
(2007) 01 MP CK 0047
In the Madhya Pradesh High Court

Arun Singh Yadav and Amit Choudhary	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) ILR (MP) 178

Hon'ble Judges : A.K. Patnaik, C.J;R.S. Jha, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—In these two writ petitions under Article 226 of the Constitution, the petitioners have challenged Rules 9.6 and 9.9 of the M.P. Medical and Dental Under-Graduate Entrance Examination Rules, 2006 (for short "the Rules").

2. The facts in W.P. No. 11414 of 2006 are that petitioner Arun Singh Yadav appeared in the Pre-Medical Test, 2006 conducted under the Rules for admission into the MBBS and BDS courses in different Government colleges in the State of Madhya Pradesh, with Roll No. 431924. He ranked No. 37 in the merit list of OBC category and raked No. 111 in the wait list of General category and secured 171.63 marks out of 200. On the basis of his merit position in OBC category, he was called for the first counselling on 27th and 28th July, 2006 and since 69 seats in MBBS course reserved for OBC candidates were filled up by OBC candidates who were placed above him, he was offered as seat in the BDS course and he opted for admission in BDS course. His case in the writ petition is that he was actually coerced, misrepresented and befooled to take the BDS seat when actually, there were seats available for the MBBS course. His further case is that subsequently about 48 seats in the MBBS course in the unreserved category became available and wait list candidates upto 118 of General category were allotted MBBS seats, while he was not offered any seat out of the aforesaid 48 seats of MBBS course which became available because of Rules 9.6 and 9.9 of the Rules. He has therefore prayed that Rules 9.6 and 9.9 to the Rules be

declared as ultra vires Article 14 of the Constitution.

3. The facts of W.P. No. 12094 of 2006 are that petitioner Amit Choudhary also took the Pre-Medical Test, 2006 for admission to MBBS and BDS courses in the Government Medical Colleges in the State of Madhya Pradesh with Roll No. 434969 and he secured 172.38 marks out of 200 and was placed at No. 100 of the merit list of the General category candidates and at No. 34 in the waiting list of OBC category. On the basis of his merit position in the OBC category, he was called for first counselling on 28th July, 2006 and since all the 69 seats in MBBS course reserved for OBC were filled up by more meritorious candidates, he was offered a seat in the BDS course. His case in the writ petition however is that a representation was made to him at the time of first counselling that a seat in the MBBS course was not available and he was forced to take admission against a BDS seat at the first counselling. After the first counselling, 48 seat became available in the MBBS course for general category but he was not called for the counselling for the said 48 seats in the MBBS course because of Rules 9.6 and 9.9 and instead candidates upto No. 118 of the waiting list of general category were given admission in these 48 seats.

4. Mr. Aditya Sanghi, learned Counsel for the petitioners submitted that 48 seats were actually available at the time of first counselling and yet these 48 seats were not offered to the candidates who attended the first counselling. He submitted that because of such misrepresentation that no MBBS seats were available, the petitioners were literally forced to take admission in the BDS seat. He submitted that a reading of Rules 9.6 and 9.9 of the Rules would show that candidates called for counselling are to exercise their option for allotment of any one of the "available seats" and once he exercises that option for allotment of any of the seats, such option shall be final and the candidate would not be invited for any other subsequent counselling even if he is higher in merit and the seat of his choice becomes available after he has selected his seat in first counselling. He argued that the expression "available seats" would mean seats available at the time of first counselling. Alternatively, Mr. Sanghi submitted that Rules 9.6 and 9.9 of the Rules are unreasonable and violative of Article 14 of the Constitution inasmuch as it deprives a meritorious candidate from admission into a seat in the MBBS course, which becomes available after he had exercised the option for BDS course and hence Rules 9.6 and 9.9 of the Rules are ultra vires Article 14 of the Constitution.

5. Mr. Ashok Agrawal, learned Government Advocate for the State submitted that Rules 9.6 and 9.9 of the Rules are not unreasonable and not violative of Article 14 of the Constitution and that similar rules have been upheld by the Supreme Court in Arvind Kumar Kankane. Vs. State of U.P. and Others, , and in Mabel Vs. State of Haryana and Others, . He further submitted that pursuant to the orders passed by this Court on 14-11-2006, the Director, Medical Education, Bhopal has filed additional affidavit on behalf of the respondents stating in Paragraph 11 thereof that it is only at the end of first round of counselling that 45 seats in

MBBS course in general category including 15 seats for woman candidates remained vacant and the Counselling Committee in its meeting held on 31-7-2006 recorded the vacancy position. Along with the said additional affidavit, a copy of the proceedings of the Counselling Committee has been annexed as Annexure AR-1. He pointed out that in Paragraph 13 of the said affidavit, the Director, Medical Education has also stated that before the commencement of the second round of counselling, three more seats of MBBS course became available from the All India Quota. He submitted that it would be clear from Paragraph 11, 12, 13 and 14 of the additional affidavit that the 45 seats of MBBS course became available and thereafter three more seats became available only in the second counselling and the submission of Mr. Sanghi that these 48 seats were available at the time of first counselling was not correct.

6. Rules 9.6 and 9.9 of the Rules impugned in these two writ petitions are quoted herein below:

9.6. The candidates or their authorised representatives shall wait for their turn in the order of merit. They shall be called in small groups of 10-20 for scrutiny, i.e., verification of original documents and if found eligible, shall further be permitted for the counseling where they shall exercise their option for allotment of any one of the available seats which shall be final and the same shall be allotted to them and the allotment letter shall be issued on payment of Bank Draft payable to Dean/Principal of the College as per Rule 7.2.

9.9. During the first counselling, allotment of seats of Medical/Dental colleges shall be done. If any candidate selects his seat during the counselling, then he/she shall not be invited for the subsequent counselling even if he/she is higher in merit and seat, college and course of his/her choice became available after he has selected his seat in first counselling, then also his/her claim will not be accepted.

7. It will be clear from Rule 9.6 quoted above that candidates or their authorised representatives shall wait for their turn in the order of merit and when they are called for the counselling and they exercise their option for allotment of any one of the available seats, such option shall be final and the available seats will be allotted to them. It will be further clear from Rule 9.9 of the Rules that if any candidate selects his seat during counselling in a Medical/Dental College, he shall not be invited for the subsequent counselling even if he is higher in merit and seat, college and course of his choice became available after he has selected his seat in first counselling. Prima facie, Rules 9.6 and 9.9 debarring a candidate who has exercised option for an available seat to make a claim to a seat which becomes subsequently available on the basis of his higher position in the merit list, appears to be inequitable but unless a candidate who has already exercised option for available seat is debarred from making a claim to a seat which becomes subsequently available on the basis of his higher position in the merit, there will be lot of practical difficulties in filling up the seats in the Medical and Dental courses in time to enable the commencement of the MBBS/Dental courses

on the scheduled dates. This is because if a candidate, who has already exercised option for any available seat at the previous counselling and has been allotted such seat is again offered another attractive seat subsequently, he will vacate the seat that was earlier allotted to him and this will start a chain reaction with regard to filling up of seats, making it difficult for the authority to fill up the seats available before the time for commencement of the course. Rules 9.6 and 9.9 of the Rules therefore cannot be held to be arbitrary or unreasonable but must be held to be in the public-interest.

8. In *Mabel v. State of Haryana* (supra), while upholding Clause 18 of the Information Brochure of Kurukshetra University, Haryana for BDS, MBBS examination which provides that candidates already admitted in any Medical/ Dental Colleges will not be considered eligible for admission to the course, the Supreme Court has held that the clause at times will operate harshly but is meant to ensure that the candidates who have already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission, and further such a change would deprive another eligible candidate from seeking admission to the other course. The Supreme Court has further held that the intention of the authority concerned in framing Clause 18 appears to be, to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream.

9. In *Arvind Kumar Kankane v. State of M.P.* (supra), a similar rule relating to admission to Post Graduate Medical Course was under challenge and the Supreme Court repelled the challenge and held such rule as one which is reasonable and which stands the test of rationality, relying on the decisions of the Full Bench of the Delhi High Court in *Veena Gupta Vs. University of Delhi*, , and the High Court of Punjab and Haryana in *Anil Jain's case* (1998) 3 SCC 2016. Paragraph 4 of the judgment of the Supreme Court in the case of *Arun Kumar Kankane* (supra), is quoted herein below:

4. We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the Division Bench and Delhi High Court in *Veena Gupta Vs. University of Delhi*, , and the High Court of Punjab and Haryana in *Anil Jain 's case* (1998) 3 ESC 2016 , is in accordance with the reason and stands the test of rationality. It is clear that once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counselling and his seat becomes vacant, the process of counselling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period.

In view of the aforesaid decisions of the Supreme Court, we are of the considered opinion that Rules 9.6 and 9.9 of the Rules are reasonable and have

been framed in public interest and are not ultra vires Article 14 of the Constitution.

10. Coming now to the contention of Mr. Sanghi that 48 seats of MBBS were actually available at the time of first counselling and that the two petitioners were misled and coerced to take admission in the BDS course, we find that in Paragraphs 11 to 14 of the additional affidavit filed on behalf of the respondents, it is clearly stated that these 48 seats were not available at the beginning of the first counselling and instead it is stated that 45 MBBS seats of General category were available at the end of the first round of counselling and three seats were received back from the All India Quota before the commencement of the second round of counselling. The said Paragraphs 11 to 14 of the additional affidavit filed on behalf of the respondents are extracted herein below:

11. At the end of first round of counselling, 45 seats of MBBS course in unreserved/open category including 15 seats reserved for women candidates remained vacant. The vacancy position was recorded by the Counselling Committee in its meeting held on 31-7-2006, a copy where of is annexed herewith as Annexure AR-1.

12. In order to fill up the vacant seats of unreserved category, advertisement was issued for conducting second round of counselling w.e.f. 28th August up to 30th August, 2006. In the said advertisement the availability of vacant seats in unreserved category was clearly mentioned. A copy of the advertisement is annexed herewith as Annexure AR-2.

13. Before commencement of the second round of counselling, the answering respondents received six seats of MBBS course from All India Quota. The seats which are reverted from the All India Quota are required to be reserved for SC/ST/OBC candidates in accordance with the provisions contained in the Rule 9.16 of the Admission Rules. Accordingly one seat in Gandhi Medical College was reserved for SC, one seat in Gwalior Medical College was reserved for OBC and one seat in Jabalpur Medical College was reserved for ST. Thus, three additional seats for open unreserved category became available in the second counselling.

14. The total number of MBBS seats thus became available in the second counselling was 48 (i.e., 45 left unfilled at the time of first counselling and 3 seats received back from All India Quota).

11. It is further stated in Paragraph 25 of the additional affidavit that the petitioners opted for BDS seats on their own will and they were allotted seats on 20-7-2006 and admitted in the respective Medical Colleges on BDS seats on 31-7-2006. The relevant portion of Paragraph 25 of the additional affidavit is also extracted below:

25. It is further submitted that the petitioners opted for BDS seats on their own volition. They were allotted seat on 30-7-2006. On the basis of allotment, they took admission in their respective Dental Colleges on 31-7-2006 and also

deposited requisite fees. No allegation was made till this date that they were forced to opt for BDS seat....

11. For the aforesaid reasons, we do not find any merit in these writ petitions and we accordingly dismiss the same. But we would like to observe that henceforth the authorities, who conduct counselling, should follow a transparent procedure in which candidates seeking admission to MBBS/BDS courses have trust and confidence. The procedure should be such that they should not feel that although better seats were available at the time of their counselling, information with regard to such seats was withheld from them and as a consequence, they were misled to take admission in a less attractive seats and the better seats were offered to show favour to candidates of their choice. What exactly should be the transparent and fair procedure to be adopted is for the counselling authorities to work out. This new transparent and fair procedure should be devised and adopted in the next counselling.

The writ petitions are disposed of with the aforesaid observations and directions. There shall be no order as to costs.