
(1992) 07 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 954 of 1991

Ajay Kumar Agarwal (Dr.)

APPELLANT

Vs

Director of Medical Education and Others

RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) JLJ 659

Hon'ble Judges : S.D. Jha, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : S. Kulshrestha, for the Appellant; Kutumbale, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.G. Qureshi, J.—This petition has been filed under Article 226 of the Constitution of India against the Respondents, challenging the action of the Respondent in not admitting the Petitioner to the course of M.S. (ENT) at M.G.M. Medical College, Indore.

2. According to the Petitioner he is prosecuting his studies in the post Graduate Diploma Course in Otorhino-laryngology (D.L.C.) in the M.G.M. Medical College Indore. He has passed the M.B.B.S. Examination in December, 1988 and completed internship on 25th Dec. 1989 from the same college at Indore. He was selected for a paid house job and appointed as House Surgeon in E.N.T. in accordance with the merit in the Gandhi Medical College, Bhopal, which he completed on 29.12.1990. The Petitioner, however, continued to be an institutional candidate of the M.G.M. Medical College, Indore notwithstanding the completion of house job by him from the Gandhi Medical College, Bhopal and, therefore, in accordance with the merit he was given admission in the M.G.M. Medical College Indore to one year Diploma course in D.L.O. as the Petitioner could not make the grade for admission to M.S. (ENT) for which only two seats were available for merit candidates in the said college.

3. The Government has framed Rules known as M.P. Selection for P.G. Courses (Clinical para-Clinical and Non-clinical Courses) for Medical Colleges of M.P. in the year 1984 (hereinafter called the Rules of 1984). The Rules regulate admission to the P.G. M.D./M.S. courses in the Medical Colleges of the State. The Rules provide for fixation of total number of seats in accordance with the medical council of India's recommendations. It has been further provided in the Rules that the institutional merit candidates, Assistant Surgeons and the other working doctors in the State shall be admitted in accordance with Rule 8 and Rule 9. According to the aforesaid Rules the allocation of seats in the PG Rules has to be in the ratio of 2:1 between the merit candidates and Assistant Surgeons. But in view of the directions issued by the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, five seats were placed at the disposal of the Director General of Health Services for being filled through All India Pre P.G. Examination. However, these four seats could not be filled by all India competition and those seats reverted back to the State, out of which one seat reverted to the M.G.M. Medical College Indore. According to the Petitioner this seat should have been reserved for the merit candidate, but was wrongly allotted to the quota of Assistant Surgeons with the Result that the Rules of 1984 have been violated and the ratio provided in the Rules has been disturbed. The Petitioner is at serial No. 1 on the waiting list for entrance to M.S. (ENT) Course in the M.G.M. Medical College Indore amongst the institutional merit candidates and he fulfills all the qualifications provided under Rule 8 of the Rules of 1984 for admission. As such the Petitioner alone is the most deserving candidate for admission to M.S. (ENT) seat. The Petitioner also made a representation to Respondent No. 3 requesting him to grant admission to the Petitioner against the seat released from All India Pre-P.G. quota in the year-1990 in M.S. (ENT) but the admission was not granted to the Petitioner notwithstanding the fact that he was the only deserving candidate. Therefore, he made a prayer (sic) the Respondent be directed to admit the Petitioner to M.S. (ENT) course at M.G.M. Medical College, Indore against the seat which was reverted to the State of M.P.

4. This petition was filed on 30th May 1991 and till then the seat for which admission was sought was vacant. But during the pendency of this petition on 1.6.1991 Dr. P.R. Balkishore, from the Assistant Surgeons quota was admitted to the aforesaid course. Therefore, by amending the petition the Petitioner has pleaded that the (sic)cation of the seat to the quota of Asstt. Surgeon is contrary to Rules which require distribution of seats between the merit candidates and Assistant Surgeons in the ratio of 2:1. A future prayer was made that in admitting Dr. Balkishore the Authorities have acted contrary to the rules as also the instructions in this behalf. In any case if the Respondents wanted to give admission to some Assistant surgeon more seats should have been created but the ratio of the institutional candidates and Assistant Surgeons could not be disturbed. It has also been pleaded that Dr. Balkishore was admitted on 1.6.1991, where as the last date for admission was 25.5.1991. Therefore, also the admission of Dr. Balkishore is illegal.

5. The petition was resisted by the Respondents on the ground that the seat in the M.G.M. Medical College Indore, on reversion, was reserved for Assistant Surgeons quota and, "therefore, Dr. Balkishore was selected for admission to that course. Although it is true that Dr. Balkishore joined after the last date fixed for joining the post, but he was allowed to join on 1.6.1991 in view of the order of the Government dated 31.5.91 which was passed in view of the unavoidable circumstances of delay. Nothing has been stated in the return in respect of the averment made by the Petitioner in respect of the ratio of institutional candidates and the Assistant Surgeons as provided in the Rules of 1984.

6. By way of rejoinder the Petitioner has stated the position of the total seats available for the Post Graduation course in the ENT subject in the Medical Colleges of M.P. and this fact remains undisputed. As such it is not in dispute that in all there are, 18 seats for M.S. (ENT) in the Medical Colleges of the State of M.P. In the year 1990 out of 18 seats available, 8 seats were allocated for being filled up by the institutional merit candidates; 5 seats by the Assistant Surgeons quota and 5 seats by all India Pre P.G. examination. So the seats of merit candidates were 8, for Assistant surgeons 5 and for Pre. P.G. examination 5. Now, out of the five seats allocated to the All India quota, four seats could not be filled up and, therefore, these seats reverted to the State Government for being filled up through the eligible candidates as per the Rules. Now, according to the rules of 1984 the ratio which has to be maintained between the merit candidates and the Assistant Surgeons has to be 2:1 and, therefore, under the rules the State should have distributed the four seats in such a way that the ratio of 2:1 between the merit candidates and Assistant surgeons could be maintained. However, the State has divided the four seats equally between the merit candidates and the Assistant Surgeons with the result that the seats of the merit candidates became 10 while the seats of the Assistant Surgeons quota became 7. As such the ratio of the seats between the merit candidates and the Assistant Surgeons became contrary to the Rules of 1984. According to the Petitioner because of the aforesaid distribution of seats between the merit candidates and the Assistant Surgeons, the ratio of the seats was disturbed, thwart the claim of the merit candidates and divest them of the legitimate claim.

7. After considering the respective arguments of the learned Counsel and the averments in the petition along with the averments made in the return, we are of the view that the distribution of the reverted seats, between the assistant surgeons and the merit candidates, has not been made as provided under the Rules. Actually to maintain the ratio of 2:1 between the institutional merit candidates and the Assistant Surgeons, the seats of the merit candidates should have been 11. and that of the Assistant Surgeons 6 out of the total 17 seats available for admission. Then also the ratio of the Assistant Surgeons would have remained a little higher marginally. But in any case the ratio could have been maintained by allocation of 11 seats for merit candidates and 6 seats for the Assistant surgeons quota, whereas as a result of equal distribution of the reverted seats, the seats of the merit candidates have become 10, whereas the

seats of Assistant Surgeons have become seven, which is contrary to Rules of 1984.

8. This Court had an occasion to consider the question of maintenance of ratio between the institutional merit candidates and the Assistant Surgeons quota in the case of *Dr. Mrs. Urmilla Shukla v. State of M.P.* M.P. No. 297 of 83 dated 17.4.1984 (JB). At that time the State Government on the basis of the Regulations framed by the Medical Council of India had decided that 2/3 of the seats in each subject for post-graduate studies should be on merit and the remaining 1/3 should be made available to those who are in service of the State Government as Asstt. Surgeons or in equivalent posts. The Petitioner in that case had made a representation that out of seven seats available in the Medical College at Gwalior, five seats must go to the merit candidates and two to Assistant surgeons. The representation found favour with the college and Hospital council and they recommended that the ratio should be kept at 5:2 but as no decision was taken she filed a writ petition. This Court relying on the judgments in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Suman Gupta v. State of J & K* AIR 1983 SC 1236 held that the authorities are expected to adopt some valid criteria for reservation of the seats. It was further held that when the State Government had fixed the ratio of 2/3 for merit candidates and 1/3 for those from Assistant Surgeons or equivalent posts for admission to post graduate studies in medical college, the same standard should be followed. Although at that time no Rules were framed by the State for admission to post graduate studies, however, in the light of the decision of the State Government it was observed that it has to be applied uniformly taking up to consideration the figure of 2/3 of 7 seats which comes to 4.666 and the figure of 1/3 of 7 seats which comes to 2.333 it was held that the figure of .333 has to be ignored and figure of .666 has to be treated as one and as such a ratio of 5:2 was fixed.

9. In the instant case it is not disputed before Us that the ratio of the institutional merit candidates and the Assistant surgeons has to be 2:1. Therefore, in the available 17 seats, if ratio of 2:1 has to be fixed, the ratio of the merit candidates would be 11:33 whereas the ratio of the Assistant surgeons and other candidates would be 5:66. If .33 is ignored then the total seats of the institutional merit candidates will be 11 and that of the Assistant Surgeons 6 because figure .66 has to be treated as one as such 5 plus 1 equal to 6. Now in the instant case the ratio between the merit candidates and the Assistant Surgeons has been disturbed so as to make the post-graduation seat in ENT in the State as 10 instead of 11 and 7 instead of 6, respectively. Therefore, there can be no escape from the conclusion that the allocation of the seats in question to the quota of Assistant Surgeon by the Respondents is in violation of the Rules and against the settled principles for maintaining ratio between the institutional candidates and the candidates of Assistant Surgeons quota and others. In view of the aforesaid we hold that the Petitioner was wrongly deprived by the Respondents from admission to the M.S. (ENT) Course

for which he was qualified and entitled to be admitted for that course.

10. This finding gives rise to another question in view of the subsequent events after the filing of the petition. Whether the Respondents should be directed to admit the Petitioner while cancelling the admission of Dr. Balkishore who has been admitted on 1.6.1991 during the pendency of this petition against the quota of Assistant Surgeons. Now it is not disputed that the Petitioner has pursued the studies in the diploma Course. Whereas the admitted candidate Dr. Balkishore has studied for a period of one year as a result of his admission. This Court in the case of Dr. Ramkumar v. State of M.P. MP No. 853 of 90, decided on 22.2.1991 has held that the admission of the admitted candidate cannot be cancelled and because of the laches and delay on the part of the Petitioner he cannot be admitted to the course he is seeking admission and reliance was placed on the often cited case of Dr. Ajay Pradhan v. State of M.P. 1988 J.L.J. 563. In our opinion in the instant case the circumstances are different. The Petitioner had filed this petition when the seat was lying vacant and was not filled in. He had also applied for an interim relief for being admitted to the course, but that relief was not granted, to the Petitioner and unfortunately this petition remained pending for one year with the result that the Petitioner could not pursue his studies as a regular candidate. However, the learned Counsel for the Petitioner has made a statement at the Bar that the course which he is pursuing is equivalent to the first year post-graduation course and this fact was not challenged by the State by saying that the course is entirely different or the curriculum is not the same. As such because of the unfortunate delay in the disposal of this petition we do not propose to penalise the Petitioner. However, in the circumstances of the present case when the State despite the pendency of the petition admitted another candidate in violation of the Rules, it cannot be allowed to take a stand that the Petitioner can now not be admitted as another candidate has already been admitted. If we allow this practice to continue then in each case where the disposal of a petition of a candidate is delayed the State would come forward with a plea that because of the delay the admission cannot be made, thus depriving a rightful candidate of his right for ever. But in the facts and circumstances we are not also inclined to penalise the candidate who has been admitted by the State Government from the Assistant Surgeons quota because he has been admitted from the Assistant Surgeons quota in pursuance of the State Government's order to allocate the seat to the Assistant Surgeons quota. As such the admitted candidate Dr. Balkishore cannot be allowed to suffer because of the arbitrary and illegal action of the State Government.

11. In the aforesaid it is only the State Government which is responsible for violating the Rules and creating a situation as has arisen in this case. It is very strange that despite the notice of the petition in the return the State has not come forward with the justification as to how the seat could be allocated to the quota of Assistant Surgeons in violation of the Rules of admission and the settled ratio of the institutional and Assistant Surgeons quota candidates. We are aware that this Court should issue a direction for creation of a seat in the rarest of rare

case, but in the instant case the situation which has arisen is such wherein the Court has no option but to direct the State Government to create an additional seat to accommodate (sic) Dr. Balkishore, who is already pursuing his studies in the post graduate course of ENT.

The Petitioner has to be admitted against the seat which has reverted from the All India quota and a fresh seat has to be created for Dr. Balkishore. In view of the fact that already a long time has elapsed, it is directed that the decision as per our directions be taken within a month from the date of this order for creation of a seat and admitting the Petitioner or Dr. Balkishore against that seat. We are fortified in making the aforesaid direction by a Division Bench judgment of this Court in M.P. No. 690 of 91 (Dr. Madhulika Bandish v. Director, Medical Education, Bhopal) decided on 29.7.91.

12. In the result the petition is allowed as aforesaid with no order as to costs.

S.D. Jha, J.

13. Nothing has been pointed out to us why the Petitioner could not be granted admission in respect of the seat for which he is claiming admission. In the facts and circumstances of the case, I agree with the order proposed by Brother Qureshi, J".