
(2015) 07 MP CK 0029
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1067/15

Jitendra Kanjolia	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 MP CK 0029

Hon'ble Judges : U.C. Maheshwari, J; B.D. Rathi, J

Bench : Division Bench

Advocate : Rajendra Shrivastava, for the Appellant; N.S. Kirar, learned Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.D. Rathi, J.—Present writ petition under Article 226 of the Constitution of India has been filed by the petitioner-Dr. Jitendra Kanjolia, seeking for the following reliefs:--

"7. Relief prayed for:

In view of the facts mentioned above, the petitioner prays for the following reliefs that:

- i) This Hon''ble Court may kindly be pleased to allow this writ petition;
- ii) The respondents may kindly be directed not to apply Rule 14(4) of the Madhya Pradesh Medical and Dental Post Graduate Course Entrance Examination Rules, 2014 and/or 2015 for admission in Unaided Private Medical college for State Quota Seats;
- iii) Respondents may kindly be directed to allow the petitioner in counselling of State Quota Seats in his category of Scheduled Castes in Unaided Private Medical Colleges for admission in Post Graduate Degree/Diploma Courses:

iv) Any other writ order and direction, which is found just, suitable and proper in favour of the petitioner, may kindly be issued;

v) Costs be awarded."

2. The facts of the case may be summarized as under:

"As per the case of the petitioner, he passed his MBBS course alongwith 12 months" rotatory internship in the year 2010 from G.R. Medical College, Gwalior. Thereafter, the petitioner was granted admission in the year 2012 for post graduate course in PSM [Preventive and Social Medicines] Subject at Reewa Medical College but due to illness of his mother, he had resigned from the course. Thereafter, the petitioner again appeared in entrance examination for admission in post graduate degree/diploma seat in private medical college in State Government quota seat in the year 2014. He qualified the examination conducted by National Board of Examination and secured 4777th rank in his category for all India seats and secured 2466th rank for State/State Quota. Copy of the result of All India Post Graduate Medical Entrance Examination, 2014 has been annexed as Annexure P-1. It is also pleaded that the State Government has framed the rules for admission to post graduate medical course [MD/MS], post graduate medical diploma and post graduate degree [MD/MS] courses in the private unaided medical and dental colleges in the State of Madhya Pradesh. These rules are known as Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2014 [Annexure P-2]. In Rule 10, criteria for eligibility has been prescribed and as per these rules, there is no prohibition for admission in post graduate course in private medical colleges for a candidate who has taken earlier admission in a government college under the State quota and resigned."

3. It has also been pleaded that in spite of securing 2466th rank for State quota by the petitioner, he was not called for counselling as per his merit under his category for State quota seats and for State quota in private medical colleges. He was also not allowed to take part in counselling in view of Madhya Pradesh Medical and Dental Post graduate Course Admission Rules (Degree/Diploma), 2014, hereinafter referred as the "Rules 2014". It was stated that the petitioner is held not eligible for admission in private Unaided Medical College in view of the said Rules 2014, marked as Annexure-P/3. It has also been pointed out that there are two different sets of rules for admission in P.G. Courses, framed by the State of M.P. for private unaided Medical College and Govt. Autonomous Medical vide Annexure-P/2 and P/3, respectively. The petitioner was not allowed to take part in counselling for State quota on wrong notion and on the basis of wrong interpretation of these rules, hence, the present writ petition has been preferred by him under Article 226 of the Constitution of India for issuance of appropriate writ for the reliefs as mentioned above.

4. In response, reply has been filed on behalf of respondents No. 1 and 2. According to them, petitioner who had joined P.G. course in Reewa Medical

College and thereafter when he resigned therefrom, now he cannot claim further admission through private aided college. Such kind of admission has been prohibited under Rule 14(4) of the aforesaid rules (Annexure-P/3). Petitioner cannot be allowed to take admission in violation of the rules. This issue has already been dealt with by the Apex Court in so many cases. Thus, it is prayed that the petition deserves dismissal. Almost similar reply has been filed by respondent No. 3.

5. It is submitted by Shri Rajendra Kumar Shrivastava, learned counsel appearing on behalf of the petitioner, that when the petitioner entered and got admission in accordance with the rules specially framed for admission in Government Autonomous Medical Colleges (Annexure P-3), he could not have been denied for further admission in private aided college for P.G. course because different set of rules have been framed for this purpose [Annexure P-2]. It is also submitted that in Rule 8 eligibility criteria has been prescribed and nowhere in private aided college rules it has been prohibited that nobody can claim admission for P.G. course in private aided colleges if once he has already taken admission for P.G. course in Government Autonomous Medical College. Therefore, Rule 14(4) (Annexure P-3) is not applicable in this case. It is also pleaded by the learned counsel that during pendency of this writ one seat has been allotted to the petitioner Dr. Jitendra Kanjolia for P.G. course in M.D. (General Medicine) subject in SC category at R.D. Gardi Medical College, Ujjain. It was also informed by referring letter Annexure P-5 that for admission to collect online generated "admission slip" from the Gandhi Medical College, Bhopal after fulfilling required admission formalities but unfortunately, petitioner was denied later on orally for admission by the Director, Medical Education, State of Madhya Pradesh, Bhopal. It is also submitted that such kind of writ can very well be issued exercising extraordinary jurisdiction under Article 226 of the Constitution of India. In spite of availability of efficacious alternative remedy, attention of the court has been drawn towards the judgment rendered by the Hon"ble Apex Court in the matter of Ram and Shyam Company Vs. State of Haryana and Others, AIR 1985 SC 1147 : (1985) 1 SCALE 1237 : (1985) 3 SCC 267 : (1985) 1 SCR 541 Supp : (1986) 1 UJ 539 for seeking appropriate relief.

6. That apart, it is submitted by the counsel for the petitioner that meritorious candidates should not be barred to get admission in P.G. course only on account of some technical grounds. On this point, he placed reliance on the decision in the case of Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 .

7. In response, it is submitted by Shri Kirar, learned Panel Lawyer for respondents No. 1 and 2/State and Shri Roman, learned counsel for respondent No. 3 that petition itself is not maintainable because in both kinds of rules it has been specifically provided that if any candidate has got admission once for P.G. course in any kind of college either government or private aided college and if as

per eligibility criteria given in rule 14(4) (Annexure P-3) he/she did not join or joined and left the seat due to any reason such candidate will not be entitled to further admission in P.G. course at least for a period of three years. It is also submitted that if the candidate after taking admission on the allotted seat resigns due to any reason then such candidate will be considered as not eligible for subsequent round of counselling neither for government medical college nor for provide medical college. It is also submitted that in catena of decisions this issue has already been decided by the Apex Court and as per the say of the Hon"ble Supreme Court such kind of candidate cannot be allowed to take further admission in P.G. course. It is also submitted that apart from all these, as per the guidelines issued in Ashish Ranjan and others v. Union of India and Others in WP (S) [Civil] No. 76/2015 by the Hon"ble Supreme Court, admission for the academic session 2015-16 has already been closed. In view of that also, present petition is not maintainable and deserves dismissal with cost.

8. Having regard to the arguments advanced by the learned counsel for the rival parties, we have gone through the entire record and the relevant rules.

9. Admittedly, there are two types of rules governing admission in P.G. Courses. Firstly, the rules are framed by the State Govt. for admission in P.G. Courses in Govt. Autonomous Medical and Dental Colleges vide Annexure P/3 whereas in respect of the Private Unaided Medical and Dental Colleges the rules are framed vide Annexure-P/2.

10. It is the case of the petitioner himself that he after passing MBBS, got admission in the year 2012 for doing post graduation course in PSM subject at Rewa Medical College. Thereafter due to illness of his mother he had resigned from the said course. This averment has been made in para 5.8 of the petition. In this way, the petitioner had availed an opportunity of admission as per Rules contained in Annexure-P/3 in Govt. Autonomous Medical and Dental College. At this stage, sub-rule (4) of Rule 14 is relevant for consideration which is extracted below:

"No candidate including In-service candidate/Demonstrator will be entitled for doing post graduation for a period of three years, if a seat was allotted to him/her through All India or State Pre. P.G. Entrance Examination and he/she did not join or joined and left the seat thereafter, due to any reason, during the last three years preceding 2013. In addition, a candidate who has obtained Post Graduate degree/diploma will not be eligible for three/two years from the date of completion of such course, respectively. "

11. A perusal of the aforesaid rules makes it clear that the petitioner is restricted for getting admission at least for a period of three years again in P.G. Courses either in Govt. Autonomous Medical and Dental Colleges or in Private unaided Medical and Dental Colleges because of the Rules contained in Annexure-P/3 relating to admission in Government Autonomous Medical and Dental Colleges framed by the State of M.P. It is provided under Rule 16 (11) thereof as under:--

"If a candidate after taking admission on the allotted seat resigns due to any reason then he/she will be considered not eligible for the subsequent round of counselling for Govt. Medical Dental Colleges and Private Medical Dental Colleges."

12. The comparative study of this provision alongwith the provision contemplated in Rule 14(4) clearly indicated that once he opted for admission at first stage then he will not be entitled for getting admission in P.G. Courses neither in Government Autonomous Medical and Dental Colleges nor in Private Unaided Medical and Dental Colleges. Same provision has already been made in the Rules known for admission in Private Unaided Medical and Dental Colleges by the State of M.P. vide Annexure-P/2. As per Rule 12(11) thereof, it is provided as under:--

"If a candidate after taking admission on the allotted seat resigns due to any reason then he/she will be considered not eligible for the subsequent round of counseling for Govt. Medical/Dental Colleges and Private Medical/Dental Colleges."

13. Nowhere, it has been prescribed in either of the aforementioned two rules that a candidate even after tendering his resignation from Government Autonomous Medical and Dental College will become entitled to get further admission in P.G. Courses in Private Medical/Dental Colleges.

14. On perusal of the record it is further clear that as per Rule 3 (6) of the Rules framed for Private Medical/Dental Colleges, vide Annexure-P/2, "the Director, Medical Education, Govt. of M.P. is empowered to settle all the disputes relating to admission to P.G. Courses." From the document filed with the petition, marked as Annexure, P/5, it is clear that the seat was allotted to the petitioner by the Directorate of Medical Education on 2/4/2015 and thereafter as per contention of the petitioner, he was denied admission orally. But this submission of Shri Shrivastava, learned counsel for the petitioner is also not acceptable because he has not specifically worded that on what date the petitioner was refused for admission in P.G. Course even after allotment of seat to him vide Annexure-P/5. No notice was given by the petitioner nor any representation was submitted by the petitioner to the Directorate of Medical Education, M.P. Bhopal. It was also not pleaded that on what ground the petitioner was denied admission. It is also evident from the record that when seat was allotted to the petitioner by Annexure-P/5 on 2/4/2015 by the Director of Medical Education, M.P. Bhopal then it was wrong say of the petitioner that he was orally denied by the authority for admission. In such premises the best recourse available to the petitioner is to file representation to the Director of Medical Education who is empowered to consider the same as per the provisions of the rules made thereunder. Therefore, the challenge made by the petitioner on this ground is also not tenable.

15. This petition has been preferred on 18/2/2015 prior to ending of time limit of three years from the date of getting first admission by the petitioner for P.G. Course in the year 2013 in Medical College, Rewa, therefore, on this count, it

seems to be premature. In this context, reference may be made to the decision of Hon. Apex Court in the case of Mabel Vs. State of Haryana and Others, AIR 2002 SC 2773 : (2002) 5 JT 402 : (2002) 5 SCALE 337 : (2002) 6 SCC 318 : (2002) 3 SCT 917 : (2002) 2 UJ 1181 : (2002) AIRSCW 3137 : (2002) 5 Supreme 141 wherein it has been observed as under:--

"5.A plain reading of the afore-mentioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission and further such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the concerned authority in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4 years/5 years as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under clause 18 in this case will cease after the BDS course for the academic year 2000-2001, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-2001."

16. In the case at hand also, as discussed above, the petitioner has left the course in midterm and applied for fresh admission in the P.G. Course. In view of the restriction imposed under the rules, the petitioner is not entitled to admission again in P.G. Courses in Private Medical Unaided College, though he is free to move representation before the Director of Medical Education, M.P. Bhopal in the light of the Rule 3(6) (Annexure-P/2).

17. After thus examining the matter to a rigorous test on the touchstone of the rules and the principles of law laid down by the Hon"ble Apex Court in the cases referred to above, this court is of the considered view that the petition sans merit and deserves to be and is hereby dismissed.

No order as to costs.