
(2007) 09 MP CK 0058
In the Madhya Pradesh High Court

Ms. Shinu Saluja

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 09 MP CK 0058

Hon'ble Judges : S.C. Sinho, J; Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.—The petitioner being aspirant for prosecuting medical education appeared in entrance examination called Dental and Medical Admission Test (for short "D-MAT") conducted for the year 2006-07. The examination was conducted on 13.8.2006 and results were declared on 18.9.2006. The petitioner was placed at Sr. No. 874 in the merit list. She was called for counselling on 26.9.2006 and she was asked to take admission in the Arbindo Institute of Medical Sciences, Indore, the respondent No. 3 herein. As pleaded, she was not interested in pursuing the Dental course she opted for M.B.B.S. course and submitted an application to that effect on 26.9.2006.

2. It is averred that 15% seats were not filled up even after counselling was over on 26.9.2006 and, therefore, the petitioner was entitled to be allotted a seat in M.B.B.S. Course. As set forth, she appeared in the counselling again on 27.9.2006 for a vacant seat for M.B.B.S. Course and enquired regarding submitting a fresh application as published in the newspaper. She was informed by the authorities that there was no need and she could be allotted a seat for M.B.B.S. Course in case she was willing to make payment for the said seat. The petitioner was confident that she had a good ranking and she could be allotted the medical seat. The respondent No. 3 discouraged the petitioner stating that she could only be allotted a seat in the Dental discipline. Subsequently, she came to know that though she had secured more marks than other candidates, they had been given admission and she has been denied the benefit of admission.

Because of the aforesaid situation and other irregularities and the conduct expressed by the authorities of the respondent No. 3 she submitted a complaint to the Chairman of the Monitoring Committee which is looking and monitoring the affairs of D-MAT examination. The said complaint has been brought on record as Annexure-P

3. While the complaint was pending to be looked into by the concerned Committee the petitioner filed W.P. No. 3186/2007. This Court by order dated 12.3.2007 directed the Committee to pass a order disposing of the petitioner's complaint. Thereafter, the Committee directed the petitioner to appear before it on 23.2.2007 and rejected the complaint by order dated 05.4.2007 as per Annexure-P-7.

It is asserted that though the petitioner was placed at Sr. No. 874 in the merit list, she was not given admission in the M.B.B.S. Course but the persons who were placed below him were given admission. It is further urged that one Ms.Ankita Singh has been allotted the seat which should have been allotted in favour of the petitioner. On this foundation the petitioner has prayed for issue of mandamus to the respondents to allot a seat in M.B.B.S. Course in the College of the respondent No. 3 and to pursue her study in the said discipline.

4. A counter affidavit has been filed by the respondent No. 3 contending, inter alia, that D-MAT, 2006 examination results were declared on 18.9.2006 and in the counselling held by the respondent No. 3 the petitioner was allotted BDS seat. She did not opt for waiting for M.B.B.S. Course in the College and never did submit any application in that regard. The assertion has been disputed on the bedrock that the Monitoring Committee found 6 out of 27 complaints to be genuine. It is asseverated that after admissions were over and some seats remained vacant an advertisement was published as per Annexure-R-3/1 on 27.9.2006. The applications were required to be received in the College office before 10 a.m. on 28.9.2006. The petitioner never applied for consideration in respect of remaining seats. It is also putforth that the petitioner had not contacted anyone and none of the college authorities discouraged her. It is clarified that the persons who had been admitted had submitted applications in respect of the vacant seats pursuant to the advertisement dated 27.9.2006 were given admission on the basis of their merit. It is setforth that Ankita Singh was given admission in the college and her ranking was 874 in the merit list. A reference has been made to order dated 06.8.2007 passed in W.P.no.3379/2007 to highlight that similar petition has been dismissed. Emphasis has been laid on the report of the Monitoring Committee. It is contended that when the petitioner had not applied after the advertisement and was very much aware of the advertisement as per her own version, she cannot claim any equitable relief in this writ petition. The demand of amount made by any authority of the college has been controverted.

5. We have heard Mr. Aditya Sanghi and Mr.Gagandeep Singh, learned Counsel for the petitioner, Mr.Vivek Awasthy, learned Government Advocate for the

respondent-State and Mr.Rajendra Tiwari, learned senior counsel with Mr.Anoop Nair for the respondent No. 3.

6. It is submitted by Mr.Aditya Sanghi, learned Counsel for the petitioner that the merit is the sole criterion which has been totally brushed aside by the respondents and the same vitiates the very process of selection for admission to the medical courses. It is urged by him that the petitioner has become a victim in the hands of the respondent No. 3 as they have played fast and loose suiting to their whim and caprice and such a fanciful act is not to be tolerated and deserved to be severely dealt with. Learned Counsel further argued that in the merit list two candidates could not have been placed at the same serial number. If the prospectus of D-MAT, 2007 is appreciated in proper perspective which deals with merit criteria in case of candidates with equal marks it would be clear as day that the petitioner should have been placed higher in rank than the other persons. Learned Counsel also contended that after the first counselling was over for the vacant seats an advertisement was issued on 27.9.2006 granting no time to anyone to apply and itself goes a long way to show that the inherent illegality in the action of the respondent No. 3. To buttress his submissions he has commended us to the decisions rendered in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, , P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537, Dolly Chhanda Vs. Chairman, JEE and Others, , Medical Council of India v. Naina Verma and Ors. (2005) 12 SCC 626, Harilal d/o Sudamrao Wankhede v. State of Maharashtra and Ors. (2005) 13 SCC 464 and Amandeep Jaswal v. State of Punjab and Ors. (2006) 9 SCC 597. He has also commended us to the decisions rendered in Sunil Harioudh v. State of M.P. and Ors. (W.A. No. 511/2006), Ku.Prachi Mantri v. State of M.P. and Ors. (W.P. No. 3692/2004), Nikhil and Anr. v. State of M.P. and Ors. (W.A. No. 685/2006) and Arpit s/o Abhay Shrimal v. State of M.P. and ors. (W.P. No. 1060/2004).

7. Mr.Rajendra Tiwari, learned senior counsel for the respondent No. 3, countering the aforesaid submissions, has contended that the petitioner has not approached this Court in clean hands and, therefore, is not entitled to the equitable relief under Article 226 of the Constitution of India. It is urged by him that the petitioner had not taken admission in BDS course and no one had ever discouraged her. The allegations made by her are not substantiated as per the decision of the Monitoring Committee and hence, no relief should be granted. It is proposed by him though the grievance of the petitioner had arisen in September, 2006 she approached this Court in the fag end of February, 2007 which shows that the allegations are based on figment of imagination and are not founded on the realm of reality and, therefore, are bound to founder. Learned senior counsel submitted that the candidates who have been admitted had submitted their applications in respect of the vacant seats and the petitioner chose not to submit an application and hence, she can not putforth a claim for admission to the course solely on the ground that she was discouraged, more so,

when the said facet has not been given credence to by the Monitoring Committee.

8. To appreciate the rivalized submissions raised at the Bar it is pertinent to refer to the earlier order passed by this Court. In the earlier writ petition this Court had directed as under:

The petitioner's case in the writ petition is that she appeared in the DMAT Examination 2006-07 conducted by the respondent No. 4 for admission to the MBBS and BDS Courses in the private Dental and Medical Colleges in the State of Madhya Pradesh and she was placed at list Rank No. 874 in the merit list. She was offered a BDS seat, but she declined to take BDS seat as she was interested in an MBBS Seat and she has not come to learn that another candidate by the name of Ankit Singh at rank No. 874 in the merit list has been given admission in the MBBS seat in the respondent No. 3/College. The petitioner has also alleged that the candidate with rank as low as 1594 has also been given admission in an MBBS Seat in the respondent No. 3/College.

We find from Annexure P/3 that the petitioner has made a complaint to the Chairman, Admission Monitoring Committee that she has not been given MBBS Seat despite of her position in the merit list at rank No. 874. The petitioner has made a grievance before us that despite the said complaint, the Admission Monitoring Committee has not considered her case.

At this stage, we dispose of this writ petition with a direction that a copy of our order passed today along with a copy of the complaint (Annex. P/3) will be filed before the Secretary, Admission Monitoring Committee and the Secretary of the Admission Monitoring Committee will place the same before the Chairman of the said Committee. The Committee will thereafter consider the complaint of the petitioner and after hearing the petitioner as well as the Association of Private Dental and Medical College, Bhopal and Aurobindo institute of Medical Science, Indore and such other parties as it may deem fit may pass orders disposing of the complaint within a period of one month from the date of receipt of copy of this order.

9. After the said order, the Committee passed the following order:

(b) Complaint by Ku. Shinu Saluja:-She was also present on 22.3.07 together with her father and they were heard. She ranked at No. 874 in order of merit. It is not disputed that she was allotted a seat in BDS course where she did not join. According to her she wanted admission in MBBS course only and for that it is not disputed that she did not qualify in the first instance and was therefore, not allotted any seat. Her grievance is that she should have been admitted against vacancies found after 26th. It is also not disputed that many vacancies existed after 26th as many candidate who were allotted seats failed to report. The procedure adopted by institutes was that the candidates had to apply fresh after 26th and before 10:00 AM on 28th Sept. 2006 in the respective college where he or she wanted admission. It is not disputed that she had not applied accordingly. Therefore, she could not be given admission. Her one grievance is

that she should have been considered as per her rank in merit. For the sake of argument even if this was to be considered, her ranking was much below. The number of seats that had fallen vacant after the first allotment which ended at NO.281 were not enough to house all the candidates upto the rank 870. She also submitted that the SAIMS at Indore was contacted and one Mr. Raghuvanshi from that institute had told that if she wanted admission, she should pay Rs. 25 Lakhs. This is denied by the institute. She also submitted that an application on plain paper was submitted by her. That is also denied by the institute and there is nothing on record to satisfy this committee that any such application was ever delivered by her to the institute. Admittedly, she did not lodge any complaint thereafter till February 2007 i.e. till some complaints were allowed by this committee and the same was published in some news papers. The committee is of the view that considering all these circumstances, the allegations made by her appear as an after and without any substance. Thus, there is no substance in her complaint and the same is accordingly dismissed.

10. On a perusal of the report of the Committee and the complaint which has been brought on record as Annexure-P-3 there is no reason to disbelieve the report of the Committee. The Committee has considered all the facts and has recorded its conclusion. This is decidedly in the realm of facts. Mr. Aditya Sanghi, learned Counsel for the petitioner has seriously disputed the report and contended that the findings recorded by the Committee are not sustainable and the merit has been given descent burial. Be that as it may, there is no material on record to controvert the report.

11. At this juncture, we may note with profit that four aspects weigh in our mind viz. (i) the petitioner had not taken admission in the BDS course; (ii) that there is nothing on record to show that the petitioner was told that she was not required to submit an application; (iii) that the petitioner, as is patent from her complaint, was aware of the advertisement; and (iv) that she had not taken immediate action in respect of her grievances.

12. In *PA Inamdar (supra)* their Lordships of the Apex Court in paragraph 138 have held as under:

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

13. In *Dolly Chhanda Vs. Chairman, JEE and Others*, a three-Judge Bench of the Apex Court has held as under:

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such

purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

14. Thereafter their Lordships referred to the decision rendered in the case of Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, and eventually came to hold as under:

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 296-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in the JEE2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

15. In Aman Deep Jaswal (supra) the Apex Court dealt with a case of the candidate who was more meritorious and was entitled to be admitted to the Government Medical College, Patiala against the course of her option, namely, MD Anaesthesia but she could not be granted relief in view of the session having already commenced. The relief was denied by the High Court on the ground that the mid session admission was not permissible. At the same time the High Court cancelled the admission in the aforesaid course granted to the respondent, one Dr. Radhika Dhawan. The writ petitioner, Aman Deep Jaswal, and the respondent Dr. Radhika Dhawan challenged the order of the High Court before the Apex Court. In that context, in paragraphs 3 and 4 their Lordships observed as under:

3. It is not in dispute that the appellant Aman Deep Jaswal was much higher in rank in the selection and had also opted for MD Anaesthesia as one of the options. There could be no valid reason for denying her admission simply

because of the word "any" written by her as third preference. Her first preference was MD Gynaecology and the next was MD Anaesthesia but in the second counselling her first option was MD Anaesthesia. The same could not be denied for the use of the word "any" when it is not disputed that she was more meritorious than Dr. Radhika Dhawan. The High Court was, however, right, despite these facts, in denying admission being granted to her during mid-session.

4. On these peculiar facts, we are of the view that the appellant Aman , Deep Jaswal is entitled to be admitted in MD Anaesthesia in Government j Medical College, Patiala in the next academic year 2006-2007 within the" sanctioned intake of the college. Ordered accordingly.

16. In Naina Verma (supra) the Apex Court in paragraphs 3 to 8 expressed the opinion thus:

3. The writ petition was filed on 4-7-2003. During the pendency of the writ petition, Respondent 1 was admitted in the dental course for a BDS degree. The writ petition was ultimately allowed on 28-11-2003 by which time the MBBS course for 2003-2004 had long since started. The writ petition allowed, the respondent to be admitted to the MBBS course. In compliance with the High Court's direction, on 9-1-2004 the respondent was admitted to the MBBS course.

4. Needless to say that the direction of the High Court was wholly contrary to the decision of this Court in Medical Council of India Vs. Madhu Singh and Others, in which this Court has categorically laid down that the time schedule framed by MCI should not be interfered with by the Court. The principle is that the courses having begun, apart from maintaining the discipline in the matter of education, it was imperative that the students had the benefit of education which is to be imparted from the first day on which the students started prosecuting their studies to become doctors ultimately. There is no question of giving a retrospective education in such matters and this is particularly so in matters pertaining to medical training.

5. The respondent, however, claims that she has been prosecuting MBBS course and has in fact taken the first semester examination in that course. She says that she should not be disturbed now as that would mean that she would waste not only Academic Session 2003-2004 but also Academic Session 2004-2005 which has since commenced.

6. We are of the view that this is not a matter which calls for any compromise. The respondent must complete the MBBS course with effect from day one. There is no short-circuiting the process of education by means of litigation or otherwise. We are supported in the view that we have taken by the decision of this Court in Muskan Dogra v. State of Punjab [SLP (C) No. 21219 of 2004 pronounced on 14-12-2004]. In that case the writ petitioner had been admitted in the BDS course whereas according to his ranking he should have been permitted to join MBBS course. By the time the writ petition was disposed of and

the matter came up to this Court, the writ petitioner had been studying for one-and-half year in the dental course. This Court while upholding the petitioner's claim to be admitted in the MBBS course made it clear that he would have to forego one-and-half years spent in the dental course and start the MBBS course from day one.

7. The situations brought about by the various orders of the High Court would not have occurred, had the High Court in compliance with the directives of this Court, also ensured that the Medical Council was made a party before passing any such order relating to admissions in the medical courses.

8. In the circumstances of the case, we dispose of the appeal by allowing Respondent 1 to be admitted in the MBBS course for Academic Session 2005-2006 within the permissible capacity of Rajinder Prasad College, Tanda.

17. In Sunil Harioudh (*supra*) there was a diversion of quota as a result of which a scheduled caste candidate was affected. In that context, a Division Bench of this Court directed that the candidate therein should be extended the benefit of admission.

18. In the case of Ku. Prachi Mantri (*supra*) the Division Bench was dealing with the regard to the admissions of her fee, unauthorized fee, bank guarantee demanded by Sri Aurobindo Institute of Medical Sciences, Medical College and Hospital. It was also contended before the Division Bench that College had selected students on irrelevant criteria. Keeping note of the various facets the Division Bench expressed the opinion and directed in paragraph 7 as under:

7. The petitioners have been fighting these litigations seeking justice, and pointing out the injustice caused to them. They have also lost one valuable academic year. In the circumstances, it will be unjust to drive them to drive them to one more process of MPT or other selection process. The evidence clearly established that they were entitled to admissions when compared to those admitted. Therefore, all the petitioners shall be adjusted and given admission for the year 2005-06 out of 50 Management Quota seats surrendered by the College to the Government. The State shall include the names of the petitioners in the list of students to be allotted to the college for the academic year 2005-06 and only the balance shall be filled by the students who take the MPT of 2005. It is needless to say that the students will pay fee only in accordance with the fee fixed by the Fee Fixation Committee subject to such modification/changes that may be ordered by the Supreme Court or by this Court. It is worth noting here that the students therein were entitled for admission but deprived of the benefit because of the uncalled for conditions imposed by the College.

19. In Vivekanand Tiwari (*supra*) the Division Bench was dealing with the issue whereby the Management had given admission by usurping seats of said College of M.B.B.S/BDS courses which were required to be filled up on the basis of Pre Medical Test conducted by the Professional Examination Board throughout the State of Madhya Pradesh. Considering the facts and circumstances of the case in

toto and taking note of the conditions imposed by the Institute the Division Bench held as under:

21. Resultantly, the writ petitions are allowed. It is directed that the admissions against 26 seats of MBBS of State Quota filled in by the management by the students of its choice, the management quota for the academic session 2006-07 shall stand reduced to the extent of 26 seats, no additional seat shall be created. The petitioners who had opted for MBBS course shall be admitted in the next academic year 2006-07 as against the aforesaid seats to be reduced of the management quota and if still 26 seats are not utilized, additional students shall be allotted on the basis of merit of PMT, 2006 to the corresponding number of seats which remain vacant after admissions of the students in the aforesaid manner. The students shall be allotted out of the Pre- Medical Test to be held in 2006 as per their merit on remaining seats, similar direction holds good with respect to seats utilized by the college of BDS course in 2005-06 for the academic year 2006-07.

20. The question that falls for consideration is whether the petitioner can be extended any benefit on the basis of aforesaid pronouncements of law. The aforesaid decisions, we are disposed to think, rest on their own facts. There was gross violation of law and, therefore, there was inference by the Apex Court and under certain circumstances by this Court. There can be no quarrel that the merit has to be given priority but, a significant one, the fact remains that when the petitioner had not taken admission in the BDS course; had not submitted an application for waiting; and had not submitted an application in pursuance of the advertisement-Annexure-R-3/1; and her allegations have not been proved before the Monitoring Committee as per the report and further her belated approach, should any relief be granted to her. It is well settled in law that a writ jurisdiction exercised by the High Court under Article 226 is extraordinary, inherent and equitable. As is perceptible from the facts in entirety, the petitioner slept over the matter from September, 2006 to February, 2007. This Court took cognizance of the complaint and directed the Monitoring Committee to decide it and the same been decided. The Committee has expressed the opinion that the entire allegation is an afterthought. We have already stated that there is no reason to differ with the findings of the Committee. It is worth noting that the doctrine of delay and laches has to be weighed with the principle of substantial equity. While exercising the jurisdiction under Article 226 of the Constitution of India, it cannot be regarded as a mere technical fetter or impediment. Any person, who intends to vindicate a right invoking the extra-ordinary jurisdiction of this Court has to keep in mind with the said jurisdiction. The reservoir of justice is not extendable when the person concerned has taken recourse to lackadaisical and languorous proclivity and further innovated pleas which are not established on facts and is an after thought on the bedrock of subsequent events. The conceptual prudence of exercise of inherent jurisdiction does not recognize it and the common sense does not give consent to it. The test has to be objective based on material facts available on record but not on inferential phenomenon or symphthetic conjecture

and for that matter any kind of empathetic gesture. Extension of equitable benefit to a candidate seeking medical admission without primary satisfaction, if we allow ourselves to say so, is permitting the petitioner to build a castle Spain. The denial of the relief is further re-enforced by the categorical and unequivocal finding returned by the Monitoring Committee. Quite apart from the above, if the factual exposition in the writ petition is appreciated, it is perceptible that the asseverations have been made and the facts have been projected without stating the facts in its entirety. Thus, we are inclined to hold that no equitable relief should be extended to the petitioner.

21. We would be failing in our duty if we do not take note of one aspect. The counselling was over by the respondent No. 3 on 26.9.2006. An advertisement was published as per Annexure-R-3/1 on 27.9.2006 fixing the date of 28.9.2006 for counselling. It does not require Solomon's wisdom to visualize that in such a short span it would be difficult for a student to know about the vacancy position. Mr.Tiwari has submitted that as certain illegalities occurred last year there was delay. Be that as it may, we would like to observe that the respondent No. 3 College shall act in quite promptitude and in future shall be alert in publishing any advertisement, if vacancy remains, by giving reasonable period of time. Any deviancy shown by the respondent No. 3 shall be taken exception to and the Medical Council of India shall take note of it and act accordingly. The State Government shall also take action as per law.

22. As we have already held that in the obtaining factual matrix the petitioner is not entitled to any equitable relief, the inevitable and natural sequitur is the dismissal of the writ petition which we direct. In the facts and circumstances of the case there shall be no order as to costs.