
(1998) 08 AHC CK 0104
In the Allahabad High Court
Case No : C.M.W.P. No. 33178 of 1997

Dharmendra Narayan Dwivedi

APPELLANT

Vs

Director General, Medical Education and Training, Lucknow
and others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 363

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : R.S. Mishra, for the Appellant; P.N. Saxena, J.N. Verma and R.K. Jain and S.C., for the Respondent

Final Decision : Allowed

Judgement

O.P. Garg, J.—The petitioner-Dharmendra Narain Dwivedi, with roll number 47,000, appeared as a general candidate in Combined Pre-Medical Test (for short "C.P.M.T.") of 1997 conducted by Chatrapati Sahuji Maharaj University, Kanpur. He was successful in the "C.P.M.T. examination and was placed at Sl. No. 710 in the merit list. The petitioner appeared in counselling and thereafter he was selected for admission to Bachelor in Dental Surgeon (B.D.S.) course against a free seat and was allotted Rama Dental College Hospital, respondent No. 4--a private medical college, for admission. An order to this effect was issued by the Registrar of the University which conducted the C.P.M.T. examination, 1997. which is Annexure-1 to the writ petition. The petitioner was also informed that he has been allotted a free seat of 01 category. In order to take admission, the petitioner went to respondent No. 4 and deposited a sum of Rs. 500 as fee for Royal Society of Educational Academy on 8.9.1997. As a candidate selected against free seat, the petitioner was required to deposit Rs. 15,000 per year as capitation fee which amount was further reduced to Rs. 8,000 by the order of the Director General of Medical Education, Lucknow, as applicable to the free seats of

Private Medical Colleges. The petitioner was not admitted on the normal fee, which was to be charged from a candidate selected on a free seat but was required to deposit Rs. 4,24,000 within a month excluding Rs. 51,000 as hostel expenses. The petitioner being a person of meagre means was not in a position to fulfill the aforesaid unreasonable demand which virtually amounted to extortion. He ran from pillar to post with request to get him admitted in the Medical College, aforesaid, on payment of charges as are permissible for a free seat. All his efforts proved futile. The grievance of the petitioner is that he was selected for the B.D.S. course on merit and though he is entitled for admission on a free seat, he could not be required to pay the prohibitive amount of Rs. 4.24,000 as under then existing fee structure, he was to pay Rs. 15,000 per year besides other charges.

2. By means of this writ petition, under Article 226 of the Constitution, the petitioner has prayed that the respondents, particularly, respondent No. 4 be commanded to admit him for B.D.S. course and charge Rs. 15,000 per year as prescribed by the State Government and that the respondent Nos. 1 and 2 be directed to give admission to the petitioner in any State Medical Colleges after recounselling.

3. A counter-affidavit has been filed by Sri B. S. Kushwaha. Chairman/Director, Rama Dental College Hospital, respondent No. 4. The fact that sums of Rs. 4,24,000 as well as Rs. 51,000 were demanded has been totally denied and it is asserted that the petitioner was never asked to deposit the fee excessive than as was required to be paid as per rules. Rejoinder-affidavit and supplementary counter-affidavits have also been filed. Heard Sri R. S. Misra, learned counsel for the petitioner and Sri P. N. Saxena for respondent No. 4 and learned standing counsel on behalf of the respondent No. 1 and Sri J. N. Varma for respondent Nos. 2 and 3.

4. It is an indubitable fact that consequent upon the selection in C.P.M.T. and counselling, the petitioner was entitled to be admitted in B.D.S. course in the session beginning from 1997 in Rama Dental College Hospital. Sarvodaya Nagar, Kanpur, against a free seat. An order to this effect was issued by the Registrar of the University--respondent No. 3. There is no dispute about the fact that the petitioner did present himself well within the time to seek admission and to complete all the formalities. The denial of the respondent No. 4 that no amount in excess of the fee prescribed by the Government for a free seat was demanded is not only motivated but against stark realities and probabilities. It is not understandable why a student who has been duly selected for admission against a free seat would not pay the required fee as prescribed by the Government. He would in no case allow his year to be wasted against off chance of his being selected in the next year as he was required to undergo the same procedure once again. The petitioner has appeared in the C.P.M.T. examination with an avowed object of taking admission in the B.D.S. course. He did approach the respondent No. 4 for admission and had also deposited as a preliminary step for

seeking admission a fee of Rs. 500 towards Royal Society of Education Academy, which is the sponsoring body of Rama Dental College Hospital and Research Centre (respondent No. 4) and Rs. 600 as processing charges for admission vide receipts, Annexures-1 and 2 to the rejoinder-affidavit. The petitioner would not have run from pillar to post making entreaties to all and sundry to get himself admitted against free seat if the respondent No. 4 had not pestered and harassed him by making an unreasonable demand of exorbitant amount beyond the means of the petitioner.

5. The evil of admission based on exorbitant capitation fee was quite rampant. Medical, dental surgery, veterinary sciences, pharmacy, engineering and architecture disciplines are the subject-matters of professional colleges and in this area, a number of private professional colleges have sprung up. The medical colleges which started growing like mushrooms and are charging huge capitation fees for granting admissions to undeserving and meritless students with a view to make substantial profits without providing proper education and caring precious little for achieving excellence of standards in professional education which, if denuded of such standard, would pose a serious health hazard to the people who could ill afford to go in for well-equipped expensive medical practitioners should be thrown at the mercy of quacks. Similar situation has arisen in technical, engineering and other kinds of institutions.

6. "Capitation fee" means charging or collecting amount beyond what is permitted by laws ; it is nothing but a price for selling education. The Supreme Court's decision in *Miss Mohini Jain v. State of Karnataka*. (1992) 3 SCJ 152 on the capitation fee is a landmark in the history of education in independent India. Its importance lies in the fact that the admissions to professional colleges based on capitation fee are being allowed by the State Governments and it was essential to put a halt to such practice. The Court has held the charging of capitation fee by private educational institution even under the cover of the permission by the State Government as wholly illegal and arbitrary.

7. The decision though has earned respect and reverence resulted in flutter and furore in certain interested quarters, there arose a strong cry to review and upset the decision in *Km. Mohini Jain's* case (supra). The management of various private institutions had, as a matter of fact, filed a bunch of petitions seeking a declaration that private educational institutions have a right to run self-financing institutions.

8. The Supreme Court decision in *Km. Mohini Jain's* case (supra) striking down the Karnataka Government's notification relating to private medical colleges has further given rise to a new debate on the built-in conflict between private interest versus the State responsibility in the educational sector. Implicit in the above statement is the general assumption of viewing education as profit-yielding activity or fundamental right.

9. Sequel to the decision of *Mohini Jain's* case (supra), the Central Government

had promulgated two ordinances to curb mushrooming of medical colleges. Prior permission of the Medical Council of India to start new colleges and even new courses in existing colleges had been made mandatory. Some of the Universities have launched noval scheme of "self-paying education". The impact of the ban imposed by the Supreme Court on charging the capitation fee cannot be belittled. Unfortunately, the hiatus between precept and practice is nowhere so pronounced as in the case of this area of educational activity.

10. In the latest seminal decision In Unni Krishnan J. P. and others v. State of Andhra Pradesh and others JT (1993) I SC 474 on the point, the Supreme Court has thrashed out the entire matter and has laid down the procedure to be prescribed for the entrance examination to private professional colleges. The number of seats have been fixed and the seats have been categorised under two heads ; (1) free seat and (2) payment seats. Any candidate who fulfils the eligibility conditions would be entitled to apply for admission. After the free seats in professional colleges are filled up, the unsuccessful candidates shall be entitled to exercise their option for admission against payment seals. The result of the entrance examination shall be published in at least two leading newspapers, one in English and the other in vernacular. The payment candidates shall be allotted to different professional colleges on the basis of merit-cum-choice. The management of professional colleges shall not be permitted to admit any students other than the one allotted by the competent authority whether against free seat or payment seal. It was also made clear that in the matter of reserved categories, the principle of inter se merits shall be followed. After making allotments, the competent authority, i.e., the admission body shall prepare and publish a waiting list of the candidates along with the marks obtained by them in relevant test/examination. The said list shall be used for filling up any casual vacancy or "drop out" vacancies arising after the admissions are finalised.

11. The idea behind the elaborate scheme prepared by the Supreme Court, which is to be operative and binding on the management of the private professional colleges is to eliminate discretion in the management altogether in the matter of admissions. It is the discretion in the matter of admission that is at the root of several ills complained of. The discretion has mainly led to commercialisation of education.

12. The above decision has set at naught, to a considerable extent, all the controversies relating to the admission to private professional colleges. The management would hardly have any say in the matter, The possibility of the backdoor admission is now remote. Corrupt and malpractices shall come to an end. Under the scheme evolved by the Supreme Court, the interest of the meritorious students have been well protected. The decision has received full acceptance at all hands.

13. Sri P. N. Saxena, learned counsel for the respondent No. 4 pointed out that the Government Order under which fees for the free seat were prescribed, has been stayed by this Court on 22.5.1998 in Civil Misc. Writ Petition No. 35610 of

1997, Rama Dental College Hospital and Research Centre v. State of U. P. and others, and, therefore, earlier fee structure is not in vogue. Learned counsel for the petitioner urged that the petitioner is prepared to pay the fee and other charges as are admissible to the candidates who have been selected against free seats. The chart of fee structure has been brought on record by the respondent No. 4 through supplementary counter-affidavit, dated 30.7.98 filed by Bhanu Pratap Singh, it is Annexure-6 to the said affidavit. After going through the chart of the fee-structure for 1st year admission for the years 1996-97 B.D.S. course under the caption "As per Decision of Supreme Court" (obviously in Unni Krishnan's case (supra), learned counsel for the petitioner frankly conceded that the petitioner is prepared to pay the charges as mentioned therein or, as may be applicable for the free category seat. In view of this undertaking given by the counsel, the petitioner may, without any hesitation, be allowed to be admitted in B.D.S. 1st year course on payment of prevalent fee-structure relating to free category seat.

14. Sri P. N. Saxena learned counsel for the respondent No. 4, however, pointed out the difficulty that the petitioner cannot be admitted to the 1997 session course as the teaching has reached in advance stage and the semesters examinations are to take place in the month of August. 1998 itself. This difficulty pointed out by the learned counsel for respondent No. 4 cannot be overlooked and some solution has to be found out, as the petitioner who otherwise has been successful in getting selected for admission and has also further been successful in establishing his right to be admitted on payment of the charges as applicable to a free seat, he cannot be denied the fruits of litigation merely on the ground that the teaching has reached its advance stage. The petitioner cannot be faulted in any manner. When he failed to get redress of his grievance, he has approached this Court with all expedition. Law's delays are not to be allowed to come in his way. If the petitioner is denied admission, then it would be a case where a person has a right but no remedy. It would be nothing but a sheer mockery of law if the petitioner is denied the benefit of admission.

15. Sri P. N. Saxena, learned counsel for the respondent No. 4 pointed out that it would not be proper if a student who has not attended even one class for whatever reasons, particularly in the Medical Science, is allowed to appear in the ensuing examinations, after admission. According to him, in view of Dental Council of India, B.D.S. course Regulations, the scheme of examination in the B.D.S. course has been divided into four professional examinations, namely. 1st B.D.S. examination at the end of 1st academic year, IIInd at the end of 2nd academic year. IIIrd at the end of 3rd academic year and IVth and final B.D.S. examination at the end of 4th academic year, and where semester system exists, there shall be 2 examinations in each year, designated as Parts I and II of the respective examinations. It was also pointed out that the 1st B.D.S. examination is comprised of three subjects, viz., (1) General Human Anatomy including Embryology and Histology ; (2) General Human Physiology and Biochemistry and (3) Dental Materials. The syllabus and examination system is further provided in

the Prospectus of respondent No. 4, which also includes two more subjects. Prosthetics (Full Dentures) and Tooth Morphology in the first year course. In the rules of conduct, as mentioned in the Prospectus, it is also provided that the students admitted to the respondent No. 4 institution are governed by all the rules of conduct, specified therein. They include-- (1) students should be regular and punctual in attending classes, tutorials, practicals and clinicals. Students shall not be certified for examination if his progress, conduct and attendance are not satisfactory ; (2) 75% of attendance in Theory and Practical and 85% in Clinical classes is compulsory, and (3) Work quota [as prescribed by the D.C.I.) should be completed. The examination shall be open to a candidate who satisfies the requirement of attendance, progress and conduct, as stipulated by respective Universities.

16. Sri R. S. Misra, learned counsel for the petitioner urged that since the respondent No. 4--institution is affiliated to Lucknow University, examinations are to be conducted in view of the provisions of Chapter XIV which deals with the examinations of Faculty of Dental Science and in which, provision has been made that a candidate who has failed, may clear the back papers simultaneously with the future course. It was also pointed out that there are certain Government Orders to this effect.

17. I have given thoughtful consideration to the matter and find it highly objectionable and unreasonable that a candidate, particularly in the discipline of Medical Science, is allowed to appear in the examinations even though he has not attended even one class. The B.D.S. is a course of specialty and a candidate who has not known anything about the subject because he has not studied the same by attending the classes, cannot straightway be permitted to appear in the examination. Therefore, the difficulty pointed out by Sri P. N. Saxena cannot be overlooked though it has to be solved in a reasonable manner.

18. Admissions in the mid term/session have not been approved by the Supreme Court though there may be vacancies and the delay does not defeat the claim for admission. A student should study throughout the session to maintain excellence in the academic courses. In *Promod Kumar Joshi v. Medical Council of India*, Writ Petition No. 1154 of 1990, decided by Apex Court on February 19, 1991, the Supreme Court held that the course for the year 1991 is almost complete and it would not be proper to allow admission belatedly. In *Dr. Subodh Nautiyal Vs. State of U.P. and others*, where there was a delay of four months in giving admission, the Court held that, "the course has started in September for the Session. This is a technical course and to admit a student four months after the commencement would not at all be correct. In *Jeevak Almast Vs. Union of India (UOI) and Others*, , there was flux in selection of the candidates for M.B.B.S. course on all India basis and large number of vacancies were left unfilled. Under these circumstances, the Supreme Court, instead of allowing them to go waste, directed admissions on the basis of merit. This order was made in peculiar situation and was not to apply to post graduate course. Admissions in the

midstream would disturb the courses and also works as handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view, the considered opinion of the Supreme Court is that vacancies in seats would not be taken as a ground to give admission in the mid session State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., and Ajay Pradhan Vs. State of Madhya Pradesh and Others,

19. This Court has, on earlier occasions, permitted the students who were found entitled for admission, to pursue their further studies. A reference may be made to the decision of learned single Judge In Rajeew Agarwal v. State of U. P. and others (1996) 3 UPLBEC 1614 (LB), in which it was observed that in technical courses, the meritorious students should not be refused" admission on technicalities. In that case, the petitioner could not be admitted to technical course though he had secured 29th position in the merit list of Combined Entrance Test for a professional course due to non-submission of the final year result of B. Sc. Part III on the date of counselling. In that case, the admission was allowed to be made from a future date. In Rubiya Bano v. State of U. P. and others, (1997) 3 ESC 1644 (All), the petitioner was allowed to be admitted to the M.B.B.S. course. In that case, C.P.M.T. examinations were held on 16th and 17th August, 1995 result of which was declared on 5.2.1996. The petitioner Rubiya Bano, who had been successful, was called for medical examination on 1.3.1996 and on 12.3.1996, she had gone with her father to complete the formalities for admission but on account of non-production of the certificate that she does not belong to creamy layer, she was refused admission. Her petition came to be finally decided on 5.3.1997. She was allowed to take up admission in the M.B.B.S. course. In her case also, almost a year had passed.

20. In the background of above law. I feel it would not be proper to permit the petitioner to Join the classes after completing all the formalities to secure the admission in the mid-session, particularly when the examinations of 1st session have to commence in the near future. It is the misfortune of the petitioner that he has lost one academic year of B.D.S. course and has to lag behind by one year at least in comparison to those candidates who were selected along with him. No body can bring the period back which has already been lost. With this lamentation. I am of the view, that it would be proper and in the fitness of things that the petitioner is admitted in the next B.D.S. 1st year course of 1998-99. In view of prospectus of respondent No. 4 (at page 5--Reservation of Seats), seats for admission to B.D.S. course may be reserved one year in advance provided the candidate is eligible for admission to the said course. There can, therefore, be no difficulty in keeping a seat reserved for the petitioner for the next course.

21. In the result, the writ petition succeeds and is allowed. It is hereby directed that the respondent No. 4 shall admit the petitioner in the next B.D.S. 1st year course (1998-99) on the petitioner's depositing the fee and other charges as are required to be deposited by a candidate selected against free seat. No amount in excess of the fee structure, as applicable to the free, seat, shall be charged by

the respondent No. 4 from the petitioner.