
(2002) 11 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 948 of 2002 (G)

Dr. Ritesh Jaiswal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Entrance Examination Rules, 2001 — Rule 9.4, 9.6, 9.7

Citation : (2003) 1 MPJR 473

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Arvind Dudawat, for the Appellant; K.N. Gupta, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

As common questions are involved in these petitions, they are disposed of by this common order.

In W.P. No. 932/02 the petitioner Dr. (Ku.) Rashmi Katyal contends that she has passed her M.B.B.S. Examination from G.R. Medical College, Gwalior in the year 1998. In pursuance to the entrance examination conducted in the year 2001 for admission to Post Graduate Course under the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules 2001, she had appeared in the entrance test conducted in the year 2001 and secured 609 marks out of 900. Her name was placed at Sr. No. 159 of the waiting list. Results of the examination were declared on 5.7.01, and the first counselling took place on 27.7.01 and the second counselling was held on 29.9.01. In the second counselling candidates whose names were at Sr. No. 144 of the waiting list were called and admissions were given as per option given by the candidates in the respective counselling held as per the Entrance Examination Rules of 2001. It is averred by her in the petition that after giving admission to the Post Graduate Degree/Diploma

Courses in the second counselling, various seats in both degree and diploma courses remained vacant for being filled up. For filling up of these seats, no further counselling has been held even though a large number of seats are lying vacant. After the second counseling was held, Director of Medical Education (respondent no. 2) had declared that a further counselling will be held soon for giving admissions against the remaining vacant seats. It is contended by her that according to the provisions of Rule 9.4, 9.6 and 9.7 of the Entrance Examination Rules of 2001, if any seats in other degree/ diploma courses remains vacant, the same has to be taken up from the waiting list candidates strictly in order of merit by subsequent counselling. Similarly, seats lying vacant against SC, ST and OBC category are also to be filled up from unreserved candidates. According to the petitioner in G.R. Medical college, Gwalior and other Medical Colleges of the State, various seats are lying vacant as per the statement given in Annexure P-5. It is the grievance of the petitioner that these vacant seats have not been filled by any eligible candidate including the petitioner. According to the petitioner the action of the respondents in not filling up these vacant seats is illegal. She had made repeated representations and she was assured by respondent no. 2 that further counseling for giving admission shall be held, she had submitted representation and application vide Annexure P-6 and P-7 but when nothing was done she had no option but to file this petition claiming admission to Post Graduate Degree/Diploma Course preferably against the seat of M.S. (Obs. & Gynaec) lying vacant in G.R. Medical College, Gwalior. Prayer made is to issue a writ of mandamus directing the respondents to grant admission to the petitioner to the said seat. It is also averred that vide order dated 19.6.02 Annexure P-8, the claim of the petitioner has been rejected and it has been contended that as counselling for filling up of seats for the Pre P.G. Entrance Examination conducted in 2002 have already commenced, the seats of 2001 cannot now be filled up.

In W.P. No. 948/02 also similar relief is claimed by the petitioner who had also appeared in the Pre P.G. Entrance Examination against the seat reserved for O.B.C. candidate. The petitioner in this case received 528 marks out of 900. His name was placed at Sr. No. 30 of the list as per result declared on 5.7.01. The petitioner was called for first counselling held on 27.7.01. However, as the seat offered to the petitioner was not of his choice, he opted not to take the seat. His name was therefore placed in the subsequent counselling. In the subsequent counselling held on 29.9.01 also he was called but as the seat offered was not of his choice he did not opt for the same and his name was kept in the waiting list. In this case also, the petitioner contends that after the second counselling, various seats in Degree and Diploma Course are lying vacant and the respondents have not taken any action for conducting further counselling in filling up these seats. The petitioner in this case also submitted representations vide Annexure P-8 and P-9 but by order dated 19.6.02 Annexure P-10, the State Govt. has rejected the claim of the petitioner on the ground that first counselling for filling up of the seats in the Pre P.G. Examination for the year 2002 have already commenced and therefore there is no question of filling up the seats of

the year 2001. In this case also prayer made is for directing the respondents to hold further counselling and filled up the seats.

Shri A. Dudawat, learned counsel appearing for the petitioner in both the cases contends that the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules 2001 (hereinafter referred to as Rules of 2001) have been enacted in pursuance to the powers conferred on the State govt. u/s 10 of the M.P. Chikitsa Shiksha Sanstha (Niyamtran) Adhiniyam, 1973. The rules framed are statutory in nature. According to the learned counsel for the petitioner, a perusal of rule 9.4, 9.5, 9.6, and 9.7 would indicate that the rules contemplate filling up of the seats by various counsellings. There is no restriction in holding more than two counselling. It is the submission of the learned counsel that the intention of the legislature and the interest of the public and the students are that each and every seat available should be filled up and no seat should be held vacant. Referring to the aforesaid provision of rules and in particular the provisions of Clause 9.4, 9.5, 9.6 and 9.7 of the rules, it is argued by learned counsel for the petitioner that the State govt. is required to fill up all the vacant seats. It is further submitted by Shri Dudawat that even though in the rules in question it has been indicated that the last and closing date of admission and the waiting list shall lapse after 5 p.m. on 2.7.01, same will not apply in the facts and circumstances of the present case because according to the learned counsel the examinations were held late, the results were declared on 5.7.01 i.e. after the said date of 2.7.01. First counselling was held on 27.7.01 and Second counselling was held on 29.9.01. That being so, the cut of date for admission as 2.7.01, is not applicable in the present case. According to the learned counsel for the petitioner, the respondents were duty bound to hold another counselling and fill up all the seats which are vacant. It is contended by him that by not holding further counselling and not filling up the vacant seats, the respondents have committed breach of rules. According to the learned counsel for the petitioner, as per the law laid down by the Apex Court, the seats of Post Graduate Degree and Diploma Course are wealth and property of the nation and in any case they cannot be permitted to go waste.

By filing a rejoinder making certain averments therein, it has been pointed out by learned counsel that 13 admissions were granted in various courses against seats reserved for earlier years on subsequent dates. It is submitted by him that for seats reserved for 1997-98 admissions were allotted in the year 1999-2000 and in one case admission was permitted in the year 2002 to one Dr. Vineeta in M.D. Course after lapse of more than 4 or 5 years. It is therefore submitted by him that in the case of petitioner, a different yardstick has been adopted by the State and only on the ground that counselling for the subsequent year i.e. for the year 2002 has been completed, admission to the petitioner is being refused even though seats are vacant and the petitioners are eligible. Referring to various judgments of the Supreme Court it has been emphasised by learned counsel that admission can be granted in such circumstances. The respondents cannot be permitted to keep the seats vacant and the action of the respondents are

perverse, illegal, arbitrary and totally injustice. In that view of the matter it is argued by him that the petitioner is entitled to relief claimed by him. In support of his contention learned counsel has referred to the following judgments :-

Dr. Rekha Saxena Vs. State of M.P. and Others, , Ombir Singh and Others etc. etc. Vs. State of U.P. and another etc. etc., , Dr. Indu Kant Vs. State of U.P. and others, ; Ajay Pradhan Vs. State of Madhya Pradesh and Others, .

Reliance is also placed on a judgment of the Supreme Court in the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, to contend that the rules for admission made are statutory in nature, therefore binding on the respondents and they are duty bound to fill all the seats when candidates like the petitioners are available in the waiting list, eligible to get admission.

Refuting the aforesaid submission Shri K.N. Gupta, learned Govt. Advocate points out that under the rules the cut of date for admission was 2.7.01. The rules strictly prohibits making of admission after the cut of date fixed, no admission can be granted after the cut of date and the waiting list automatically lapses after cut of date. In this regard, he invites attention of this Court to the provisions of Clause 9.5 and 9.6 of the rules. It is also contended by him that under Clause 10 of the rule, endeavour has to be made for commencement of the course on second day of May every year and the process of admission has to come to an end by 2nd July each year. It is argued by him that even though some administrative reason in the instant case the said date could not be adhered to but after declaration of results on 5.7.01 and after the second counselling was over on 29.9.01, no further admission can be granted. That apart, it is submitted by him that subsequently, the Pre P.G. Entrance Examination for the year 2002 have been completed and the first phase of counselling for the examination of 2002 is completed and therefore no further admission with regard to the seats of 2001 can now be undertaken.

As far as the contention in the rejoinder with regard to granting admission after 2-3 years to 13 candidates are concerned, it is submitted by learned counsel for the petitioner that in the case of the candidates mentioned at Sr. No. 1 to 5, 8, 11 to 12 of the said list, these candidates were permitted to change from Diploma to Degree Course in the same subject whereas candidates at Sr. No. 6, 9, 10 and 13 were permitted to change their seats in the respective courses. It is argued by him that those were the cases with regard to transfer of seats from one course to another and the petitioner's claim are entirely different. Referring to a recent judgment of the Supreme Court referred to in the case of Medical Council of India Vs. Madhu Singh and Others JT 2002 (7) SC I and Shafali Nandwani Vs. State of Haryana and Others 2002 (7) SCC 300 it is submitted by learned counsel for the State that it has been held by the Supreme Court in the aforesaid case that once the course are commenced, no admission in the mid-term is permissible. It is submitted by learned counsel for the petitioner that in the light of the aforesaid judgments of the Supreme Court, no relief can be granted to the petitioner.

I have heard learned counsels for the parties.

Even though in the rules in question the last date for admission was fixed as 2.7.01 but the same was not adhered to and the entrance examination result itself was declared on 5.7.01. Thereafter according to the petitioner the counselling took place on 27.7.01 and 29.9.01 but according to the return of the State Govt., the first counselling was held on 23.7.01 and second on 29.8.01, two counsellings have been held and the petitioners were not selected. As far as petitioner Dr. (Ku.) Rashmi Katyal in W.P. No. 932/2002 is concerned, she did not come within the merit to be eligible to appear in the counselling. However, in the case of Dr. Ritesh Jaiswal petitioner in W.P. No. 948/2002 he has contended that he was called for counselling on two occasions but as he did not get seat of his choice, he exercised his option to remain in the waiting list. The question involved in the present case is as to whether the petitioners can be granted admission at this state and whether in the admitted fact when seats are lying vacant, can a mandamus be issued by this Court to fill up the seats.

Even though the last date for admission was 2.7.01 and if the admission process was completed on the said date, there should have no difficulty in rejecting the petition by holding that in the light of the mandatory stipulations as contained in Clause 9.4 and 9.5 of the Entrance Examination Rules, no admission is permissible after 2.7.01 and the waiting list automatically gets exhausted after 5 p.m. of the said date i.e. 2.7.01. The difficulty arise because of the delay in declaration of result and the late holding of examination. Even though the results were declared on 5.7.01. the record indicates that two counsellings were held and the second counselling was over in august 2001. Thereafter, the selected candidates took admission and the course had commenced. Even though the petitioners contend that they were assured that further counseling will be held and they were waiting for further counselling but there is nothing on record to indicate that the aforesaid fact is correct. It is only in December 2001 i.e. on 9.12.01 vide. Annexure P-6 that the petitioner in W.P. No. 932/02 moved an application for allotment of seat. This application is alleged to have been sent under postal certificate. The second application is dated 3.1.02 which has also sent under postal certificate. However, the third application is dated 25.4.02 which is filed as Annexure P-7. It is by this application that the petitioner in this case had claimed the seat. Similarly, in W.P. No. 948/02 also, the petitioner had moved application under postal certificates vide Annexure P-8 on 6.11.01, Annexure P-9 on 3.5.02. It is submitted by Shri Dudawat that when the applicants had made the representations, the respondents should have immediately take action for filling up seats and now because of delay by the respondent State the subsequent orders, examination for 2002 is year and vide Annexure P-8 dated 19.6.02 filed in W.P. No. 932/2002 claim of the petitioner has been rejected.

As indicated hereinabove, even though the last date for admission i.e. 2.7.01 could not be adhered to in the present case but the fact remains that after the

second counselling no further counsellings were held and no person were admitted thereafter. The contention of the petitioners are that no seat should be left vacant and the rules contemplates filling up of all the seats every year. Even though learned counsel has referred to a judgment of the Division Bench in the case of Dr. Rekha Saxena (supra) and the Supreme court in the case of Ombir Singh (supra) and Indukant (supra) to contend that the Supreme Court and the High Court have laid down that seats cannot be left vacant and they should be filled up. The aforesaid submission has to be considered in the light of the judgment and observations made by the Supreme court in the case of Madhu Singh (supra). In the aforesaid case the Supreme Court has considered the question with regard to belated admission of medical classes in different courses. Para 1 of the said judgment it is observed as under :-

This appeal filed by the Medical Council of India (in short the "MCI") raises important questions regarding desirability of belated admissions to medical colleges in different courses, both pre-graduate and postgraduate. The questions assume importance because filing a large number of petitions before various High Courts and this Court has become an annual feature. When time of admission to medical courses arrives, immediately comes to mind Shakespeare's Othello, where it was written "chaos is come again". Inevitable result is that considerable time is lost by candidates chasing vires instead of virus. Supreme court in *Convenor, M.B.B.S./B.D.S. Selection Board and Ors Vs. Chandan Mishra Ors.*

1. observed as follows :-

The learned judges of the High court, if we may say so in a well considered opinion expressed their anguish at the insensitivity of the authorities administering medical admission in the state to the need to prevent occasion for repetitive grievances from the student community and had occasion to observe :

Shakespeare in Othello has written chaos is come again". This Court has witnessed chaos almost annually when time for admission to MBBS/BDS courses come...

(Emphasis Supplied)

A persual thereof clearly indicates that in the said case the Supreme Court was seized of the question with regard to admission to both the P.G. and M.B.B.S. courses in Medical College. After considering various judgments including the judgment of Dr. Indukant (supra) referred to by the learned counsel for the petitioner in para 9 of the said judgment the Supreme Court in para 10 in the case of Madhu Singh (supra) has concluded as under :-

Para 10 :

It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual positions go show the inevitable result is increase in the number of

seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. Though, it was pleaded by learned counsel for respondent no. 1 that with the object of preventing loss of national exchequer such admissions should be permitted, we are of the view that same cannot be a ground to permit mid-stream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The student also need rest and the continuous taking of classes with the object of fulfilling requisite number of days would be harmful to the student's physical and mental capacity to study. In fact such a suggestion was held to be grossly inappropriate in Dr. Dinesh Kumar's case (supra). In paragraph 15, it was observed as under :

The next question is as to when should the examination be held. Learned counsel for the Union of India as also the Indian Medical Council suggested that it could be done in October this year so that the candidates selected at the entrance examination could join the 1987-88 session from November. In most of the colleges, admission in respect of 85 percent seats has been completed and actual teaching has either begun or is about to begin. By November a substantial part of the course would have been read. To meet the situation, learned counsel for the Union of India suggested that we should direct the colleges and institutions to have a supplementary course for the students admitted against the 15 percent vacancies. In the absence of consent from the institutions, it would be difficult to work out that. As it is, there exists a lot of confusion in the field and we do not propose to add to it by giving a direction of the type proposed. On the other hand it would be appropriate to bring the scheme into operation from the coming year so that all the preliminaries can be properly conducted and in regular course the students can seek admission to the 1988-89 session. We accordingly direct the authorities to hold the examination in the manner directed, in June (sic may) 1988. The Union of India, the medical council, the dental council, the several states, universities and medical colleges or institutions who are covered by the scheme are directed to comply with these orders in time so as to give full effect to what has been said here.

A perusal of the aforesaid clearly indicates that the Supreme Court in unequivocal terms has held that no admission in the medical courses in the mid of the session is permissible. In sub-para 1 and 2 of para 11, it has been clearly held that there is no scope for admitting students mid term and it has been held that the same would be against the spirit of the statutes governing Medical Education. It is further observed that merely because seats remains unfulfilled, that cannot be a ground for giving admissions in mid session.

The case in hand, and the relief claimed by the petitioners and the submissions made by learned counsel for the petitioner is to be considered in the light of the aforesaid enunciation of law laid down by the Supreme Court. The Supreme

Court in the aforesaid case has considered the statutory rules framed by the Medical Council of India and thereafter the conclusions is recorded in para 11 which is reproduced here in :-

Para 11 :

There is however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the schedule date, which essentially should be the date for commencement of the courser.

In conclusion:

- (i) there is no scope for admitting students mid-stream as that would be against very spirit of statutes governing the medical education;
- (ii) even if, seats are unfilled that cannot be a ground for making mid session admissions;
- (iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
- (iv) the MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission.
- (v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;
- (vi) no variation of the schedule so far as admissions are concerned shall be allowed;
- (vii) in case of any deviation by the concerned institution, action as prescribed shall be taken by the MCI.

In the light of the aforesaid it is to be held that in the present case, this court cannot give any direction to the respondents to grant admission to the petitioners merely on the ground that the counsellings were held late or that the rules contemplates holding of council to fill up all the vacant seats and further the rules contemplates filling up of all the seats. The submission made by learned counsel for the petitioners and the grounds raised in the present petition, if viewed in the light of the observations and enunciation of law as laid down by the Supreme Court in the case of Shafali Nandwani and the observations made and the directions given in the case of Madhu Singh (supra), this Court has to conclude that no direction as prayed for by the petitioners can be granted. Admittedly, in the present case the course has commenced, admission for the years 2001 even though concluded after 2.7.01. is to be held as closed once the examination for the subsequent year has been held and counselling for that year has commenced.

The grounds of discrimination raised in the rejoinder does not help the petitioners as they pertain to change from diploma to degree course and change of subject to already admitted candidate. That being so, the petitioners claim for grant of admission has to be considered by this Court strictly in accordance with the law laid down by the Supreme Court in the case of Dr. Madhu Singh (supra) and Shafali Nandwani (supra) and as indicated hereinabove. Considered in the light of the aforesaid, directives of Supreme Court, this Court cannot issue any mandamus nor can the relief claimed for by the petitioners be granted to them. In the circumstances I find no merit in the petition on the basis of which relief can be granted to the petitioners. The petition is accordingly dismissed.

Parties to bear their own cost.