

(1991) 09 RAJ CK 0020
In the Rajasthan High Court
Case No : C.W.P. No. 3548 of 1991

Dr. Ganga Vishnu Diwakar

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Act, 1946 — Section 1
Rajasthan University Ordinances, 2009 — Ordinance 278E

Citation : AIR 1992 Raj 171 : (1992) 1 RLW 224 : (1992) 3 WLC 600

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; Naresh Goyal, Additional Government Advocate, for the Respondent

Judgement

Navin Chandra Sharma, J.—This is a writ petition under Article 226 of the Constitution of India, for issue of a direction to the respondents, to allow the petitioner, to change the specialty of Tuberculosis and Chest-Diseases (TB and CD), allotted to him in MD-Course, to General Medicine, or to any other specialty which has the recognition of the Medical Council of India, in accordance with the preference given by him in his application form of PG-Course.

2. The petitioner passed his MBBS Examination in the year 1988, and he completed his internship in the, year 1989. On the recommendation of the Central PC Admission Board,, constituted under Ordinance 278-E of the University of Rajasthan, the petitioner was allotted the specialty of TB and CD, in the MD-Course. The petitioner joined the MD-Course in the specially, of TB and CD, in the RNT Medical College, Udaipur on 17th Jan., 1991 as First Year Resident under the Three Year Residency Programme, and since then he has been continuing in the said specialty. The petitioner has stated that in his application-form for PG-Course, he had shown his preferences in the following order:

- (i) Orthopaediatrics.
- (ii) Paediatrics.
- (iii) General Medicine.
- (iv) Skin and Venereal Diseases.
- (v) Tuberculosis and Chest Diseases,

The petitioner was not informed that the PG-Degree in the specialty of TB and CD, from RNT Medical College, Udaipur, had no recognition by the Medical Council of India; and the petitioner had also no knowledge about it. It is alleged that the admission of the petitioner to the MD Degree Course in TB and CD, in RNT Medical College, Udaipur, which is not recognized for the purpose of conferment of degree in the said specialty, would not be useful to the petitioner in His service and educational career. On this basis, the petitioner has filed the present writ petition, seeking the above-mentioned directions against the respondents.

3. This writ petition was admitted on 9th July, 1991. On that date, Mr. M. K. Kaushik, Deputy Government Advocate, was present, and time was granted to him, to file reply to the writ petition within three weeks; and the writ petition was ordered to be listed on 29th Aug., 91. No reply to the writ petition till that date was filed by the respondents. Arguments were, therefore, heard on the writ petition, and the case was kept reserved for orders. However, on 9th Sept., 91, a reply to the writ petition was presented in the registry, on behalf of the respondents. The writ petition was, on oral request made on behalf of the respondents, listed for orders. The reply presented by the respondents was allowed to be taken on record. Further arguments were also heard.

4. The respondents have stated that in his subject-preferences, the petitioner had given the specialty of Tuberculosis and Chest Disease as his last preference. This specialty even could not be given to the petitioner in the first instance, and it could be given to him only after the second reshuffling for MD and MS Course, 1990. The petitioner had done his MBBS Course from RNT Medical College, Udaipur, and had also done his internship from Udaipur. The petitioner has studied at Udaipur for a long period, and he must have been well-acquainted with the fact that the degree in TB & CD is not recognized by the Medical Council of India. The petitioner has filed the writ petition merely to get admission to the subject of Medicine for which he was not eligible directly through the competitive examination. It is stated that if this Court gives direction to the respondents to give admission to the petitioner, to the subject of his choice, i.e., "General Medicine", other meritorious candidates would be affected, as there were a number of writ petitions pending before the Court, in which, admissions to PG-Course in various specialities are in question. The petitioner, having knowledge of the fact that the MD Course in TB & CD is not recognized by the Medical Council of India, took the admission to that subject. Lastly, it is stated that if this Court

in the facts and circumstances of the case, gives direction to the respondents to give admission to the petitioner to a subject which is recognized by the Medical Council of India, then, direction may be given for admission to the petitioner in the order of preference, which has been specified by the petitioner in para 4 of his writ petition.

5. There have been several decisions of this Court on the point, which may be noticed. In SB Civil Writ Petn. No. 2097/90 (Dr. R. K. Agrawal v. State of Rajasthan), decided on 4th Sept., 90, the petitioner in that case, was also admitted to PG-Course in the specialty of TB & CD, on 6th Sept., 89, in the RNT Medical College, Udaipur; and on reshuffling held on 17th Jan., 90, he joined in the same specialty, in the SMS Medical College, Jaipur. The petitioner, in that writ petition, came to know that the degree of MD in TB & CD, given by the University of Rajasthan, was not recognised for the purpose of registration, or for further higher studies in the specialty, by the Medical Council of India. A learned single Judge of this Court, relied upon an earlier decision of this Court in the case of Dr. Rakesh Kumar v. State of Rajasthan (DB Civil Writ Petn. No. 969/89), decided on 24th Apr., 89, and held that if the petitioner qualified the degree of MD in TB & CD specialty from the University of Rajasthan, he would not be allowed to practise in the said specialty, because, the same was not recognised by the Medical Council of India. Accordingly, the writ petition was allowed, and the Principal and Controller, SMS Medical College, Jaipur, was directed to give admission to the petitioner, to MD Course in the specialty of General Medicine.

6. Reference may also be made to another decision of the same learned single Judge of this Court in Dr. Brijlal Sharma v. State of Rajasthan, etc. (SB Civil Writ Petns. Nos. 4995, 5498 and 6027 of 1990), decided on 12th Mar., 91. In that case, the petitioners, on inquiry from the Medical Council of India and from the Rajasthan Medical Council had come to know that the degree in MD, in TB & CD specialty, was not recognised for the purpose of registration for practice in the same specialty. The learned single Judge held that none of the petitioners would be able to practise in the specialty of TB & CD after they get through the required examination from the University of Rajasthan, since the degree of the University of Rajasthan, in the said specialty was not recognised by the Medical Council of India. It was emphasized that it was only desirable that no admission should be given to such course/specialty, which were not recognised by the Medical Council of India. The writ petition was allowed; and the respondents were directed to give admission to each of the petitioners, to any of the specialties with respect to which they had given preferences in their applications, in any Medical College in Rajasthan.

7. It is clear from the above referred two decisions of this Court that the degree in MD, in the specialty of TB & CD, conferred by the University of Rajasthan, is not recognised by the Medical Council of India; and in the absence of that, the petitioner would not be entitled to start practice in the said specialty. It has been, time and again, emphasized by this Court that in PG-Courses, seats in such

specialities should not be allotted in any Medical Colleges in Rajasthan, the passing of examination from which college and obtaining degree in consequences whereof is not recognised by the Medical Council of India. The respondents have not shown that passing of the MD Examination in the specialty of TB & CD from the RNT Medical College, Udaipur (affiliated to the University of Rajasthan), and conferment of degree in the said specialty by the University of Rajasthan, to such a student, is recognised by the Medical Council of India. It is, however, clear that admission to PG-Course, according to Ordinance 278-E of the University of Rajasthan, is made on the basis of merit-cum-preferences. From the present writ petition, it is not at all clear as to whether the petitioner on the basis of his merit-cum-preference, amongst the various candidates, who had passed the Pre-PG Test, was entitled to be admitted to other higher preferences given by him in his application-form for admission to PG-Course. This Court cannot, therefore, straightway direct the respondents to admit the petitioner to the specialty of General Medicine. All that can be directed is that in case the petitioner, on the basis of merit-cum-preferences, is entitled to be admitted to PG-Course in the specialties of Orthopaedics, Paediatrics, General Medicine, or in Skin & Venereal Diseases, the respondents would consider his case, for change to a higher specialty, solely on the basis of merit-cum-preference.

8. I, therefore, direct the respondents that the petitioner's case be considered by the respondents, for his admission to PG-Course, in specialties other than TB & CD, solely on the basis of merit-cum-preference, as was given by him in his application-form for admission to PG-Course, and if it is found by the respondents that the petitioner was entitled to admission, on the basis of merit-cum-preference, to any of the first four specialties mentioned in para 4 of the writ petition, he be allowed to change his specialty on that basis, and be given admission accordingly.

9. In the above terms, the writ petition is hereby disposed of.