
(1995) 09 AHC CK 0128
In the Allahabad High Court
Case No : C.M.W.P. No. 6987 of 1995

Dr. Swapnil Chauhan

APPELLANT

Vs

Director, Medical Education and Others

RESPONDENT

Date of Decision : 11-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) AWC 496 Supp

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Rahul Sripat, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, Petitioner prays for a writ, order or direction in the nature of mandamus directing the Respondents to admit her in M.S. (Gynaecology and Obstetrics) in Sessions 1994-97 in M.L.N. Medical College, Allahabad.

2. It has been stated by the Petitioner that after obtaining the degree of M.B.B.S. and completing internship from G.S.V.M. Medical College, Kanpur, she appeared in examination for admission in Post-graduate course known as P.G.M.E.E. 1994. Petitioner opted for M.S. (Gynaecology and Obstetrics) as her first choice and second choice was Diploma in Gynaecology and Obstetrics (D.G.O.) and also consented for admission in M.L.N. Medical College, Allahabad. There were six seats of M.S. (Gynaecology and Obstetrics) subject. Petitioner has qualified in the examination and was placed at serial number 7 in the merit list and was given admission in D.G.O. It has been stated that one student, namely, Dr. Anupama Bansal of M.S. (Gynaecology and Obstetrics) resigned, therefore, her seat in the aforesaid course fell vacant. It has been alleged that the Petitioner was entitled to be adjusted in the said course. Inasmuch as she stood at serial number No. 1 of M.L.N. Medical College, Allahabad in the waiting list. Since the Respondents were not prepared to admit the Petitioner in the said course, on the

seat vacated by Dr. Anupama Bansal, she made a representation, which was forwarded by Respondent No. 3 to Respondent No. 2, who in turn forwarded the same to Respondent No. 1 on 2.2.95. Respondent No. 1 did not pay any heed to the said representation, therefore, Petitioner had to approach this Court and file writ petition No. 4925 of 1995, which was finally disposed of on 1.3.95 and a direction to Respondent No. 1 was Issued to decide the representation of the Petitioner within specified time. The order passed by this Court was communicated to Respondent No. 1 on 7.3.95 but the said representation was not decided within the time prescribed by this Court.

3. It has further been stated that 8 girl students who were lower in merit than Petitioner, have been given M.S. (Gynaecology and Obstetrics), but the claim of the Petitioner has not been accepted wholly arbitrarily, inspite of the fact that one seat was vacant in which Petitioner could be adjusted without any difficulty.

4. This Court vide Its order dated 21.3.95 directed learned standing counsel to seek instruction from Respondents on the point that one seat in M.S. (Gynaecology & Obstetrics) in M.L.N. Medical College, Allahabad has fallen vacant or not and whether Petitioner moved an application for being accommodated on the said seat and in case the Head of Department has forwarded the letter to the Director of Medical Education Lucknow, then what decision has been taken on the said representation. Since no instruction was given by the Respondent to the learned standing counsel as sought by this Court vide order dated 21.3.95, this Court on 24.4.95 passed the following orders:

The standing counsel was granted time for filing CA on 21.3.95. No CA has been filed till date. The Petitioner has filed this writ petition for a writ of mandamus directing the Respondent to admit the Petitioner in M.S. Gynaecology and Obstetrics for the sessions 1994-97 at M.L.N. Medical College, Allahabad., It has been stated that one seat in M.S. Gynaecology & Obstetrics had fallen vacant and the Petitioner is entitled to get admission to the same. The Petitioner has stated that she was given admission in Diploma course in Gyna & Obst. in which she is prosecuting her studies since 1992.

Since no CA has been filed and no instructions also received by the standing counsel, I Issue an ad-interim mandamus directing the Respondents No. 1 and 2 to admit the Petitioner in M.S. (Gyna. & Obst.) of the session 1994-97 within a period of one month from the date of presentation of a certified copy of this order before them or show cause "by filing CA."

Respondents instead of complying with the order of this Court rejected the representation of the Petitioner by order dated 15.3.95. Petitioner has challenged the validity of the said order by means of amendment application, which was allowed.

5. Respondents have also filed counter-affidavit on 7.7.95 with application for condonation of delay for filing counter-affidavit, in which Respondents have admitted the facts stated in the writ petition. It has, however, 1 been asserted

that there were six seats available in Gyn. & Obs. Degree course which were allotted to the candidates higher in merit than the Petitioner in Medical College, Allahabad. It has not been denied that one seat out of the aforesaid six seats fell vacant, but It has been asserted that the vacancy has occurred after third counselling, when the admissions were closed. The Petitioner was thus not entitled to be admitted and to change the speciality and also the college.

6. I have heard learned Counsel for the parties.

7. On behalf of the Petitioner, it has been vehemently urged that one seat out of six seats fell vacant as Dr. Anupama Bansal resigned from the said seat and that in the waiting list, Petitioner was placed at serial No. 1, therefore there was no Justification for Respondents to refuse the admission to the Petitioner. in support of his contention, learned Counsel for Petitioner has placed reliance upon the following decisions:

(i) Jeevak Almast Vs. Union of India (UOI) and Others, .

(ii) Dr. Shakti Saxena v. Principal B.R.D. Medical College, Gorakhpur 1991 (1) UPLBEC 666.

(iii) Dr A. Franklin Joseph Vs. State of T.N. and Others, .

8. In the aforesaid decisions in similar circumstances, this Court has directed Respondent to admit/adjust the Petitioners in those cases on the vacant seats.

9. In the counter-affidavit, only this much has been stated that the said seat fell vacant after closure of admission. in my opinion, it is not sufficient ground to refuse the admission. Petitioner was fully qualified to be admitted in M. S. (Gynaecology and Obstetrics) and was also placed at serial number 1 in the waiting list. The waiting list is prepared only for adjusting the students, in the event seats fell vacant. The candidates whose names find place in the waiting list are to be adjusted in the vacant seat in order of merit. Learned Counsel for the Petitioner is thus right in his contention that Petitioner was entitled to be admitted in M.S. (Gynaecology and Obstetrics) course in place of Dr. Anupama Bansal, whose seat is admittedly lying vacant.

10. In view of the aforesaid discussions and law laid down by this Court as well as by Hon"ble Supreme Court, the writ petition deserves to be allowed.

11. The writ petition is allowed. The order dated 15.3.95 is quashed. Respondents are directed to admit the Petitioner in M.S. (Gynaecology and Obstetrics) course for the sessions 1994-97) in the vacancy caused by the resignation of Dr. Anupama Bansal within two weeks from the date a certified copy of this order is produced before them.