

(1997) 11 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Petition No"s. 1932 and 3382 of 1997

Anshuman Aggarwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 6 AD 824 : (1997) 43 DRJ 714

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Dhruv Aggarwal and B.S. Saini, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) RULE.

(2) By this common judgment, I would be disposing of the above two writ petitions as common questions and issues arise in both the petitions.

(3) Petitioners, Dr. Anshuman Aggarwal and Dr. Gagan Gupta, had both taken the competitive entrance examination on "All India basis" being conducted by the All India Institute of Medical Sciences, (in short AIIMS) respondent No.2 herein, for admission to Post Graduate Medical and Dental courses for the year 1997. The said examination was being conducted by respondent No.2, Aims for admission to 25% of seats in the various Post Graduate courses available in different colleges in India. In terms of the advertisement and the bulletin of information issued, the Post Graduate courses comprised the MD/MS course for a duration of three years, while diploma courses were for a duration of two years. The bulletin listed out the various courses and subjects and Medical Colleges in which these course were available. Written examination was conducted by respondent No.2. Both the petitioners qualified in the written examination so conducted and were called for counselling and interview. The merit position of the petitioner, Dr. Anshuman Aggarwal, in C.W.P. No.1932/96, was 1283 while

that of Dr. Gagan Gupta, petitioner in C.W.P. No.3382/97 was 1632. The counselling was being done in accordance with the procedure set out by the Apex Court in Anand S.Biji Vs. State of Kerala and Others (C.A.No.1944/93).

(4) The counselling and interview was held. Both the petitioners were eligible to seek admission in Md as well as in diploma courses. The petitioners opted for the diploma course in Venereology and Dermatology, which as per the information given and contained in the bulletin was a two years course. Petitioner, Dr. Anshuman Aggarwal was allotted admission in diploma course in Venereology and Dermatology of two years duration at Grant Medical College, Bombay. A letter annexure B appearing at page 49 of the paper book in C.W.1932/97, specifically mentioned the course to be of two year duration. Similarly, Dr. Gagan Gupta, petitioner in C.W.3382/97 was allotted admission in the diploma course in Venereology and Dermatology of two years duration at the L.T. Municipal Medical College, Bombay. Letter annexure P3 appearing at page 73 of the paper book in C.W.3382/97, specifically mentioned the course to be of two year duration.

(5) Petitioners to their charge in and dismay, when they went to join their respective colleges, discovered that the diploma course in Venereology and Dermatology at Grant Medical College, Bombay and L.T. Municipal Medical College were of one year duration each. The petitioner in C.W.3382/97 was given an appointment letter for Jr. Resident in L.T. Municipal Medical College with stipend. Petitioners submit that with the one year diploma course, it would not be possible for him to take the final exam of the National Diplomat Board.

(6) After issuance of notice to show cause counter was filed by the Union of India. Petitioners also filed additional affidavit. The Union of India in its counter submits that it had a limited role of displaying the availability of seats on T.V. screen during the counselling to enable the selection of candidates for different courses. As per the information available with the respondent seats were available in the Diploma course, which were allotted to the petitioner on their opting for it. Rather a peculiar plea is taken by the Union of India in its counter. It is stated that the Grants Medical College and the L.T. Municipal Medical College cannot show their inability to admit the petitioners in Diploma in Venereology and Dermatology course, of two years duration since form 1993 the period for training and duration of course for MD/MS degree and diploma in medical post graduates courses had to be three years and two years respectively. It is further averred in the counter that the college authorities are bound to admit the petitioners in two year course and it is urged that suitable directions could be issued to the principals of the colleges to admit the petitioner in diploma course in Venereology and Dermatology. Learned counsel for the petitioners have pointed out that the available courses in the said medical colleges are of one year duration and not of two years. In these circumstances, it is not comprehensible how this Court can give a direction to the said colleges to issue a mandamus to make it a two years course without there being the requisite planning and infrastructure for it.

(7) The petitioners are sought to be deprived of admission to a two years course for no fault of theirs. Rather the petitioners were misled on wrong information having been supplied by the respondent in opting for the Diploma courses. Counsel for the petitioners have argued that the Apex Court in *Samir Gupta Vs. Union of India & Ors.* (C.W.171/97), with the consent of the respondent/Union of India directed second counselling and candidate was adjusted against the existing vacancy in Medical Colleges other than the Guwahati Medical College, where he was first admitted. Petitioners have placed on record additional affidavits to which replies were also filed by the Union of India. The Union of India has sought to distinguish the decision in *Samir Gupta's* case on the ground that due to the prevailing conditions in Assam, the academic session had been delayed for two to three years and it was in these extra ordinary circumstances that second counselling was permitted and candidates was adjusted at a vacancy available in another Medical College. The Union of India as directed by this Court had also made available the position of existing vacancies. Since there are no vacancies in diploma courses in Medical Colleges in Bombay or New Delhi, counsel for the petitioner, Dr. Anshuman Aggarwal prayed that he be granted admission in M.D. (Radiology), at Medical College, Indore while counsel for petitioner, Dr. Gagan Gupta, prayed that he be granted admission in M.D. Pediatric at G.S. Seth, Medical College, Bombay. The Assistant Director General Health Services in his additional affidavit has indicated that petitioner Dr. Anshuman Aggarwal could be accommodated in a subject of petitioner's interest viz. M.D. degree course in Skin and Venereology at the medical college, Amritsar while Dr. Gagan Gupta could be accommodated in the two years diploma course in Skin and V.D at the medical college at Ranchi. Learned counsel for the Union of India has submitted that the last candidate admitted in M.D. Radiology had the rank 1054 while the rank of Dr. Anshuman Aggarwal is 1283. Similarly, in the case of Dr. Gagan Gupta, the last candidate admitted in M.D. Pediatrics had the rank 826 while the rank of Dr. Gagan Gupta is 1632. Learned counsel for the Union of India submitted that it may result in further legal complications, besides being in conflict to the principles laid down in *Anand S.Biji Vs. State of Kerala and others* (C.W.No.1944/93), of not permitting changes. Change in course was also not permissible under the bulletin. The said prohibition in my view cannot come in the way of relief being granted since the present situation has arisen out of the lapse and mistake of the respondents by which the petitioners were led into opting for the second year Diploma Course instead of a degree course in another discipline.

(8) As regards, petitioners ranking in merit being lower than the last candidates admitted in M.D. (Radiology) and M.D. (Pediatrics), it is pointed out that Dr. Vinayak Gautam, who had earlier been granted admission in M.D. Pathology, Guwahati with the rank of 1487 i.e. being lower than the petitioner No.1, has been granted admission in M.D. (Radiology) at the Grants Medical College, Bombay. Similarly, Dr. Mahesh Chandra (Rank 1101) was permitted to take M.S. (Orthopedics) in Allahabad. I am of the view that the plea of the Union of India in

the peculiar facts of these cases should not come in the way of the petitioners" being accommodated in the degree courses of their choice. While, it is true that following the Apex judgment in Anand S.Biji Vs. State of Kerala and others, which prescribed the procedure and guidelines for counselling and the manner in which 150 candidates were to be called each day, and the vacancies as existed and filled up has resulted in rationalization of the procedure ensuring the minimisation of anomalies such as candidates lower in the merit list getting a preferred courses in the second or third waiting list, while the same being not available to other candidates in the first list. The present cases are some more different and exceptional. The petitioners were eligible and could have opted for any other course apart from diploma course in Skin and V.D. and even for a degree course. Petitioners submit that they were interested in pursuing their studies in Bombay. At the time of counselling M.D. and M.S. courses were also available at places other than Bombay.

(9) The present state of the petitioner is directly attributable to wrong information being given in the bulletin and on the basis of which the petitioners were misled into opting for the courses which turned out to be of one year instead of two years duration. Moreover, it is not as if the petitioners are ineligible for a degree course. Even now the Union of India has indicated that the petitioner, Dr. Anshuman Aggarwal could not opt for a M.D. course in Skin and V.D., at Amritsar. As noted earlier in Samir Gupta Vs. Union of India (C.W.171/97), two petitioners, namely, Dr. Vinayak Gautam and Dr. Mahesh Chandra were both permitted change in subject and course in second counselling. Dr. Vinayak Gautam (Rank 1487) was given M.D.(Radiology) at Bombay which had closed in the first counselling at Rank 106. Similarly, Dr. Mahesh Chandra (Rank 1101) was permitted to take M.S.(Orthopedics), which had earlier closed at 300 Rank.

(10) In these circumstances, when specially seats are not available in the two years courses in Skin and V.D. in the places of their choice, viz. Bombay, where they had originally opted and if the petitioners choose any discipline in which seats are presently available even though candidates with better merits were earlier admitted, the same should not be denied to them since they are otherwise eligible. The present case is analogous to second counselling. No prejudice can be caused to any intermediary rank holder, since the choice/option already stands closed and they cannot have a claim against these available seats. The availability of the seats in M.D.(Radiology) at Medical College, Indore and M.D.(Pediatrics) in G.S. Seth Medical College at Bombay had been confirmed by the respondents and vide order dated 11.11.1997, they were directed to retain and not surrender the above seats till further orders. In view of the foregoing discussion, writ petitions are allowed. Directions be issued to respondent No.3 to allot to the petitioner, Dr. Anshuman Aggarwal the vacant seat available in the M.D. Radiology course at Medical College, Indore and the petitioner, Dr. Gagan Gupta in M.D. Pediatric, in G.S. Seth Medical College at Bombay. Admissions of course would be subject to the petitioners" complying

with the requisite rules and formalities. Writ petitions stand disposed of with these directions.