

(2018) 10 RAJ CK 0082

In the Rajasthan High Court

Case No : Special Appeal Writ No.953, 1071 , 316, 353, 397 of 2015

NIMS University Rajasthan @APPELLANT@Hash State of Rajasthan

Date of Decision : 31-10-2018

Acts Referred:

Medical Council of India Act, 1956 — Section 33

Citation : (2018) 10 RAJ CK 0082

Hon'ble Judges : Pradeep Nandrajog,CJ;G R Moolchandani, J

Bench : Division Bench

Advocate : R. P. Singh, Achintya Kaushik, R.N. Mathur, Prateek Mathur, Nikhil Saini, Kamalakar Sharma, Smt.Alankrita Sharma, S.N. Kumawat, Shantanu Kumawat, A.K. Sharma, Rachit Sharma, R.D. Rastogi, C.S.Sinha, Angad Mirdha,, Kunal Jaiman, N.M. Lodha, Ravi Chirania

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, CJ.

1. For the year 2015, pertaining to the admission in MBBS/BDS Courses in the private medical colleges in the State of Rajasthan it was decided that

the Pre-Medical Entrance Test would be conducted by the Federation of Private Medical and Dental Colleges in the State of Rajasthan with Maharshi

Dayanand Saraswati University Ajmer to be the nodal agency to conduct the examination. The said University conducted the examination in the

month of July, 2015. The Federation of Private Medical and Dental Colleges issued the information brochure as per which the eligibility prescribed for

the General Category candidates was 50 percentile and for SC, ST, OBC and SBC 40 percentile.

2. On 15th February, 2012 the Medical Council of India had issued Notification No. F.No.MCI-31(1)/2010-MEB/62051. The same was issued in

exercise of the powers conferred by Section 33 of the Medical Council of India

Act, 1956. The notification was issued with the previous approval of the Central Government. Two significant amendments pertaining to the eligibility for admission to MBBS and BDS Courses were introduced. The first was the requirement of obtaining minimum of marks at 50 percentile in the National Eligibility-cum-Entrance Test to the MBBS/Dental Courses, with lowering of the percentile to 40 for SC, ST and OBC candidates and 40 percentile for candidates with Loco Motor Disability of Lower Limbs. There was a proviso added, which reads as under:-

3. "Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks lowered by the Central Government shall be applicable for the said academic year only."

3. The second part of the amendment, relevant to be noted, was the requirement of eligibility to admission in a MBBS Courses, being the requirement to pass the subjects of Physics, Chemistry, Biology/Bio-technology and English not only individually but with a minimum of 50% marks in Physics, Chemistry, Biology/Bio-technology. For SC, ST and OBC the requirement was reduced to 40% marks in the aggregate. There was no proviso for the requirement of the minimum cut off marks, as distinct from lowering of the percentile.

4. On 11th August, 2015 the Medical Council of India informed to the Secretary of the Federation, as under:-

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“MEDICAL COUNCIL OF INDIA”

MC9-34(MC)/2015/126219 Dated: 11/08/2015

The Secretary

Federation of Private Medical and Dental Colleges of

Rajasthan 17-C, Old Fatehpura

Udaipur-313001 Rajasthan.

Subject: Seeking guidelines regarding counselling of candidates for admission in

MBBS course securing less than 50% and 40% marks in competitive examination:

Madam/Sir,

With reference to your letter No.FPMDCR/PCPMT2015/171, dated:05/08/2015 on the subject cited above. Your kind attention is invited to clause

5(2) of the Graduate Medical Education Regulations, 1997 lays down as under:

5. Selection to Students: The selection of students to medical college shall be based solely on merit of the candidate for determination of merit, the

following criteria be adopted uniformly throughout the country:

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical

college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as

there may be variation of standards at qualifying examinations conducted by different agencies.

The Clause 5(5)(ii) has been substituted in terms of notification published on 03.11.2010 in Gazette of India and the same is as under:

(ii) In case of admission on the basis of Competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in

the subjects of Physics, Chemistry, Biology/Bio-technology and English individually and must have obtained a minimum of 50% of marks taken

together in Physics, Chemistry and Biology/Bio-technology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must

have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, chemistry

and Biology/Bio-technology taken together in the competitive examination. In respect of candidates belonging to Schedule Caste, Schedule Tribes or

other Backward Class the marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination and competitive

entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted

to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course

until he fulfills the eligibility criteria under regulation 4.â??

The aforesaid provision of the Graduate Medical Education Regulations, 1997 is mandatory for all the States to follow and has been upheld by the

Honâ??ble Supreme Court and various Honâ??ble High Courts in a catena of Judgment and is binding in nature. The consequence of any admission

that is made contrary to the norms laid down by Graduate Medical Education Regulations, 1997 is that the qualification awarded to such person cannot

be considered as a recognized medical qualification under the Indian Medical Council Act, 1956. Accordingly, such person is not entitled to be granted

registration be any State Medical Council.

This issues with the approval of President, MCI.

Yours

faithfully.

Sd/-

(S. Savitha)

Assistant Secretaryâ??

5. Applying the aforesaid criteria, from out of the 1657 candidates who were declared provisionally qualified at the Pre-Medical Entrance Test 2015

as per the result declared by the Maharshi Dayanand Saraswati University, Ajmer, 1173 candidates were found entitled to be considered for being

given admissions in medical and dental colleges but only 484 candidates became eligible by applying the criteria of minimum 50% marks to be obtained

in the aggregate for Physics, Chemistry, Biology/Bio-technology papers. At the first round of counselling held on 1st and 2nd September 2015,

admissions were granted to those who had participated at the said counselling.

6. Pertaining to the vacant seats, matter was taken up by the Admission Regulatory Committee headed by a Retired Judge of this Court and

comprised the Principal Secretary Medical Education and Principal SMS Medical College, Jaipur as the Members. The Joint Secretary Medical

Education, OSD Medical Education and Additional Director Medical Education were invited as special invitees. On 18th September, 2015 the said

Admission Regulatory Committee took a decision as under:-

â??Minutes of the meeting of Admission Regulatory Committee dated: 18 th, September 2015 A meeting of the Admission Regulatory Committee

constituted as per directions of Honâ??ble Apex Court in Islamic Academy, of Education and another v/s State of Karnataka and others Judgment

date 14-08-2003 was held under the Chairmanship of Honâ??ble Justice Isarani (retd.) following officials were present in the meeting:

1. Principal Secretary Medical Education. Member Secretary
2. Principal SMS medical College, Jaipur. Member Secretary
3. Joint Secretary Medical Education. Sp Invitee
4. OSD Medical Education. Sp Invitee
5. Additional Director Medical Education. Sp Invitee

The issue of filling the residual/vacant seats in MBBS/BDS course in private Medical & Dental colleges of Rajasthan after completion of final round

of counselling for MBBS/BDS course for session 2015-16 was discussed in detail.

It was brought to the notice of Committee that on completion of PC-PMT-2015 counselling, 484 eligible candidates have been allocated seats in

MBBS/BDS course different private Medical & Dental Colleges of Rajasthan. However the seats remain vacant in MBBS/BDS course in some of

private Medical & Dental Colleges after final round of counselling due to drop outs, which needs to be filled.

After having heard the Federation and Keeping the view realizing that mandatory last date for admission in MBBS/BDS course i.e. 30th Sept. 2015.

(As per directions of Honâ??ble Supreme Court) and natural demand of private universities/colleges to have justified alternatives for filling up

vacant/residual seats in the specified time frame in a fair, transparent and non-exploitative process (as per Pai foundation case) it has been decided to

permit College/Universities for filling up the vacant/residual seats on basis of merit in the following manner.

1. The first preference will be given to the AIPMT qualified candidates who are registered with Rajasthan UG admission board on the basis of merit.

The Overall merit (based on percentage of marks obtained Common Entrance Test will be considered) will be considered first.

2. Secondly, after exhausting AIPMT qualified candidates who are registered with Rajasthan UG admission board, in case seats remained vacant,

than the admission on these vacant seats shall be done on basis of merit out of AIPMT qualified candidates.

3. In case the seats still remain vacant then the admission on these remaining seats shall be done on the basis of the merit obtained by the candidates

of Common Entrance Test (CET) conducted by Institution of national Importance and Armed Forces (AIIMS, JIPMER, BHU, AFMC, CMC,

Manipal). State Governments and State government approved Association of Private Medical & Dental Colleges/UGC recognized Universities in

India. The order of priority shall be maintained as follows. AIIMS then followed by candidates of JIPMER, BHU, AFMC, CMC, Manipal. CET

conducted by other states, UGC recognized Private/Deemed universities or State approved Association of Private Medical & Dental Colleges.

4. The College/University concerned will publish the notification for vacant seats in at least one State news papers of repute, one news paper of

national repute and will display/publish the list of selected candidates as well as vacant seats on website and will also provide a copy of it to

Department of Medical Education. In the process all previous directions by Honâ??ble Courts will be followed.â??

7. Based on the aforesaid decision a second round of counselling was held (dates not brought on record) but somewhere around 22nd to 24th

September, 2015. Third round of counselling was scheduled to be held on 29th September, 2015.

8. Before the third round of counselling could be held four writ petitions came to be filed. Grievances were made in the writ petitions regarding the

counselling which took place on 1st and 2nd September 2015. It was pleaded that many candidates who had not even participated at the counselling

were allotted seats in private medical colleges. The replies were filed to the writ petitions pleading that at the counselling, the crowd gathered had

resorted to hooliganism and had taken away the record kept during counselling. But it was pleaded that no person who was not eligible to be granted

admission was allocated a seat.

9. Relevant would it be to note at this stage that in neither pleadings reference was made to the fact that a second round of counselling had already

taken place and seats were allocated in terms of the decision taken by the Admission Regulatory Committee on 18th September, 2015.

10. But from a perusal of the decision dated 29th September, 2015 challenge in the first three writ-appeals, it is apparent that the decision of the

Admission Regulatory Committee was brought to the notice of the learned Single Judge, who considered the same.

11. Since the counselling was scheduled for 29th September, 2015, arguments were heard on 29th September, 2015 itself, in the said writ petitions and

judgment was pronounced in open court. The said judgment dated 29th September, 2015 is the subject-matter of challenge in the three captioned

appeals filed in the year 2015. The judgment notes that the criteria evolved by the Admission Regulatory Committee violates the law declared by the

Supreme Court in the decision reported as (2012) 7 SCC 433 : Priya Gupta Vs. State of Chattisgarh & Ors., as per which the admissions in medical

colleges in a State had to be pursuant to a common admission test and not on the basis of admission test conducted by different bodies. The order

dated 29th September, 2015 records that prima-facie a contempt of the direction issued by the Supreme Court had been committed and that the

learned Advocate General took oral instructions on the same day to avoid issuance of contempt notice that admissions would not be as per the

decision taken by the Committee on 18th September, 2015. But unfortunately, nobody informed the learned Single Judge that further admissions had

been affected pursuant to the said decision. This appears to be the reason why the learned Single Judge, while disposing of the four writ petitions on

29th September, 2015 did not quash the admissions at the second round of counselling.

12. Pertaining to the admissions granted at the first round of counselling, which concededly was as per the norms prescribed, the learned Single Judge

held that the argument about substitution of candidates while giving admission through counselling was not borne out from the records, which

conclusively established that seats were allocated to eligible candidates. Thus, the contentions regarding bungling at the first round of counselling held

on 1st and 2nd September, 2015 were negated.

13. Confronted with the situation where seats would go abegging, notwithstanding the entrance examination clearly indicating to the candidates that for

wrong answers, negative marks would be given, to increase the pool the learned Single Judge recorded a consent order that the result would be

redrawn by removing negative marking.

14. Thus, regarding the decision dated 29th September, 2015, suffice it to note that the learned Single Judge repelled the challenge to illegalities

committed at the first round of counselling held on 1st and 2nd September, 2015 and accepted the plea by the Federation that due to acts of

hooliganism the contemporaneous record at the counselling was not available. The learned Single Judge adversely commented upon the decision taken

by the Admission Regulatory Committee. The learned Single Judge was not informed that a second round of counselling had been conducted by

applying the revised criteria sanctioned by the Admission Regulatory Committee. The learned Single Judge did not grant relief prayed for by the writ

petitioners. The learned Single Judge directed negative marks to be removed and merit list redrawn. The learned Single Judge also did not disturb the

admissions granted at the first round of counselling.

15. Highlighting at this stage that the writ petitioners have not challenged the decision dated 29th September, 2015, challenge is by NIMS University

Rajasthan, Geetanjali University and Federation of Private Medical Colleges. Grievance is that there was no pleadings in the writ petition challenging

the decision of the Admission Regulatory Committee and without affording an opportunity to the Federation to defend the decision and qua the

colleges stand taken is that they were not impleaded as party, it was urged before us in the said three appeals that the learned Single Judge ought not

to have decided the issue concerning the revised guidelines framed by the Admission Regulatory Committee.

16. Questioned by the Court as to what justification could be given in support of the decision of the Admission Regulatory Committee in the teeth of

the law declared by the Supreme Court in Priya Gupta's case, learned Senior Counsel stated that they could not defend the decision save and

except to urge that the students who were admitted as a result of the counselling conducted applying the said criteria would be adversely affected and

they ought to have been heard. Learned counsel urged that the decision is confusing, in that, the learned Judge has not quashed the admissions granted

at the second round of counselling.

17. We shall deal with this contention after we note the facts concerning the other appeals.

18. Writ petitions came to be filed as a sequitur to the decision dated 29th

September, 2015 in the four earlier writ petitions, which were already disposed of. Two writ petitions came to be filed by Vivek Bugalia, Ravi Kumar Sharma and Mahesh Kumar Sharma. In the said writ petitions, they raised issues concerning the first counselling held, but notwithstanding the fact that Vivek Bugalia admitted that he never offered his candidature to be allocated a seat in a private medical college and that Ravi Kumar Sharma and Mahesh Kumar Sharma were unsuccessful candidates at the first result declared on 21st August, 2015, they questioned admissions granted at the first counselling. They also challenged the admissions made subsequently, but essentially the pleadings relate to the admissions given on 1st and 2nd September, 2015.

19. Notwithstanding the fact that in the earlier round of litigation, vide judgment dated 29th September, 2015 the learned Single Judge had essentially held:-

(i) The criteria adopted by the Federation at the first round of counselling of 50% marks and 40% marks was legal and as per the regulation framed;
and

(ii) Challenge to the negative marking adopted must fail, and further the fact that the so-called irregularities at the first round of counselling were found to be without any basis, the learned Single Judge went into the counselling held on 1st and 2nd of September, 2015 as also the admissions given on the basis of criteria adopted by the Admission Regulatory Committee.

20. The second decision dated 9th February, 2018 which is challenged in the subsequent three appeals would show that the learned Single Judge has essentially held as under:-

(i) Admission to candidates based on marks obtained in other entrance tests was not legally sustainable in view of the decision in *Priya Gupta*’s case.

(ii) The record would show that candidates who obtained less than 50% marks at the PC-PMT were granted admissions.

(iii) The manner of counselling conducted on 1st and 2nd of September, 2015 does not inspire confidence.

(iv) Non-production of record of the said counselling due to mob taking away record of the said counselling does not inspire confidence.

21. After so holding, the learned Single Judge has held that the matter requires to be investigated by the CBI and MCI which has been directed to take action as per decision of the Supreme Court in Priya Gupta's case.

22. Aggrieved with the direction issued in the decision dated 9th February, 2018, the Federation and two medical colleges have filed the above three captioned appeals in the year 2018.

23. The facts though seemingly appear to be confusing in the pleadings, but are as straight forward and self evident as noted above would show that

on 1st April, 2015 the Federation issued an advertisement to conduct the PCPMT-2015 on the basis of which admissions were to be given in the private medical and dental colleges in Rajasthan. The examination was conducted on 16th August, 2015 and result was declared on 21st August, 2015.

24. The first round of counselling was as per the norms issued by the MCI. Four writ petitions came to be filed concerning the counselling held on 1st

and 2nd September, 2015 and were decided vide judgment dated 29th September, 2015. The learned Single Judge repelled the challenge to the

admissions granted by the Federation at the counselling held on 1st and 2nd September, 2015, but noted that for the left over vacant seats a wrong

criteria as per the decision of the Admission Regulatory Committee dated 18th September, 2015 was proposed to be adopted. The learned Single

Judge simply directed negative marking to be removed and thereafter vacant seats to be filled up. The learned Single Judge categorically held that the

criteria adopted by the Admission Regulator Committee could not be implemented. Unfortunately it was not brought to the notice of the learned Single

Judge that a second round of counselling had been conducted on the basis of the decision taken by the Admission Regulatory Committee.

25. Pursuant to the said decision dated 29th September, 2015, Maharshi Dayanand Saraswati University at Ajmer removed the negative marking and

further counselling was held.

26. Two writ petitions came to be filed thereafter challenging once again the counselling held on 1st and 2nd September, 2015 and also raising the issue

once again regarding admissions made pursuant to the decision taken by the Admission Regulatory Committee on 18th September, 2015. The learned

Single Judge disbelieved the stand of the Federation, which he accepted in the earlier round of litigation, that due to hooliganism by mob the record of

the counselling could not be produced and further in the earlier decision he having held that admissions granted were proper. This has resulted in the direction issued to CBI and MCI to conduct an enquiry and take action against those who are found guilty.

27. The second decision dated 9th February, 2018 could not have reopened the issue concerning the admissions which were granted at the first round of counselling held on 1st and 2nd September, 2015 and the direction issued to CBI to investigate the admissions made at the said counselling is ex-facie faulty.

28. Pertaining to the admissions which were granted pursuant to the decision taken on 18th September, 2015 by the Admission Regulatory Board, we find no error in the impugned decisions for the reason when the four writ petitions filed earlier were disposed of on 29th September, 2015 it was not brought to the notice of the learned Single Judge that a counselling had already been taken place by applying the criteria adopted by the Admission Regulatory Committee; but to hold that the colleges were responsible for the same is a wrong view taken, inasmuch as, the colleges had no role to play in the counselling. The Federation ought to have brought this aspect to the notice of the learned Single Judge when the first decision dated 29th September, 2015 was pronounced. At this stage we deal with the contentions advanced by learned counsel for the appellants in the first three appeals concerning the decision dated 29th September, 2015 i.e. that the colleges were not impleaded as respondents in the writ petitions, which were decided on 29th September, 2015 and that the Federation was not given an opportunity to defend the decision taken by the Admission Regulatory Committee.

29. Now, Counsel for the appellants did not dispute that the decision taken by the Committee was ex-facie illegal being in the teeth of the law declared by the Supreme Court in Priya Gupta's case. In any case, we had an opportunity to defend the decision in the second round of litigation and for reasons obvious they did not defend the same; because the decision cannot be defended at all.

30. Concerning the facts to be ascertained after holding the enquiry, either by CBI or the Medical Council of India, we note that the facts are not in dispute. The question of ascertaining any facts would thus not arise. The undisputed position is that the first counselling held on 1st and 2nd September,

2015 was as per the norms prescribed by the MCI. Challenge to the admissions granted at the counselling held on said two dates was repelled in the judgment dated 29th September, 2015. Nothing remains to be examined qua the said counselling. Second counselling obviously was tainted by the fact that it was pursuant to the criteria formulated by the Admission Regulatory Committee. Though this criteria was brought to the notice of the learned Single Judge when the decision was pronounced on 29th September, 2015 but without the sequitur fact that admissions were already granted to some candidates, the learned Single Judge got no occasion to issue directions qua said admissions.

The Federation ought to have brought said fact to the notice of the learned Single Judge but it did not do so. Thus, at the second round of litigation the learned Single Judge was justified in recording the view in the said decision that admissions granted at the second round of counselling needed to be looked into by MCI. But, the direction to CBI to conduct an enquiry does not relate to the said admissions. Thus, the direction issued for CBI to conduct an enquiry in the decision dated 9th February, 2018 is quashed. The direction to MCI to hold an enquiry and take action in terms of the decision in Priya Gupta's case is affirmed with a clarification that as of today MCI as per stand taken by their Counsel has completed the necessary enquiry and in the first week of July, 2018, on different dates, notices have already been issued by MCI to the medical colleges where admissions have been granted pursuant to the second round of counselling conducted by the Federation based upon the criteria formed by the Admission Regulatory Committee.

The students have also been given show cause notices.

31. In the impugned decision dated 9th February, 2018, the learned Single Judge has recorded that before taking any adverse decision against students they would be put to notice. This we find is direction No.2. Opportunity of hearing by MCI to the institutions is part of direction No.3. Thus, as regards the three appeals filed in the year 2018 we quash the direction for CBI to conduct an enquiry. As regards enquiry by MCI is concerned as noted, enquiry has been concluded and MCI has proceeded to issue notices to the students and institutions. Said direction, as noted above, has been upheld by us.

32. Before concluding we note that a circumstance of a possible equity being claimed by the students, who were granted admissions based on the criteria evolved by the Admission Regulatory Committee, if urged by the students would be considered by MCI. The students have completed 3 years study course. They all are in the 4th year. Admissions were granted with respect to marks obtained by the students in entrance exams conducted by other bodies. In said examinations they obtained 50% marks in the aggregate for Physics, Chemistry and Biology, but could not obtain said percentage of marks in the qualifying examinations conducted by Maharishi Dayanand University, Ajmer. Decision to annul their admissions would push them back by four years. This aspect would be kept in mind by MCI while taking a decision pertaining to the admission given to the students by the Federation in different colleges. As regards the colleges MCI would deal with their stand that they had no role to play in the counselling and the decision taken by the Admission Regulatory Committee. They simply took the fee from the students who were allotted to them by the Federation at the second round of counselling held.

33. The appeals are disposed of in above terms.