
(2007) 08 MP CK 0026
In the Madhya Pradesh High Court

Dr. V.K. Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 33

Citation : (2008) 1 MPHT 219 : (2007) 3 MPLJ 576

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.

This is a Public Interest Litigation tiled under Article 226 of the Constitution of India by the petitioner who claims to be a reputed Surgeon of Indore and who is also a Member of Professional Education Guardian Society, Madhya Pradesh. He has stated in the writ petition that he has come to know that respondent No. 4 has given admission to students who have secured even 40% marks in the Pre-Medical Test Examination, although the minimum bench mark prescribed for admission to MBBS course by the Medical Council of India is 50%.

The petitioner has prayed for a direction on the respondent Nos. 1, 2 and 3 to enquire into the admissions given by the respondent No. 4 College during the academic session 2005/2006 and for a further direction to respondent No. 4 College to refund the money collected from the students during the admissions and to compensate the students who deserve admission on the basis of their merit as determined by the Pre-Medical Test, 2005 and 2006 but have not been given admission by the respondent No. 4 College.

Mr. Aditya Sanghi, learned Counsel for the petitioner submitted that Writ Petition Nos. 3692/2004, 3834/2004, 4045/2004, 4073/2004, 4209/2004, 4255/2004 and 260/2005, were filed by several students alleging irregular admission to the MBBS course made by the respondent No. 4 college and a Division Bench of this Court by a common order dated 11-5-2005 disposed of the writ petition with a

direction that all the petitioners shall be adjusted and given admission for the year 2005-2006 out of 50 Management Quota seats surrendered by the College to the Government and the State shall include the names of the petitioners in the list of students to be allotted to the College for the academic year 2005-2006 and only the balance shall be filled by the students who take the PMT-2005. He submitted that the Court gave this direction because the Court had found that respondent No. 4 College had committed irregularities, in giving admissions to the MBBS course in the College for the year 2004-2005. He submitted that despite the said directions of the Court in the Order dated 11-5-2005, the respondent No. 4 College has given admission to three students namely: Ajay Raghuvanshi, Tanmay Maheshwari and Karam Veer Singh Kaur, who had secured 94.05 out of 200 marks, 89.90 out of 200 marks and 80.49 out of 200 marks in the PMT-2005. He submitted that under Regulation 5(ii) of the Regulations on Graduate Medical Education, 1997 made by the Medical Council of India u/s 33 of the Indian Medical Council Act, 1956, in case of admission on the basis of competitive entrance examination, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. He submitted that since the three candidates were all general category candidates and did not have the requisite 50% marks in the competitive entrance examination namely PMT-2005, the respondent No. 4 College again committed an illegality in giving admission to the three candidates contrary not only to the Regulation 5 (ii) of the Regulations on Graduate Medical Education, 1997 made by the Medical Council of India u/s 33 of the Indian Medical Council Act, 1956, but also the directions of this Court in the order dated 11-5-2005 passed in Writ Petition No. 3692/2004 and other connected cases.

Mr. Rajendra Tiwari, learned Senior Counsel appearing for the respondent No. 4, on the other hand, relying on the averments in the return filed by the respondent No. 4 and the annexures thereto submitted that out of the 50 seats to which admissions were to be made from amongst the candidates on the basis of PMT-2005 as directed by the Court in the order dated 11-5-2005 passed in Writ Petition No. 3692/2004 and other connected cases, the petitioners of the aforesaid writ petition and the other connected cases as well as the other candidates who had got the requisite marks of 50% in Physics, Chemistry and Biology in PMT-2005 were given admission but in three seats, the aforesaid three candidates who had secured less than 50% marks in the PMT-2005 were given admission because till the last date of admission, i.e., 30-9-2005 no guidance whatsoever was given by the Government of Madhya Pradesh in the Medical Education Department on how these three vacant seats are to be filled up despite communications made by the Chairman of the respondent No. 4 College to the Secretary, Government of Madhya Pradesh, Medical Education

Department, through a special messenger. He submitted that since for three seats of MBBS course of the respondent No. 4 College, candidates who had secured more than 50% and above in Physics, Chemistry and Biology in PMT-2005 were not available, the respondent No. 4 College had no other option but to admit Ajay Raghuvanshi, Tanmay Maheshwari and Karam Veer Singh Kaur who had secured less than 50%. He further explained that these admissions were all provisions admissions and it was made clear to the three candidates that if the admission granted to them was not finally approved by the Medical Council of India and the State Government the admission shall stand cancelled and no objection in this regard shall be entertained. Mr. Tiwari, further submitted that neither the State Government nor the Medical Council of India have as yet issued any order or intimation to the respondent No. 4 College to cancel the admissions of the three candidates who had secured less than 50% marks in the PMT-2005 though both the State Government and Medical Council of India were intimated by the respondent No. 4 College about these admissions.

Mr. Tiwari, cited the decision of the Supreme Court in *Modern Dental College and Research Institute and Ors. v. State of M.P. and Anr.* : (2004)8SCC213, to show that in that case the Supreme Court had clarified that in management quota seats those who may have taken PMT/PET but are otherwise eligible to be admitted on the basis of marks obtained by them in CBSE/equivalent Board exams can be granted admission if otherwise they are so eligible. He submitted that the respondent No. 4 College was one of the parties in the aforesaid case before the Supreme Court and hence the departure made by the respondent No. 4 College in giving admission to the three candidates on the basis of their CBSE/equivalent Board exams and on the basis of their PMT in the three management quota seat should not be held to be irregular.

Ms. Jasmeet Chana, learned Counsel appearing for the Medical Council of India, pointed out that the aforesaid decision of the Supreme Court in *Modern Dental College and Research Institute and Ors. v. State of M.P. and Anr.* (supra) was purely an interim direction applicable for the academic year 2004-2005. She submitted that in various decisions of the Supreme Court rendered from time to time, a strict view has been taken by the Supreme Court that no departure should be made from the Regulations of the Medical Council of India in granting admission to candidates, both in the MBBS and Post Graduate courses.

Regulation 5(ii) of the Regulation on Graduate Medical Education, 1997 made u/s 33 of the Indian Medical Council Act, 1956 by the Medical Council of India, is quoted hereinbelow:

5. (ii) In case of admission on the basis of competitive entrance examination under Clauses (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such

competitive entrance examination of securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

It is clear from the aforesaid provision that in case of admission on the basis of competitive examination, the candidates belonging to general category sought to be admitted into MBBS course must not have only passed in Physics, Chemistry and Biology with 50% marks at the qualifying examination but in addition must have come in the merit list prepared as a result of competitive examination by securing not less than 50% marks in Physics, Chemistry and Biology, in the competitive examination and in cases of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the minimum marks obtained in the qualifying examination and the competitive entrance examination has been reduced to 40%.

We find that in the order dated 11-5-2005 of this Court in Writ Petition No. 3692/2004 and the other connected writ petitions, the Court after having found that irregularities had been committed by the respondent No. 4 College for the year 2004-2005, directed that for the year 2005-2006, out of 50 management quota seats surrendered by the College to the Government, the petitioners in those cases shall be adjusted and the remaining seats will be filled up by the students who take the PMT-2005. Hence the admissions to the remaining seats were to be given on the basis of the competitive examination in accordance with the Regulation 5(ii) and not on the basis of the qualifying examination. As we have seen Regulation 5(ii) clearly provides that the general candidates must secure 50% marks in Physics, Chemistry and Biology in addition to 50% in the qualifying examination. Admittedly, the three candidates namely; Ajay Raghuvanshi, Tanmay Maheshwari and Karam Veer Singh Kaur, have not secured 50 marks in the competitive examination namely PMT-2005 and, therefore, admission to these three candidates should not have been given by the respondent No. 4 College as per the Regulation 5 (ii) of the Regulations even if they had secured 50% marks in Physics, Chemistry and Biology. The decision of the Supreme Court in *Modern Dental College and Research Institute and Ors. v. State of M.P. and Anr.* (supra), which relates to admission into the management quota which is not surrendered to the Government does apply to the facts of this case.

In our order delivered on 23-7-2007 in Writ Petition No. 16146/2006, we had disposed of the writ petition with a direction to the Medical Council of India and the Dental Council of India to take prompt action in accordance with law in respect of the admissions in MBBS and BDS course in Private Medical and Dental Colleges in Madhya Pradesh pursuant to DMAT-2006 contrary to the guidelines and regulations of the Medical Council of India and the Dental Council of India

and the law laid down by the Supreme Court in this regard.

We also dispose of this writ petition with a similar direction to the Medical Council of India to take prompt action in accordance with their Regulations and the law laid down by the Supreme Court in respect of the admissions given by the respondent No. 4 College to the three candidates who had secured less than 50% in PMT-2005.

Security amount, if any, deposited by the petitioner be refunded to him.