

(2008) 11 MP CK 0056
In the Madhya Pradesh High Court

Association of Private Professional Technical and Medical
Institution

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyam Avam Shulk Ka Nirdharan) Adhiniyam, 2007 — Section 12

Citation : AIR 2009 MP 110

Hon'ble Judges : A.K. Patnaik, C.J;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In this writ petition filed under Article 226 of the Constitution by the Association of Private Professional Technical and Medical Institutions, we are called upon to decide whether a candidate who has taken admission in an institution pursuant to the first phase of counselling can be allowed to participate in the second round of counselling and reopen the allotment made in his favour in the first round of counseling.

2. The facts briefly are that for regulatory fees and admissions in Private Professional Institutions in the State of Madhya Pradesh, the Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ke Viniyam Avam Shulk Ka Nirdharan) Adhiniyam 2007 (for short "the Adhiniyam, 2007") was made by the State Legislature. In exercise of powers conferred by Section 12 of the Adhiniyam, 2007, the State Government made the Admission Rules, 2008 (for short "the 2008 rules"). In accordance with the 2008 Rules, a common entrance test for candidates intending to take admission in B.E. course in different institutions was conducted by the Professional Examination Board of the Government of Madhya Pradesh and on the basis of the position of the candidates in the merit list, the candidates were called for counselling by the Engineering Courses Counselling Authority constituted as per the 2008 Rules. In the first round of counselling that

took place the candidates opted for the different institutions for the B.E. course. When the first round of counselling was going to be completed, the Engineering Courses Counselling Authority issued a schedule for second round of counselling mentioning therein inter alia that a candidate, who has got admission through the first round of counselling can also appear in the second round of counselling. Aggrieved, the petitioner has filed this writ petition contending that under the 2008 Rules once a candidate has taken admission on the basis of first round of counselling he cannot be allowed to participate in the second round of counselling and reopen the allotment of the institution made to him.

3. On 26-9-2008 the Court while issuing notice to the respondents passed an interim order restraining the respondents from allowing the students, who have already got admission through the first round of counselling in any other course or college to seek cancellation of admission and obtained fresh admission through the second round of counselling in any other course or college during the academic year 2008-09. The interim matter was again taken up on 14-10-2008 when the Court after hearing the Counsel for the petitioner and the respondents as well as the Counsel for the interveners and after perusing Rule 7(6) of the 2008 Rules took the prima facie view that once a candidate has taken admission in an institution after counselling, he can opt for reopening of allotment after getting his previous admission in the institution cancelled only where he desires to change the course of study and accordingly refused to vacate the interim order dated 26-9-2008 but made it clear that a candidate who desires a change of course of study and in such case, reallocation may be permitted with a procedure duly approved by the Committee as provided in Sub-rule (6) of Rule 7 of the 2008 Rules. On 14-10-2008, we also directed that until we decide the matter, the second round of counseling will not take place. Accordingly, the second round of counselling has not taken place as yet and it has become necessary to decide this case forthwith.

4. When the case was taken up for hearing today, Mr. Ajay Mishra, learned senior Counsel for the petitioner, relied on the provisions of Rule 4(1)(b) and Rule 7(6) of the 2008 Rules and submitted that under the scheme of the 2008 Rules once a candidate has taken admission in an institution pursuant to the first round of counselling, he cannot be allowed to participate in the second round of counselling and reopen the case in his favour except where the course of study may change for example from BDS to MBBS course. He further submitted that the courses of study have been stated in the Rule 13 of the 2008 Rules which would go to show that Bachelor in Engineering (B.E.) is only one course. He submitted that the 2008 Rules, therefore, does not permit any candidate who has been admitted to the B.E. course in any institution to participate in the second round of counselling and seek admission in another institution in B.E. course pursuant to the allotment made in the subsequent round of counselling. He cited the decisions of the Full Bench of Delhi High Court in Sandhya Kabra and Others Vs. University of Delhi, in Dr. Veena Gupta v. University of Delhi AIR 1994 Delhi 108 in which it has been held that the effect of putting the seat back for

counselling for all candidates would upset the entire counselling which had already taken place. He also cited the decision of the Allahabad High Court in *Dr. Naveen Jamval v. Dr. Arvind Kumar Kenkane* AIR 2000 All 191 wherein the Division Bench of the Allahabad High Court has held that permitting those candidates who have already been granted admission to again exercise their option in the second counselling is unsustainable because the result of such a course of action will be that the seats, which had been allotted to the institutions concerned in the first counselling will fall vacant and it will inevitably result in holding of a third counselling. In the aforesaid decision, the Division Bench of the Allahabad High Court has further held that this will set a chain reaction in motion and the candidates who had participated in the second counselling would like to participate in the third counselling which would again create vacancy in the seats allotted to them in the second counselling and this will probably require a fourth counselling and the completion of the admission process would take a very long time, this disturbing the entire schedule and the courses will never be completed within the period as laid down by the University or AICTE or the Medical Council of India as the course may be. He also relied on the decisions of the Supreme Court in *Sub-Committee of Judicial Accountability Vs. Union of India and others*, , *Arvind Kumar Kankane. Vs. State of U.P. and Others*, and *Mabel Vs. State of Haryana and Others*, which were to the same effect.

5. Mr. Vijay Shukla, learned Deputy Advocate General appearing for the State of M. P., Mr. Rajendra Tiwari, learned Senior Advocate, with Mr. Paritosh Gupta, Advocate, appearing for the Rajeev Gandhi Prodyogiki Vishwavidyalaya (respondent No. 3), and the Counsel for the interveners and candidates, on the other hand, submitted that Sub-rule (6) of Rule 7 of the 2008 Rules clearly provides that in subsequent round of counselling reopening of allotment can be done where course of study may change for example from BDS to MBBS. They also referred to Rule 9 of the 2008 Rules to say that under the 2008 Rules admission of a candidate can be cancelled if he wants to participate in the second round of counselling for allotment of a seat in some other institution. The learned Counsel for the respondents and the interveners further submitted that candidates should be permitted to participate in the subsequent counselling for admission to seats in better private professional institutions even if they are admitted to an institution on the basis of first phase of counselling and for this reason Sub-rule (6) of Rule 7 permits participation in the second round of counselling after getting the previous admission duly cancelled. They further submitted that in accordance with the 2008 Rules, the Professional Examination Board published a brochure titled P.E.P.T., P.A.T. 2008 in which it is clearly stated that a candidate can be permitted for the subsequent round of counselling and may be permitted re-allotment of seat in an institution different from the one he had been admitted pursuant to the earlier round of counselling provided he has his admission duly cancelled. They also referred to Rule 9 of the 2008 Rules to show that cancellation of admission is permissible and the only consequence of such cancellation of admission would be that a candidate would lose 10% of the

fees deposited by him and the balance will be refunded by the institution in which he had taken admission. They finally submitted that the B.E. Course may be different in different institutions depending upon the subjects of B.E. taught in the institutions and hence a candidate seeking admission in a different institution with a different B.E. Course is, in fact, studying a different course for which re-allotment in the second round of counselling is permissible under Sub-rule (6) of Rule 7 of the 2008 Rules.

6. We have considered the submissions of the learned Counsel for the parties and we find that though we are called upon in this case to interpret Sub-rule (6) of Rule 7 of the 2008 Rules, we have to look into not only Sub-rule (6) of Rule 7 of the 2008 Rules but other provisions of Sub-rule (6) of Rule 7, both preceding and succeeding Sub-rule (6) Of Rule 7 for finding out the correct meaning of Sub-rule (6) of Rule 7 of the 2008 Rules. As observed by the Supreme Court in the National Insurance Co. Ltd. Vs. Anjana Shyam and Others, .

As early as in 1846, Dr. Lushington in R. v. Eduljee Byramjeet (sic) posited that to ascertain the true meaning of a Clause in a statute the Court must look at the whole statute, at what precedes and at what succeeds and not merely at the Clause itself.

7. Rule 4(1)(b). Rule 7(6), Rule 9 and Rule 13 which have a bearing on the issue to be decided by us in this case, are extracted herein below:

4. Admission Rules.- Admission Rules for year 2008-09 onward - In all professional institutions the procedure for admission shall be as under:

(1) Availability of seats:

xx xx xx (b) If during counselling permission is granted to any institution or the number of seats in any institution are varied by the Appropriate Authority on or before 30th June of that year same may be incorporated in counselling and the candidates who have already taken admission prior to change in intake capacity, shall not be entitled for admissions to newly sanctioned seats.

7. Procedure of admission.-

xxx xxx xxx (1) Once a candidate has taken admission in an institution on his day of counselling he shall not be permitted to change it in some phase of counselling but he may appear in the next phase of counselling after getting his previous admission duly cancelled. In subsequent round of counselling re-opening of allotment can be done where course of study may change for example from BDS to MBBS, re-allotment may be permitted with a procedure duly approved by Admission and Fee Regulatory Committee.

9. Cancellation of admission.- (1) If at any stage it Is found that a candidate has got admission in any institution on the basis of false or incorrect information or by hiding relevant facts or if at any time after admission it is found that the admission was given to the candidate due to some mistake or oversight, the

admission granted to such a candidate shall be liable to be cancelled forthwith without any notice at any time during the course of his/her studies by the Principal of the Institution or by Competent Authority.

(2) In the event of refusal or non-admission on the part of the candidate, the fees so deposited be refunded after 10% deduction on deposited amount if such cancellation is done within 7 days before the last date of counselling or as per the criteria laid down by the Competent Authority.

13. Courses.- Courses relating to technical education institutions running AICTE approved B.E., B. Pharma, B.Arch., MBA, MCA and Diploma Pharmacy Courses are given in Annexure.

8. On a reading of Rule 4(1)(b) quoted above, it is clear that if during counselling permission is granted to any institution or the number of seats in any institution are varied by the Appropriate Authority on or before 30th June of that year the same may be incorporated in counselling and the candidates who have already taken admission prior to change in intake capacity, shall not be entitled for admissions to newly sanctioned seats. This provision in the 2008 Rules thus expressly provides that candidates who have already taken admission prior to change in intake capacity of an institution shall not be entitled for admission to newly sanctioned seats. The intention of this provision of the 2008 Rules obviously is to ensure that an admission to a seat already made in any institution shall not be disturbed where the number of seats in any institution is varied by the Appropriate Authority during counselling.

9. The first limb of Rule 7(6) states that once a candidate has taken admission in an institution on his day of counselling he shall not be permitted to change it in the same phase of counselling but he may appear in the next phase of counselling after getting his previous admission duly cancelled. The second limb of Rule 7(6), however, states that in the subsequent round of counselling reopening of allotment can be done where course of study may change for example from BDS to MBBS, re-allotment may be permitted with a procedure a procedure duly approved by the Admission and Fee Regulatory Committee.

10. Mr. Ajay Mishra learned Counsel for the petitioner submits that the first and second limbs of Rule 7(6) of the 2008 Rules have to be read together and this would mean that a candidate would be permitted to participate in the second round of counselling on his previous admission being duly cancelled only for the purpose of change of his course of study and not for the purpose of change of institution with the same course. The Counsel for the respondents and the interveners on the other hand submitted that the second limb of Rule 7(6) has to be read independent of the first limb of Rule 7(6) and so read the second limb of Rule 7(6) is clear that in the subsequent round of counselling re-opening of allotment can be done.

11. After considering the submissions of learned Counsel for the petitioner and learned Counsel for the respondents and the interveners, we are of the

considered opinion that the second limb of Rule 7(6) cannot be read independent of the first limb of Rule 7(6). The first reason for this opinion is that the first limb provides the pre-condition for participation in the next phase of counselling and it states that unless the previous admission is duly cancelled participation in the second round of counselling as provided in the second limb is not permissible. Secondly, the first limb itself states that a candidate may appeal in the next phase of counselling after getting his previous admission duly cancelled but does not say what will follow thereafter. It is only the second limb of Rule 7(6) which states what will follow when a candidate wants to appear in the next phase of counselling after getting his previous admission duly cancelled and it is this that he can go in for re-opening of allotment where course of study may change and such re-allotment may be permitted with a procedure duly approved by Admission and Fee Regulatory Committee. Thus the first and second limbs of Rule 7(6) of the 2008 Rules have to be read together and so read, Rule 7(6) would mean that after getting his previous admission duly cancelled, a candidate can participate in the second round of counseling only for the purpose of reopening of allotment in the course of study and not for the purpose of re-allotment of institution without change in the course of study. This provision has been made by Rule making authority presumably to allow candidates a change over from one course to another even when they have taken admission in an institution, but this provision has not been made to allow change over from one institution to another without a change of course because if such a change over from one institution to other without change of course is permitted, the admission and counselling process would be de-stabilized leading to a chain of subsequent counselling for the seats which become vacant by cancellation of the previous admission by the candidates., this Intention of the Rule making authority is the same as in Rule 4(1)(b), as discussed above under which a candidate who has already taken admission prior to change In intake capacity, shall not be entitled for admission to newly sanctioned seat.

12. The learned Counsel for the respondents and the interveners alternatively submitted that the example of change of course from BDS to MBBS given in Rule 7(6) is not exhaustive of the cases of change of course. They submitted that there are different branches of engineering in B.E. course and, therefore, these branches represent different course of B.E. We are unable to accept this submission. A reading of Rule 13 of the 2008 Rules quoted above would show that B.E. is a course and different branches of B.E. are not different courses. Hence, a candidate cannot re-open the allotment in the second round of counselling from one institution to another on the plea that the B.E. course in one institution is different from the B.E. course in other institution.

13. Coming now to Rule 9 of the 2008 Rules, we find that under Sub-rule (1) of Rule 9, admission of a candidate in any institution is liable to be cancelled forthwith if such admission was taken on furnishing false or incorrect information or suppressing relevant facts or was given due to some mistake or oversight. Sub-rule (1) of Rule 9 does not confer any right on the candidate as such to have

his admission cancelled on any ground. In Sub-rule (2) of Rule 9 it is provided that in the event of refusal or non-admission on the part of the candidate, the fees so deposited be refunded after 10% deduction on deposited amount if such cancellation is done within 7 days before the last date of counselling or as per the criteria laid down by the Competent Authority. This is thus only a provision for refund of fees deposited by a candidate in the event of refusal or non-admission on his part and not a provision conferring a right on a candidate to have his admission cancelled. The only right conferred on the candidate to have his admission cancelled is Rule 7(6) of the 2008 Rules, if he wants to participate in the subsequent round of counselling for the purpose of re-opening of allotment where course of study may change and not otherwise.

14. In the affidavit filed on behalf of the State of Madhya Pradesh by the Additional Secretary, Department of Technical Education & Training, Government of Madhya Pradesh, however, it is Stated that in the next round of counselling candidates if so wish are permitted to change; opt course/institution branch, after getting his/her previous admission cancelled and this practice is being followed in the State since long time and retains the freedom of choice to students placed higher in the merit. We cannot accept this plea taken by the State because where statutory Rules are in operation, practice has no place and statutory Rules have to be followed. As we have seen, the 2008 Rules and in particular Rule 4(1)(b) and Rule 7(6) prohibit a candidate who has once taken admission in a course in an institution to seek admission in another institution in the same course and only for change of course his participation in the second phase of counselling and re-allotment of a new course are permitted on his cancellation of his previous admission.

15. To find out what was the intention of the Rule making authority at the drafting stage of the rules, we had called upon the State to produce the records in which the entire exercise of Rule making has been done and we find that in the drafting stage also the intention of the Rule making authority was clear that once admission was taken by a candidate in an institution on the basis of a counselling such admission was final and subsequent request for a change was not to be entertained.

16. This is clear from the draft proposal of the notification for Admission and Fee Regulatory Committee (Transaction of Business) (Regulations 2007 sent to the Minister for Technical Education and Training Department, Government of Madhya Pradesh, under cover of letter dated 31-10-2007. Regulation 12 of this Draft Regulation provided that the institution and the subject allotted during counselling shall be final under due written acceptance from the candidate and the subsequent request for a change shall not be entertained by the Authority or the Chairperson and Regulation 13(1) of the Draft Regulation provided that if there is second round of counselling, the candidates left over during first round will be called and will be allotted to institution having vacant seats on the basis of merit and priority. Regulation 13(2) of the Draft Regulation emphatically provided

that in no case there will be re-opening of allotments made during the first round and the candidates will have to seek admission to the institution allotted to them during the first round. These draft regulations did not even provide for re-opening of allotment during the subsequent phase of counselling for re-allotment of a change of course.

17. The second draft of the regulations was sent to the Additional Secretary, Technical Education and Training Department, Government of Madhya Pradesh, by letter dated 19-12-2007. Regulation 5 enumerated the procedure for admission and Clause (g) of Regulation 5 stated that the institution and the subject allotted during counseling shall be final under due written acceptance from the candidate and the subsequent request for a change shall not be entertained by the Authority or the Chairperson. Clause (h) of Regulation 5 of second draft provided that if there is subsequent round of counseling, the candidates left over during first round will be called and will be allotted to institution having vacant seats on the basis of merit and priority. Clause (i) of Regulation 5 provided that in subsequent round of counselling, reopening of allotment can be done where course of study may change for example from BDS to MBBS, re-allotment may be permitted with a procedure duly approved by Admission and Fee Regulatory Committee. Thus, in the second draft, a provision was made for the first time that in subsequent round of counseling, re-opening of allotment can be done where a course of study may change, otherwise reopening of allotment was not permissible and the institution once allotted during counselling was final.

18. The final draft was titled as Admission Rules, 2008 and Rule 7 of the Admission Rules 2008 provided the procedure of admission. Sub-rule (6) of Rule 7 provided that once a candidate has taken admission in an institution on his day of counselling, he shall not be permitted to change it in same phase of counselling but he may appear in the next phase of counselling after getting his previous admission duly cancelled and in the subsequent round of counseling, re-opening of allotment can be done where course of study may change for example from BDS to MBBS, re-allotment may be permitted with a procedure duly approved by Admission and fee Regulatory Committee. This provision in Sub-rule (6) of Rule 7 was finally adopted in the 2008 Rules.

19. It will be clear from the aforesaid history of the 2008 Rules that in the initial stages of drafting of the Rules, the intention of the Rule making authority was clear that once admission was taken by a candidate pursuant to counselling in an institution in any subject or course, such admission was final and could not be re-opened. In the subsequent stages of the draft rules, the Rule making authority intended to make one exception to this provision and provided that in case of a change of course, in the subsequent round of counseling, re-allotment would be permissible if the previous admission, pursuant to the earlier round of counseling, is duly cancelled.

20. According to the English traditional view, the intent of Parliament which has

passed the Act is not to be gathered from the Parliamentary history of the statute such as its original form, or the amendments considered during its progress in parliament. This traditional view, however, has undergone a change and the Indian view on the relevance of legislative or Parliamentary history has been very succinctly stated in Justice G.P. Singh's "Principles of Statutory Interpretation" 11th Edition, 2008 thus:

The Supreme Court, speaking generally, to begin with, enunciated the Rule of exclusion of Parliamentary history in the way it was traditionally enunciated by the English Courts, but on many an occasion, the Court used this aid in resolving questions of construction. The Court has now veered to the view that legislative history within circumspect limits may be consulted by Courts in resolving ambiguities.

In recent times, therefore, on many occasions Indian Courts have used the aid of Legislative history in resolving ambiguities in construction of statutes within circumspect limits. The legislative history of the 2008 Rules, as we have seen, only re-affirms our interpretation of the 2008 Rules that a candidate who had taken admission in a course in an institution pursuant to counseling, could participate in the subsequent round of counselling and such a re-allotment after duly canceling his previous admission only for the purpose of change of course, not otherwise.

21. A submission was made on behalf of the interveners that the Professional examination Board in its brochure P.E.P.T., P.A.T. 2008 had clearly stated in Clause 2.9.2 and Clause 3.5, Sub-clause (6) that participation in second round, of counselling is permissible for change of institute. Obviously, the brochure published by the Professional Examination Board cannot override the statutory 2008 Rules and as we have seen, the 2008 Rules are amply clear that once admission is taken on the basis of counselling in an institution, a candidate cannot participate in subsequent round of counseling for the purpose of re-allotment except for change of course.

22. An apprehension was expressed on behalf of the interveners who are all candidates seeking admission in the private institutions in Madhya Pradesh that since they have already cancelled their previous admissions for participating in the second round of counselling, the seats in which they have been given admissions may have been filled up in the meanwhile, Mr. Ajay Mishra, learned senior Advocate for the petitioner, submitted that such apprehension is not well founded. Since we have interpreted the 2008 Rules and we have held that participation in the second round of counselling on cancellation of the previous admission is permissible only for the purpose of change of course and not for the purpose of change of institution without change of course, the respondent No. 3, the Engineering Courses Counselling Authority, will ensure that such students get back to the institutions in which they were earlier given admissions. If any difficulty is faced in carrying out this direction of the Court, it will be open for any party or any intervener to move this Court for appropriate directions. The last

date of admissions are extended up to 30th November 2008.

23. The writ petition is allowed but without any order as to costs.

The interim order restraining further counselling is vacated. The applications for interventions are allowed. All other interlocutory applications stand disposed of.