

(2005) 12 AP CK 0032
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23985 of 2005

Dr. Gopal Chevuru

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Constitution of India, 1950 — Article 371D
Indian Medical Council Act, 1956 — Section 10A

Citation : (2006) 2 ALD 86

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Nuty Ram Mohan Rao, for the Appellant; D.K. Nagarjuna Babu, for the Respondent No. 2 and S. Niranjan Reddy, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner completed his Post Graduation in M.D. (General Medicine) from the Nizam Institute of Medical Sciences in December 2003. The NTR University of Health Sciences, second respondent herein, for short "the University", conducts Super Speciality Courses in several subjects. Admission to such courses is processed, by conducting an entrance examination. The petitioner intended to get admission into a Super Speciality Course, viz. D.M. (Neurology).

2. According to the prospectus issued by the University, there is one seat in D.M. (Neurology), in Osmania Medical College, Hyderabad, and one seat in Andhra Medical College, Visakhapatnam. The seat in Osmania Medical College is treated as State-wide course, whereas the one in Andhra Medical College is treated as Non-State-wide, for the purpose of the Presidential Order, issued under Article 371D of the Constitution of India. The petitioner appeared in the entrance examination conducted on 29-5-2005, and secured 2nd rank. He is a local candidate of Osmania University Area. The seat in Osmania Medical College was

allotted to the 1st ranker and the seat in Andhra Medical College was allotted to the 3rd ranker, who was incidentally the candidate of Andhra University local area.

3. The candidate who was admitted in the Osmania Medical College, vacated the seat on 30-9-2005. Petitioner states that he was not intimated of the same, and as soon as he received" the information, he approached the University for allotment of the seat. He contends that the University is refusing to admit him in lone seat of the entire course, on the ground that the date, notified for closure of admissions had expired.

4. Sri Nooty Ram Mohan Rao, learned Counsel for the petitioner, submits that expenditure to the tune of crores of rupees is incurred, for providing the infrastructure for each seat in the Super Speciality Courses. He submits that though the petitioner secured highly meritorious rank, he could not be admitted, on account of the implementation of Presidential Order, in different modes for the two seats, and ultimately, when the seat fell vacant, he is denied the admission, on the sole ground that the last date had expired. Learned Counsel submits that the object behind stipulating the last date, be it either by the Supreme Court in its decision in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, , or under the relevant rules, is to ensure that the students, admitted to a course, undergo uniform pattern of instructions, and thereby their requisite standard is ensured. He submits that a Super Speciality Course, where exists only one seat, cannot be compared to the other courses such as, MBBS and PG Medical Courses, where a number of students are involved and staggered admissions would have their own impact, on the maintenance of standards.

5. Learned Standing Counsel for the University submits that the admissions were conducted, strictly in accordance with the rules contained in the prospectus, but the seat became vacant on account of the cancellation of admission of the lone candidate. It is stated that admission of the petitioner, at this stage, is prone to be objected by the Medical Council of India, the third respondent herein, and that it is in a helpless situation.

6. Learned Standing Counsel for the third respondent submits that the Supreme Court stipulated the dates, before which the admissions into different courses are to be concluded, and admission of the petitioner, at this stage, would be contrary to the said decision, as well as rules stipulated, in this regard.

7. By their very nature, Super Speciality Courses involve training and learning of very high standard. Out of dozens of colleges in the State, Super Speciality Courses are available, only in three of them, viz. Osmania Medical College, Gandhi Medical College and Andhra Medical College, that too in limited number of courses. It is only in five courses in the Osmania Medical College that the number of seats is 2. In rest of the courses in Osmania Medical College and in all the courses in Gandhi Medical College and Andhra Medical College, the course comprises of only one seat. Having regard to the importance and scarcity of

these seats, some of them are treated as State-wide and some other as Non-State-wide. The question as to whether such a classification accords with the terms of Presidential Order, is besides the issue.

8. The petitioner secured the 2nd rank in the entrance examination conducted by the University for the course of D.M. (Neurology). There is one seat in Osmania Medical College and one seat in Andhra Medical College. The former is treated as State-wide seat and the latter a Non-Statewide. The first seat went in favour of the 1st ranker and the other seat was allotted to the 3rd ranker, who is a local candidate of Andhra University Area. The admission process accorded with the prospectus, and the petitioner did not have any grievance to that extent.

9. In its decision in *Medical Council of India Vs. Madhu Singh and Others*, , the Supreme Court emphasized the need to ensure uniformity in the matter of effecting admissions into various categories of courses. Thereafter, in *Mridul Dhar's case (supra)*, the Supreme Court dealt with the scope and ambit of powers of the Medical Council of India, u/s 10-A of the Medical Council of India Act, as well as the Regulations made, in that regard. After taking the view of the third respondent herein, a time schedule was fixed for admission into Post Graduate and Super Speciality Courses. For the Post Graduate Courses, the last date for counseling is stipulated as 25th July, and 1st August is indicated as the date for commencement of the Academic Session. 30th September is fixed as the date, upto which the students can be admitted against the vacancies arising on account of any reason.

10. In the instant case, the candidate admitted against the solitary seat in D.M. (Neurology), in Osmania Medical College, cancelled his admission on the last date stipulated by the Supreme Court, viz. 30.9.2005. To say the least, his conduct was totally objectionable, reprehensible and unacademic. In fact, he ought to have been disqualified from pursuing any other course. If he was not interested in such a rare and Super Speciality Course, he ought not to have joined it, and if there existed any compelling circumstances, he must have vacated it before 30-9-2005. The insistence of execution of bond did not deter him from resorting to such unprofessional practice. Under these circumstances, the second respondent was virtually helpless, in offering the vacant seat to the petitioner, though he is qualified and eligible, in all respects.

11. It is true that the Supreme Court stipulated the time frame for the admission into different categories of courses. Way back in the year 1993, in its judgment in *Dr. Subodh Nautiyal Vs. State of U.P. and others*, the Supreme Court held that the object behind insistence of such a pattern is;

...to maintain excellence the courses have to be commenced on schedule and be completed within the schedule, so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the midstream would disturb the courses and also work as a handicap to the candidates themselves to achieve excellence.

This was taken note of by the Supreme Court in its decision rendered in Madhu Singh's case (supra). The practice of making admissions in the midstream of the course was deprecated.

12. The courses, in which number of students are admitted, and the courses, in which there exists only one seat, differ from each other, not only on the mere numerical strength of seats, but also in the pattern of course. This is so particular in the context of commencement of courses. One of the fundamental reasons for the Supreme Court, to insist on adhering to a schedule was that once the course commences, the nature of instructions, on which the student admitted into that course, must be uniform, both in content and extent. In a course, where there are number of seats, the academic session would commence from the notified date, even if all the seats are not filled up. However, where there exists only one seat in the course, the academic session can commence, depending on the availability of the lone student. The commencement or cessation of academic session in such courses would depend upon the presence or absence of that lone student. Therefore, notwithstanding the advisability and importance of stipulation of a date, within which, the resultant vacancies must be filled in two types of courses referred to above, its consequences cannot be the same for the courses with many seats on the one hand, and the course with solitary seat, on the other hand.

13. The matter assumes significance from the point of view of pragmatism also. For each seat of Super Speciality Course, the expenditure incurred by the State is said to be in the order of crores. The object behind incurring such expenditure and providing highly sophisticated facilities is to ensure that the candidate, who has undergone this course, would be of immense help to the society. If for one reason or the other, the selected candidate does not pursue the course and abandons it, at the inception, the whole infrastructure would go waste. In the under-Graduate and Post Graduate Courses, the result of discontinuance of a course by a student and the effect of the seat going waste, are not so drastic. In those cases, the courses as such would proceed, but one seat may go waste. In the case of Super Speciality Course, the entire course stands discontinued, so far as that academic year is concerned. Such situations, naturally, were not either in the contemplation of the Supreme Court, or the Medical Council of India, when the time frame was stipulated.

14. Legal history is replete with examples, wherein the principal, as well as the subordinate legislations were enacted, keeping a set of circumstances in view, and with the passage of time, new situations have unfolded, warranting a purposive interpretation of such provisions. Instances are not lacking, wherein the provision as such, is honoured and respected, in its entirety, but as regard its application, the element of elasticity is ascribed, without compromising with the basic tenets. In the present context, given the statutory character of the time frame stipulated by the Supreme Court in Mridul Dhar's case (supra), it needs to be seen as to whether the stipulation of date for filling of the resultant vacancies,

is so rigid, as not to be crossed under any circumstances.

15. The object underlying such stipulation has already been explained, by referring to the judgments rendered by the Supreme Court. It was to ensure that the students that are admitted into a course are imparted the course in its entirety, and not part of it, due to admissions, when the course is half way through. Such situation does not exist in a Super Speciality Course, which has only one sent. The course commences with the admission and continuance of the student, and it is brought to a grinding halt, for that academic year, with the discontinuance of the student, so admitted. The Hon"ble Supreme Court never intended that the entire course must go waste, together with the expensive infrastructure, on account of the irresponsible conduct of the admitted candidate.

16. Further, the pattern of instructions for Super Speciality Courses is also substantially different, from other courses. While it is instructions of regular nature for Post Graduate and Under-graduate Medical courses, it is training in respect of Super Speciality Course. Conducting of examination is also not on par with the regular academic courses. The same is evident from clause 12 of the prospectus. It reads as under :

12. Period of Training ; -The period of training shall be of 3 years duration in the department concerned. A candidate admitted into DM/M.Ch Course shall pass the examination within 3 years from the date of completion of course. If he/she fails to pass the examination within the period specified above, he/she shall not be permitted to appear for the examination thereafter and qualify for the award of DM/M.Ch Degree.

17. Another prominent reason for admission into a course at the earliest possible stage is, to ensure that the students put in, the minimum prescribed percentage of attendance, which is necessary for appearing in the examination. Clause 12 denotes that such a requirement does not exist, by and large, for Super Speciality Courses. The stipend to be paid to a candidate is limited to 36 months. Under these circumstances, the denial of admission to the petitioner does not only result in personal loss to him, but also would bring about the discontinuation of the entire course of D.M. (Neurology) in the Osmania Medical College, for the current academic year.

18. For the foregoing reasons, the writ petition is allowed, and the second respondent is directed to consider the case of the petitioner for admission into D.M. (Neurology), in Osmania Medical College for the current academic year, within a period of one week from the date of receipt of a copy of this order. The third respondent shall pass suitable orders, if necessary, in the circumstances referred to above, to regularize the admission of the petitioner, if granted by the second respondent. There shall be no order as to costs.