
(1987) 11 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 1016 of 1987

Anil Kumar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-11-1987

Acts Referred:

Admission to Professional Colleges Rules — Rule 2.7.7
Constitution of India, 1950 — Article 226

Citation : AIR 1988 MP 258

Hon'ble Judges : K.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : P.K. Saxena, for the Appellant; P.K. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Sohani, J.—This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows :

By advertisement dt. 20-7-1987 (Annexure P-3) published in "Dainik Bhaskar", applications were invited by respondent No. 2, the Director of Technical Education, for admission to second year B.E. Course at the Engineering Colleges in the State specified in the advertisement, from applicants, who had passed the Diploma Examination. It was stated in the advertisement that admission would be on the basis of marks obtained in theory by the applicants in the final year examination of the Diploma Course. The petitioner was one of the applicants and he was allotted the Engineering College at Jabalpur. The petitioner contends that in accordance with the rules framed in that behalf, he should have been allotted the Engineering College at Indore in place of respondents No. 3 or 4.

3. As regards allotment of Engineering College at Indore to respondent No. 4, the contention advanced on behalf of respondent No. 2, the Director of Technical Education was that respondent No. 4 had secured more marks in theory than the petitioner and hence, the allotment of the Engineering College at Indore to him

cannot be assailed by the petitioner. On behalf of the petitioner, it was contended that if marks obtained in practical were added to the marks obtained by the petitioner and respondent No. 4 in theory then the petitioner stood higher in order of merit.

4. As regards respondent No. 3, the petitioner contends that as a girl candidate, she was no doubt entitled to secure admission to a college on the basis of her first choice, as provided by the rules, but as the first choice of respondent No. 3 was Bhopal, where she was not admitted, she could not be granted admission to the Engineering College at Indore, in preference to the petitioner, because in the order of merit, she was placed below the petitioner. In reply, it was contended on behalf of respondent No. 2 as follows :

"In considering the cases of allotment of colleges, it was found that respondent No. 3 could not be granted the place of her first choice of Bhopal as other girl candidates having higher merit than respondent No. 3, had also opted for Bhopal and were, therefore, accommodated against the two seats available in Bhopal. The case of respondent No. 3, therefore, was processed to accommodate her in accordance with her second choice and she was, therefore, granted admission at Indore."

5. The short question for consideration is whether in allotting to respondents Nos. 3 and 4 the Engineering College at Indore, in preference to the petitioner, respondent No. 2 has acted arbitrarily or in violation of the provisions of any regulation. That there were only two seats available for admission to the diploma-holders to the second year course at the Engineering College at Indore, was not disputed. Direct admission to second year degree course in Engineering in the State Engineering Colleges and M.A.C.T., Bhopal is governed by rules made in that behalf Rule 2.7.2 of the Rules framed for admission to Professional Courses reads as under :

"2.7.2. 25% of the total vacancies available shall be filled by admission of 1st division Diploma-holders as per existing procedure. Admission to other courses such as Mining and Metallurgy will also be made against quota of seats approved by the State Government for admission to 2nd year B.E. Application for admission against these seats shall be invited by Director of Technical Education by a separate notification to be issued for the purpose."

In the advertisement Annexure P-3, which was issued in pursuance of the aforesaid rule, it was clearly stated that the order of merit would be determined on the basis of marks obtained in theory. In the light of this advertisement, respondent No. 4 admittedly stood higher than the petitioner in the order of merit. The learned counsel for the petitioner, however, contended that in Rule 2.7.7, it was provided that allotment of College to Diploma pass candidates would be done on merit on the basis of marks obtained in the Final Year Diploma Examination and, therefore, the "marks" referred to in Rule 2.7.7 would include marks obtained in practical as well. Now, Rule 2.7.7 has to be read along with

Rule 2.7.2 and the advertisement issued by respondent No. 2 inviting applications, as prescribed by that rule. In evaluating merit on the basis of marks obtained in theory alone, respondent No. 2 cannot be held to have acted arbitrarily or contrary to rules.

6. Now so far as respondent No. 3 is concerned, the fact that she was entitled to secure admission in one of the Engineering Colleges on the basis of merit, was not disputed but it was urged that she was not entitled to a seat at the Engineering College at Indore in preference to the petitioner. It is true that Indore was the second choice of respondent No. 3 in order of preference. In rule 2.7.7, it is stated that "girl candidates will be offered admission on the basis of their first choice as far as possible." Now, respondent No. 3 could not be admitted at Bhopal, which was the first choice of respondent No. 3 because girl candidates, who had secured higher marks than respondent No. 3 and whose first choice was Bhopal, were granted against the vacant seats at the Engineering College at Bhopal. But Rule 2.7.7 cannot be read as laying down that if admission could not be offered to a girl candidate on the basis of her first choice, then she should not be offered admission on the basis of her second choice. The facility extended to girl candidates in the matter of allotment of colleges on the basis of their choice in order of their preference, as far as possible, cannot be held to be arbitrary or contrary to any rule. As the petitioner has failed to make out that the action of respondent No. 2 in allotting the Engineering College at Indore to respondents Nos. 3 and 4 is arbitrary or contrary to rules or mala fide, no relief can be granted to the petitioner under Article 226 of the Constitution.

7. The learned counsel for the petitioner contended that the petitioner comes from a poor family and cannot afford to stay away from his home at Indore and join the Engineering College at Jabalpur. It was stated that it was permissible for respondents Nos. 1 and 2 to increase the quota of vacant seats at Indore. The petitioner should make a representation to the proper authorities in this behalf and if it is permissible according to rules for these authorities to accede to the request of the petitioner, we hope and trust that the authorities shall consider the case of the petitioner for admission to the Engineering College at Indore sympathetically.

8. The petition fails and is accordingly dismissed. The interim order passed on 1-9-1987 is vacated. No order as to costs in the circumstances of the case. The amount of security cost, if any, be refunded to the petitioner.