications. Rejecting the contention that the cut-off was arbitrary, this Court held that the fixation of a cut-off prescribing maximum or minimum age requirements for a post is in the discretion of the rule-making authority. The Court held thus :
>
> > "5. … In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-

[8] **(1997) 6 SCC 614**

> off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable."

The same view has been adopted in other decisions, including those in (i) ***State of Bihar v. Ramjee Prasad***[9]; (ii) ***Union of India v. Sudhir Kumar Jaiswal***[10]; (iii) ***Union of India v. Shivbachan Rai***[11]; and (iv) ***Council of Scientific & Industrial Research v. Ramesh Chandra Agrawal***[12].

23. In ***Ramjee Prasad***, the State issued advertisements for the post of Assistant Professors and prescribed 31-1-1988 as the last date for the receipt of applications. Applicants must have had three years of experience. Contending that applicants could not meet the prescribed requirement of experience by the date prescribed, the cut-off date was challenged as being arbitrary and ultra vires Article 14 of the Constitution. A two-Judge Bench of this Court upheld the cut-off date and held thus :

> "8. … It is obvious that in fixing the last date as 31-1-1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. *As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.* It is not the case of anyone

[9] **(1990) 3 SCC 368**
[10] **(1994) 4 SCC 212**
[11] **(2001) 9 SCC 356**
[12] **(2009) 3 SCC 35**

that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31-1-1988 to 30-6-1988 is no reason for dubbing the earlier date as arbitrary or irrational."

(emphasis supplied)

24. In ***Sudhir Kumar Jaiswal***, the date with reference to which the age eligibility of a person desirous of sitting in the competitive examination for recruitment to the Indian Administrative Service/Indian Foreign Service was fixed as 1 August of every year. The preliminary exam would normally be held annually before 1 August. Rejecting the contention that the cut-off date is arbitrary and hence ultra vires, a two-Judge Bench of this Court held thus :

"5. As to when choice of a cut-off date can be interfered with was opined by Holmes, J. in ***Louisville Gas & Electric Co. v. Coleman***[13] by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. What was observed by Holmes, J. was cited with approval by a Bench of this Court in ***Union of India v. Parameswaran Match Works***[14] (in para 10) by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.

6. The aforesaid decision was cited with approval in ***D.G. Gose & Co. (Agents) (P) Ltd. v. State of Kerala***[15]; so also in ***Ramjee Prasad*** …

7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void…

---

[13] **1928 SCC OnLine US SC 92 : 72 L Ed 770 : 277 US 32 (1928)**
[14] **(1975) 1 SCC 305**
[15] **(1980) 2 SCC 410**

> 8. … As to why the cut-off date has not been changed despite the decision to hold preliminary examination, has been explained in Para 3 of the special leave petition. The sum and substance of the explanation is that preliminary examination is only a screening test and marks obtained in this examination do not count for determining the order of merit, for which purpose the marks obtained in the main examination, which is still being held after 1st August, alone are material. In view of this, it cannot be held that continuation of treating 1st August as the cut-off date, despite the Union Public Service Commission having introduced the method of preliminary examination which is held before 1st August, can be said to be "very wide off any reasonable mark" or so capricious or whimsical as to permit judicial interference."

25. In ***Shivbachan Rai*** the Union Public Service Commission advertised for direct recruitment to the post of Assistant Director in the Central Poultry Breeding Farms and prescribed an age-limit of 35 years as on 31-5-1990 with a relaxation of five years for government servants. The earlier notification did not provide a limitation on the age relaxation. The five-year stipulation was challenged as being arbitrary and ultra vires. A two-Judge Bench upheld the notification and held thus :

> "6. … Prescribing of any age-limit for a given post, as also deciding the extent to which any relaxation can be given if an age-limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age-limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age-limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation."
>
> (emphasis supplied)

26. In ***Ramesh Chandra Agrawal,*** the Council of Scientific and Industrial Research framed a scheme for the absorption of researchers working in their laboratories and institutes following

the directions of this Court. It was prescribed that eligible applicants must have 15 years of continuous research on 2-5-1997. The Director was conferred powers to relax the requirement. Contending that the tenure of researchers is ordinarily 13 years, the prescription of 15 years was challenged as being ultra vires and arbitrary. This contention was accepted by the High Court. On appeal, a two-Judge Bench of this Court examined the scheme and applicable avenues to researchers. Noting that there was no ceiling of 13 years on researchers, this Court upheld the prescription of 15 years and the cut-off date. The Court held thus :

> "*29. "State" is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved*. 2-5-1997 was the date fixed as the cut-off date in terms of the Scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.
>
> *30.* The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. *The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date*."
>
> (emphasis supplied)

27. These judgments provide a clear answer to the challenge. The petitioners and the appellant desire that this Court should rollback the date with reference to which attainment of the upper

age-limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age-limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age-limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper age-limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are adverting to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule-making authority to discharge that function while framing the Rules.

28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfilment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age-limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS."

(Underscoring supplied; Italics in original)

22. Specifically apropos fixing of a cut-off date for a post, albeit in the context of service law, the Supreme Court held thus, in ***Dr Ami Lal Bhat***:

"5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or

minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. *One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable.* This view was expressed by this Court in ***Parameswaran Match Works*** and has been reiterated in subsequent cases. In the case of ***A.P. Public Service Commission v. B. Sarat Chandra***[16] the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

> "when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. *Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age*."

(Emphasis supplied)

23. The case of the petitioner is entirely predicated on his submission that, had the cut-off date been taken from the last date for

[16] **(1990) 2 SCC 669**

submission of the application as reflected in the first Public Notice dated 9 February 2024 issued by the NTA, the petitioner would have been eligible. That may be so; however, that cannot be a basis for the Court, much less a writ court, to hold that ESIC had mandatorily to fix a cut-off date on the basis of the first Public Notice dated 9 February 2024.

24. Mr. Shlok Chandra, learned Counsel for the ESIC also points out that the fixing of the cut-off date was in accordance with the admission policy of the ESIC for the academic year 2024-2025, which was approved by the Central Government, Clause 9 of which reads thus:

> "9. **'Ward of Insured Person'** will be children / child of an Insured person who are / is eligible for benefit under the ESI Act as on **the last date of submission of application form for NEET-UG for the relevant year.**
>
> *Note: The critical date for determining age of the Ward of the IP as per Section 2 (11) (iii) of the ESI Act, 1948, for the benefit of admission to MBBS / BDS course under Insured Person Quota, would be last date of submission of application form for NEET-UG for the relevant year.*"

25. The fixing of the cut off date as 10 April 2024 was, therefore, the result of a conscious policy decision to treat the last date for submission of applications for participating in the NEET UG 2024 as the date by which the candidate ought not to have completed 21 years of age to be entitled to "Ward of IP" reservation. There is nothing arbitrary in this decision; indeed, it fixes a firm cut off date without leaving any scope for conjecture or hypothesis.

26. Indeed, if one were to look at the matter from the point of view of arbitrariness, the ESIC has probably eschewed arbitrariness in reckoning the last date for applying in participating in the NEET-UG 2024 as the cut-off for reckoning the age of the applicant "Ward of IP". There is no basis for this Court to hold that the ESIC was bound to fix the cut-off date on the basis of the Public Notice dated 9 February 2024.

27. Mr. Pravesh Sharma also submits that, as the grant of "Ward of IP" reservation benefit is a beneficial provision, intended to ameliorate the conditions of persons who may not be financially well positioned, the attempt should be to maximise the availability of the reservation, rather than fix a date which would reduce the number of persons, who would be eligible therefor. The submission is easier urged than accepted. No doubt, the grant of "Ward of IP" reservation is a beneficial provision. That, however, cannot be a basis for this Court to interfere with the cut-off date fixed by the ESIC. It is not as though, by fixing of the cut-off date, no person would not obtain the benefit of "Ward of IP" reservation. Fixation of any cut-off date is always bound to result in prejudice to some persons, who may not qualify. So long as there is no basis urged on the basis of which the fixing of the cut-off date can be said to be arbitrary, the Court cannot interfere. It is also a settled position that the onus to establish such arbitrariness is on the person so urging.

28. Moreover, the cut-off date was fixed in accordance with Clause 9 of the admission policy of the ESIC, which was approved by the

Central Government. Even for this reason, the fixation of the cut-off date does not merit interference.

29. Given the above position, it is not possible for this Court to accept the petitioner's submission that the fixing of the cut-off date for reckoning the age of 21 years as 10 April 2024 in Clause 7.9.2 of the impugned admission notice dated 24 April 2024, issued by the ESIC, is arbitrary in any manner or warranting interference under Article 226 of the Constitution of India.

30. The writ petition is accordingly dismissed, with no orders as to costs.

CM APPL. 30679/2024 and CM APPL. 30680/2024

31. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

JUNE 3, 2024/rb

Click here to check corrigendum, if any