

**DEPARTMENT OF EDUCATION, CULTURE AND SPORTS (DECS) AND
DIRECTOR OF CENTER FOR EDUCATIONAL MEASUREMENT,
PETITIONERS, VS. ROBERTO REY C. SAN DIEGO AND JUDGE
TERESITA DIZON-CAPULON...**

G.R. No. 89572. December 21, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The issue before us is mediocrity. The question is whether a person who has thrice failed the National Medical Admission Test (NMAT) is entitled to take it again.

The petitioner contends he may not, under its rule that -

h). A student shall be allowed only three (3) chances to take the NMAT. After three (3) successive failures, a student shall not be allowed to take the NMAT for the fourth time.

The private respondent insists he can, on constitutional grounds.

But first the facts.

The private respondent is a graduate of the University of the East with a degree of Bachelor of Science in Zoology. The petitioner claims that he took the NMAT three times and flunked it as many times.[1] When he applied to take it again, the petitioner rejected his application on the basis of the aforesaid rule. He then went to the Regional Trial Court of Valenzuela, Metro Manila, to compel his admission to the test.

In his original petition for mandamus, he first invoked his constitutional rights to academic freedom and quality education. By agreement of the parties, the private respondent was allowed to take the NMAT scheduled on April 16, 1989, subject to the outcome of his petition.[2] In an amended petition filed with leave of court, he squarely challenged the constitutionality of MECS Order No. 12, Series of 1972, containing the above-cited rule. The additional grounds raised were due process and equal protection.

After hearing, the respondent judge rendered a decision on July 4, 1989, declaring the challenged order invalid and granting the petition. Judge Teresita Dizon-Capulong held that the petitioner had been deprived of his right to pursue a medical education through an arbitrary exercise of the police power.[3]

We cannot sustain the respondent judge. Her decision must be reversed.

In *Tablarin v. Gutierrez*,[4] this Court upheld the constitutionality of the NMAT as a measure intended to limit the admission to medical schools only to those who have initially proved their competence and preparation for a medical education. Justice Florentino P. Feliciano declared for a unanimous Court:

Perhaps the only issue that needs some consideration is whether there is some reasonable relation between the prescribing of passing the NMAT as a condition for admission to medical school on the one hand, and the

securing of the health and safety of the general community, on the other hand. This question is perhaps most usefully approached by recalling that the regulation of the practice of medicine in all its branches has long been recognized as a reasonable method of protecting the health and safety of the public. That the power to regulate and control the practice of medicine includes the power to regulate admission to the ranks of those authorized to practice medicine, is also well recognized. Thus, legislation and administrative regulations requiring those who wish to practice medicine first to take and pass medical board examinations have long ago been recognized as valid exercises of governmental power. Similarly, the establishment of minimum medical educational requirements – i.e., the completion of prescribed courses in a recognized medical school - for admission to the medical profession, has also been sustained as a legitimate exercise of the regulatory authority of the state. What we have before us in the instant case is closely related: the regulation of access to medical schools. MECS Order No. 52, s. 1985, as noted earlier, articulates the rationale of regulation of this type: the improvement of the professional and technical quality of the graduates of medical schools, by upgrading the quality of those admitted to the student body of the medical schools. That upgrading is sought by selectivity in the process of admission, selectivity consisting, among other things, of limiting admission to those who exhibit in the required degree the aptitude for medical studies and eventually for medical practice. The need to maintain, and the difficulties of maintaining, high standards in our professional schools in general, and medical schools in particular, in the current state of our social and economic development, are widely known.

We believe that the government is entitled to prescribe an admission test like the NMAT as a means of achieving its stated objective of "upgrading the selection of applicants into [our] medical schools" and of "improv[ing] the quality of medical education in the country." Given the widespread use today of such admission tests in, for instance, medical schools in the United States of America (the Medical College Admission Test [MCAT] and quite probably in other countries with far more developed educational resources than our own, and taking into account the failure or inability of the petitioners to even attempt to prove otherwise, we are entitled to hold that the NMAT is reasonably related to the securing of the ultimate end of legislation and regulation in this area. That end, it is useful to recall, is the protection of the public from the potentially deadly effects of incompetence and ignorance in those who would undertake to treat our bodies and minds for disease or trauma.

However, the respondent judge agreed with the petitioner that the said case was not applicable. Her reason was that it upheld only the requirement for the admission test and said nothing about the so-called "three-flunk rule."

We see no reason why the rationale in the Tablarin case cannot apply to the case at bar. The issue raised in both cases is the academic preparation of the applicant. This may be gauged at least initially by the admission test and, indeed with more reliability, by the three-flunk rule. The latter cannot be regarded any less valid than the former in the regulation of the medical profession.

There is no need to redefine here the police power of the State. Suffice it to repeat that the power is validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.[5]

In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.

The subject of the challenged regulation is certainly within the ambit of the police power. It is the right and indeed the responsibility of the State to insure that the medical profession is not infiltrated by incompetents to whom patients may unwarily entrust their lives and health.

The method employed by the challenged regulation is not irrelevant to the purpose of the law nor is it arbitrary or oppressive. The three-flunk rule is intended to insulate the medical schools and ultimately the medical profession

from the intrusion of those not qualified to be doctors.

While every person is entitled to aspire to be a doctor, he does not have a constitutional right to be a doctor. This is true of any other calling in which the public interest is involved; and the closer the link, the longer the bridge to one's ambition. The State has the responsibility to harness its human resources and to see to it that they are not dissipated or, no less worse, not used at all. These resources must be applied in a manner that will best promote the common good while also giving the individual a sense of satisfaction.

A person cannot insist on being a physician if he will be a menace to his patients. If one who wants to be a lawyer may prove better as a plumber, he should be so advised and adviced. Of course, he may not be forced to be a plumber, but on the other hand he may not force his entry into the bar. By the same token, a student who has demonstrated promise as a pianist cannot be shunted aside to take a course in nursing, however appropriate this career may be for others.

The right to quality education invoked by the private respondent is not absolute. The Constitution also provides that "every citizen has the right to choose a profession or course of study, subject to fair, reasonable and equitable admission and academic requirements." [6]

The private respondent must yield to the challenged rule and give way to those better prepared. Where even those who have qualified may still not be accommodated in our already crowded medical schools, there is all the more reason to bar those who, like him, have been tested and found wanting.

The contention that the challenged rule violates the equal protection clause is not well-taken. A law does not have to operate with equal force on all persons or things to be conformable to Article III, Section 1 of the Constitution.

There can be no question that a substantial distinction exists between medical students and other students who are not subjected to the NMAT and the three-flunk rule. The medical profession directly affects the very lives of the people, unlike other careers which, for this reason, do not require more vigilant regulation. The accountant, for example, while belonging to an equally respectable profession, does not hold the same delicate responsibility as that of the physician and so need not be similarly treated.

There would be unequal protection if some applicants who have passed the tests are admitted and others who have also qualified are denied entrance. In other words, what the equal protection requires is equality among equals.

The Court feels that it is not enough to simply invoke the right to quality education as a guarantee of the Constitution: one must show that he is entitled to it because of his preparation and promise. The private respondent has failed the NMAT five times. [7] While his persistence is noteworthy, to say the least, it is certainly misplaced, like a hopeless love.

No depreciation is intended or made against the private respondent. It is stressed that a person who does not qualify in the NMAT is not an absolute incompetent unfit for any work or occupation. The only inference is that he is probably better, not for the medical profession, but for another calling that has not excited his interest.

In the former, he may be a bungler or at least lackluster; in the latter, he is more likely to succeed and may even be outstanding. It is for the appropriate calling that he is entitled to quality education for the full harnessing of his potentials and the sharpening of his latent talents toward what may even be a brilliant future.

We cannot have a society of square pegs in round holes, of dentists who should never have left the farm and engineers who should have studied banking and teachers who could be better as merchants.

It is time indeed that the State took decisive steps to regulate and enrich our system of education by directing the student to the course for which he is best suited as determined by initial tests and evaluations. Otherwise, we may

be "swamped with mediocrity," in the words of Justice Holmes, not because we are lacking in intelligence but because we are a nation of misfits.

WHEREFORE, the petition is GRANTED. The decision of the respondent court dated January 13, 1989, is REVERSED, with costs against the private respondent. It is so ordered.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] A check with the Department of Education showed that the private respondent had actually taken and flunked four tests already and was applying to take a fifth examination.

[2] He also failed this fifth test.

[3] Rollo, pp. 26-34.

[4] 152 SCRA 730.

[5] US v. Toribio, 15 Phil. 85; Fabie v. City of Manila, 21 Phil. 486; Ynot v. Intermediate Appellate Court, 148 SCRA 659.

[6] Article XIV, Section 5(3).

[7] See Footnote Nos. 1& 2.

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