
(2009) 02 MP CK 0019
In the Madhya Pradesh High Court

Atul Bansal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2009) 2 MPHT 530 : (2009) 1 MPLJ 655

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

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

The petitioner, aggrieved by the demand and recovery of higher fees from him for the MBBS course to which he was admitted, has filed this petition under Article 226 of the Constitution of India.

The relevant facts briefly are that the petitioner appeared in the Pre-Medical Test as a general candidate and secured 991.32 marks out of 1200 marks and was at Serial No. 281 of the merit list. The seats in MBBS course in the Government Medical Colleges were categorised as "free seats" and "payment seats". The fees payable for a free seat was Rs. 35,000/- per annum and the fees payable for a payment seat was Rs. 1,50,000/- per annum. The petitioner's case is that as per his position in the merit list, he was entitled to admission in a free seat but instead, he was given admission in payment seat in the G.R. Medical College, Gwalior. The petitioner has therefore prayed for a direction to the respondents to charge only Rs. 35,000/- per annum for the MBBS course from the petitioner and not to demand Rs. 1,50,000/- per annum for the said MBBS course.

Mr. Aditya Sanghi, learned Counsel for the petitioner, submitted that in Deepak Chaturvedi Vs. State of M.P. and Others, , a Division Bench of this Court has already held relying on Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., that the scheme formulated by the

Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., of free seats and payment seats for private professional colleges with nominal fees for "free seats" and higher fees for "payment seats" was not applicable to a College financed and controlled by the State Government. He submitted that the G.R. Medical College, Gwalior to which the petitioner was admitted for MBBS course was also a college financed and controlled by the State of M.P. and therefore, the scheme in Unni Krishnan (supra), of free seats and payment seats was not applicable to the G.R. Medical College, Gwalior. He further submitted that in any case, as per the merit position, the petitioner was entitled to admission in MBBS course in "free seat" and accordingly was liable to pay lower fees in a private professional college and even if he was given admissions in Government College, on the basis of his own option, he was liable to pay fees applicable to "free seats".

Mr. Awasthi, learned Government Advocate, on the other hand, submitted that the petitioner had himself opted for admission to a payment seat in the G.R. Medical College, Gwalior and cannot now turn back and say that he is not liable to pay higher fees for payment seats. He further submitted that the higher fees of Rs. 1,50,000/- per annum has already been recovered from the petitioner and if a direction is given by the Court to the respondents to refund the fees, the respondents will suffer prejudice.

We have perused our order dated 23-11-2007 in Deepak Chaturvedi (supra), and we find that we have taken the view therein that the right to equality guaranteed under Article 14 of the Constitution entitled the students to be treated in matters of admission and fees on the basis of merit and this being a fundamental right guaranteed by Article 14 of the Constitution cannot be waived. In our order dated 23-11-2007 in Deepak Chaturvedi (supra), we have also held relying on Unni Krishnan and Institute of Human Resource (supra) that the scheme in Unni Krishnan (supra), of free seats and payment seats for private professional colleges was not applicable to colleges financed and controlled by the State Government of M.P. Hence, charging of different sets of fees for "free seats" and "payment seats" was not applicable to the G.R. Medical College, Gwalior, which is financed and controlled by the State Government of M.P.

We find from the additional return filed on behalf of the respondent Nos. 1 and 2 that the last free seat in a private medical college was allotted to one Arpan Dubey, who scored 985.58 marks and was at serial No. 5 in the waiting list, whereas the petitioner had secured 991.32 marks and was placed in the merit list at Serial No. 281 but Arpan Dubey was admitted to a free seat paying fees of Rs. 35,000/- per annum, whereas the petitioner was admitted to a payment seat paying Rs. 1,50,000/- per annum. This was a clear violation of Article 14 of the Constitution of India and hence the petitioner is entitled to a relief of enforcement of the equality clause under Article 14 of the Constitution of India.

In the result, the petition is allowed. Since the petitioner has already paid fees of Rs. 1,50,000/- per annum to the respondents, we direct the respondents to

refund the excess fees over and above Rs. 35,000/- per annum to the petitioner within a period of three months from today. No order as to costs.