
(2017) 03 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1567 of 2016

Dr. Ashita Aggarwal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Citation : (2017) AIR(Uttaranchal) 80

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Jitendra Chaudhary, P.C. Bisht, Shobhit Saharia, Parikshit Saini, Rajendra Dobhal, Prince Chauhan, Devendra Pant

Final Decision : Disposed Off

Judgement

Sudhanshu Dhulia, J. (Oral)—The petitioner before this Court has challenged the arbitrary rejection of her candidature in a post-graduation seat for MD (Pathology) by a medical College known as Sri Guru Ram Rai Institute of Medical and Health Sciences for the year 2016.

2. As of now, in the entire country MBBS as well as Post Graduation seats in Medical Colleges are to be filled by a combined test known as National Eligibility Entrance Test (from hereinafter referred to as "NEET"). For admission for the year 2017, NEET has already been conducted in December 2016. However, prior to this, different States were holding separate tests for post graduation admissions. The present dispute relates to an admission in the post graduation course in MD (Pathology) in the year 2016.

3. The petitioner completed her MBBS studies from a Government Medical College, Haldwani in the year 2014 and thereafter she secured a job as a Medical officer in Uttarakhand Medical and Health Services and joined her duties on 01.04.2015 at the Primary Health Centre, "Kalsi" in Dehradun. At the relevant time, the petitioner was on probation for a period of two years. Meanwhile, in order to pursue her studies further, she applied for a seat for admission in a post

graduation course in the Medical Colleges in the State of Uttarakhand. At the relevant time in the year 2016, there were only two colleges open for these admissions. One is Sri Guru Ram Rai Institute, which is a private medical college and second is the Government Medical College, Haldwani. For the Government seat, the body which was constituted for selection in post graduation courses Hemwati Nandan Bahuguna Garhwal Central University was to conduct the test. The test which was conducted by the Hemwati Nandan Bahuguna Garhwal Central University was known as Uttarakhand Post Graduate Medical Entrance Examination (i.e. UKPGMEE). For the private seats, the body which was constituted for conducting the test was known as Association of Combined Entrance Examination and the examination which was conducted by this body was known as Combined Medical and Dental Post Graduate Entrance Examination (i.e. CMDPGEE). The petitioner was a candidate for both the examinations, which in other words would mean that she wanted to compete under the Government seat as well as under the private seat for the two medical colleges. The medical college with which we are presently concerned is Sri Guru Ram Rai Institute of Medical Health and Sciences, which is a private medical college. It had total four seats in MD (Pathology), out of which two seats were government seats and other two seats were private seats. For the private seat, which was allotted to the Sri Guru Ram Rai Institute (from hereinafter referred to as the "private medical college"), it conducted its own entrance test and admissions were given to two students. Out of the two students selected under the State quota, one failed to deposit his fee till the last date i.e. 27.05.2016. Logically therefore, the private medical college should have apprised the State Selection Body that since the student who has been selected under the State quota has failed to deposit the fee, the State body may conduct another counselling so that another student may be admitted. This was, however, not done in time. His candidature was later cancelled, but the State instead of filling the seat itself, authorised the private medical college to do that.

4. As per the Medical College Regulations, following is the time schedule for Post-Graduate Medical Courses:-

S. No.

Schedule for admission

Broad Speciality

All India quota

State quota

1.

Conduct of Entrance Examination

Month of December

Month of January

2.

Declaration of result of the qualifying Exam/Entrance Exam

By 15th of January

By 15th of February

3.

1st round of counselling/admission

Between 12th of March to 24th March

Between 4th April to 15th April

4.

Last date of joining/reporting the allotted college and the course.

By 3rd April

By 22nd April

5.

2nd round of counselling/admission for Vacancies

Between 23rd April to 30th April

Between 11th May to 20th May

6.

Last date of joining for the 2nd round of counselling/admission.

By 10th May

By 27th May

7.

Commencement of the academic session/term.

1st May

1st May

8.

Last date up to which students can be admitted/joined against vacancies arising due to any reason

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By 31st May

5. As per the aforesaid schedule, the second counselling ought to have been

done between 11th May to 20th May. In this case, the second counselling has been done by the private medical college i.e. Sri Guru Ram Rai Institute of Medical & Health Science through its consortium on 30th May, 2016. The reason being that the State quota for Post-Graduate (Pathology) could not be filled and this State quota was transferred to the private medical college. Hence it was filled as a private seat by the private medical college on 30th May, 2016, where the petitioner was at serial No. 1 in the list, but she was denied admission, as the petitioner, till 31st May, 2016 could not submit her "No Objection Certificate" of the Government since she was already working as a Medical officer at Government Medical College, Haldwani, District Nainital.

6. The case of the petitioner is that since the seat was a private seat, under the private college, there was no requirement of such "no objection certificate" being given by the State Government. Moreover, under the policy of the State, certificate can only be given, after serving Medical officer has procured admission, and she/he is able to show the proof of it to the department concerned. Since the admission itself was given to the petitioner on 30th May, 2016, it was not possible for her to produce such certificate on 31.05.2016 i.e. the very next day. Since the procurement of the no objection certificate was made a precondition, she could not get the certificate.

7. In this case, on the last occasion, Additional Secretary, Medical Education has given a categorical statement before this Court on 19.09.2016 that under the policy of the State Government, if a serving Medical officer of the State gets admission in Post Graduate course, he/she, as a matter of routine, is given "no objection certificate".

8. Why did the State Government hand over a government seat to a private medical college is the question which has not been answered satisfactorily by any of the respondents. We would deal with this aspect in a while.

9. For this one single seat for PG (Pathology), no separate examination was conducted but the Association of Combined Entrance Examination/respondent no.3, i.e. the private body and it decided to give this seat to the candidate who had secured marks on the basis of MBBS course. Since the petitioner was already a competitor under the private quota and had the highest number of marks, she was invited for admission for this remaining one seat and was given 24 hours time on 30.05.2016 to deposit the required fee by way of a Demand Draft. On 31.05.2016, the petitioner submitted a Demand Draft of Rs.8,60,000/- before the Admission Committee, but according to the petitioner, she was not given admission and instead was kept waiting till 4.00 PM that day for reasons that an inspection by the medical council was going on in the campus. At 4.30 PM, the petitioner was informed that since she has not got the No Objection Certificate (from hereinafter referred to as "NOC"), from the Government, which was mandatory, the petitioner being a government servant. It was not possible for the petitioner to procure the NOC on 31.05.2016 itself at 4.00 PM, which was the last date, and therefore, the admission was granted to the next candidate which

is respondent no. 6. Aggrieved, the petitioner is before this Court.

10. By now, the candidate, who has been given the admission has completed almost one year of studies. The main objection of the petitioner before this Court is that firstly the seat which had to be filled under the State quota should not have been surrendered by the State and it was given by the State for extraneous purposes to the private medical college as the medical college has been less than fair in giving the seat to the meritorious candidate. Even though the petitioner has secured highest number of marks, she has been denied admission on an entirely frivolous ground that she was not having an NOC, which was in fact not a requirement in a private medical college.

11. The case of the petitioner would be that whereas it is only the State body i.e. Uttarakhand Government Body who could have asked for the NOC and since the admission was being given by the private body, there was no requirement of an NOC. In fact, the petitioner has filed a Brochure issued by the private medical college to show that there is no requirement to take an NOC from a candidate before granting the student admission.

12. The reply of the private medical college is that the seat in question was in fact a government seat and for a government seat, a No Objection Certificate had to be given which was not procured by the petitioner in time. This objection does not seem to be correct for many reasons. Firstly when the counselling itself had taken place on 30.05.2016, this requirement of NOC should have been told to the student and the petitioner should have been warned in advance to get an NOC, which she could have done by 31.05.2016. But this was not done. In any case, insisting on an NOC by a private medical college does not seem to be justified, particularly when the same body i.e. Association of Combined Entrance Examination/respondent no. 3 conducted its entrance examination for PG medical courses, a candidate i.e. Dr. Aman Saini was given one week's time to procure the NOC certificate but this was not done in the case of the petitioner.

13. Most importantly learned counsel for the petitioner - Mr. Jitendra Chaudhary has shown necessary documents relating to admission and has argued that there is no provision of an NOC in the admission Brochure published by the concerned private medical college for admission in the P.G. Courses.

14. In any case as per the system prevailing in the State of Uttarakhand, as stated before this Court, a medical officer in service of the Government is given NOC if he/she shows the proof that he/she has got admission in a P.G. course. Grant of an NOC is hence a mere formality once admission in P.G. course is given to any serving medical officer. On 19.09.2016, a statement was given by the Additional Secretary, Medical Education, Government of Uttarakhand Mr. Pankaj Pandey that under the policy of the State Government, if a serving Medical officer of the State gets admission in Post Graduate course, he/she, as a matter of routine, is given "no objection certificate". Hence by insisting on an NOC from the petitioner, even before formally granting her the admission, the private

medical college was indeed trying to put the cart before the horse.

15. This Court has absolutely no doubt in its mind that the manner in which these selections have been made for the PG seat does not inspire confidence. A State quota seat which remains unfilled must be reported to the authorities without delay. This information must be given to the State by the concerned private medical college in time. This has not been done in the present case. Secondly, since the seat was a government seat, it was not liable to be surrendered and given to a private medical college to be filled at their end. Thirdly, and what is most important is that the private medical college had absolutely no rights to have insisted for an NOC from the petitioner because of the reason that in Brochure, which has been issued by the private medical college there was no requirement of an NOC from a selected candidate. Even assuming for the sake of argument that since the seat which was surrendered was a State seat and the admission was being given on a State seat, at least a reasonable time was to be given to the petitioner to procure an NOC, which has not been done. Therefore, this Court has no doubt in its mind that the petitioner has been given an unjust and unequal treatment at the hands of the private medical college.

16. The question is what is to be done in these circumstances when the petitioner has been unjustly denied a P.G. seat, which is now given to another candidate who has been pursuing her studies for the one year. Under these circumstances, it would not be just or proper, rather be unfair, to the selected candidate, who has already completed almost one year of studies, in case she is to be deprived of this seat at this stage. But, at the same time, fairness also demands that the petitioner, who has obviously been wronged, must be redeemed in some manner.

17. The learned counsel for the petitioner here relies upon a decision of the Hon"ble Apex Court in the case of *Asha v. PT. B.D. Sharma University of Health Sciences and Others*, reported in (2012) 7 SCC 389, where in such appropriate cases relief can be moulded to suit a particular exigency.

18. This Court is aware that for the year 2016-17 onwards all seats in Post Graduate Medical Courses have now to be filled by an entrance examination known as National Eligibility Entrance Test, which is also possible ultimately due to the directions given by the Hon"ble Apex Court in the case of *Sankalp Charitable Trust and another v. Union of India and others* reported in (2016) 7 SCC 487.

19. This Court has further been informed by the learned counsel for the petitioner that the petitioner has already appeared in the NEET examination for the year 2016 and has qualified the examination and has secured a rank of 30352. Learned counsel for the petitioner has fairly submitted that with this rank it would perhaps not been possible for the petitioner to get a seat in PG (Pathology) in the medical colleges but the fact remains that she has qualified

the test.

20. In view of the above, this Court makes the following directions:

Learned counsel for respondent no. 4 Mr. Parikshit Saini, who has assisted this Court and has fairly submitted that considering the peculiar facts and circumstances of the case, an extra seat in the said college can be created, without giving any undue advantage and benefit to the said medical college in future.

It is therefore ordered that one seat of PG (Pathology) over and above what is sanctioned, shall be created for this academic year of 2017 alone in MD (Pathology) for the petitioner. The fee that the petitioner would be liable to pay for this course will be government fee, not higher than what she would have paid, had she got admission in 2016. Further at the end of her successful completion of the course an amount of Rs.1,00,000/- (Rupees One Lakh), would be given to her by the medical college as cost and expenses incurred in the litigation.

21. Medical Council of India is hereby directed to take strict measures in future to check the abuse such as what has taken place in the present case, and take appropriate action against the concerned medical college. It is further directed that they shall create one seat (PG Pathology) for the petitioner as directed above, and for the coming years, as this is being done solely to meet the ends of justice.

22. It is made clear that in case the petitioner does not join the medical college for the above course, this seat shall not be given to any one else.

23. With the observations as aforesaid, the writ petition stands disposed.