
(1994) 09 AHC CK 0031

In the Allahabad High Court

Case No : Writ petition No. 1456 (M/S) of 1994

Geeta Gulati

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Citation : (1994) 09 AHC CK 0031

Hon'ble Judges : K.C.Bhargava, J

Final Decision : Allowed

Judgement

K. C. Bhargava, J.—The petitioner has prayed for a writ of mandamus directing the respondent no. 2 to consider her admission in the vacant seat of Postgraduate medical courses of 1994.

2. The facts leading to this writ petition are that the State of U. P. for various medical colleges of the State for regulating admission to Postgraduate Medical Courses, has issued a Notification on 9th of October, 1990, copy of which is Annexure1. This Notification provides for Junior Residency Scheme which was later on amended vide Notification dated 30th of June, 1993, copy of which is Annexure2. Thereafter another amendment was made vide Notification dated 30th of March, 1994, copy of which is Annexure3. The examination for Residency Scheme was conducted by the Lucknow University for Entrance Examination of the year 1994, known as Postgraduate Medical Entrance Examination (PGMEE). Copy of the brochure issued by the Lucknow University for that year is Annexure4. The petitioner submitted an application for the same and the examination was held on 16th January, 1994, the result of which was declared on 16th March, 1994. The petitioner was placed at Serial No. 223 in the main select list and she qualified for admission to Postgraduate Medical Course.

3. The respondent no. 2, Director General, Medical Education and Training, U. P. Lucknow for the purposes of counselling called the selected candidates between 10th of May to 13th of May, 1994. In view of clause "G" (IV) of brochure issued by the Lucknow University it was obligatory on the respondent no. 2 to have

displayed all the available seats in different Courses/Colleges at the time of counselling so that the candidates may choose any one of the available seats according to their merit. At the time of counselling it was disclosed that MS of Ophthalmology in Lala Lajpat Rai Medical College, Meerut (LLRM College) was available. The petitioner opted for the same and when she joined the college on 18th of May, 1994, she came to know that the said course was not recognised by the Medical Council of India. The petitioner immediately made representation to the Director General Medical Education, Opp. Party no. 2 and requested that she may be granted any vacant seat in the said speciality in either of the three medical colleges, viz , K. G. M. C. Lucknow, M. L. N. Medical College. Allahabad and G. S. V. M. College, Kanpur. She also made clear that if no seat in the said speciality is available, then she may be considered for admission to MS of Gynaecology/Obstetrics, Paediatrics or Radio Diagnoses. Copy of the said representation is Annexure 5 to the writ petition,

4. Section 11 of the Indian Medical Council Act, 1956 provides for the course which was recognised for a particular medical college and list of the same is given in the brochure. The fact that MS of Ophthalmology in Medical College, Meerut is not a recognised course, was not disclosed to the petitioner at the time of counselling, otherwise the petitioner would not have opted for the same. The father of the petitioner met the opposite party no. 2 for change of the course, but he expressed his inability in view of Rule IV of clause G of the brochure and refused to change the option for any other seat.

5. The Examination of PGME 1994 was held in January 1994 and the result of which was declared on 16th of March, 1994. The Junior Residency Scheme of 1990 was amended in June, 1993 and as such the petitioner is entitled to the benefit of clause G of clause 8 of Junior Residency Scheme 1990, which was amended in 1993. No written reply was given by the respondent no. 2 to the representation of the petitioner. When the petitioner came to know that one seat in MS of Ophthalmology is vacant in G. S. V. M. College, Kanpur, she requested that she may be accommodated there otherwise she may be admitted in the vacant seat in MD Paediatrics, which is vacant in M L. N. College, Allahabad and Lucknow or a vacant seat of Gynaecology in K. G M C, Lucknow or G. S. V. M. College, Kanpur.

6. In the counteraffidavit filed on behalf of opposite parties 1 and 2, it is alleged that all the available seats for allotment to each category of candidates were displayed and the candidates were asked to give their option according to their merit against the available seats. In para 10 of the writ petition it is mentioned that at the time of counselling it was displayed that seat in M.S. of Ophthalmology in L L R M. College, Meerut was available. It is alleged in the counteraffidavit that M S. of Ophthalmology course is being conducted for the last 15 years in L L R. M. College, Meerut and the concerned authorities are pursuing for its recognition by the Medical Council of India. The M.C.I. Inspectors are also inspecting the available facilities at the college and the report of M C. I. is

awaited and it is expected that M C. I. will grant recognition to this course in near future. A copy of the letter dated 311279 of M C. I. is enclosed as AnnexureCA1. It is further alleged that the petitioner is not entitled for any change of college/course as per Govt. Order dated 30th March, 1994 because she has already opted for MS Ophthalmology course at Medical College, Meerut and joined there. It is also alleged that candidates of PGMEE 1994 were duly informed that once a seat is allotted, the candidates shall not be allowed to change their admission for any seat vide clause "G" (iv) of the Lucknow University brochure.

7. Learned counsel for the parties have been heard.

8. On the date when the writ petition was filed the Court passed the following order:

"Put up on 16694 to enable the learned Standing counsel to seek instructions in regard to the averments made in the writ petition that at the time of counselling, seat offered to the petitioner in M. S. Ophthalmology of the Meerut Medical College was one which was not recognised by the Medical Council of India, yet the opposite parties offered such a seat. It is submitted that had the petitioner known about it, she may not have chosen to take admission in an unrecognised course."

9. In view of the admitted position now which emerges from the allegations of the petition and the counteraffidavit is that M. S. course in Ophthalmology is being conducted in LLRM College, Meerut, which is not recognised by the Medical Council of India. This course is being run for the last 15 years without any recognition from the M. C. I. It is also admitted fact that at the time of counselling a seat in M. S. Ophthalmology in L. L. R. M College, Meerut was offered to the candidates and the petitioner opted for such a seat on account of representation made by the opposite parties party no. 2 that such course is being conducted in that college. When such representation is made by the University authorities, it is natural that the candidates will believe it to be the correct position. But later on it turned out, after the petitioner joined the college, that this course was not recognised by the Medical Council of India.

10. In the First Schedule which has been appended to the Indian Medical Council Act, 1956 under Section 11 of the Act a list of colleges and the courses are given which are recognised medical qualifications granted by Universities or Medical Institutions in India. The MS Ophthalmology is not a recognised course in L. L. R. M. College, Meerut. Section 11 deals with medical qualifications which have been granted by the University or the Medical Institutions in India and which shall be recognised medical qualifications for the purposes of the Act, Subclause (2) of Section 11 of the Act provides that any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised. Procedure for recognition of medical qualification is prescribed in this section.

11. Thus it is apparent that opposite parties at the time of counselling had disclosed to the candidates that M. S. Ophthalmology course is a recognised one in L. L. R. M. College, Meerut. As a matter of fact that course was not a recognised course and it could not have been displayed by the opposite parties at the time of counselling to the candidates, who had qualified in the Entrance Examination of PGMEET 1994. By this misrepresentation by the University authorities they have played with the career of the students, who made offer for M. S. Ophthalmology as in the event of passing this course, L. L. R. M. College Meerut could not have granted any Degree in the said course because the said course is not recognised by the M. C. L. The entire career of the petitioner might have been ruined by this act of the opposite parties. It is highly undesirable that the University authorities play such havoc with the career of the student by making false representation and misrepresenting the facts. The opposite parties could not have offered this course at the time of counselling to the candidates who have passed P. G. M. E. E. 1994. Therefore, the petitioner could not have offered for the seat in M. S. Ophthalmology in L. L. R. M. College, Meerut.

12. The authorities after having committed this blunder did not take any steps to rectify the mistake committed by them and they deprived the petitioner from changing to any other course which was available at that time. Even the representation of the petitioner fell on deaf ears and no action was taken by the opposite party no. 2 on this representation and shelter is sought behind some of the provisions of the University brochure, issued by the Lucknow University at the time of entrance examination. In the counteraffidavit it is being mentioned by the Lucknow University that the petitioner is not entitled for any change of the college/course as per Govt. Order No. 2311 Sec. 14/five 250/82, T. C. dated 30/3/94. This Government Order is on record. Clause "f" of this Govt. Order reads as under :

"The allotment of speciality and college to the eligible candidates shall be made by personal appearance. At the time of allotment all the available seats shall be displayed. The selected candidates shall be called according to their merit in the respective lists and shall be required to give their choice amongst the seats available at their rank. The allotment shall be firm and final. No change of speciality or college shall be allowed to any candidate "

13. A perusal of this clause "f" goes to show that the allotment of speciality or college is to be made by personal appearance and at the time of allotment all the available seats shall be displayed. It says that according to the merit the candidates are required to give their choice. It further says that the allotment shall be firm and final and no change of speciality or college is allowed to any candidate. It is on the last two lines of clause "f" that the opposite parties have raised such objection. No doubt this clause says that once option is given by the student, it shall not be allowed to be changed. But this clause will apply only in those cases in which student of his own free will acting on the bonafide belief has indicated his option. But this clause cannot in any case be allowed to operate

against the misrepresentation made by the authorities concerned at the time of counselling as has been done by the opposite parties in the present case.

14. It has been proved on record that M. S. Ophthalmology course in L. L. R. M. College, Meerut is not recognised by the M. C. I. and even though knowing it fully well the opposite party no. 2 offered this course to the petitioner to opt for the same and join. After joining the course the petitioner came to know that this course is not recognised one. Thus it is clear that petitioner chose this course on misrepresentation of facts brought about by opposite party no. 2. Had the opposite party no. 2 at the time of counselling told the candidates that M.S. Ophthalmology course in L.L.R.M. College, Meerut is not a recognised course, no candidate could have opted for this course ; moreover opposite party no. 2 could not have displayed this course before the students at the time of counselling because it was unrecognised course. It is immaterial whether this course is being run at Meerut Medical College for the last 15 years or whether recognition of this course is likely to be made in near future. These are immaterial facts which have been pleaded in the counteraffidavit by the opposite parties. The opposite party no. 2 should have, when the representation was made, changed the course of the petitioner instead of taking shelter behind clause "f" of Govt. Order dated 30394. The lame excuse by opposite party no. 2 for not changing this speciality, cannot be approved by this Court. The opposite party no. 2 committed a mistake at the time of counselling and in order to perpetrate that mistake no orders have been passed on the representation permitting the petitioner to change the course. This has caused mental tension to the petitioner and she had to indulge in the litigation.

15. At this stage it will not be out of place to mention that in the Indian Medical Council (Amendment) Ordinance, 1993, Sections 10A, 10B and 10C have been added. Sec. 10A deals with the permission for establishment of new Medical College, new course of study etc. It provides that no medical college shall open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification. Thus in view of these provisions the opposite party no. 2 could not have offered M.S. Ophthalmology course in L.L.R.M. college, Meerut to the candidates of PGME 1994.

16. Learned counsel for the petitioner has placed reliance on clause(g) of Annexure2, which is Govt. Notification No. 4702 Sec. 14/five250/82, Lucknow dated 30th June, 1993. This clause runs as under :

"Where in a postgraduate diploma or degree course a candidate is admitted to a speciality other than the speciality he has opted for and a seat has fallen vacant in the speciality of his option, he may on the basis of merit, be admitted to the speciality of his option within six months of the commencement of the academic session."

17. A perusal of this clause goes to show that speciality to which a person has opted can be changed within six months of the commencement of the academic session if a seat has fallen vacant in the speciality of his option. The representation (Annexure 5) was made by the petitioner on 30.5.1994, in which she has mentioned that the postgraduate course in M.S. Ophthalmology in L.L.R.M. College Meerut was not a recognised course and she made her choice on the basis of representation made to her about the vacancies which was displayed on the notice board. She also indicated that if seats are not vacant in other medical colleges she may be offered any other course in the seats mentioned therein. This option for change was made within six months of commencement of academic session.

18. In view of the facts on record it is clear that only on the misrepresentation of the opposite party no. 2 the petitioner had offered to join M.S. Ophthalmology at L.L.R.M. College, Meerut. No importance can be attached to Annexure C.A.1, which has been placed by opposite party no. 2 to show that the Post Graduate Committee has decided to permit the authorities of L.L.R.M. College, Meerut to start postgraduate course in M. S. Ophthalmology subject to the terms and conditions laid down in the report of the M.C.I. Inspector. This letter is dated 31st of December, 1979. The report of the Inspector has not been furnished to this Court and it has not been shown as to whether the said College has taken any steps in furtherance of the said report of the Inspector and whether the suggestions and objections given in that report have been complied with. Since 1979 a period of 15 years has been passed, but recognition of this course has not been granted. Therefore, the opposite parties cannot be allowed to play with the lives of the students in view of this Annexure C. A.1.

Keeping in view all these facts, the writ petition is liable to be allowed and the petitioner has to be offered a seat in any other medical college or course as indicated by her in para 12 of the writ petition.

20. The writ petition is allowed and the opposite parties, particularly the opposite party no. 2, is directed by a writ of mandamus to offer a course of speciality in either of the medical colleges or course as disclosed by her in her representation dated 30.5.94 contained in Annexure 5 to the writ petition within a period of one month from the date of service of a copy of this order along with a copy of the representation dated 30.5.1994. The petitioner shall be entitled to costs of Rs. 2000/-