

(1994) 01 SC CK 0064

In the Supreme Court Of India

Case No : Writ Petition (C) No. 370 of 1993

Chhavi Mehrotra (Miss)

APPELLANT

Vs

Director General Health Services

RESPONDENT

Date of Decision : 14-01-1994

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2

Citation : (1994) 2 JT 212 : (1994) 2 SCALE 497 : (1994) 2 SCC 370 : (1994) 3 UPLBEC 1464

Hon'ble Judges : M. N. Venkatachaliah, C.J;S. Mohan, J

Bench : Division Bench

Judgement

1. The petitioner filed this writ petition under Article 32 of the Constitution of India praying for direction for consideration of her admission to M.B.B.S. course against the 15% All Indian Quota of 1992. She was originally allocated a seat in Medical College, Alleppey, Kerala. She prayed for transfer to Lucknow.

2. This writ petition along with similar other writ petitions were taken up for consideration by this Court. Comprehensive directions were issued in relation to admissions. In obedience to this order of this Court, a Notification dated 28.5.1993 was issued by the Director General of Health Services requiring the candidates to signify their willingness to be considered for admission under the scheme evolved by the Court. By an order dated 10.6.1993 of this Court, inter alia the following directions were given:

(i) The Director General of Health Services will first consider the cases of all those candidates who have applied for change of college and whose applications are pending before the Directorate on the date of this order including the petitioners in W.P. Nos. 370, 383, 388, 447, 458 and 466 of 1993.

(vii) In case any candidate who has been allotted a seat against All India quota in pursuance of this order does not avail of the same and fails to report in the college to which he has been nominated by July 15, 1993, the seat allotted to

the said candidate would stand surrendered to the State quota.

3. In spite of the matter being in seisin of this Court, the writ petitioner moved the High Court in Writ Petition No. 1508 of 1993 before the Lucknow Bench of Allahabad High Court and obtained certain directions. The High Court ordered that a seat be kept vacant in the King George Medical College, Lucknow. By our order dated 26.7.1993, we disapproved of the High Court entertaining the writ petition and a stay of the order was granted.

4. Petitioner was allocated a seat in S.N. Medical College, Jodhpur. She prays that she might be accommodated in Lucknow. She gives instances of following five persons who being lower in rank to her, have been accommodated in Lucknow.

a) Km. Neetika Pant (W.P. No. 563/93) merit rank No. 1718 wait listed candidate, resident of Allahabad has been reallocated seat at S.N. Medical College, Allahabad,

b) Mr. Vibhuti (W.P. No, 564/93) merit rank No. 1460 also a resident of Allahabad has been reallocated seat at S.N. Medical College, Allahabad. Initially admitted at T.D. Medical College, Alleppey, Kerala.

c) Mr. Rajiv Kumar Goyal (W.P. No. 458/93) merit rank No. 2118, wait listed admitted candidate, resident of Barreilly has been reallocated seat at Meerut from Dibrugarh.

d) Km. Anshu Aggarwal on representation submitted to the respondent, merit rank No. 1958 wait listed candidate admitted at Barhampur, State of Orissa, resident of Kanpur, has been re-allocated seat at M.L.B. Medical College, Jhansi.

e) Km. Neelu Aggarwal (W.P.No. 544/93) admitted at Tjamkavur, State of Tamil Nadu, merit rank No. 1284, resident of Agra, has been reallocated a seat at Lucknow.

5. In his counter-affidavit the Assistant Director General (Medical Examinations) slates in paragraph 7 as under:

With regard to the averments contained in paragraph 8 I submit that the list submitted to the Court on 10.6.1993 included only those candidates who had applied after the last date or receiving applications for first of the allocation viz. 28.12.1992, the candidates who had applied upto 28.12.1992 were not included in the list and therefore the names of the petitioners did not figure in the list.

6. In reply, the petitioner would aver as under:

Contents of para 7 are wrong and incorrect to the knowledge of the deponent of the affidavit under reply and the same are vehemently denied. In the list submitted by 10th June, 1993, some of the candidates who had applied before 28.12.1992 for change of medical college were included and one such examples is Km. Namila Jhamb (1465) at Serial No. 37. It is submitted that Km. Namita Jhamb had applied before 28.12.1992 and her representation was not considered

by the respondent where for no change was given to her. Km. Namita Jhamb preferred writ petition before this hon'ble Court and annexed her representation and acknowledgment thereof issued by the respondent herein before 28.12.1992. It is, therefore, false to the knowledge of the respondent that the candidates who had applied after 28.12.1992 for change of Medical College were included in the list and the candidates who had applied before 28.12.1992 were not included therein. The statement on oath made by Professor Girish Tayal, Assistant Director General is false and he deserve to be proceeded against for suitable action for deliberately and knowingly making a false statement on oath before this Hon'ble Court.

7. Again by way of reply to the supplementary affidavit of the petitioner filed on 8.11.1993, it is stated by the Assistant Director General (Medical Education in paragraph 7 as under:

I submit that Kumari Rohini Khurana had been placed at rank No. 1312 and was allotted a seat at Medical College, Thanjavur on 1.10.1992. The petitioner has been placed at rank No. 1462 in the same entrance examination. Kumari Rohini Khurana could not be related either on 25th January 1993 or on 28.6.1993 due to nonavailability of a seat at her rank as per her choices. Kumari Rohini Khurana again requested for a change to K.G.M.C., Lucknow vide letter dated 3.9.1993. A seat was found to be vacant at K.G.M.C, Lucknow and she being higher in merit than the petitioner was allotted said seat on 28th October, 1993. On 26.7.1993 this Hon'ble Court while staying the order of High Court at Lucknow for keeping a seat vacant at K.G.M.C, Lucknow for the petitioner (Kumari Chhavi Mehrotra) has directed that the Director General of Health Services is at liberty to fill it up otherwise.

8. Further it proceeds as follows:

I submit that the petitioner in this para has herself admitted that Kumari Rachna Aggarwal rank No. 1071 has sent a representation to the Secretary, Medical Education, Govt. of Uttar Pradesh and Director of Medical Education, Govt. of Uttar Pradesh for her reallocation to K.G.M.C. Lucknow in August, 1992. The said representation of Km. Rachna Agarwal has not been received by this respondent. This respondent is came to know of the High Court's order on 25.10.1993 through the telephonic message from the Director of Medical Education, Govt. of Uttar Pradesh. This respondent was asked about the eligibility for the admission of Km. Rachna Agarwal to K.G. Medical College, Lucknow at her merit position 1071. The Director of Medical Education, Govt. of Uttar Pradesh was informed about this Hon'ble Court's orders dated 26.7.1993 and 30.7.1993 advised to act accordingly. The perusal of the order of hon'ble High Court at Lucknow annexed with the supplementary affidavit of the petitioner shows that the High Court has directed the respondents (Secretary, Medical Education, Govt. of U.P., Director, Medical Education, Govt. of Uttar Pradesh) and the Principal, K.G. Medical College, Lucknow to consider the application of the petitioner for her migration/admission to K.G.M.C., Lucknow and pass appropriate orders considering the

guidelines of the Medical Council of India as well as the notification in that regard within 15 days from the date of production of a copy of this order. I submit that the D.G.H.S. was not a party to this petition.

9. The same stand is reiterated in the affidavit dated 4.1.1994 filed by the Assistant Director General (Medical Education) in relation to the admission of Kumari Rachna Agarwal.

10. It is somewhat surprising that whenever it suited the Director General of Health Services to obey the orders of the High Court, he would not bring up this matter to this Court but chose to obey even though he was not a party, Be that so.

11. In spite of the specific directions dated 10.6.1993 requiring the surrender of unfilled seats to State quota. We do not know how there could be a disobedience thereof. Then again, there is disobedience of directions dated 10.6.1993, in that Kumari Jaya, (rank No. 703) and Mr. Anup Kumar (rank No. 575) were not in the list of eighty candidates, the list which came to be submitted to this Court, Lastly, in relation to Kumari Namita Jhamb (rank No. 1465) the application is prior to 28.12.1992 while it is sought to be made out that the candidates who had applied after 28.12.1992 were included in the list dated 10.6.1993. This statement is misleading.

12. Accordingly, we direct issue of notices to the Director General of Health Services and Dr. Girish Tayal, Assistant Director General (Medical Education) to show cause why they should not be proceeded against u/s 2(a) of the Contempt of Courts Act, 1971 and be punished u/s 12 of the said Act.