
(1998) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2481 of 1998

Dr. Gurvinder Kaur

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Act, 1946 — Section 13

Citation : AIR 1999 Raj 223 : (1999) 2 WLC 431

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; K.S. Rathore, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner after qualifying her MBBS examination from the University of Rajasthan had appeared in Pre P.G. (M.D./M.S.) Competitive Examination in the year 1997 conducted by the University of Rajasthan. She was allotted Roll No. 384. On declaration of the result her name appeared on merit No. 6. It is stated that she had attained merits as she throughout in her career had been attaining the meritorious position as per Schedule A and the total MBBS marks obtained by her were 64% and had always, cleared in 1st attempt.

2. The result declared by the University was challenged by way of Public Interest Litigation being Writ Petition No. 3073/97 Dr. Anurag Dwivedi v. State of Rajasthan. By the orders of the High Court a committee was constituted by the State Government consisting of five Principals of the Medical Colleges situated in the State of Rajasthan. There was doubt cast about the result of top 30 candidates appearing in the merit list. There were allegations and counter allegations for using fair and unfair means for obtaining the top most position. However, the committee so constituted as mentioned above, had allowed only two candidates to be admitted to the Post Graduate Course out of 30 and the

petitioner was one of those candidates. Ultimately vide Annexure 5, the petitioner's name was shifted from the subject of Physiology in M.D. to DCH at SMS Medical College, Jaipur. She was allowed to join the P-G. Course of D.C.H. subject to the undertaking that if in the enquiry which was being investigated by the State in regard to the top 30 students placed in the merit list, if the conclusion goes against the petitioner, the petitioner shall have no objection to forego the seat. It is stated that such an undertaking was given by the concerned candidates. However ultimately the writ petition filed in public interest was dismissed and it was left up to the State Government and University of Rajasthan to take action in accordance with law. It goes without saying that the writ petition was initially filed with a prayer to investigate the matter of the merit list. The writ petition having been dismissed, the matter was left open to the State and the University to investigate the episode.

3. The petitioner was continuing studies when she received the impugned orders dated 26-3-1998 and 27-4-1998 when her result of pre P.G. was cancelled and when the admission to DCH at SMS Medical College, Jaipur was terminated vide Annexure-10 dated 27-4-1998, which order was based on the order Annexure-7 passed by the University of Rajasthan when the result of 28 candidates out of list of top position 30 candidates was cancelled which included the result of the petitioner.

4. The petitioner has approached this Court with the prayer for quashing the impugned orders Annexures-7 and 10 so far as they relate to the petitioner.

5. Reply to the writ petition has been filed by the respondent Nos. 1 and 3. In the reply filed by the respondents the facts as stated are admitted and it has been specifically stated in para 10 of the written statement that the University had taken a decision in accordance with law and, therefore, there was no necessity to afford any opportunity of hearing to the candidates including the petitioner.

6. In the written statement filed by the respondent No. 2, the University of Rajasthan, it is stated that the admission was given to the petitioner in view of the interim order passed on 6-8-1997 in D.B. Special Appeal No. 1059/97 arising out of the writ petition wherein it was observed by the Court that in case 30 top ranking candidates are really found guilty of malpractice and in case their examinations are liable to be cancelled in accordance with the law or the Court quashes their selections in any manner whatsoever, they would not claim any relief or equities in their favour whatsoever, as regards to their provisional admission and they would give an undertaking for this purpose before this Court. This order was further modified vide another order dated 18-2-1998 wherein the Court had observed that prima facie it was clear that the examinations were not conducted fairly but it was not possible for the Court to examine and find out as to who was the candidate responsible for such act of trying to get admission by paying huge amount of money. It was observed that it was the duty of the State Government to find out the truth and do the needful in the matter. It is the case

of the respondent University that the University had taken a decision that because of the prima facie case having been investigated by the State Agency which did show that some bungling had been done in the conduct of the examinations, the University had thought it fit to cancel the result of 28 candidates out of 30 candidates and the petitioner was one such candidate.

7. The question which arises for determination in the present case is whether any final decision has been arrived at by any Court or any authority, wherein the petitioner might have been associated as to reach to such a conclusion to the effect that the petitioner had actually misconducted in the examination or after the examination. Admittedly, in the present case, the petitioner is not the accused in the proceedings pending before the State agency. The petitioner was not even the party before the High Court when initial public interest litigation was filed. However, it was an admitted fact that as per the result declared the petitioner was at merit No. 6. The public interest litigation was dismissed. The result of the dismissal of the public interest litigation, writ petition, is that the investigation in regard to the merit list had been left to be investigated either by the State Agency or by the University and to take appropriate action. Only because the State investigating agency was of the opinion that as many as 28 candidates had indulged in malpractice, it cannot be said that the case has been proved against the petitioner. The case still is at investigating stage. FIR has been registered against certain other persons. The case has not been put up in the Court. There is no final verdict by any authority whatsoever to prove that the petitioner had misconducted. Therefore, in my opinion, only because the matter is being investigated by the criminal branch of the State agency, it cannot be said that the case stands proved against the petitioner and her result is to be cancelled.

8. Ordinance 152 also enables the University to take action against the student by constituting an investigating committee. The respondent had taken a categorical stand that there was no necessity whatsoever to give any opportunity of hearing of defence to the petitioner at any stage and, therefore, implidely the respondents want to say that even for the unfair means the provisions of Ordinance 152 can be said a good-bye and not complied with, such plea is not an acceptable argument.

9. The University had also produced the record. From the record there is a note of Vice Chancellor made on 22-3-1998 stating therein the narration of facts. The Vice Chancellor does mention of Ordinance 152 slating that for using unfair means the provisions of Ordinance 152 can be invoked and has also observed that u/s 13(a)(4) of the University of Rajasthan Act, the Vice Chancellor is empowered to take action in any emergency, which, in his opinion, calls for immediate action and further says that the situation in the case in hand was such that he was invoking the emergency powers by cancelling the result of the students and on the same day vide Annexure 7 the result was cancelled.

10. It is a case where the petitioner who is still to be proved to be guilty, was on

merit list. The petitioner and other candidates' merit list was challenged in the High Court by filing a civil writ petition in public interest. Civil writ petition was dismissed leaving the matter to be decided by the State and the University in accordance with law. The law prescribes that before taking any action under the UMC the candidate is to be afforded an opportunity. A committee is also to be constituted. No such steps were taken by the University and straight way the admission of the petitioner who was continuing her M.D. studies in DCH. SMS Medical College, Jaipur were cancelled. Nothing had been proved against the petitioner nor there had been any effort to prove any allegation against the petitioner. She has been punished un-heard which is not permitted under the law. Neither her result could be cancelled, nor her admission in studies be withdrawn. Principles of natural justice have been violated and the action of the Vice Chancellor in observing on the file that by resorting to the emergency powers, he cancels the result of 28 students cannot be said to be in accordance with the principles of natural justice and cannot be sustained in the eyes of law and, therefore, the petitioner is entitled to continue with her studies.

11. The order Annexure 7 so far it relates to the petitioner, dated 26-3-1998 and order Annexure 10 dated 27-4-1998 are to be quashed. The petitioner shall be deemed to be continuing in her course in which she was admitted.

12. An apprehension has been made by the counsel for the University to the effect that in the circumstances the other students whose results have been cancelled would seek the similar relief from the Court and, therefore, no relief should be given to the petitioner. This argument of the learned counsel for the respondent University has no merit. In view of the fact that the petitioner was one of the two candidates who had been given admission because of her merit by the orders of the Court by the selection committee of the five principals of five different Medical colleges of the State, no other candidate except two including the petitioner was admitted to such privilege. The case of the petitioner is definitely distinguishable and even if the apprehension that some other students may also try to take benefit out of the case of the petitioner cannot be considered to be any valid reason for depriving relief to the petitioner who was admitted in the DCH, SMS Medical College, Jaipur and whose admission has been withdrawn illegally.

13. For the above-said reasons and observations, the writ petition is allowed. The respondents shall also pay costs of Rs. 1,000/- to the petitioner.