
(2010) 10 RAJ CK 0004
In the Rajasthan High Court

Dr. (Miss) Aditi Mittal

APPELLANT

Vs

Dr. Shubham Joshi and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2011) 2 RLW 1176

Hon'ble Judges : Mohammad Rafiq, J; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This appeal is directed against judgment of learned Single Judge dated 09.09.2010 whereby writ petition, filed by respondent No. 1/writ-petitioner Dr. Shubham Joshi, has been allowed by issuance of writ of mandamus cancelling admission granted to appellant Dr. Aditi Mittal in post graduation study course in M.D. (General Medicine) at SMS Medical College, Jaipur; and directing respondents No. 2 to 4 to grant admission to respondent Dr. Shubham Joshi in PG course in M.D. (General Medicine) at S.M.S. Medical College, Jaipur and, in vacancy caused by his admission at Jaipur, appellant Dr. Aditi Mittal, who was initially given admission at Jaipur, was ordered to be admitted in the same study course in RNT Medical college, Udaipur.

2. Factual matrix of case is that both, appellant Dr. (Miss) Aditi Mittal and respondent No. 1 Dr. Shubham Joshi, appeared in Rajasthan Pre PG written Entrance Examination 2010; while appellant secured merit position No. 21, respondent No. 1 secured merit position No. 22. Both of them also appeared in All India Pre PG Entrance Examination, 2010. Appellant secured merit position No. 1318 therein, and merit position of respondent Dr. Shubham Joshi was lower than her at No. 1361. Convener, Central Medical Admission Board at Bikaner, conducted first counselling on 13th and 14th of April, 2010 and therein appellant was allocated seat for admission in MD (Pediatrics) in SP Medical College, Bikaner, whereas respondent Shubham Joshi in the same counselling was selected for admission in MD (General Medicine) at RNT Medical College, Udaipur.

3. Director General of Health services (for short, "the DGHS"), vide its order dated 05.03.2010 provisionally selected appellant Dr. Aditi Mittal for admission to MD (Anesthesia) course at SGPG Medical College, Lucknow and required her to report at allocated college within 15 days from the date of allotment letter, failing which it was stated therein that she shall forfeit the claim for a seat under 15% of All India Pre PG quota and this offer of allotment shall be cancelled without any further reference. Likewise, respondent Dr. Shubham Joshi was also provisionally selected for admission to MS (General surgery) Course at JLN Medical College, Ajmer with similar stipulation.

4. It is not in dispute that while the appellant deposited fee and submitted admit card and rank letter in original with SGPG Medical College, Lucknow but she did not actually join the study course, she did not even submit other original documents with the said college at Lucknow. The respondent Dr. Shubham Joshi, however, opted not to accept admission in the Central quota offered to him in MS (General Surgery) at JLN Medical College, Ajmer, and decided to pursue the studies in MD (General Medicine) in RNT Medical College, Udaipur. The appellant Dr. (Miss) Aditi Mittal also joined the study course of M.D. (Pediatrics) with SP Medical College, Bikaner.

5. In these circumstances, when the second counselling of the state PG quota was convened from 23rd to 25th of June, 2010, the appellant as well as the respondent both appeared therein, while the appellant was allocated seat of MD (General Medicine) in SMS Medical College, Jaipur, the respondent Dr. Shubham Joshi was admitted in the same specialty at RNT Medical College, Udaipur. In other words, even after change of specialty, he continued to pursue his studies in the same Medical College at Udaipur. Admission of appellant in MD (General Medicine) at SMS Medical college was objected to by respondent Dr. Shubham Joshi who submitted a written representation to the Admission Board precisely on the ground that since the appellant did not resign the seat of her admission in MD (Anesthesia) with SGPG Medical college, Lucknow, she according to Clause 10 of the Notification dated 18.06.2010 issued by the convener of the central Admission Board, was not eligible for admission in MD (General Medicine) at SMS Medical college, Jaipur.

6. It was pointed out by respondent Dr. Shubham Joshi that in fact the appellant had appeared even for second counselling convened by DGHS for admission against seats of Central quota on 26.04.2010 wherein as per option given by her, she was selected for admission to MS (Ophthalmology) in SMS Medical College, Jaipur. She was therefore illegally admitted in MD (General Medicines) at Jaipur and the respondent Dr. Shubham Joshi being next candidate in merit of Rajasthan Pre PG written Entrance Examination, was entitled to admission against this seat. Aggrieved by admission of appellant, Dr. Aditi Mittal, respondent Dr. Shubham Joshi filed writ petition. His afore-noted argument has found favour with the learned single Judge who allowed the writ petition in the terms indicated above. The appellant Dr. (Miss) Aditi Mittal, aggrieved thereby, is

now before us by way of present special appeal.

7. We have heard appellant Dr. Aditi Mittal and respondent No. 1 Dr. Shubham Joshi, who have appeared in person to argue their case. No one has, however, appeared for respondents No. 2 to 4 despite service of notice.

8. Appellant Dr. Aditi Mittal has argued that learned single Judge has misconstrued the provisions contained in Clause 10 of the Notification for Medical & Dental PG Counselling, 2010, dated 18.06.2010 and has erred in law in holding that appellant could not be admitted in MD (General Medicine) at SMS Medical College at Jaipur unless she had resigned from SGPG Medical College, Lucknow. The appellant argued that afore-stated Clause No. 10 inter-alia provides that candidate must present the accepted resignation from Institution he/she is persuading studies at present at the time of joining. Even though the appellant was allocated for admission to that Medical college at Lucknow by the DGHS and admission order to that effect was issued by Dean of that college on 16.03.2010 but the appellant merely deposited fee along-with admit-card and rank letter, she, however, did not deposit any other document in original and she also did not actually join said study course and even did not attend the classes/lecturers/practical.

9. It was argued that on true construction of Clause 10 of the Notification, supra she could be denied right to consideration for admission based on her merit in Rajasthan Pre PG Written Entrance Examination only if she was "pursuing studies" with SGPG Medical College, Lucknow. Mere deposit of fee does not mean that she was "pursuing studies" at Lucknow. It was argued that her appearance for second counselling before DGHS pursuant to All India Pre PG Entrance Examination may be an irregular act on her part but she did not accept the admission granted in that counselling either. Appearance in counselling by a candidate who has been allocated one specialty in first round of counselling would not debar him/her from appearing in second round of counselling to claim a better specialty even if he or she has not resigned, only condition is that on reallocation, allocation made earlier shall stand automatically cancelled with immediate effect and candidate shall have no claim whatsoever of the earlier allocation made. The appellant in this connection referred to Annexure-14 appended to rejoinder to reply filed by respondent Dr. Shubham Joshi in writ petition.

10. The appellant also cited judgment of Delhi High Court in W.P. (C) No. 4272/2010 - Dr. Varun Kumar Agarwal v. Union of India and Ors. decided on 09.08.2010 on interpretation of the word "pursuing" to argue that mere deposit of fee does not tantamount to pursuing study course, It is argued that the appellant in a most bona-fide manner believed that she having not physically joined study course at SGPG Medical college, Lucknow, was not debarred from joining study course in MD (General Medicine) at SMS Medical college, Jaipur because letter of admission dated 16.03.2010 itself stated that in case the appellant failed to join by 03.05.2010 her admission shall stand automatically

withdrawn. This was the implication even when she appeared for second counselling in the central quota on 26.04.2010 as per the Annexure-14 referred to supra. Appellant argued that she being an acute asthenic, climate condition of Udaipur, with abundance of pollution, does not in the least suits her and, therefore, it would not be possible for her to join the study course at RNT Medical college, Udaipur. Lastly, it is argued by appellant that seat allocated to her in MD (ophthalmology) at Medical college, Lucknow, has been allocated to another candidate in the second counselling and it is not correct to say that said seat has gone waste or was otherwise vacant. It was therefore prayed that impugned judgment be set-aside and admission of appellant based on her higher merit than the respondent Dr. Shubham Joshi in SMS Medical college, Jaipur be restored and the respondent Dr. Shubham Joshi be repatriated to the RNT Medical college, Udaipur to pursue the same study course.

11. Per contra, respondent Dr. Shubham Joshi has argued that restriction contained in Clause 10 of Notification dated 03.04.2010 of the first counselling and similar Clause 10 in notification dated 18.06.2010 issued regarding second counselling, is based on analogy that no candidate should be allowed to have admission against two seats at a time so that just claim of a meritorious candidate for admission against such seat may not be defeated. The appellant knew fully well that she was admitted to SGPG Medical College, Lucknow, which is why she was eligible to appear in second counselling in All India quota and she actually appeared for said second counselling on 26.04.2010. It is another matter that despite her selection for admission in MS (ophthalmology) at SMS Medical college, Jaipur, she did not choose to take admission in that specialty. It was argued that the appellant joined at SP Medical College, Bikaner in specialty of Paediatrics on 19.04.2010 and at that time, she had not resigned, she became wiser subsequently by a formally resigning that seat at Lucknow on 26.04.2010 when she appeared in second counselling but that cannot be a reason not to hold that she at one point of time occupied two seats, one at Lucknow and another at Bikaner. In view of this, she was not eligible for consideration in second round of counselling in the Rajasthan PG quota. The admission board committed grave illegality firstly in allowing her to appear in the counselling and subsequently in allocating her seat in MD (General Medicine) at SMS Medical College, Jaipur. If her candidature was rejected, the next best-entitled candidate was respondent Dr. Shubham Joshi. The learned single Judge was perfectly justified in allowing writ petition. It was argued that restricted interpretation could not be placed on the language used in Clause 10 of the Notification dated 18.06.2010 which clearly postulates acceptance of resignation from the Institution where the candidate is pursuing studies at the time when he or she is willing to appear for counselling. The fact that the appellant had deposited fee and also certain documents, clearly goes to show that she willingly decided to take admission in the Medical college at Lucknow. She never resigned from that seat at any point of time before joining in study course in SP Medical college, Bikaner, and not only that she did not resign that seat she having been admitted in SP Medical College,

Bikaner even appeared for second counselling for All-India quota. Her admission was thus illegal.

12. The respondent Dr. Shubham Joshi also relied on letter dated 19.04.2010 issued by the convener, central PG Admission Board, Bikaner addressed to all Principals of various Medical Colleges in Rajasthan, wherein it was clarified that in case any candidate at the time of joining was not able to personally go and submit resignation before the Medical College where he or she was admitted, it would be enough if such letter of resignation is sent by fax and copy thereof is produced along-with affidavit asserting that he or she has resigned but in that case such candidates should submit an undertaking to the effect that original documents would be produced before the Principal of concerned College within five days. The respondent also referred to relevant instructions of DGHS regarding admission in All Pre PG Medical counselling, 2010, specially the condition regarding appearance in the second counselling which inter-alia provides that if a candidate who appeared in first counselling, wanted to appear for re-allocation he must bring admission slip, admission fee receipt in original and undertaking on given proforma duly signed by Principal/Dean of the admitted college along-with photo copy of admit card, rank letter, duly attested by Gazetted officer, only then he/she will be allowed to appear in the second round of counselling. The appellant appeared for second counselling against All India PG quota with all these documents, which clearly show that she had admission against two seats, which disentitled her to appear for second counselling in state PG quota.

13. We have given our anxious consideration to rival submissions and perused the material on record.

14. In order to appreciate true meaning and content of the phraseology "pursuing studies", it will be at the outset appropriate to reproduce relevant Clause 10 of the Notification dated 18.06.2010 in extenso which we do as under:

10. The candidate must present the accepted resignation from the institution he/she is pursuing studies at present at time of joining. Failure to do so may be disqualification for admission.

(underlining ours)

15. It is on interpretation of aforesaid clause that we have to decide in the facts of present case whether learned single Judge was right in holding that appellant having deposited fee, admit card and rank letter with Medical college at Lucknow, can be taken to have been "pursuing studies" in that college making it imperative of her to produce acceptances of resignation or as per the modified instruction by letter dated 19.04.2010, to at-least send such resignation by fax to the Principal of Medical college at Lucknow for claiming eligibility to appear for second counselling in state PG quota. But then, the core issue that requires determination is whether mere deposit of fees with admit card and rank letter can by itself be taken to mean that the appellant was pursuing her studies with

SGPG Medical college at Lucknow even if she had not physically joined that medical college and deposited fee only in order to secure the allotment of seat in that specialty, while simultaneously craving for allotment of any better specialty of her choice in further counselling that may be held by Admission Board in State PG quota or DGHS in All India quota.

16. Decision of this matter therefore hinges upon the meaning of the phraseology "pursuing studies". Black's Law Dictionary (sixth Edition) defines "pursue" as "to follow, prosecute, or enforce, to pursue the practice of any profession or business, contemplates a course of business or professional practice and not single isolated acts arising from unusual circumstances. shorter Oxford English Dictionary also defines "pursue" inter alia as follow up, carry on further, continue a course of action.

17. An identical controversy came up before Delhi High Court in Dr. Varun Kumar Agarwal (supra) wherein the petitioner had appeared in entrance examination held by All India institute of Medical Sciences for admission to PG courses, in that case, counselling was originally scheduled for 11th June, 2010 but was postponed to 18th June, 2010 owing to certain differences between Director General Medical Examination and All India institute of Medical sciences, objection was raised by AIIMS that in the said counselling, admission was given to even such candidates who had till date not resigned from seats in other Medical colleges and were thus debarred from counselling. This objection was founded on clause on Clause 12.A.1 of Part VI of the Admission prospectus of All India institute of Medical Sciences, which is as follows:

12. OTHER TERMS & CONDITIONS

A. Important

1. Please not (sic note) that the candidates who have already done/are pursuing MD/MS/MDS in any subject at the time of counselling shall not be considered for admission to MD/MS/MDS courses. If it is found at a later stage that the candidate has given false undertaking at the time of counselling, his/her candidature/registration will be cancelled.

18. The admitted position before Delhi High Court was that appellant and many other candidates, even though allocated for admissions, have not yet commenced their studies for the PG in other Medical colleges and that they had merely deposited their fee. In those facts, Delhi High Court in Para Nos. 11 to 15 of judgment, held as under:

11. The words "are pursuing" in Clause 12.A.1 is in alternative to "have already done". The purport of the said clause appears to be to bar those candidates from admission to respondent No. 3 AIIMS who have already done their post graduation or who are in the process of doing their post graduation. The word "pursuing" has a meaning different from the word "admission", specially when both expressions have been used in the same document. "Pursuing" connotes

having moved forward from the threshold. Speaking from the point of view of a lawyer, a mere engagement of a lawyer cannot be construed as the lawyer "pursuing the case". The question of pursuing would arise when the lawyer after engagement does some other act on behalf of the client. In the present case, it is the admitted position that none of the 22 students had commenced their studies for the Post Graduation in any other Medical College. All that they had done till the date of counselling in respondent No. 3 AIIMS was to have deposited their fee in the other college. The session was then still to begin/commence. The undertaking given by the said candidates to respondent No. 3 AIIMS was only to the effect that they were not "pursuing". The undertaking was not to the effect that they had not taken admission.

12. The prospectus on the basis whereof the petitioner as well as the other candidates appeared in the examination clearly permits that even those candidates who had taken admission to Post Graduation courses in other Colleges, if prefer respondent No. 3 AIIMS, could take admission in respondent No. 3 AIIMS. If the intent had been to treat the said students as pursuing Post Graduation courses in other colleges, the occasion for Clause 12.E.3. would not have arisen.

13. The counsel for the petitioner has however contended that if such candidates were not pursuing the Post Graduation courses in other colleges, the question of their resigning there from as they have done, would not have arisen, in my view, merely because such students have informed the colleges where they had first taken admission that they are now no longer interested in continuing there, would not make them any the more "pursuing" the course than if they had not written such letters.

14. The Post Graduation course is ordinarily a two year course; admissions to respondent No. 3 AIIMS are held twice in a year i.e. in July & December; it is quite possible that candidates admitted to Post Graduation courses in other Medical Colleges in July may attempt to join Post Graduation courses in respondent No. 3 AIIMS in December or may be even in next July, even at the cost of one year, Clause 12.A.E. is intended to prohibit such persons who have already commenced learning in the Post Graduation courses in other Colleges from seeking admission to respondent No. 3 AIIMS.

15. In my opinion, reading Clause 12.A.1 (supra) in the fashion and/or giving the meaning as contended by the petitioner to "are pursuing" would tantamount to making the Clause 12.E.3. redundant/otiose, such interpretation cannot be accepted particularly when it is possible to harmoniously construe the two.

19. In the present case too, we find that appellant Dr. (Miss) Aditi Mittal joined PG course of MD (Pediatrics) in SP Medical College, Bikaner, where she produced original documents and deposited fee and also started pursuing studies. But she never started studies with SGPG Medical College, Lucknow. In fact, she never physically joined said course nor did she attend any lecture or class or even a

practical. Mere deposit of fee by her with admit-card and rank-letter cannot be construed to mean "pursuing studies" by her in that Medical College. Her appearance in second counselling that was held by the DGHS on 26.04.2010 may have been an act of over-enthusiasm on her part to take chance for admission in a still better specialty, but then that action on her part is relevant only for deciding the question whether she could have been allowed to appear in second round of counselling before DGHS, a question which we are not called upon to decide in the present matter. Allowing the appellant to appear in second round of counselling by DGHS for admission against central PG quota may have been an irregularity both on the part of appellant and DGHS, but then that does not in any manner vitiate her admission in MD (General Medicine) with SMS Medical College, Jaipur, where she was entitled to, and granted admission in her own right because she had better merit than the writ petitioner/respondent. For the present purpose, what we are concerned with is whether as per rules and instructions on the subject governing admission to post graduation course against the state PG quota, based on Rajasthan Pre PG written Entrance Examination, her appearance before the Admission Board in second round of counselling pursuant to Notification dated 18.06.2010 was in any manner illegal or whether admission granted to her on that basis can be said to be in any manner illegal. And on this, we are inclined to concur with the view expressed by Delhi High court in Dr. Varun Kumar Agarwal (*supra*) that mere deposit of fee does not tantamount to "pursuing studies", for pursuing connotes having moved forward from the threshold. In other words, the word "pursuing" implies something, which has already begun and is sought to be taken further or moved ahead towards completion. When the appellant did not actually join the study course to pursue the studies at Medical college, Lucknow, merely because she deposited the fee, it cannot be said that she was pursuing studies in that Medical college.

20. In view of what has been discussed above, present appeal deserves to succeed and is accordingly allowed, Impugned judgment passed by learned single Judge is set-aside. Respondents No. 2 to 4 are directed to forthwith allow appellant Dr. (Miss) Aditi Mittal to resume her studies in MD (General Medicine) at SMS Medical college, Jaipur and revert respondent Dr. Shubham Joshi to RNT Medical college, Udaipur to pursue the same study course.