
(1986) 09 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2267 of 1985

Nishi Bala

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-1986

Acts Referred:

Citation : (1986) WLN 525

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—The petitioner by this writ petition has prayed that the respondents may be directed to grant admission to the petitioner to the M.B.B.S. Course, 1985. It was further prayed that the provisions of Clause A of Rule 2 of the Rules of Admission in M.B.B.S. Course in Medical Colleges in Rajasthan 1985 may be declared illegal and may be struck down.

2. The petitioner after obtaining the Degree of Bachelor of Science in the year 1985 appeared in the P.M.T. Examinations which were held in July 1985 and she obtained 810 marks out of 1200 marks The petitioner's father is an employee of the Department of Central Government namely, All India Radio. The petitioner's father is at present posted as Assistant Engineer, All India Radio, Jodhpur. The petitioner's father was initially transferred to Jodhpur AIR Centre in the month of July 1976 as Assistant Engineer and since then he is continuing at Jodhpur. The petitioner has been continuously prosecuting her studies at Jodhpur since July 1976. The petitioner though obtained 810 marks out of 1200 marks but she was not admitted. She made enquiries and came to know that a number of persons who have obtained lesser marks than the petitioner have been granted admission. Thereafter she came to know that as per Rule 2 of the Rules of Admission in M.B.B.S. Course in Medical Colleges in Rajasthan, 1985 thereafter referred to as "the Rules") 65% of the seats shall be filled by the candidates belonging to Rajasthan and 20% of the total number of seats shall be reserved

for the girl candidates, As per Clause B of Rule 2, 15 seats are reserved for students from abroad/other States to be nominated by the Government of India. The petitioner could not be admitted because she did not fall within the definition of resident of Rajasthan as given in Rule 2(A) of the Rules. The petitioner was admitted in the M.B.B.S. Course in pursuance of the interim stay order passed by this Court on 3-2-1986.

3. A return has been filed by the respondents and the respondents have taken the position that since the petitioner does not fall within the definition of Rule 2(A) of the Rules and she and her father have not continuously resided in Rajasthan for a period of last 10 years as such she is not eligible for admission in M.B.B.S. Course. Mr. Joshi, learned Additional Advocate General, has also pointed out that a reservation has been made for 70% seats for residents of Rajasthan and 30% seats were reserved for non-residents. Mr. Joshi has pointed out that the petitioner in her form has clearly mentioned that she is appearing against the non-resident quota and as such once she has appeared in the P.M.T. against the non-resident quota, she cannot turn back to challenge the validity of the Rules. He has also pointed out that this challenge to the Rules of May 1985 in October, 1985 (when the writ petition was filed) is belated.

4. The matter was heard by Hon'ble S.M. Jain, J. on 22-5-1986 Hon'ble S.M. Jain, J. vacated the stay order. Aggrieved against that order, the petitioner preferred a SLP before the Supreme Court. Their Lordships of the Supreme Court while disposing of the SLP passed the following order;

CMPS are adjourned to 30-10-1985. Meanwhile the respondents are permitted to fill up the remaining 30% seats out of the external students since there are only 10 students from outside the State who are anxious and willing to get admitted in the five Medical Colleges in the State on the basis of the results of the Entrance Examinations, particularly when there are five Medical Colleges in the State and each Medical College will have to admit 2 more students if these ten students are directed to be taken. Moreover this peculiar situation is limited to this academic year. We therefore suggest that two more seats may be allowed in each Medical College in the State. We hope and trust that the Medical Council of India will respond to this suggestion in order to obviate hardship to the students.

5. Thereafter, the matter was listed before me for final disposal. One more development which needs to be mentioned is that during the pendency of this litigation Hon'ble M.B. Sharma, J. at Jaipur Bench by his order dated 17-5-1986 has held that the Central Government employees, who have put 3 years of service either serving or retired their wards are eligible for admission in the M.B.B.S. Course. Hon'ble M. B. Sharma, J. observed as under:

Consequently, I allow this writ petition and hold that the exclusion of son/daughter of an employee (serving or retired) of the Central Government who had put in at least three years service on the last date of submission of the applications for the year of admission from the definition of candidates belonging

to Rajasthan is arbitrary and unreasonable and is discriminatory. A son/daughter of a Central Government employee (serving or retired) who had put atleast three years service on the last date of submission of the application in the year of admission shall be deemed to be included among the candidate belonging to Rajasthan within the meaning of Rule 2A of the Rules of 1985. The petitioner cannot be granted admission in the academic session 1985-86 of MBBS Course, but to do justice to the petitioner, who as a result of the aforesaid decision would have stood in merit much higher than the last candidate, should be admitted as a candidate belonging to Rajasthan. It is hereby directed that the petitioner shall be given admission in the MBBS course in any of the Medical Colleges in Rajasthan for the academic session 1986-87. Costs made easy.

This judgment was not brought to the notice of Hon''ble S.M. Jain, J. when he vacated the stay order.

6. So far as the objections raised by Mr. Josht regarding delay and apportionment of the quota between residents and non-residents are concerned I think that those objections cannot be sustained for the purpose of dismissing the writ petition at the outset. Once, Hon''ble Sharma, J has taken the view that the Central Government employees also form a class and their wards have been made eligible after putting three years service in the State of Rajasthan then similar treatment cannot be denied to wards of those Central Government employees. The petitioner is the daughter of a Central Government employee who is serving in the All India Radio Thus, I think that the petitioner was eligible for appearing in the P.M.T. Examinations. Mr. Joshi has pointed out that there may more candidates who have qualified against 30% quota of the non-resident Central Government Employees and they may be more meritorious then they should not be allowed to suffer. The argument could have been sustained if tt can be pointed out that there are candidates who have obtained more marks than the petitioner against the Central Government quota and can be admitted at this distance of time or not, Firstly, it has not been pointed out that how many persons of non-resident quota have more marks than the petitioner so as to get priority in admission, Secondly at this distance of time even if it is assumed for a moment there may be any then they cannot be admitted at this late stage. Since the petitioner has been already studying under orders of this Court dated 3-2-1986 it will not be fair to deny the petitioner for a situation which is still not known that whether any person more meritorious than the petitioner is available against the non-resident quota. Thus, I think it would be unfair to deny the continuation of studies to the petitioner now.

7. In the result, the writ petition is allowed. The petitioner may be allowed to prosecute her studies for M.B.B.S. Course.

8. The parties are left to bear their own costs.