
(1993) 11 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3305 of 1993

Dr. Mahendra Kumar Bhadu	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 33

Citation : (1994) 1 RLW 501 : (1994) 3 WLC 126 : (1993) WLN 433

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—The restricted number of seats of various disciplines specialities in Post-Graduate Medical Courses in MD/MS deprive several students to get admission or the speciality of their choice on merit. So, whenever a vacancy occurs due to non-joining or resignation by a student, the candidates who failed to get admission or the speciality of their choice on merit rush to this Court under Article 226 of the Constitution. The present petition depicts the same problem. This Court often comes across such problem and it needs proper guidelines in the matter.

2. Post-graduate medical degree course is a technical/academic course of super speciality, where emphasis had always been on merit, In Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad (1986) SCC 726: it was observed that if you want to produce doctors, who are MD or MS, particularly Surgeons, who are going to operate upon human beings, it is of utmost importance that the selection should be based on merit. Learned Judges have gone to observe that no weightage should be given to a candidate for rural service rendered by him for admission to Post-graduate Courses.

3. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, the Supreme Court laid emphasis on merit for admission to Medical courses to meet the excellence in the medical services. It was observed:

The effort must, therefore, always be to select the best and most meritorious students for admission to technical Institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and Integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national Interest to admit in medical colleges or other institutions giving Instruction In specialities less meritorious students when more meritorious students are available, simply because the former are permanent residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It Is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.

4. The Medical Council of India is constituted under the Indian Medical Council Act, 1956 and one of its duties is to prescribe the minimum standards of medical education. It made recommendations on February 12/13, 1971 prescribing uniform standards for post-graduate medical education through-out India, which having been approved by the Government of India and as revised from time to time, have the status of Regulations u/s 33 of the Act. The Regulations framed by the Medical Council of India provide, inter alia, for the different specialities for which PG courses in MD/MS as also Diploma courses in certain disciplines may be conducted, and for the norms for admission of students to the PG courses in MD/MS as also to the Diploma courses. According to the Regulations framed by the Medical Council of India, the student-teacher ratio for the PG course in MD/MS is to be maintained at 1:1. The relevant regulation prescribing a student-teacher ratio at 1:1 for the PG course in MD/MS made with a view to maintain the minimum standards of medical education for the PG course in MD/MS insofar as relevant, is as follows:

General

(1) For MD/MS degree in clinical subjects, there shall proper training in basic medical sciences related to the disciplines concerned as well as paper in these subjects at the examination. In the case of M.D. and M.S. in basic medical sciences, there should be training in applied aspect of subject and a paper on the subject.

(2) In all post-graduate courses, whether clinical or basic medical sciences, preventive and social aspects be emphasised.

(3) This should be a part of the examination in the degree courses as this gives training in research methodology.

(4) The student teacher ratio should be such that the number of post-graduate teachers to the number of post-graduate students admitted per year be maintained at 1:1.

For the proper training of the post-graduate students, there should be a limit to the number of student admitted per year. For this purpose every unit should of at least 3 full time post-graduate teachers and can admit not more than 3 students for post-graduate training per year. If the number of post-graduate teachers in the unit is more than three, then the number of students can be increased proportionately. For this purpose one student should associate with one post-graduate teacher.

(5) The selection of post-graduates both for degree and diploma courses should be strictly on the basis of academic merit.

*** ** 5. Ordinance 278-E of the University of Rajasthan regulates admission of students to the Post-graduate Course in MD/MS in Medical Colleges in the State of Rajasthan. It also provides their method of training, examinations and assessment. Post-graduate course in MD/MS is a three years course of training. Clause (V) of the Ordinance requires a candidate to study for at least 2 1/2 years in the same speciality subject.

6. Clause (VI) provides the method of training for MD/MS as under:

(a) The emphasis will be on in service training and not on didactic lectures. Candidates will take part in Seminars, group discussion, clinical meeting etc. In service training requires the candidates to be resident in the Campus and he will be given graded responsibility in the Management and treatment of patient entrusted to his care. It should also include adequate training in Basic and Medical Sciences relevant to the subject/speciality concerned. The candidates will be required to participate in the teaching & Training Programme of under-graduate students and interneers in their subject/specialities.

(b) All candidates will attend a post-graduate courses of eight weeks in Applied Basic Sciences (to be started immediately on completion of one year after the registration of regular batch of students for post-graduate course) for M.D. Branches (i) to (vii) and M.S. Branches (i) to (v) applied basic Sciences. Tropical Medicine communicable Diseases for M.D. Branches (ix) to (xiv) and Applied and clinical aspects of the subject concerned for M.D. Branches (xv) to (xvii) and M.S. Branch (vi).

(c) Candidate will also attend a four months comprehensive course in the subject/speciality in two parts in February/March and September/October. During this period, the candidates will also attend a course of atleast six lectures/lecture demonstrations on the Principles of Statistics as applied to Medical Sciences and Research.

7. Clause (VII) deals with examination and assessment. It provides that the progress of the work of the candidate shall be assessed periodically by the respective guides and reports submitted to the Head of the Institution through Head of Department at the end of every six months. In case the report indicates that a candidate is incapable of continuing to do the work of desired standard and complete it within the prescribed period, the Head of the Institution may recommend cancellation of his/her registration at any time to the University. The examination in MD/MS consist of (a) thesis or dissertation; (b) written papers; (c) clinical, oral and practical examination, as the case may be.

8. Thus, a post-graduate student of MD/MS has not only to write a dissertation or thesis under the supervision of a Professor or Associate Professor, who is his guide, but also to take part in Seminars, group discussions, clinical meetings, besides attending classes. There is also emphasis on in-service training and not on didactic lectures. The in service training requires the student to be a resident in the Campus and he has graded responsibility in the management and treatment of patients entrusted to his care. For this purpose, adequate number of posts of clinical residents or tutors are created. The period also includes adequate training in the basic Sciences of Anatomy, Physiology, Bio-chemistry, Bio-physics, Pharmacology and Pathology in all respects relevant to the speciality concerned. He is also required to participate in the teaching and training programs of under-graduate students internees in their subjects. The examination for P.G. Course in MD/MS consists of (i) thesis or dissertation; (ii) written papers; (iii) clinical and oral and practical examinations. There are four theory papers for the post-graduate degree examination, of which one has to be on Applied Basic Sciences. The clinical examination is aimed at eliciting the knowledge of the students to under-take independent work as a Specialist. The oral and practical examinations are meant to test his knowledge on investigative procedures, techniques and other aspects of the speciality.

9. In the background of the above academic course, the question requires for determination is whether the petitioner could be accommodated in MD/MS course and that, too, at this late stage. For this purpose, necessary facts of the case may be given.

10. The petitioner after passing MBBS examination in the year 1991 and completing the rotating internship appeared in Pre-PG Competitive Entrance Test held on 19.4.1992. The result of the test was declared on 12.5.1992 and the merits number of the petitioner was 258. In the first list declared by the Central PG Admission Board, he was not allocated any speciality in MD/MS course. On reshuffling and allotment of vacant seats, he was allotted Diploma Course in Anesthesiology, at S.P. Medical College, Bikaner vide order dated 2.1.1993. It appears that Dr. Sunil Ramanan (Anaesthesia) Dr. Vishwandra Singh (General Surgery) and Dr. Veer Singh Jat (General Surgery), who were allotted the specialities in PG course vide office order dated 2.1.1993 did not join and intimation thereof was forwarded by the Principal, S.P. Medical College, Bikaner

vide his letter dated 6.4.1993 to the Convenor, Central PG Admission Board. It is also stated that three more doctors did not join the allotted specialities in MD/MS course. Thus, according to the petitioner, six seats in different specialities in MD/MS course are lying vacant and he should be accommodated in any one of them.

11. Admissions to Post-graduate Courses in MD/MS are made on open merit judged on the basis of Pre-PG Entrance Test. The admissions for all the State Medical Colleges are made by the Central PG Admission Board and the candidates are allocated college and subject on the basis of merit-cum-preference. The vacancies created due to non-joining of candidates or otherwise are filled in as per the Ordinance 278-E in the following manner stated therein:

The vacancies due to not joining within the stipulated time shall be filled by reshuffling on the basis of merit-cum-preference list and the resultant vacancies or such vacancies which cannot be filled by reshuffling shall be filled by taking candidates from the waiting list on merit-cum-preference basis at the earliest but not later than six months from the date of initial appointment. No admission shall be made after six months from the date of initial appointment even if any vacancy is left unfilled or any vacancy occurs subsequently.

(Emphasis provided).

12. It was stoutly urged by the learned Counsel for the petitioner that no seat should go waste and it is the duty of the respondents to see that all existing left over vacancies are filled in even after six months of the initial admissions. Counsel contended that there is paucity of qualified doctors in our country and every step should be taken to turn out maximum possible doctors. Reliance is placed on the decision in Jeevak Almast Vs. Union of India (UOI) and Others, and the decision of a learned Single Judge of Allahabad High Court in Dr. Lal Chandra Vs. The Vice-Chancellor, Banaras Hindu University, Varanasi and others, . Learned Counsel contended that the learned Single Judge of Allahabad High Court has gone to the extent that in admissions where the merit has to be kept in view to fill up vacant seats and it should not be insisted with that strictness which is followed at the time of regular admission. The learned Counsel also contended that left out vacancies on non-joining of the students and vacancies occurring due to resignation etc. should be immediately intimated by the Principals of the Medical Colleges to the Admission Board and they should be filled in without further loss of time. If vacant seats are not filled in the prescribed time, for the apathy and lethargy of the authorities, the students should not be allowed to suffer, as it will seriously prejudice their future career.

13. On the other hand, Mr. Richhpal Singh, learned Counsel appearing for the respondents, contended that Order 278-E, governs selection/admission of the candidates it has statutory force, and it provides in unequivocal terms that no admission shall be made after six months from the date of initial admissions even if any vacancy is left unfilled or any vacancy occurs subsequently. According to the learned Counsel, the bar is complete and no discretion is left with the

court. It was also contended that the course had commenced from June, 1992 and 15 months have passed since then, as such, any admission in MD/MS course in the mid-stream shall not be in the interest of the students and the society. It was then, contended that MD/MS course is a technical course which cannot be compressed to accommodate any particular candidate at a late stage. Learned Counsel/also drew my attention that a minimum period of 2 1/2 years training in the same speciality/subject is required to be undergone by a student, as prescribed in Clause (V) of the Ordinance.

14. I have given my careful consideration to the respective submissions. As pointed out earlier, Order 278-E regulates admissions to post-graduate degree courses in the State. The ordinance appears to have been framed keeping in view the nature of the training required for a student in academic courses of super-specialities and the standards prescribed by the Indian Medical Council. It was not disputed before me that the Ordinance has statutory force.

15. Ordinance 278-E in unequivocal terms provides that the vacancies due to non-joining of the students within the stipulated period should be filled in by reshuffling and, then, by taking candidates from the waiting list on merit-cum-preference basis at the earliest, but not later than six months from the date of initial admissions. It also prohibits in clear terms that admissions shall not be made after six months, even if any vacancy is left un-filled or occurs subsequently. The Ordinance has to be interpreted by written text. If the precise words used in the ordinance are plain or unambiguous, we are bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience or hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit, we must give effect to it whatever may be the consequence for in that case the words of the statute have to be the intention of the Legislature.

16. In *Ajay Pradhan Vs. State of Madhya Pradesh and Others*, , the Apex Court had an occasion to consider if admission in PG course in MD (General Medicine) could be provided contrary to Rule 10 of the Rules prescribing the manner in which the seat available in any particular year was to be filled. The High Court had repelled the argument of the Government based on Rule 10 that a seat falling vacant in a particular year could only be filled up in that year relying on the observations made by the Supreme Court in *Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others*, wherein it was observed that those who infringed the Rules must pay for their lapse and the wrong done to the deserving students who ought to be admitted has to be rectified. The Supreme Court, however, did not agree with the view taken by the High Court and it was held as under:

The learned Chief Justice largely relied on the concept of justice and fairness. He adverted to the fact that the College Council took a decision on December 22, 1984 creating a vacancy w.e.f. August 1, 1984 I.e., commencement of the next

academic session. Although Dr. Laxmi Jain did not join the P.G. course in MD in General Medicine In August, 1983 due to apathy and lethargy of the authorities as no steps were taken to fill up the seat in that year in terms of Rule 10. On the language of Rule 10, we find It difficult to sustain the action of the authorities in making the seat available from August 1, 1984, i.e. commencement of the next academic year, or the view expressed by the High Court.

17. In U.P. Junior Doctors Action Committee and Ors. v. Dr. B. Sheetal Nandwani and Ors. 1992 Suppl (1) SCC 680, their Lordships of the Supreme Court deprecated the practice of providing provisional admission in a writ petition at interlocutory stage in MD/MS courses and emphasis was laid that in the matter of admission to Post-graduate courses, prescriptions made by the Medical Council of India and directives issued by the Supreme Court should be strictly observed. It was stated as under:

Appropriate knowledge and expertise are a pre-requisite for a person to be allowed to register himself as a medical practitioner. Very often, health problems require expert treatment. If anyone is authorised in society to practice medicine or undertake medical care without the appropriate qualification, society exposes itself to health hazards. The prescriptions by the Indian Medical Council and the attempts made by government for regulating the medical study are for establishing a basically uniform knowledge to be imparted to the students before they can be entrusted with the nation's medicare. Unless there is a sincere and thorough educational discipline to be gone through as a precondition to the grant of the requisite certificate the lives of citizens would be In peril. The Indian Medical Council has prescribed a reasonable period of study on expert advice and upon taking into consideration the experience over the years as to how much study is necessary for the requisite qualification to be gathered. The Court has also indicated the dates of admission and commencement of the courses of study. There are prescriptions for a purpose and are not intended to be empty formalities to be violated.

18. In State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., , their Lordships of the Supreme Court had an occasion to consider as to whether the vacancies of seats was a ground to give admission to PG Courses in midstream. Their Lordships were of the view that in order to maintain excellence the course have to be commenced on the schedule and to be completed within the schedule and the students should have an opportunity to study full course to meet their excellence. It was observed as under:

Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to meet their excellence and come at par excellence. Admission In the midstream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence. Considering from this Parametric point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to

give admission and direction by the High Court to admit the candidates Into these vacant seats cannot be sustained.

19. It was also observed that to maintain excellence in the Academic courses, the delay defeats the claim for admission though posts are vacant.

20. In Dr. Pramod Kumar Joshi v. Medical Council of India 1992 (2) SLR 58, the grievance of the petitioner was that on completion of his house job in Paediatrics, he was denied admission in Diploma Course in Paediatrics and was offered admission in Medical Radio-therapy and, thereafter, in clinical pathology. It was pleaded by him that it was contrary to the Regulations. The Supreme Court observed that there was force in the submission, but still the relief was denied observing:

Sessions is almost complete and It would not be proper to allow him admission belatedly and disturbed others who have already been admitted and have been undergoing the courses.

21. In Dr. Subodh Nautiyal Vs. State of U.P. and others, the prayer for admission to medical college was denied after four months. It was observed:

Even according to Mr. Pandey 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. We accordingly reject the application.

22. A Division Bench of this Court in Dr. Mahendra Vangani and Ors. v. State of Rajasthan and anr. (D.B. Civil Special Appeals No. 135/92 and 164/92, decided on 27th May, 1992), considered the purport and effect of Order 278-E in relation to admission after six months. It was observed:

The submission of Mr. Mridul is that whether the seats which fall vacant after six months should be allowed to lapse. For this argument, it is sufficient to say that it is for the respondents to make a provision in this regard and if there is no such provision, the language used has to be strictly construed. The admission after lapse of a period of six months from the date of initial appointment can create number of problems to the institutions. The candidate has to attend the classes regularly besides the practical, classes and the training which is imparted in the hospitals. This being the technical training if the admissions are allowed on the ground that the seat should not be allowed to remain vacant, would be either to put the respondents In a position to provide such further training so that the minimum training period in a particular speciality of 2 1/2 years Is under-gone or the candidate is deprived of such benefit of the Education in the regular classes or the practical classes or the training in the hospital. In these circumstances, it would not be proper to construe that simply because there is a vacant seat which has been created after lapse of a period of six months, the admission should be allowed to some candidate amongst the waiting list. We are, therefore, of the opinion that in a case where no vacancy arises within a period of six months from the date of initial appointment, no candidate from the waiting list can have

the right of admission.

23. Ordinance 278-E does not admit any relaxation. Taking into consideration the precise and plain language of the Ordinance, the nature of the training which the students are required to under-go in post-graduate degree courses of various specialities and the time-bound schedule of training and admissions., it is clear that the entire exercise of reshuffling and filling up of the remaining vacancies by fresh admission from the candidates in the waiting list must be completed within six months from the initial admissions. Six months period is the outer limit and the authorities have no discretion in the matter. They are bound to perform their statutory duties in time period as provided by the Ordinance. On the expiry of six months, no further reshuffling or fresh admission on vacant seats are permissible. I would, therefore, like to impress upon the concerned authorities, including the Member/Convener of the Central P.G. Admission Board, the desirability of taking immediate steps to fill up the vacancy/vacancies in P.G. Course in M.D/M.S. or the Diploma Course of studies in a particular speciality or specialities at the earliest. They must act with due promptitude, so that no seat goes waste or remains unfilled by their lethargy or inaction. A single unused seat would be depriving a student waiting anxiously for his future career to get admission or the speciality of his/her choice. It would also be a national loss.

24. The decision of *Jeevak Almost v. Union of India and Ors.* (supra), on which reliance was strongly placed by the learned Counsel for the petitioner, has been considered by their Lordships of the Supreme Court in *State of U.P.V. Dr. Anupama Gupta* (supra) and it was held that the decision related to MBBS Course in a peculiar situation and it does not afford a precedent. Similarly, the decision of Delhi High Court in *Dr. Lalchand's case* (supra) relied upon by the petitioner, is contrary to Order 278E and also to the decisions of Supreme Court, as such, it would not render any assistance to him.

25. However, the matter does not end here. It was often noticed by us that the time-schedule for admissions, as provided by Order 278-E, is not strictly adhered by the authorities, with the result that it not only gives rise to litigation, but, some-times, the seats remain unfilled and go waste. A student of Post-Graduate Course in M.D./M.S. is compulsorily required to study in the speciality/subject at least for 2 1/2 years out of three years training course. Hence, all admissions must be completed within six months. This is what Order 278-E requires in clear and plain language. All concerned, therefore, must act with promptitude and responsibility to see that all seats are filled up in time and thus no seat goes waste.

26. To achieve this object, I propose to provide a time bound procedure for admissions, to be followed by Central P.G. Admission Board (for short, "the Board") in future. This is in conformity with Order 278-E. In this I have also introduced partial counselling system, so that no seat goes waste due to remaining vacant after six months. The counselling system has ben approved by the Supreme Court w.e.f. 1994 and in Delhi University, it was introduced in the

year, 1993 vide judgment in Sandhya Kabra and Others Vs. University of Delhi, The proposed procedure for admissions shall be as follows:

(i) The Central P.G. Admission Board shall interview the candidates and allocate them college and subject on the basis of merit-cum-preference list and all available seats shall be filled up accordingly;

(ii) The admission list shall be notified by the Convener of the Board, immediately after the interviews are over and each candidate shall be given at least 15 days' time to join the allotted college and course;

(iii) The vacancies arising due to non-joining within the stipulated time shall be intimated to the Convener of the Admission Board by the Principals of the Medical Colleges within 15 days after the expiry of the joining period. The Admission Board, thereafter, within 15 days shall prepare a list of the vacancies speciality-wise accrued due to non-joining of the candidates;

(iv) All such vacancies shall be filled up by re-shuffling on the basis of merit-cum-preference list and the resultant vacancies or such vacancies, which could not be filled up by re-shuffling, shall also be filled up by taking candidates from the waiting list on merit-cum-preference basis at the earliest. In any case, the entire exercise, including the notification/publication of the list of successful candidates, must be completed by the end of 4th month from the date of initial admissions;

(v) If any seat/seats still remain/s vacant due to non-joining of a candidate/s or occurs vacant for any other reason up to the last day of the 5th month of the initial appointments, the same shall be intimated by the concerned Principals immediately, thereafter to the Convener of the Board:

(vi) All these vacancies shall be filled up by the Admission Board by the method of counselling on personal appearance of the candidate strictly on the basis of merit without taking into consideration the preference of the subject/college given at the time of filling the admission forms. The counselling shall be available to all the candidates, who did not join any speciality in Post Graduate Degree/Diploma Courses in the state quota. In other words, the candidates who joined any of the Post Graduate Courses in the State quota, shall not be eligible for taking part in the counselling. The candidates shall have a right to choose anyone of the available seats. The same will be allotted to him/her and the allotment letters will be issued within 3 days giving each candidate 15 days' time to join. The allotments made by counselling will be firm and final. In case, a candidate is unable to appear in person on a notified date for personal appearance, he/she can send his/her representative with an authority letter for allotment. The allotment made to the authorised representative shall be binding on the candidate. The Convener of the Admission Board shall see that the entire exercise of counselling and allotment is completed within six months from the date of initial admissions so as to be within the period prescribed for admissions in Order 278-E. While making initial admissions date-wise, scheduled programs shall be prepared by the Convener of the Board and it shall be intimated to all

the Principals to do the needful in time. I hope and trust that the above procedure shall be strictly followed.

27. For the reasons stated above, the petitioner is not entitled to get any relief in the writ petition. The writ petition is, therefore, disposed off, as indicated above. No order as to costs.

28. A copy of this order be sent to the Convener of the Admission Board, as well as, the Principals of all Medical Colleges of the State of Rajasthan for their information.