
(2011) 08 CHH CK 0014
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 5488 of 2010

Priya Gupta

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2011) 5 MPHT 54

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Rajendra Tiwari, Mr. P.S. Koshi, Mr. Matin Siddiqui and Mr. Vaibhav Shukla, for the Appellant; Anumeh Shrivastava, Kishore Bhaduri, A.A.G. for the State/Respondent Nos. 1, 3 and 4, Mrs. Fouzia Mirza, Advocate for the Respondent No. 2/Union of India, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By these writ petitions filed under Article 226 of the Constitution of India, petitioners are challenging the order dated 10-9-2010 (Annexure P-1) whereby their admissions to the MBBS Course have been cancelled. The petitioners are also challenging the directions of the State issued in Annexure P-2, dated 10-9-2010 for lodging the First Information Report. Brief facts of the case according to the petitioners are that they had appeared in Pre-Medical Test conducted by the State of Chhattisgarh in the year 2006. Petitioner Akanksha Adile secured general rank as 3893 and as she belongs to Scheduled Caste Category, her rank in S.C. Category was 396. Petitioner Priya Gupta secured general rank as 1614. The counselling was held for Jagdalpur Medical College on 22nd and 23rd August, 2006 and 2 seats from Central quota were reverted back to Jagdalpur Medical College vide Annexure P-4, dated 8-8-2006 and the names of the petitioners find place for their admission in Jagdalpur Medical College in the list (Annexure P-5) enclosed to the letter dated 8-8-2006. The contention of the petitioners is that since their admissions were in accordance with the directions of the Government on the basis of reversion of

seats of Central quota, their admissions were in accordance with law and since they have studied professional course upto Part II, their admission cannot be questioned at this stage and no FIR can be lodged for inquiry of such admission. In the light of these facts the petitioners pray for the following relief(s) :--

(i) To kindly quash the impugned cancellation of admission order dated 10-9-2010, which is annexed as Annexure P-1.

(ii) To kindly quash the impugned direction given vide letter dated 10-9-2010, which is annexed as Annexure P-2.

(iii) To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.

2. The stand of the State/respondent Nos. 1 and 3 is that CGPMT for academic year 2006-2007 was held in which aspirants for admission in medical course appeared. There were 3 Medical Colleges in the State of Chhattisgarh, they are, (1) Pt. JLN Medical College, Raipur, (2) Chhattisgarh Institute of Medical Science (CIMS), Bilaspur, and (3) Govt. NMDC Medical College, Jagdalpur. The distribution of seats is 100 each for Raipur and Bilaspur Medical Colleges whereas 50 for Jagdalpur Medical College. Out of total number of seats, 15% seats are given under the All India Quota and 3% seats are given under Central Pool Quota, meaning thereby that out of 100 seats, 18 seats should go to the Central Government for allotment by them to the students of CPMT and also for the students of Union Territory. Thus, so far as Raipur and Bilaspur Medical Colleges are concerned, the State has to distribute 82 seats for each Medical College and 41 seats for Jagdalpur Medical College. Petitioner Ku. Akanksha Adile is the daughter of the then Director, Medical Education, Dr. S.L. Adile who by virtue of his position could be said to be the Superior Officer for conducting and controlling the pre-medical examination and post graduate medical admission.

3. It is the petitioners' stand that All India Quota seats were reverted to the Director, Medical Education (for short "DME") vide Annexure P-4, dated 8-8-2006 whereby a categorical direction alleged to have been issued by the Assistant Director General, Directorate General of Health Services & Medical Examination Cell, New Delhi, stating that in case 15% of all India Quota remains vacant after 23-8-2006, they may be treated as surrendered to State quota. The contention of the petitioners is that according to the final allotment/re-allotment list of MBBS/BDS seats under All Indian Quota (Second Round), 2006, two seats in merit Nos. 2196 and 2203 were reverted back to Govt. NMDC Medical College, Jagdalpur in the name of Akanksha Adile and Priya Gupta and their allotment date appears to be 8-8-2006.

4. Learned Counsel for the State/respondent Nos. 1 and 3 have submitted that if it was the true and correct position, then there was no occasion for the Dean, Govt. NMDC Medical College, Jagdalpur to seek direction from DME on 30-9-2006 more so when the counselling for Medical College, Jagdalpur was held on 23-8-2006 for allotment of those 2 seats. The said, askance by the Dean,

Medical College, Jagdalpur as alleged by the petitioners was on 30-9-2006 and directions were issued by the then DME on 30-9-2006 to the Dean directing him to inform all the students on Telephone for counselling and in case none of the candidates appeared on information then to hold counselling for those students who happened to be present in the College. Surprisingly, the daughter of DME, i.e., petitioner Akanksha Adile and another candidate Priya Gupta were present in Jagdalpur Medical College on that particular day without information to them on record and accordingly they were admitted in the course. This action on the part of entire machinery appeared to be well enveloped within dark clouds of doubts. The said doubts were further cleared by the Directorate General of Health Services and Medical Examination Cell, New Delhi, vide letter dated 28-10-2009 addressed to complainant Dr. Anil Khakariya, who is an intervenor in these writ petitions. This information was supplied to Dr. Anil Khakariya under the Right to Information Act stating that no such allotment of seats to Jagdalpur Medical College was made by-letter dated 8-8-2006. Copy of the letter dated 28-10-2009 was filed as Annexure R-1. Therefore, learned Counsel for respondent Nos. 1, 3 and 4 has further submitted that the letter dated 8-8-2006 allotting two seats to Jagdalpur Medical College under Central Pool Quota is sham. It was further stated that the officials at the connivance of and in collusion with the then Director, Medical Education namely Mr. S.L. Adile got his daughter Akanksha Adile and another petitioner Priya Gupta admitted in the Medical College, Jagdalpur contrary to the above distribution scheme.

5. In the Supplementary counter-affidavit filed by Prof. Sanjay Shrivastava, Assistant Director General (Medical Education), Directorate General of Health Services, Nirman Bhawan, New Delhi, on behalf of the Central Government, it has been specifically stated that the Director General of Health Services neither made any allotment of MBBS seats to the candidates in Jagdalpur Medical College, Jagdalpur under 15% All India Quota for the year 2006 nor made any reservation for allotment of MBBS seats in Medical College, Jagdalpur under 15% All India Quota for the year 2006 and also there was no 3% Central Pool Quota for Jagdalpur Medical College.

6. Earlier, a counter-affidavit was filed on behalf of Central Government by Professor Mangala Kohli, Director General (Medical Education), Directorate General of Health Services, Delhi, in which also it has been specifically stated denying the allegations made in the writ petition that no allotment of seats in Govt. NMDC and Medical College, Jagdalpur under 15% All India Quota for the year 2006 was made nor sent any allotment letter to DME, Chhattisgarh as well as Jagdalpur Medical College, Jagdalpur and Rank Nos. 2196 and 2203 were achieved by different candidates. In the counter affidavit, it was also mentioned that complainant namely Dr. Khakhariya has been informed in response to question No. 11 raised by him that Rank No. 2196 belongs to Ms. Delma who has been allotted MBBS seat of Govt. Medical College, Salem (TN 09) on 8-7-2006 and Rank No. 2203 belongs to Mr. Saurabh Uniyal who was marked absent on 8-7-2006 and the Directorate has not made any allotments to Ku. Akanksha and

Ku. Priya under 15% All India Quota in the year 2006.

7. It is not disputed that there were 3 Medical Colleges in the State of Chhattisgarh; the Chhattisgarh Pre-Medical Test Examination for the year 2006-2007 was conducted in the year 2006; results were declared before July, 2006 and the first counselling was held on 21st and 22nd July, 2006 and the second counselling was held on 23rd August, 2006. The merit position of these two petitioners as per annexures dated 30-9-2006 is as follows :--

(1) Ku. Priya Gupta - Merit No. UR 1614

(2) Ku. Akanksha Adile - Merit No. SC 396/3893

The last candidate admitted in Govt. Medical College, Jagdalpur was Ms. Pooja Khetrapal, under unreserved quota (female) whose merit number was 188. Therefore, no candidate after the merit No. 188 was admitted. As mentioned above, the merit position of petitioner Ku. Priya in unreserved female quota was 1614. Therefore, the candidates who got ranks between Merit Nos. 189 and 1613 were not given opportunity to seek admission. Likewise, the last candidate admitted under SC Category was Ku. Pratima Koshewara, whose merit position was 48. The merit position of Ku. Akanksha Adile as mentioned in Annexure P-11, dated 30-9-2006 under S.C. Category was 396. Therefore, the candidates whose ranks were in between Merit Nos. 49 and 395 were not given any opportunity to get admission or to attend the institution.

8. In the counter affidavit filed on behalf of State of Chhattisgarh/ respondent Nos. 1 and 3, it has been stated that the instant case is a case which can, beyond the reasonable doubts, be said to be a case of admission strictly on fraud or fraudulent basis. It has been further stated that such fraud is not attributed as an outcome of lack of knowledge or as an outcome of acting bonafide without notice and the then DME had every knowledge that the seats from Union of India have not been reverted, despite that a document to that effect was prepared and was used for admitting his own daughter Akanksha Adile and another candidate Priya Gupta knowing fully well that the document is not genuine and ultimately they got admissions by appearing on the last date, i.e., 30th September, 2006 without getting any notice. If two seats were correctly reverted back to the State vide letter dated 8-8-2006 then there was no justification in concealing this fact in the counselling held on 23-8-2006 and this Court may not allow such illegality to culminate into a valid justification thereby allowing fraud to be encouraged in the fashion.

9. In view of the foregoing discussion, we are of the opinion that there is violation of Article 14 of the Constitution of India as more meritorious candidates were deprived of opportunity to get admission. Unless prompt information could issue in such circumstances to the candidates meritorious than the petitioners, they could not have known that any of them is a fortunate person to get the seat. In any case, the petitioners could have already been admitted in the course and due to their candidatures to the admissions, perhaps, intentionally the other

candidates were not informed. Otherwise, the whole intention to give admission to these petitioners in such a way would have become futile. This Court cannot encourage a wrong doing by which there is gross violation of provisions of Article 14 of the Constitution depriving the opportunities of eligible candidates who are meritorious in comparison to the petitioners in getting admission. We are conscious that the petitioners, who were not entitled to continue the studies but subject to result of the writ petition they are continuing, would no more be benefited and although they will suffer personal loss but there is no place of sentiments in the field of law. Thus, we are of the opinion that the petitioners do not acquire any right under the umbrella of interim order.

10. Learned Counsel for the petitioner has placed reliance in State of Maharashtra Vs. Milind and Others, , and submitted that at this stage, if any action is taken against the petitioners, it may lead to depriving the service of doctors to the Society on whom huge public money has already been spent. But in case of Milind (supra), the person had become a doctor 15 years back. Therefore, it was directed that no benefit being an ST candidate would be given to him. But the facts of the instant case are quite different from that of Milind's case (supra). The case in hand is regarding admission and without following the eligibility norms the petitioners got admissions by fraud or undue influence and after their admissions, the dispute has arisen by the complainant, but in the case of Milind (supra), the dispute had come before the Hon'ble Supreme Court after 15 years and the person concerned had already passed the course and had become a doctor, but in that case the benefit of caste reservation was not given to him by Hon'ble the Supreme Court. Therefore, Milind's case is distinguishable on facts of these cases.

11. We have noticed that legitimate candidates have been deprived of getting admissions as the information that two seats were lying vacant was concealed to them. No notice was issued to them and the petitioners who were not at all entitled to get admissions, as they stand very low in the merit list, were given admissions in such a way, which is not expectable from the Government or its officers.

12. Article 14 of the Constitution guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by an authority in a negative manner. It would be the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in any of the matter under the State and the officials of the State would remain committed to the Constitution and honestly serve the people of this country and not spoils the system by acting inverse of the Constitution. In other words, if an illegality or irregularity has been committed in favour of any particular individual or a group of individuals by an Authority, which can be held to be State within the meaning of Article 12 of the Constitution, the said act amounts to violation of principles of natural justice.

13. In the matter of Union of India and Another Vs. Tulsiram Patel and Others, in

Para 95, Hon''ble the Supreme Court held as under :--

The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject matter of that article. Shortly put, the syllogism runs thus :--

Violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of the State action, it is a violation of Article 14, therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to the Legislation and State action but also where any Tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such a matter fairly and impartially.

(Emphasis supplied)

14. The question arises here as to whether the principles of natural justice and equal opportunity have been followed or not at the time of consideration of allotments of seats for admission ? As discussed in the foregoing paragraphs, the petitioners have been benefited in exclusion of others by undue influence and way of an irregular or illegal manner. The officials concerned are supposed to be totally independent and impartial while discharging their function in the process of admissions to the MBBS course. The public interest must be taken as supreme consideration and there may not be any place for individual benefits. Public interest requires no compromise. Any violation thereof spoil the system. Therefore, if such acts are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal allotment of seats.

15. In the present case, there was denial of equal opportunity by ignoring the meritorious and suitable candidates in comparison to the petitioners, which amounts to violation of natural justice. Therefore, we have no hesitation in coming to the conclusion that the petitioners were given admissions in utter violation of principles of natural justice, which are an integral part of the guarantee of equality assured by Article 14 of the Constitution. In view of the above discussion, we do not find any good reasons warranting interference in the impugned orders. Both the writ petitions are liable to be and are dismissed. No order as to cost (s).