
(1999) 07 MP CK 0035

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3191 of 1998

Hemant Mittal and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 MPHT 472 : (1999) 2 MPLJ 20

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; P. Singh, Panel Lawyer for the Respondent Nos. 1 and 2 and Ajay Mishra, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India for a direction to the respondents to allot "free seats" to them in place of "payment seats" and to refund the excess fee recovered from them.

It is not in dispute that petitioner No. 1, Hemant Mittal has graduated from Jiwaji University, Gwalior and petitioner No. 2 Nandkishore Singh has done so from A.P.S. University, Rewa. They appeared in M.P. Management Joint Entrance Test, 1997 for admission in M.B.A.. They obtained 296 and 244 marks respectively. They appeared in IIInd phase of counselling at Bhopal conducted by respondent No. 2, Director, Technical Education, on 10-9-1997 and opted for admission against "payment seats". They were allotted V.N.S. Institute of Management, Bhopal, respondent No. 3. They were each required to pay a fee of Rs. 44910/- in the first year. The fee for free seat is about Rs. 15000/-. They were ineligible to appear in the Ist and IIInd phase of counselling for admission against the free seats as their marks were less than the cut-off marks of 378. The IIIrd phase of

counselling was held at Institute level on 8-10-1997. On that date 18 candidates were given admission in V.N.S. Institute against free seats as per details given in minutes Annexure R- III/5. In this list the marks of six candidates are less than the petitioner No. 1 and of two candidates less than the petitioner No. 2. It is also mentioned in those minutes that the petitioner No. 2 was not found eligible for free seat due to lack of fulfilment of "domicile requirement" as he had graduated in 1990. The petitioner No. 1 did not appear in this counselling. They made several representations to the respondents to adjust them against free seats but these were rejected.

The case of the petitioners is that having secured higher marks than some of the candidates who have been granted admission against free seats, they are entitled to be adjusted against free seats. The action of the respondents is unreasonable and discriminatory. It was their duty to act fairly.

The case of the respondents is that the IInd phase of counselling fixed on 10-9-1997 was for "payment seats" only as per notice Annexure R-III/1. The petitioners consciously opted for admission against payment seats. They secured the admission. There is no rule for change from payment seat to free seat. The petitioner No. 1 did not even appear for counselling on 8-10-1997. The claim of the petitioner No. 2 for free seat was rejected at the time of the counselling as he did not fulfil the domicile requirement. It is specifically provided in Rule 2.2.3 "Domicile of Madhya Pradesh shall only be entitled for admission against free seats of private management institutions".

After hearing the learned counsel for both the sides and careful scrutiny of the material on record in light of the relevant Rules, this Court is of the opinion that the petition deserves to be dismissed. It is admitted that in the IInd phase of counselling held on 10-9-1997 the petitioners with their open eyes opted for payment seats and secured admission on that basis. The third phase of counselling took place at the Institute level. The petitioners had already taken admission against the payment seats. In the Rules marked as Annexure P-12 there is no provision for change of payment seat to free seat. In the counselling which took place on 8-10-1997 the petitioner No. 1 did not appear to claim that he is still entitled to free seat on the basis of higher marks. Therefore, the seat which he could claim went to another candidate. After the seats were full, the petitioner No. 1 could not get free seat.

So far as petitioner No. 2 is concerned he appeared in the counselling on 8-10-1997 and after taking into account his representation his case was considered by the committee. But it was rejected on the ground that he did not fulfil the domicile requirement. That is provided in Rule 2.3.2. The qualifying degree which he produced was of the year 1990. It was found that he was not educated in an educational institution located in Madhya Pradesh for atleast three consecutive years during the five years immediately preceding the year in which admission was sought. The petitioner No. 1 did not come in category (ii) (a). Then the question is whether he was in category (ii) (b). For that, it was

necessary to show that he was bona fide resident of Madhya Pradesh as per Explanation-1. According to that Explanation a candidate shall be deemed to be a bona fide resident of Madhya Pradesh, if he fulfils both the conditions (1) and (2) given below. The petitioner No. 2 has not mentioned in his petition that he fulfils those requirements, He does not say that he was born in Madhya Pradesh or his father has been resident of Madhya Pradesh for 15 years or he himself or his father has been carrying on business or had held immovable property in State of Madhya Pradesh for a period of not less than five years preceding the years of test. The petitioner No. 2 has not filed any rejoinder or any affidavit after it was stated in the returns that he is not domicile of Madhya Pradesh. The only material on record in this respect is Annexure P-7 at page 23 of the petition. In this letter by which the petitioner No. 2 was called for Group Discussion and Interview his address is of Allahabad. Therefore, the petitioner has not established that he fulfilled the domicile requirement before the counselling committee or before this Court. The petition does not contain the most relevant fact.

The petition is dismissed. Costs as incurred.