

(1998) 01 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No's. 510 and 511 of 1998 Arising out of SLP (C) No's. 20206 and 20336 of 1997

Prajesh Kanti Kothawala

APPELLANT

Vs

Competent Authority and Others

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Citation : AIR 1999 SC 104 : (1998) AIRSCW 3456 : (1998) 4 JT 285 : (1998) 3 SCC 179 : (1998) 9 Supreme 176

Hon'ble Judges : S. C. Agrawal, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. These appeals relate to admission to the MBBS course for the 1997-98 session in the various medical colleges in the State of Maharashtra. Admission to medical colleges in the said State is made on regional basis. The admission is governed by the rules issued by the State Government which provided for preparation of the merit list on the basis of the marks obtained in Physics, Chemistry and Biology in the Board examination. In the private medical colleges there were merit seats as well as payment seats. On the basis of their position in the merit list the appellants were offered merit seats in seven private medical colleges out of which five were recognised colleges and two were non-recognised colleges. The appellants did not choose to avail of the said offer of merit seats. They opted for payment seats in Padmashree Dr D.Y. Patil College, Vidyasagar, Respondent 2 herein. Subsequently, some vacancies occurred against merit seats in the said college and the appellants claimed that on the basis of their position in the merit list they should have been considered for admission against those merit seats. The grievance of the appellants is that without considering the claim of the appellants for admission to those merit seats which became available subsequently, admission has been given to Respondent 4, Ms Meenakshi Panth,

against a merit seat in Respondent 2 even though she is at a lower position than the appellants in the merit list. Feeling aggrieved by the said admission of Respondent 4 and denial of admission to them against merit seats in Respondent 2, the appellants filed separate writ petitions in the Bombay High Court which have been dismissed by the impugned judgments dated 10-10-1997.

3. Shri Uday Umesh Lalit, the learned counsel appearing for the appellants, has placed reliance on Rules 9 and 10 of the Rules governing the selection process. The said Rules may be reproduced as follows:

"9. Waiting lists.--At the time of selection, the applicant may opt to remain on waiting list, if not selected to the course of choice. In that case, the candidate's name will not be considered for selection to any other course. After the merit seats are exhausted, the applicant who does not desire to take payment seat, is allowed to remain on waiting list for merit seat for the course of his choice. The applicants who are selected for admission to merit seats and payment seats of private colleges will be considered as wait-listed candidates for filling up the seats falling vacant at government colleges. Similarly, the applicants who are selected for admission to payment seats of private colleges will also be considered as wait-listed candidates for filling of merit seats falling vacant in private colleges. Such waiting list will be maintained till the last date of enrolment by the University. As and when vacancies arise, the applicants in waiting list will be given admission as per their merit position on waiting list, Backward Class candidates will not be permitted to remain wait-listed in open merit category.

10. Selection against casual or drop-out seats.--(a) Only the wait-listed applicant will be eligible for selection against the casual or drop-out seats. The waiting list will be prepared region wise including the reserved category.

(b) The competent authority will publish the vacancy position of casual/drop-out seats for respective regions and the programme of filling up the vacancies after regular selection process is completed. The casual or drop-out seats will be filled up on descending order of merit and for each applicant as per the order of choice given by applicant.

(c) A wait-listed applicant must remain present in person or through an authorised proxy to claim a casual or drop-out seat along with his original candidate for verification."

4. A perusal of Rule 9 shows that for the purpose of the waiting list the applicants have been divided into different categories. In the first category fall the applicants who have not been selected to the course of their choice at the time of selection and who have opted to remain on waiting list and their names will not be considered for any other course. The second category consists of applicants who do not desire payment seats. Their names are placed on the waiting list after the merit seats are exhausted. The third category is of the applicants who have been selected for admission to merit seats and payment

seats of a private college. They would be considered as wait-listed candidates for filling up seats falling vacant in government colleges. In the fourth category fall the applicants who have been selected for admission to payment seats of private colleges. They will be considered as wait-listed candidates for filling up merit seats falling vacant in private colleges. The consideration for selection against casual/drop-out seats under Rule 10 has to be made in accordance with the waiting list keeping in view the category in which the applicant falls.

5. The Directorate of Medical Education and Research of the Government of Maharashtra had issued two notifications clarifying the position with regard to filling up casual/drop-out seats. By notification dated 2-8-1997 it was indicated that:

"1. Vacancies will be filled up region wise i.e. vacancies in the medical colleges of a particular region will be filled in from the waiting list prepared for that region. Waiting list of that region will consist of all the students admitted to private colleges in that region against 30% or 70% by the competent authority, candidates from that region who declined admission and the students who were not offered seats anywhere."

By notification dated 29-8-1997 the last sentence in the said para of the notification dated 2-8-1997, was clarified as under:

"It is clarified that the true meaning of the sentence is that the students who have declined admission against 30% and 70% in a payment category and students who have not offered seats in a merit category in private colleges are considered for wait list. It is also clarified that the students who have refused admission offered to them during the interview are not considered for waiting list."

6. The question for consideration is whether the appellants were entitled to be placed in the waiting list for the purpose of consideration against casual/drop-out vacancies against a merit seat in Respondent 2, a private college.

7. Shri Lalit submits that in view of Rule 9 the appellants fall under the last category since they have been selected for admission to a payment seat in a private college and they are entitled to be considered as wait-listed candidates for filling up merit seats falling vacant in private medical colleges. We find it difficult to accept the said contention. In our opinion, the appellants fall in the third category of Rule 9 since they were applicants who were selected for admission to merit seats and payment seats in private colleges. They had been offered merit seats in seven private colleges which they refused to avail of and thereupon they were selected for payment seats in Respondent 2, a private college. They could only be treated as wait-listed candidates for filling up the seats falling in government colleges. The appellants cannot be regarded as falling in the last category of applicants referred to in Rule 9 because the said category comprises of applicants who were not selected for merit seats in private colleges but were selected for payment seats in private colleges. In the affidavit of Smt

Snehal Surest) Gokhale filed on behalf of the State of Maharashtra it is stated that the appellants were kept on the wait list for seats falling vacant in government colleges and according to their merit position they were called to appear on 8-12-1997 for consideration against the drop-out vacancies in the three government colleges situate at Miraj, Sholapur and Dhule. The appellants did not avail of the said offer. Since the appellants were treated as wait-listed applicants and were offered merit seats in government colleges on the basis of their position in the merit list and they failed to avail of the said offer, they cannot be heard to say that they have been denied admission to merit seats in accordance with the relevant rules governing selection for admission.

8. It is no doubt true that Respondent 4, who has been given admission against a merit seat in Respondent 2, stands at a lower position than the appellants in the merit list. But she falls in the second category of applicants because she had opted for a merit seat only and since she was not selected for a merit seat in the initial selection on the basis of her position in the merit list, she was kept in the waiting list for the merit seat and was given admission against a casual/drop-out vacancy on a merit seat in Respondent 2 in accordance with the Rules. We, therefore, do not find any infirmity in the action of the authority in selecting Respondent 4 for admission against a merit seat in Respondent 2.

9. The appeals, therefore, fail and are accordingly dismissed. No order as to costs.