
(2001) 03 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3804 of 2000 and 2 Other writ petitioners

Dr. Navin Vyas and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Rajasthan University Ordinances, 2009 — Ordinance 278(E), Ordinance 278(G)

Citation : (2001) 2 RLW 1190

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : R.P. Garg and Prahlad Singh, for the Appellant; Narendra Jain and R.A. Katta, for the Respondent

Judgement

MISRA, J.

(1). The petitioners in all these writ petitions are medical graduates holding a degree in Bachelor of Medicine and Bachelor of Surgery commonly known as MBBS, who appeared in Post Graduate Entrance Examination for admission into M.D./M.S. Courses in the year 2000 which was held by the State of Rajasthan. The examination was conducted in accordance with Ordinance 278-E and 278-G of the University of Rajasthan and the instructions contained in the Ordinance were issued by the University of Rajasthan for guidance of the candidates who were to appear in the Pre P.G. Entrance Examination. After the declaration of the result of this examination, all these petitioners found place in the merit list and were offered subjects for admission into P.G. course on 4th May, 2000 as per their position on the merit list.

(2). Ordinance 278-E & G of the University of Rajasthan, however, grants liberty to the P.G. students of M.D./M.S./Diploma to change their subjects known as reshuffling meaning thereby that if a candidate does not accept a particular subject which is offered to him as per his merit and the seat is left vacant, the said seat would be offered to the next candidate who is eligible for the subject as per his position on the merit list. This process is undertaken as per the

preference given by the candidates at the time of filling the application form while appearing in the P.O. Entrance Test, However, the Ordinance also places an embargo by putting an end to reshuffling after a period of two months as it is clearly incorporated in the Ordinance that the vacancies due to non-joining of the candidates in a particular subject within the stipulated time shall be filled up by reshuffling on the basis of merit-cum-preference list and the resultant 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 two months from the date of initial allotment. The Ordinance further stipulates that no admission shall be made after two months from the date of initial allotment even if any vacancy is left unfilled or any vacancy occurs subsequently. It is perhaps relevant to state at this juncture that the maximum limit of two months which is incorporated in the Ordinance was earlier six months but by virtue of an amendment in the Ordinance it has now been reduced to two months.

(3). The petitioners have come up to this court with a case that although they were granted subjects as per the merit list at the time of initial selection which is 4th May, 2000, reshuffling, took place thereafter on 30th May, 2000 as several candidates did not join the subjects in various disciplines which were offered to them. In spite of this reshuffling on 30th May, 2000, several candidates to whom a second chance was offered to join the P.G. Courses in subjects of their choice in which seats had been left vacant on account of non-joining of some of the candidates, the vacant seats which were left unfilled even after the reshuffling were not offered to the candidates who were willing for a switch over to subjects of their choice although two months period from the date of initial selection had not expired. When the petitioners came to know of this position they filed a representation before the competent authorities that the seats which had been left unfilled after 30th May, 2000 should be offered to the candidates from the waiting list as per the Ordinance of the University but the same was refused by the authorities on the plea that the left over seats cannot be allowed to be filled once reshuffling was complete. This plea was taken on the basis of Ordinance 278 E and G of the University of Rajasthan referred to hereinbefore. The petitioners feeling aggrieved with the denial of the left over seats at the instance of the respondent who refused to grant a chance to the candidates who were willing for a change of subject, thought it proper to approach this court by filing these writ petitions for redressal of their grievance in this regard.

(4). Mr. Ajay Rastogi who appeared in SBCWP No. 3804/2000 on behalf of Dr. Naveen Vyas and 3 other petitioners, took the lead in advancing arguments in support of the plea of the petitioners and submitted that the embargo imposed by Ordinance 278-E and G can be allowed to operate only after expiry of two months period from the date of initial selection of the candidates in various disciplines but if after the first reshuffling which took place on 30th May, 2000, several seats fell vacant on account of non- joining of the candidates in the subjects which had been offered to them and also because some of the candidates had quit the seats as they might have availed of better options

elsewhere, the left over seats could not have been allowed to remain unfilled instead of filling them up by candidates from the waiting list. The arguments of Mr. R.P. Garg appearing for Dr. Manjari Gupta in SBCWP No. 5170/2000 and Mr. Prahlad Singh appearing for Dr. Pankaj Gupta and others in SBCWP No. 3935/2000 were also on the same lines.

(5). In response to a show-cause notice issued to the respondents including the Department of Medical & Health and the University of Rajasthan, a counter affidavit was filed on their behalf by Mr. Narendra Jain, who first of all stated that the petitioners could not have filed a writ petition by clubbing their cases together in one writ petition as their position on the merit list is different and they also belong to different subjects. However, this objection taken on behalf of the respondents does not merit any consideration as the principle question in all these writ petitions is one and the same and that is whether the seats which had fallen vacant before expiry of a period of two months from the date of initial selection of candidates to the P.G. Courses of Medicine and Surgery could not have been legally denied by the respondents to the candidates of the waiting list and hence this plea of Mr. Jain was rejected at the outset. However, he had further pointed in SBCWP No. 3935/2000 in regard to the petitioner No.1 Dr. Pankaj Gupta and petitioner No.2 Dr. Indu Gaulam by clearly stating in the counter affidavit that they had failed to appear even at the time of first reshuffling which was held on 29th and 30th May, 2000 and thus they had refused to participate in the reshuffling, hence they should not be permitted to raise any plea whatsoever in regard to the vacant seats which fell vacant after the first reshuffling. This factual aspect could not be controverted by these two petitioners and hence the plea of the petitioners Dr. Pankaj Gupta and Dr. Indu Gaulam, who are petitioners No.1 and 2 respectively in SBCWP No. 3935/2000 is rejected at the outset as they cannot be allowed to claim the left over seats if they had surrendered their seats practically by not participating in the reshuffling which means that they were satisfied with the subjects which had initially been offered to them. Hence the SBCWP No. 3935/2000 is dismissed as against petitioner No.1 and 2 Dr. Pankaj Gupta and Dr. Indu Gautam.

(6). In so far as the plea of the other petitioners in all the 3 writ petitions is concerned, the question certainly arose as to whether the respondents were justified in refusing them to allot vacant seats as per their merit-cum-preference, if the seats in various subjects had fallen vacant prior to expiry of two months from the date of initial admission. Since the whole case is based on Ordinance 278-E and G, it is appropriate to quote the relevant portion of Ordinance 278-E and G for facility of reference which is as follows;-

"The candidate is entitled for reshuffle only if he/she joins and continues to attend the allotted PC course failing which his/her selection will be terminated.

The vacancies due to non-joining within the stipulated time shall be filled by reshuffling on the basis of merit-cum- preference list and the resultant vacancies of 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 two months from the date of initial appointment. No admission shall be made after 2 months from the date of initial appointment which occurs subsequently."

(7). On a perusal of the aforesaid Ordinance it is more than apparent, even by simple calculation that the initial selection having been made on 4th May, 2000, the embargo of two months period expired on 4th July, 2000 and the reshuffling of seats having taken place on 29th and 30th May, 2000 after which several seats in various subjects fell vacant, the denial of those seats to the candidates existing in the waiting list can hardly be said to be justified. A perusal of the Ordinance clearly indicates that there is no embargo on frequency of reshuffling in the sense that if one reshuffling had taken place, it is nowhere stated that a second reshuffling would not take place; rather the entire emphasis of the Ordinance is that the vacant seats should be filled up by allowing admission to the candidates from the waiting list provided this exercise is not undertaken beyond a period of two months to be counted from the date of initial selection. It is not in dispute that the initial selection took place on 4th May, 2000 and it is also undisputed that a reshuffling of the seats took place on 29th and 30th May, 2000 after which seats were still left vacant in different disciplines which means that seats after reshuffling were available with the respondents even before the expiry of two months period counted from the date of initial selection. If that was so, the denial of admission to the candidates in subjects of their choice as per their merit-cum-preference is difficult to understand even taking into account the relevant provisions of Ordinance 278-E and G since the only embargo is that the change of subjects or reshuffling should not be allowed to take place beyond a period of two months.

(8). The contentions of the respondents" advocate that if more than one reshuffling is allowed to take place, the process would never come to an end also does not end into any logic as the Ordinance clearly states that the reshuffling cannot take place beyond a period of two months from the date of initial selection meaning thereby that the process of change of subjects should be allowed to take place within this period. Hence even if seats are left vacant after reshuffling but beyond a period of two months, no candidate would have any claim against those seats but as long as the seats are available within two months period, the obstruction of the admission authorities in not allotting them to candidates who are willing to join the course cannot be said to be a sound exercise of discretion in this regard. There also appears to be no rationale or any sound justification for keeping the seats vacant in a particular subject and forcing the students to continue with a subject which is not of their choice and thrust upon them the burden of studying a subject which is not of their preference even if seats in subject of their preference are available. If there had been no scope to remedy this situation, the position would have been otherwise, but in the event of availability of the subjects of the choice of candidates who were willing to join it, denial of the same certainly cannot be said to be a legitimately happy position

so as to grant legal protection to such a situation.

(9). The counsel for the petitioners had been directed by this court to ascertain as to when the seats in various subjects in the P.G. Course of Medicine and Surgery had fell vacant in reference to which a chart was furnished by Mr. Rastogi in SBCWP No. 3804/2000 as also by Mr. Prahlad Singh in SBCWP No. 3935/2000 indicating that the seats for which they are contesting, definitely fell vacant prior to 4th of July, 2000 i.e. prior to expiry of two months period. In view of this, action of the respondents in denying those seats to the petitioners, if they qualified for those seats as per their position on the merit list i.e. in consonance with their merit-cum-preference, the denial is clearly not sustainable.

(10). It is no doubt true that more than 6 months period has already passed in the process of this contest and according to the respondents' advocate Mr. Jain, if the candidates are admitted against those seats now, they cannot qualify for the examination on time. Although this might be a relevant consideration for riot changing the subjects, this is a reason for the candidates, who are mature enough, to consider as to whether they would be interested in switching over to a new subject or not in case it is offered to them and what exactly would be the consequence of this change, since this aspect is neither a matter of consideration for this court nor for the respondents; but the candidates who are entitled to apply their mind to the consequence of change of subject at a late stage because it might be that the candidates may give more weight to a subject of their choice even at the cost of spending some more time in it than having to pursue a course which is not of their interest and liking. Hence I do not deem it appropriate to deny the claim of the petitioners to switch over to a subject of their choice merely on account of the passage of time for the reasons stated hereinbefore.

(11). In view of the aforesaid discussion, the obvious conclusion that crops up, is that the seats which were left vacant in the year 2000 in the P.G. Course of Medicine and Surgery, be offered to the candidates in their order of merit-cum-preference and for this purpose the respondents are directed to publish an advertisement within a period of 6 weeks from the date of receipt of a copy of this order for reshuffling of the subjects in regard to the left over seats in various disciplines which had fallen vacant in the year 2000 with a clear stipulation that the consequence and responsibility of the switch-over would clearly be borne by the candidates meaning thereby that they would not be permitted to appear in the P.G. Examination without completing the required training period. The writ petitions accordingly stand allowed but in the circumstances without costs.