
(1997) 07 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Appeal No. 1986 of 1997

Hemant Kumar Mandovra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 70 DLT 91

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : C.L. Nasimhan and Sarabjeet Sharma, for the Appellant;

Judgement

Cyriac Joseph, J.

(1) The petitioner completed his Mbbs Course and internship from the Mgm Medical College, Indore and associated hospitals in 1996. He appeared at the All India Entrance Examination for Admission to Post Graduate Medical and Dental Courses in the year 1997. He secured rank 381 and was called for counselling on 8th March, 1997. At the time of counselling the daily vacancy position of all Colleges and subjects for 8.3.1997 was displayed. The courses. recognised by the Medical Council of India and the courses not recognised by the Medical Council of India were clearly indicated. The candidates seeking admission/ allotment of seats were required to give a declaration after selecting the College and the subject. The petitioner accordingly gave a declaration choosing a seat in Ms (Orthopaedics) (Subject Code A-12) in Government Medical College, Surat, (College Code B-13). As per the vacancy position of Colleges and subjects for 8.3.1997 displayed by the respondents the Course in M.S. (Orthopaedics) in the Govt. Medical College, Surat was a Course recognised by the Medical Council of India. The petitioner chose a seat in M.S. (Orthopaedics) in the Govt. Medical College, Surat on the basis of the representation made by the respondents that the course in M.S. (Orthopaedics) in Govt. Medical College, Surat was recognised by the Medical Council of India. The petitioner was given a memorandum signed

by respondent 3 intimating that the petitioner had been selected for admission to M.S.(Orthopaedics) in the Govt. Medical College, Surat and directed him to report to the Dean of the Institution. Accordingly, the petitioner reported to the Dean, Govt. Medical College, Surat on 18.3.1997, paid necessary fees and got provisional admission in M.S. (Orthopaedics). Thereafter, the petitioner came to know that the Course in M.S. (Orthopaedics) in the Govt. Medical College, Surat was not recognised by the Medical Council of India. Hence the petitioner sent a fax message dated 21.3.1997 to respondent 2 explaining the circumstances and requesting to allot a seat in M.S. (Orthopaedics) for the academic year 1997-98 in an institution recognized by the Medical Council of India. He also sent representations dated 21.3.1997 to respondents 2 and 3. In reply to the petitioner representation dated 21.3.1997, respondent 3 sent Annexure P6 memorandum dated 29.4.1997 stating thus:

"IN this regard this is to inform you that as per the information received from Medical College, Surat, the M.S. (Orthopaedics) seat at the Medical College, Surat is unrecognised, but it appears that the said Course in the vacancy position for 8.3.1997 during the counselling period to allotment of the seat to the candidates was shown recognised. Actually the above mistake has been done inadvertently. However, the matter for recognition of Course in concerned College is being pursued with the Medical Council of India."

(2) In the above circumstance the petitioner has filed this writ petition with the following prayers:

(I)to issue writ, order or direction in the nature of mandamus directing the respondents to allot a seat to the petitioner in M.S. (Orthopaedics) recognised by the Medical Council of India in any College in State of Madhya Pradesh as available at the time of counselling or in the alternate, in any other recognised College in Orthopedics in the State of Madhya Pradesh or in any other recognised College in Orthopedics for the academic year 1997-98 starting from May, 1997;

(II)to issue any other writ, order or direction as this Hon"ble Court may deem fit and proper, in the fact, and circumstances of the case and in the interest of justice; and

(III)to allow the costs of these proceedings, in favor of the petitioner and against the respondents, in the interest of justice.

(3) On behalf of the respondents a counter affidavit has been filed by Dr. Ajai Kumar, Assistant Director General of Health Services admitting that the chart displaying the daily vacancy positions for 8.3.1997 at the time of counselling showed that the Course in M.S. (Orthopaedics) in the Govt. Medical College, Surat was recognised and that it was so shown by inadvertent mistake. It is also stated that the mistake is not willful on the part of the respondents to allot the seat in a Course not recognised by Medical Council of India. It is further stated that the respondents have no authority to change the Course and College from one Medical College to another against the remaining vacancies after allotment

process is over and that all seats remaining vacant after allotment are deemed to have been surrendered back to the respective States.

(4) Learned Counsel for the respondent was directed by me to find out from the respondents whether any vacant seat in M.S. (Orthopaedics) was available under the All India quota in any of the Medical Colleges. After taking instructions, Mr. Sarabjit Sharma, learned Counsel for respondent informed the Court that one seat in M.S. (Orthopaedics) is vacant was available under the All India quota in the Medical College, Amritsar and that the respondents will abide by any direction issued by this Court in the special circumstances of this case.

(5) In view of the rank secured by the petitioner in the All India Entrance Examination he is entitled to seat in M.S. (Orthopaedics) in an institution recognised by the Medical Council of India, the petitioner happened to choose Govt. Medical College, Surat on the basis of a wrong representation made, though by an inadvertent mistake, by the respondents that the Course in M.S. (Orthopaedics) in Govt. Medical College, Surat was recognised by the Medical Council of India. Had the petitioner know that M.S. (Orthopaedics) in Govt. Medical College, Surat was not recognised by the Medical Council of India, at the time of counselling he would have chosen a seat in a Course recognised by the Medical Council of India. Such an opportunity was denied to the petitioner solely due to the mistake committed by the respondents. The petitioner was not in any way responsible for the unfortunate situation obtaining now. Hence the petitioner cannot be made liable to suffer on account of the mistake of the respondents. Fortunately there is a seat vacant and available in M.S. (Orthopaedics) in Govt. Medical College, Amritsar under the All India quota. But for the mistake committed by the respondents in indicating the Course/Institutions recognised by the Medical Council of India, the petitioner at the time of counselling could have chosen the seat in M.S. (Orthopaedics) in the Govt. Medical College, Amritsar. Therefore, if the vacant seat available in the Govt. Medical College, Amritsar is allotted to the petitioner he is being given only what he would have been entitled to on the basis of the rank secured by him in the entrance examination and but for the mistake committed by the respondents in indicating the Courses/Institutions recognised by the Medical Council of India. In these circumstances, I am of the view that it is necessary in the interest of justice to direct the respondents to allot to the petitioner one vacant seat available in the Govt. Medical College, Amritsar in M.S. (Orthopaedics) under the All India quota. By doing so the legitimate claim of any other person will not be affected.

(6) Learned Counsel for the petitioner requested that since the petitioner is a resident of Madhya Pradesh the respondents may be directed to allot a seat to the petitioner in the M.S. (Orthopaedics) in any College in the State of Madhya Pradesh preferably M.G.M. Medical College, Indore. However, learned Counsel for the respondents pointed out that no such vacant seat is available for allotment to the petitioner. Learned Counsel for the petitioner then requested that the respondents may be directed to create a supernumerary seat in one of the

Medical Colleges in Madhya Pradesh to accommodate the petitioner. I do not find any justification for such a request. When there is a vacant seat available in the Govt. Medical College, Amritsar it will not be proper to direct the respondents to create a supernumerary seat in any of the Medical Colleges in Madhya Pradesh for accommodating the petitioner. The petitioner at the time of counselling was willing to choose a seat in an institution outside the State of Madhya Pradesh and hence he cannot now insist on being accommodated in one of the Institutions in Madhya Pradesh itself.

(7) In view of the facts and circumstances stated above, the writ petition is disposed of directing the respondents to allot to the petitioner the one seat stated to be vacant and available in M.S. (Orthopaedics) in the Govt. Medical College, Amritsar under the All India quota and to issue necessary communications forthwith to the petitioner as well as to the Govt. Medical College, Amritsar enabling the admission of the petitioner for M.S. (Orthopaedics) in Govt. Medical College, Amritsar without any further delay. There will be no order as to costs.