

(2022) 04 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13445 Of 2005

Dr. Rahul Mittal

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Madhya Pradesh Medical And Post Graduate Course Admission Rules, (Degree/
Diploma) 2014 — Rule 11

Citation : (2022) 04 MP CK 0049

Hon'ble Judges : Sujoy Paul, J; Dwarka Dhish Bansal, J

Bench : Division Bench

Advocate : Aditya Sanghi, Janhvi Pandit

Final Decision : Allowed

Judgement

Sujoy Paul, J

1. The controversy revolves around the interpretation of Rule 11 of Madhya Pradesh Medical and Post Graduate Course Admission Rules (Degree/Diploma) 2014 (hereinafter called as "Admission Rules").

2. Before dealing with the relevant Rule namely Rule 11, it is apposite to mention the admitted facts between the parties. Petitioner took admission in Post Graduate Diploma Course in Gajra Raja Government Medical College, Gwalior on 01.07.2014. The petitioner participated in the final examination in December, 2014. Petitioner could not clear the main examination held in 2016. He took part in the supplementary examination and result was declared on 03.03.2017 (Annexure P/4).

3. Shri Aditya Sanghi, learned counsel for the petitioner submits that as per Rule 11 of the Admission Rules, The Dean, Medical College was required to provide a list of successful post graduate candidates to the Commissioner of Health Services, Government of Madhya Pradesh. The Commissioner, in turn was required to issue appointment orders to such successful candidates within three

months after declaration of the result. It is urged that the results were declared on 03.03.2017 but till date, no appointment order has been issued to the petitioner. Resultantly, in view of the clear language of Rule 11 aforesaid, the bond conditions stand obliterated automatically. Thus, petitioner is entitled for the relief claimed.

4. Shri Sanghi, learned counsel for the petitioner by taking this Court to paragraph no.2 of the petition argued that no doubt, petitioner clearly declared that W.P. No.3628/2017 and W.P. No.3629/2017 are the petitions which involve absolutely identical issue but the final order passed in the said case will show that on facts, present case is distinguishable inasmuch as the said cases were not entertained by this Court because as per the factual backdrop of aforesaid writ petitions, the admission was given by the Commissioner to the petitioner therein within three months from the date of getting the list of successful postgraduate candidates, whereas in the present case, indisputably, the petitioner has not been appointed till date. It is canvassed that one of the main objection of the respondents is based on common order dated 11.07.2018 passed in W.P. No.3628/2017.

5. Thus, the first objection mentioned in the return of the State is devoid of merits submits Shri Sanghi.

6. The petitioner submits that the petitioner earlier filed W.P.No.11900/2016 challenging the bond conditions in which an interim order dated 19.7.2016 (Annexure/R1) was passed by this Court. The order nowhere prevents the State to issue appointment order to the petitioner, a successfully P. G. Diploma candidate. For no valid reasons, they deprived the petitioner from appointment and on the other hand did not relax the bond conditions. It is argued that if the petitioner has not disclosed about factum of filing of W.P. No.11900/2016, it does not amount to suppression of fact and the petitioner has approached this Court with a pair of clean hands. In this view of the matter, case of the petitioner is that for non-fulfilling the statutory requirement of Rule 11 of Admission Rules, the bond conditions lost its force and cannot be enforced against the petitioner.

7. Mrs. Pandit, learned Deputy Advocate General sounding a contra note, urged that a careful reading of Rule 11 aforesaid makes it clear that it is in two parts. The first part makes it obligatory for all the Deans of Autonomous Colleges to provide the list to the Commissioner of the students who were appearing in the examination whereas second part deals with such Doctors who have successfully passed the examination in question. The expression 'however, such Doctors will have to work under the State Government as directed' is important, submits learned Deputy Advocate General and it is argued that as per this condition, petitioner is still required to serve the department in rural areas.

8. Learned counsel for the State also placed reliance on order dated 19.7.2016 passed in W.P. No.11900/2016 wherein present petitioner was petitioner No.3. It is urged that this order is also in two parts. A careful reading of the second part

of the order shows that candidates were required to furnish the bond or pay the amount as per bond. This petition W.P. No.11900/2016 filed by the petitioner was clubbed with a batch of petitions which came to be dismissed by a common order dated 28.8.2019 (Annexure R/3). Thus, the petitioner has no case. In addition, reliance is placed on the affidavit of the petitioner dated 12.4.2017 filed with I.A.No.23711/2011 in which petitioner categorically pleaded that if W.P. No.11900/2016 is dismissed, the petitioner will return the original educational qualification documents to the college and will render compulsory rural services. In view of this undertaking/affidavit, petitioner is bound to serve the department in rural areas.

9. Lastly, learned Deputy Advocate General submits that as per petitioner's own pleadings, this petition involves an identical issue qua W.P. No.3628/2017 which has been dismissed.

10. No other point is pressed by learned counsel for the parties.

11. We have heard the learned counsel for the parties at length and perused the record.

12. Before dealing with the merits of the case, we deem it proper to first deal with an objection of State which relates to suppression of material facts, i.e. non-disclosure of filing of W.P. No.11900/2016 in this petition.

13. As noticed above, W.P. No.11900/2016 was filed assailing the letter dated 16.8.2013 requiring the petitioner to undertake an exercise whereas as per petitioner's claim, he being an All India Quota Student, was not required to comply with the same. The bond conditions were also subject matter of challenge. Indisputably, in view of judgment of Supreme Court in the case of Association of Medical Super Speciality Aspirants and Residents and others Vs. Union of India and others (Writ Petition (Civil) No. 376/2018) decided on 19.8.2019, the petitioner's petition and other clubbed matters were dismissed by a common order dated 28.8.2019.

14. Thus, bond conditions which were prevailing at that point of time were not interfered with by this court in the previous round of litigation.

15. In the instant case, the petitioner has prayed for following reliefs :-

(i) Writ of Mandamus directing the respondents to release the petitioner from the bond conditions.

(ii) Writ of Mandamus directing the respondents to return the original documents of the petitioner and relieve him from the bond condition with immediate effect.

(iii) Writ of Mandamus commanding the respondents to give the unconditional NOC (No Objection Certificate) to the petitioner.

Any other relief/direction/order as deemed fit and proper looking to the present facts and circumstances of the case.

[Emphasis Supplied]

16. If the relief claimed in the present petition is examined in juxtaposition to the reliefs claimed in the previous case, it will be clear like cloudless sky that the previous petition was filed on 14.7.2016 assailing the bond conditions as prevailing therein. The present petition is filed in the teeth of language employed in Rule 11 of the Admission Rules by contending that since the Rule has not been complied with by the respondents, the petitioner be released from the bond conditions. Consequently, his original documents be returned to him with immediate effect. In addition, no objection certificate be provided to the petitioner.

17. Rule 11 of Admission Rules reads as under :-

“11. Fee, Bond etc. :-

Selected candidates except In-service/Demonstrator, non service candidates will have to submit a Bond as per Government instructions i.e. Rs.10.00 Lac. for postgraduate degree and Rs.8.00 Lac. for Diploma courses for serving under the State Government for 1 years after completing P.G. degree/Diploma Course. All Deans of autonomous colleges will provide the list, to the Commissioner, Health Services of candidates who are appearing for University exams from their institute at least three months before the start of examination. They will also provide list of successful PG candidates. The Commissioner, Health Services will issue appointment orders to such successful candidates within three months after declaration of the result, failing which the Bond filled by the candidate will automatically be deemed as cancelled.”

[Emphasis Supplied]

The underlined portion of above Rule shows that the law makers in their wisdom decided a period of 3 months after declaration of result to provide appointment to successful candidates failing which bond conditions will become ineffective automatically.

18. A careful reading of this Rule makes it clear that the concerned medical college is required to provide list of successful P.G. candidates to the Commissioner, Health Services to enable the Commissioner to issue appointment orders to ‘such successful candidates’ within three months after declaration of the result. This Court in W.P. No.3628/2017 opined that the starting point of three months is after declaration of the result which necessarily means after communication of result to the Commissioner, Health Services. The result in the instant case was admittedly declared on 03.03.2017 and this is also not in dispute that till date no appointment order has been issued to the petitioner.

19. In our opinion, when a statutory Rule couched in a language, which includes a deeming clause, it should be given effect to to its fullest. In other words, the intention of law makers should be respected where they have used a deeming provision so that no declaration or consequential order is required to be passed.

A microscopic reading of second part of Rule 11 shows that if appointment order is not issued to the candidate within three months, the bond filled by the candidate will automatically deemed to be cancelled. The expression "failing which the bond filled by candidate will automatically be deemed as cancelled." must be given its full and complete meaning. In our view, if Commissioner has failed to issue an appointment order within three months, the bond conditions have lost its significance or in other words such conditions pales into insignificance and cannot be enforced against the petitioner. The Apex Court in catena of judgments dealt with the effect and impact of deeming clause. It is apt to consider the legal journey on this aspect.

20. After ascertaining the purpose, "full effect must be given to the statutory fiction and it should be carried to its logical conclusion" [See :- State of Bombay vs. Pandurang Vinayak, AIR 1953 SC 244, p. 246; American Home Products Corporation vs. Mac Laboratories, (1986) 1 SCC 465, p. 501 ; Union of India vs. Jalyan Udyog, supra, pp. 96, 97; P.E.K. Kalliani Amma vs. K. Devi, AIR 1996 SC 1963, p. 1976; Mundri Lal vs. Sushila Rani, (2007) 8 SCC 609 para 26] and to that end "it would be proper and even necessary to assume all those facts on which alone the fiction can operate" [See:- C.I.T., Delhi vs. S. Teja Singh, AIR 1959 SC 352, p. 355]. In an oft-quoted passage, LORD ASQUITH stated: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it - . The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." [See:- East End Dwelling Co. Ltd. vs. Finsbury Borough Council, (1951) 2 All ER 587, p. 589; referred to in State of Bombay vs. Pandurang Vinayak, supra, p. 246; C.I.T., Delhi vs. S. Teja Singh, supra, p. 355; Rajendraswami vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad, AIR 1965 SC 502, p. 505; Shatrunjit (Raja) vs. Mohammad Azmat Azim Khan, AIR 1971 SC 1474, p. 1476; Daya Singh vs. Dhan Kaur, AIR 1974 SC 665, p. 668; Boucher Pierre Andre vs. Superintendent, Central Jail, Tihar, AIR 1975 SC 164, p. 166; Sundar Dass vs. Ram Parkash, AIR 1977 SC 1201, p. 1205; Ashok Leyland Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 1; State of West Bengal vs. Sadam K. Bormal, AIR 2004 SC 3666, p. 3673; Clariant International Ltd. vs. Securities & Exchange Board, (2004) 8 SCC 95 paras 6 and 7; See further Mohammad Iqbal Madar Sheikh vs. State of Maharashtra, (1996) 1 SCC 722, p. 727; Manorey Alias Manohar vs. Board of Revenue (U.P.), (2003) 5 SCC 521, pp. 526, 527 (deeming provision to be given full effect).

21. About legal fiction Apex Court held that -

"We have to give effect to the language of the section when it is unambiguous and admits of no doubt regarding its interpretation, particularly when a legal fiction is embedded in that section. A legal fiction has a limited scope. A legal

fiction cannot be expanded by giving purposive interpretation particularly if the result of such interpretation is to transform the concept of chargeability.”(See:- Vodafone International Holdings BV vs. Union of India (2012) 6 SCC 613, para 90).

22. In this view of the matter, the present cause of action did not arise to the petitioner to seek enforcement of Rule 11 when he filed his previous petition on 14.7.2016 (W.P. No. 11900/2016). There is no clash in the relief clauses of both the petitions. It cannot be said that if the petitioner has not mentioned about filing of W.P. No.11900/2016, it amounts to suppression of material fact. Putting it differently, had it been disclosed that the petitioner has filed W.P. No.11900/2016, the said fact would not have been of any impact in the second round/present petition. Our opinion is fortified in view of judgment of Apex Court in S.J.S Business Enterprises (P) Ltd. Vs. State of Bihar and others (2004) 7 SCC 166. Relevant para reads thus :-

“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken”.

Thus, this technical objection raised by the State deserves to be rejected.

23. In W.P. No. 11900/2016 this court passed the following order :-

“A copy of the petition be given to Shri J.K. Jain, Advocate.

In the meanwhile, as an interim measure, respondents are restrained from taking any coercive steps against the petitioners in the matter of compelling them to submit the bonds as stipulated in the impugned notification, as the notification came into force subsequent to the admission of the petitioners and prima facie the contention of the petitioners that the said condition will not have retrospective effect has to be accepted at this stage.

That part, such of the students who have completed the course and are requirement of any original procedural documents for prosecuting their studies further or in connection with any further act to be done on their behalf, they be permitted to withdraw the original documents subject to their filing an affidavit and an undertaking to the effect that ultimately if this petition is dismissed they may comply with such directions as may be issued in the matter of furnishing of the bond or paying the amount as per the bond. Subject to the petitioners comply with the aforesaid directions, respondents are directed to furnish to them all such original documents which are in their custody which the petitioners want to withdraw.”

24. We find substance in the argument of learned counsel for the petitioner that

in this order, there is nothing which prevents the State Government to issue appointment order to the petitioner. Even if, W.P. No. 11900/2016 was dismissed by passing a common order, it cannot be said that bond conditions will still survive despite non-compliance of Rule 11 of the Admission Rules.

25. It is not the case of the respondents that even after three months or at any later point of time, the petitioner was given appointment pursuant to his being successful PG Diploma Candidate. Thus, the respondents have flouted /breached Rule 11 of the Admission Rules and, therefore, the bond condition cannot be enforced against him in view of automatic/deeming clause.

26. Learned Deputy Advocate General for the respondent/State during the course of argument strenuously contended that the expression 'however such Doctors will have to work under the State Government as directed' has a definite meaning and purpose. This shows that whether or not petitioner has been given appointment by the Commissioner within three months, he is bound to serve the State Government in rural areas as per the bond conditions. If the said Rule is read with affidavit filed by the petitioner on 12.4.2017, it will be obligatory on the part of the petitioner to serve in the rural area. We do not see any merit in this contention. This phrase on which heavy reliance is placed, cannot be divorced from rest of the Rule namely Rule 11. It is inseparable part and parcel of Rule 11. The words 'such Doctors' is repeatedly used in Rule 11 and in our considered judgment, these words 'such Doctors' relate to those successful candidates who have passed the relevant course and their list is furnished by the concerned Medical College to the Commissioner, Health Services. If bond pales into insignificance and vanished in thin air because of deeming provision and because of non-appointment of petitioner within the stipulated time, we see no reason to give life to such bond which died as per the deeming expiry date. The shelf life of the bond was dependent upon issuance of appointment orders to such successful candidates within stipulated time failing which the Rule will have its own consequence. This is trite that when language of the Rule is plain and unambiguous, it has to be given effect to irrespective of consequences [See :- Nelson Motis Vs. Union of India 1992 (4) SCC 711].

27. Indisputably, no appointment order has been issued to the petitioner by the Commissioner till date. Hence, in our opinion, whether petitioner is bound to serve in the rural areas or comply with the condition of his affidavit is not of much relevance. In other words, the question of rendering rural services would arise provided petitioner was given appointment by the Government. Since the Government has not given any such appointment, this question academic in nature, in our opinion need not be answered.

28. In view of the foregoing analysis, the bond conditions automatically stood cancelled because of breach of Rule 11 of Admission Rules.

Resultantly, the said condition cannot be enforced against the petitioner anymore. Consequently, respondents are bound to return original documents to

the petitioner and furnish him the NOC. It is made clear that this order will not come in the way of the respondents in enforcing the affidavit of petitioner dated 12.4.2017 in accordance with law, if law so permits. The entire exercise of returning original documents and issuance of NOC be completed within 60 days from the date of communication of this order.

29. The petition is allowed. No cost.