
(1998) 02 DEL CK 0028
In the Delhi High Court
Case No : CW No.4997 of 1997

Naveen Chitkara

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Citation : (1998) 02 DEL CK 0028

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. Ashish Dholakia and Mr. V S Chauhan, for the Appellant; Dr. Sumant Bhardwaj, Mr. Ajit Warriar, Mr. A K Nigam and Mr. Pramod Gupta, for the Respondent

Judgement

Cyriac Joseph, J.—The petitioner seeks a direction to the respondents, University of Delhi and Union of India, to admit him to M.Ch. Neuro Surgery Course in G.B.Pant Hospital for the academic session 1997-98.

2. According to the petitioner he applied for admission to the M.Ch. Neuro surgery course for 1997-98 before the last date stipulated in Annexure F Prospectus. He appeared in the screening test held on 14th February, 1997 and he was declared passed. He was called for viva-voce on 17th April, 1997. When the final results were declared in the last week of April 1997 the petitioner was placed at Serial No. 4 in the list of candidates eligible for admission. Dr. Ashish Goyal and Dr. Pushpendra who were at Serial No. 1 and 2 in the list were admitted to the course against the two seats which were available. The petitioner was No. 2 in the waiting panel.

3. According to the petitioner a proposal for increasing the number of seats in M.Ch (Neuro sugery) Course in G.B. Pant Hospital had been pending from 1991. By Annexure H letter dated 20th May, 1997, addressed to the Medical Superintendent, G.B. Pant Hospital, the Government of India conveyed the approval of the Central Government for the scheme submitted by the Medical Superintendent, G.B.Pant Hospital to increase one seat in M.Ch (Neuro surgery)

Super Speciality Course at G.B.Pant Hospital u/s 10A of the Indian Medical Council Act, 1956 in pursuance of a Court Order dated 13.2.97 in C.W.P. No. 3823/96. It was specified in the said letter that the permission was given only for admitting the petitioner in the said C.W.P. No. 3823/96. However, the petitioner in C.W.P. No. 3823/96 Dr. Pushpender K.Sachdeva had already been admitted to M.Ch (Neuro surgery) course for the session 1997. Subsequently by Annexure J letter dated 19th August, 1997 addressed to the Medical Superintendent, G.B. Pant Hospital, the Government of India conveyed its approval of the scheme submitted by the Medical Superintendent, G.B. Pant Hospital to increase the number of seats in M.Ch (Neuro surgery) course from 2 to 4 u/s (10A) of the Indian Medical Council Act, 1956. It was clarified in the said letter that the approval included the increase of one seat already permitted by the Central Government as per their earlier letter dated 20th May, 1997. Thereupon the Director, Professor and Head of the Department of Neuro surgery, G.B. Pant Hospital sent Annexure K, letter dated 28.08.97 to the first respondent University requesting to "consider making a exception to the University Rules and to permit the Department to increase the M.Ch (Neuro surgery) seats from 2 to 4 from the academic session 1997-98 itself". It was also pointed out in the said letter that the Department of Neuro surgery had been trying since December, 1995 to increase the seats from 2 to 4 per year. The University had appointed a four member inspection team and the inspection had been carried out on 20.2.96 and favourable recommendations had been made. An inspection was also carried out in April 1996 by Dr. Subarao who was appointed by the Medical Council of India and the conditions were found suitable. The Annexure K letter also referred to the letter dated 18.9.96 of the Ministry of Health and Family Welfare, Government of India by which a Letter of Intent was issued permitting to increase the seats subject to the State government agreeing to the financial implications. Reference was also made to the letter dated 19.08.97 of the Government of India conveying formal sanction for increase of the seats from 2 to 4 per year.

4. In the above mentioned background the petitioner submitted Annexure L representation dated 29.8.98 to the Vice Chancellor of respondent No. 1-University requesting him to relax the rules and to extend the last date of admission so that admissions can be made against the two additional seats for which approval was conveyed by the Government of India through their letter dated 19.8.97. There was no favourable response from the University either to the letter dated 28.8.97 of the Director, Professor and Head of the Department of Neuro surgery, G.B.Pant Hospital or to the representation dated 28.8.97 of the petitioner. Hence the petitioner was forced to join M.Ch (Neuro surgery) course in Swai Mansingh College, Jaipur where the last date of admission was 5.9.97. Aggrieved by the action of the respondents in not admitting the petitioner in one of the two additional seats in M.Ch. (Neuro surgery) course in G.B.Pant Hospital, the petitioner has filed this writ petition.

5. In response to the show cause notice issued by this Court, respondent No. 5

G.B. Pant Hospital filed a reply affidavit stating that the University of Delhi is the final authority to permit the enhancement of seats and that the Post-Graduate Admission Committee of the University has decided not to increase the seats in M.Ch. (Neuro surgery) course for the session 1997 as the last date for admission was already over on 1.7.97. A copy of the communication dated 24.10.97 received from the University has been produced as Annexure A to the reply affidavit. The said letter dated 24.10.97 addressed to the Director, G.B.Pant Hospital reads thus

"Please refer to your letter No. 19/NS/CBP/97/63 dated 28.8.1997 on the subject noted above.

I am to inform you that the matter was considered by the Post graduate Admission Committee and decided not to increase the seats from 2 to 4 in M.Ch. (Neuro-Surgery) Course for the session, 1997 as the last date for close of admission was already over on 1.7.1997. However, the request for the aforesaid purpose can be considered for the session, 1998."

6. A counter affidavit has been filed on behalf of respondent No. 1, University of Delhi. According to respondent No. 1, Post-Graduate Medical Courses commence every year on 2nd May and the admissions close on 1st July. The Hon"ble Supreme Court in State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., has held that the courses have to be commenced and completed on schedule and that admissions in the midstream will disturb the course and that vacant seats should not be taken as a ground to give admissions. However, it is admitted in the counter affidavit that the Inspection Committee constituted by the University had recommended on 20th February, 1996 enhancement of seats in Neuro surgery in G.B.Pant Hospital from 2 to 4. It is also admitted that the Academic Council of the University vide Resolution No. 190 dated 8.5.96 accepted the recommendation to increase seats from 2 to 4. It is further pointed out that as per the procedure /rule laid down for increase of seats, the University cannot increase the number of seats in the medical courses without the approval of the Government of India. It is stated that in the year 1997 there were only two seats in M.Ch (Neuro surgery) in G.B.Pant Hospital and hence only 10 candidates were called for screening/ practical/viva-voce examination. For admission to DM/M.Ch courses the ratio between the seats and the candidates to be called for viva-voce is 1:5. According to respondent No. 1, in case the number of seats is increased from 2 to 4, 20 candidates will have to be called for viva-voce and the merit list will have to be prepared from the 20 candidates, in which case the petitioner's position may be anywhere between 3 to 20. It is also stated that there were 30 applications for M.Ch (Neuro surgery) course for the year 1997-98. It is further contended by respondent No. 1 that while the duration of M.Ch (Neuro surgery) course is two years the approval granted by the Government of India for the increase of the number of seats is only for one year and is to be reviewed after verification of achievements of the physical and other infrastructural facilities as stipulated in the Letter of Intent. It is also contended that it was not possible to

admit the petitioner before receiving the permission of the Government of India for increasing the number of seats and that by the time the permission was received the last date for admission was already over and that it would not be possible for the University to extend the last date. The counter affidavit also refers to the respondent's letter dated 24.10.97 addressed to the Director, G.B.Pant Hospital wherein it was stated that the number of seats could not be increased from 2 to 4 for the session 1997 as the last date for admission was already over on 1.7.97. The respondent has also pointed out that the petitioner has already joined M.Ch (Neuro surgery) course in Swai Mansingh College, Jaipur.

7. Respondent No. 6, Dr. P.K. Upadhaya has also filed an affidavit stating that he also is aggrieved by the inaction of the other respondents in not filling up the additional seats in M.Ch (Neuro surgery) course in G.B.Pant Hospital. He has prayed that since he is placed above the petitioner in the merit list/ waiting list, the benefit of any favourable direction issued by this Court in favor of the petitioner should be extended to him also.

8. Since respondent No. 1 took the stand that the course had already commenced and admissions in the midstream would disturb the course, the Director of the G.B.Pant Hospital was directed by this Court to file an affidavit explaining the nature of the course in M.C.H. (Neuro surgery) and the pattern of examinations to be conducted. Accordingly, respondent No. 5 has placed on record an additional affidavit dated 19th January, 1998 stating as follows :

"a) The M.Ch (Neuro surgery) Course comprises of both theory and practical (including practical in the Operation Theatre).

b) There are three theory papers. Practical exam comprises of Viva-voce, one long case and other short cases, table viva on Neuroradiology, Neuropathology and basic sciences. There is no objective type examination. The duration of the course is two years.

c) The University of Delhi ordinarily holds two examinations every year, viz., Regular examination in April and Supplementary Examination in October.

d) The candidates already admitted may not be adversely affected by any new admissions that may be made now. The previously admitted candidates are already undergoing training. However, the candidates now admitted would require to under go the training for two academic years.

e) There are no difficulties in this Institute in accommodating new admissions as there are sufficient number of seats for Senior Residents subject to the new candidates fulfilling the minimum training period of two academic years subject to the University of Delhi approval."

9. In the light of the abovementioned pleadings of the parties the questions to be considered are whether the petitioner has an enforceable legal right for admission to M.Ch. (Neuro Surgery) course in G B Pant Hospital and whether the refusal of the University of Delhi and the GB Pant Hospital to fill up the newly

approved two additional seats in M.Ch. (Neuro Surgery) course in GB Pant Hospital is illegal or arbitrary.

10. The petitioner is seeking admission to M.Ch (Neuro Surgery) course for the 1997 session. The procedure for selection and admission of candidates for the 1997 session started with the publication of the Bulletin of Information (annexure F) by the University of Delhi (Faculty of Medical Sciences). At the time of publishing the Bulletin of Information and inviting applications for admission there were only two seats in the GB Pant Hospital for M.Ch (Neuro Surgery) course. The last date for receipt of applications in the Medical Faculty office was 10.1.1997. The screening test was conducted on 14.2.1997. The viva voce was conducted on 17.4.1997. Since there were only two seats, only 10 candidates were called for interview/viva voce applying the ratio of 1:5. The final results were declared and the rank list was prepared in the last week of April, 1997. Since the petitioner was placed at rank no. 3 he was not given admission and the two seats went to the candidates who secured rank nos. 1 and 2. When the petitioner submitted his application for admission and participated in the screening test and viva voce he was aware that there were only two seats and that the selection was being made in respect of the two seats. Admittedly the last date for admission was 1.7.97. Even on that date there were only two seats in GB Pant Hospital for M.Ch (Neuro Surgery). In these circumstances the petitioner has no enforceable legal right for admission to M.Ch (Neuro Surgery) course in GB Pant Hospital.

11. It is true that a proposal for increasing the number of seats in M.Ch (Neuro Surgery) in GB Pant Hospital had been pending. It is also true that the Inspection Committee constituted by the University had recommended on 20.2.1996 the enhancement of seats from 2 to 4 and that the Academic Council of the University had accepted the recommendation as per resolution No. 190 dated 8.5.1996. However, it is not disputed that for increasing the number seats previous permission of the Central Government is required u/s 10A of the Indian Medical Council Act, 1956. Though by Annexure H letter dated 20.5.1997 the Central Government conveyed its approval for increasing one seat, it was specified that the said seat was meant only for admitting the petitioner in CW 3823/96. Later it was by Annexure J letter dated 19.8.97 that the Central Government conveyed its approval for increasing the number of seats from 2 to 4. The increase in the number of seats pursuant to annexure H letter dated 20.5.1997 or Annexure J letter dated 19.8.97 cannot confer any legal right on the petitioner who had applied for admission and participated in the selection process in respect of two seats existed at that time. As the process of selection and admission was in respect of the existing two seats and since the last date for admission was fixed as 1.7.97, the petitioner is not entitled to make any claim for admission in respect of the two seats for which approval was granted after 1.7.97.

12. Annexure A letter dated 24.10.97 (produced along with the affidavit of

respondent 5) shows that the Post Graduate Admission Committee, Faculty of Medical Sciences, University of Delhi decided not to increase the seats from 2 to 4 in M.Ch (Neuro Surgery) course for the 1997 session. The Academic Council had already accepted the recommendation of the Inspection Committee to increase the number of seats from 2 to 4. But for increasing the number of seats the prior permission from the Central Government u/s 10A of the Indian Medical Council Act was required. The permission u/s 10A of the Indian Medical Council Act was granted by the Central Government only on 19.8.97. Hence as on 19.8.97 the number of seats stood increased from 2 to 4. Any further decision by the Post Graduate Admission Committee may not be required for the increase of the seats from 2 to 4. But it is not disputed that the Post Graduate Admission Committee in the Faculty of Medical Sciences is competent to decide whether the admissions should be made against the newly approved additional seats. Hence the abovementioned letter dated 24.10.97 is in effect a decision regarding the filling up of the seats in relaxation of the rules since the said two seats were not available when applications were invited and since the last date for admission was over on 1.7.97. Based on the decision of the Post Graduate Admission Committee the University has taken the stand that the additional seats cannot be filled up for 1997 session. In the facts and circumstances of this case, it cannot be said that the stand of the University is illegal or arbitrary. When the applications were invited and the selection for admission was made these two seats were not in existence. The number of candidates to be called for interview/ viva voce was restricted to 10 since there were only 2 seats. The last date for admission was 1.7.97 and the two available seats had been filled up prior to that date. The course had commenced long before the grant of permission for increasing the number of seats. In these circumstances the decision of the University not to fill up the seats for 1997 session cannot be held to be illegal or arbitrary. Though the additional affidavit dated 19.1.1998 of respondent no.5, Director, G B Pant Hospital may indicate that there may not be any serious practical difficulty for respondent 5 if the additional seats are filled up for 1997 session, these are matters to be considered and decided by the University. In taking such decision the University has to consider not only the practical problems in the institution concerned but also other relevant aspects. I do not find any reason to overrule the decision of the University in this matter. Hence the decision of the University not to fill up the additional seats during 1997 session does not call for any interference by this court under Article 226 of the Constitution of India.

13. While considering the exercise of this court's jurisdiction under Article 226 of the Constitution of India it is also necessary to take note of the fact that the petitioner has already joined Sawai Man Singh College, Jaipur for M.Ch (Neuro Surgery) course and is pursuing his studies there.

14. In the light of the discussion above I hold that the petitioner is not entitled to any relief in the writ petition and that the writ petition is liable to be dismissed. Accordingly the writ petition is dismissed. There will be no order as to costs.