
(2017) 02 MP CK 0196
In the Madhya Pradesh High Court
Case No : 7055 of 2016

Sanjay Baichen

APPELLANT

Vs

M/s Navbharat Press (Bhopal) Pvt. Ltd.

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Citation : (2017) 02 MP CK 0196

Hon'ble Judges : P.K. Jaiswal, Virender Singh

Bench : Single Bench

Advocate : Pramod C. Nair, Shri Sunil Jain, Peyush Jain, A.M. Mathur, Abhinav P. Dhanodkar

Judgement

1. The petitioner before this Court, a student belonging to Scheduled Caste, is aggrieved by cancellation of his admission dated 6/10/2016(Annexure-P/19), which was granted to him on 5/10/2016 at Shyam Shah Medical College, Rewa(SSMC).

2. The contention of the petitioner is that he has participated in the All India Pre Medical Entrance Test (NEET UG 2016) and scored percentile of 93.055607 and obtained 377 marks. The petitioner participated in Online counselling and on 2/10/2016 the respondent No.1 published a list of seat allotment wherein the petitioner's name was at S.No.1339 and Government College i.e., Shyam Shah Medical College, Rewa was allotted to him. On the next date, the said list was cancelled. In compliance with the Hon'ble Supreme Court order dated 3/10/2016, passed in W.P. Civil No.76/2015, the allotment result published on 2/10/2016 stands cancelled and notification to the effect was published Online in the site of Director of Medical Education, Government of Madhya Pradesh, Bhopal.

3. According to the petitioner, on 3/10/2016 he was informed that earlier list prepared on 2/10/2016 has been cancelled and he was again given a choice to give a preference vide Notifications dated 3/10/2016 and 4/10/2016. The petitioner again submitted his choice on 4/10/2016. On the basis of Online

counselling, on 5/10/2016, again seat at Shyam Shah Medical College, Rewa was allotted to him under the ST category. He had fulfilled all the formalities in compliance to allotment and on 7/10/2016, a SMS has been received by the petitioner stating therein that his allotment has been cancelled and the reason assigned is that there was an error in allotment of physically handicapped candidate.

4. The contention of the learned counsel for the petitioner that large number of candidates who have secured less marks have been allotted various other medical colleges and the petitioner at this juncture, cannot be given admission in any Medical College because the deadline fixed by the Hon''ble Supreme Court of India, keeping in view the judgment delivered in the case of Ashish Ranjan Vs. Union of India and others in W.P. No.76/2015, is over. The petitioner being a more meritorious candidate is being thrown out of College for no fault on his part.

5. The stand of the respondent Nos.1 and 3 is that the petitioner has obtained 377 marks against the SC Open category, whereas the cut off marks against SC Open category is 379. No other person who is having less marks against the SC Open Category has been allotted a seat in any other Government College.

6. In the rejoinder, the petitioner raise a plea that the seats at GRMC, Gwalior, MGM Medical College, Indore and GMC, Bhopal are vacant.

7. In reply, the respondent Nos. 1 and 3 have submitted that the seats are lying vacant for ST Open category in the GRMC, Gwalior, MGM Medical College, Indore and GMC, Bhopal, In GMC, Bhopal, there is only one seat belonging to ST quota . In MGM College, Indore, there is only 1 seat vacant for ST category and in GRMC Gwalior, there is also one seat ST(handicapped) category are vacant.

8. The cut off marks for SC category(Open) in Government Medical College is 379 marks. In respect of grant of admission, the stand of the respondent Nos.1 and 3 was that allotment of petitioner was provisional as there was an error committed by MP Online in counselling and the same has been rectified subsequently and due to such error the admission of 26 students were affected.

9. The affidavits of Director of Medical Education, Bhopal and Associate Professor & Head Department of Biochemistry of Shyam Shah Medical College, Rewa have been filed in respect of the aforesaid fact.

10. On 18/12/2016, additional affidavit has been filed by Director, Medical Education, Bhopal.

11. First round of counselling was held in between 26/08/2016 to 10/09/2016, second round of counselling was held between 23/09/2016 to 30/09/2016(till 5.00 a.m.) and third round of counselling was held between 30/09/2016 (from 7.00 a.m.) to 7/10/2016 (till 5.00 p.m.).

12. After extension of time by the Hon''ble Apex Court for admission of students for MBBS & BDS course, it permitted admission upto 7/10/2016. Third round

counselling was held between 30/09/2016(from 7.00 a.m.) to 7/10/2016(till 5.00 p.m.). The petitioner was provisionally allotted a seat in SC (open) Category in respondent No.3/College. During conducting of the third round counselling, two complaints stating inter-alia that inspite of being eligible they were not properly allotted the seats. The complaints were referred to MP Online which immediately rectified the mistakes and sent an E-mail to the department. It has been found that due to non-allotment of seats to Physically Handicapped candidates at proper place, 26 candidates were affected.

13. Mr. Abhishek Haryani, who was earlier allotted GMC, Bhopal but after rectification he was upgraded at MGM Medical College, Indore in unreserved Handicapped Category. Similarly, Yashvi Barfa, who belongs to OBC Handicapped Category was not allotted any seat but after rectifying the error she was allotted a seat in Chirayu Medical College, Bhopal. After such rectification not only the petitioner but two other candidates namely Mr. Mohit Khatrikar and Rajat Rawal were not allotted a seat in any college.

14. After completing the third round of counselling, the vacancy status of seats under all category prior to offline counselling on 7/10/2016 at 7.00 p.m. shows that there were only two seats (GRMC, Gwalior and SSMC, Rewa) under SC Category were available for MBBS Course. Against those two seats in the offline counselling, Mr. Mohit Khatrikar, who has scored 379 marks allotted seat at SSMC, Rewa and Mr. Vishal Bhalse who scored 383 marks were allotted at GRMC, Gwalior.

15. In the case in hand, the petitioner is having less marks as compared to other candidates who were allotted seats in the offline counselling for Government Medical College namely Vishal Bhalse (383 marks) and Mohit Khatrikar, (379 marks). Therefore, his name could not be called for allotment of the seats in Government Medical College.

16. The Director, medical College in para - 10 of his affidavit has categorically stated that during the offline counselling the petitioner was called and he was informed that no seat for MBBS course is available in any Government College and he was apprised about the availability of seats in Private medical Colleges but he refused to opt any seat in private Medical Colleges.

17. As per the status of vacant seats, which was provided by MGM medical College, Indore, GRMC, Gwalior and GMC, Bhopal, it was mentioned that out of 4 vacant seats, 3 seats belongs to ST category and 1 seat belongs to UR category. On 17/12/2016, this Court directed to explain date wise vacant seat status, thereafter, again incharge Dean, MGM Medical College, Indore scrutinized minutely and it has been found by him that on 7/10/2016, seat of SC Category fallen vacant on account of not joining of one of SC candidate in MGM, Medical College, Indore, which could not be timely reported by the Dean MGM, Indore. A show cause notice has been served to the Dean of MGM, Medical College, Indore vide Annexure-P/15.

18. Rule 16(2) of MP Government Medical & Dental Colleges Admission Rules, 2016 provides conversion of seats of a particular category into another category. In case, the eligible candidates to the extent of reservation in any category are not available in other categories as given below :-

(i) The vacant seats of ST category shall be filled up by eligible SC category candidates.

(ii) The vacant seats of SC category shall be filled up by eligible ST category candidates.

(iii) In case, the eligible candidates to the extent of reservation ST and SC category are not available, the vacant seats shall be filled up by eligible OBC category candidates.

(iv) In case, the eligible candidates are not available, in these above THREE reserve category in the above manner, the vacant seats shall then be filled up by the eligible unreserved category candidates.

19. The Director, Medical Education in his oath has deposed that during the offline counselling, need did not arise for conversion of seats belonging to ST category to SC category in Government College and, therefore, the petitioner has no right to claim an allotment of seat which belongs to ST category.

20. After filing of additional affidavit by Director of Medical Education on 19/12/2016, the respondent No.4 - Shri R.K. Mathur, Ex-Dean of MGM, Medical College, Indore has been impleaded as respondent No.4. On 15/01/2017, detailed reply has been filed by the respondent No.4.

21. It is submitted by the learned Senior Counsel for the respondent No.4 that as per order dated 5/10/2016(Annexure-R- 4/3), Dr. Sharad Thora, Professor and Head, Department of Pediatrics, will represent the respondent as Dean in the counselling of N.E.E.T. 2016 State Quota, for 1st year MBBS Course for the academic year 2016-2017 for MGM Medical College, Indore, SAIMS, Indore, Index Medical College, Indore, Amaltas Medical College, Dewas, Modern Medical College, Indore and R.D. Gardi Medical College, Ujjain from 5/10/2016 to 8/10/2016 at Gandhi Medical College, Bhopal.

22. A detail of the chart given in para - 4 of reply reads as under :-

No.order/ document Date of Order Contents of the order

15109 05/10/16 Dr. Sharad Thora, Prof. & Head of Deptt. Of Pediatrics will represent the undersigned as Dean in the counselling of NEET 2016 State Quota for 1st year MBBS course for academic year 2016-2017 for 5 medical colleges from 5.10.2016 to 8.10.2016 at Gandhi Medical College, Bhopal.(Annexure - R-4/3).

15091 02/10/16 Dr. C.V. Kulkarni, Prof. & HOD of pathology was requested to represent the dean in the counselling of NEET 2016 from 3.10.2016 to

5.10.2016. (Annexure R-4/4).

15086 04/10/16 Various admission and scrutiny committees were formed for the purposes of scrutiny of documents of new candidates for 2016- 2017(Annexure-R-4/5).

15046 02/10/16 16 staff members were directed to proceed to Gandhi Medical College, Bhopal for counselling purposes of candidates who have been allotted seats through NEET 2016 from 3.10.2016 to 5.10.2016 to work under supervision and guidance of Dr. C.V. Kulkarni.(Annexure-R-4/7)

15036 02/10/16 Scrutiny Committee of faculty members of Team No.1 and team No.2 was constituted for scrutiny of documents from 3.10.2016 to 5.10.2016 under supervision of Dr. C.V. Kulkarni. (Annexure R-4/7)

15023 02/10/16 Admission Committee of faculty members of Team No.1 and Team No.2 was constituted for scrutiny of documents from 3.10.2016 to 5.10.2016.(Annexure-R-4/8)

4579 24/09/2016 Various staff members were allotted various works under supervision of Scrutiny and Admission Committees.(Annexure-R-4/9)

4585 24/09/2016 various staff members allotted works under supervision of Scrutiny and Admission Committees.(Annexure-R-4/10)

4366 24/09/2016 Coordinating Committee of Dr. Sanjay Dixit, Prof. & head. PSM and Dr. S.B. Bansal, Asso. Prof. PSM was constituted for coordinating and solving the problems arising during scrutiny/admission/allotment of new candidates. (Annexure R-4/11)

4362 24/09/2016 Admission Committee consisting Prof. Dr. G.K. Shukla, Nodal Officer and 5 other doctors was constituted for scrutinizing the documents of new candidates from 29.9.2016 to 30.9.2016.(Annexure R-4/12)

4372 24/09/2016 Scrutiny Committee of prof. Dr. A.K. Khatri, Nodal Officer and 3 other doctors was constituted for scrutinizing the documents of new candidates from 26.9.2016 to 28.9.2016.(Annexure R-4/13)

4368 24/09/2016 Admission Committee consisting Prof. Dr. S.K. Dadu, HOD of Forensic Medicine, Nodal Officer and 5 other doctors was constituted for scrutinizing the documents of new candidates from 26.9.2016 to 28.9.2016. (Annexure R-4/14)

4376 24/09/2016 Scrutiny Committee of Asso. Prof. Dr. Dharmendra Jhavar Nodal Officer and 3 other doctors was constituted for scrutinizing the documents of new candidates from 26.9.2016 to 28.9.2016.(Annexure-R-4/15)

4377 24/09/2016 Dr. V.S. Bhatia, Prof. Anaesthesia was appointed as Nodal Officer of Admission Committee constituted for scrutinizing the documents from 26.9.2016 to 28.9.2016. (Annexure R-4/16)

4364 24/09/2016 Scrutiny Committee comprising of Dr. P.S. Thakur, Asso. Prof., Forensic Medicine as Nodal Officer and 4 other doctors was appointed (Annexure-R-4/17)

4066 07/09/16 A photo match committee for NEET 2016 of Dr. S.K. Dadu, Prof. & HOD of Forensic Medicine as Chairman and 2 other doctors was constituted. (Annexure R-4/18)

4015 03/09/16 Various Nodal Officers were appointed for registration, inquiry and admission. (Annexure R-4/19)

4011 03/09/16 Admission Committee consisting of faculty members was constituted for scrutinising the documents of new candidates.(Annexure R-4/20)

4009 03/09/16 Enquiry Committee consisting of 3 faculty members was constituted. (Annexure R-4/21)

4009 03/09/16 Admission Committee of 8 faculty members was constituted for scrutinizing the documents of new candidates.(Annexure R-4/22)

3990 02/09/16 Scrutiny Committee consisting of Dr. C.V. Kulkarni, Prof. & HOD of Pathology as Chairman; Dr. P.D. Darkar, Prof. & HOD of Biochemistry as Nodal Officer and 6 other doctors was constituted for scrutinizing the documents of new candidates (Annexure R-4/23)

3988 02/09/16 Scrutiny Committee consisting of Dr. Salil Bhargav, Prof. & HOD of TB & Chest as Chairman; Dr. Dr. Salil Sakalle, Asso. Prof., Deptt of PSM as Nodal Officer and 5 other doctors was constituted for scrutinizing the documents of new candidates (Annexure R-4/24)

3986 02/09/16 Admission Committee consisting of Dr. Sanjay Dixit, Prof. Deptt of Pharmacology and Dr. S.B. Bansal, Asso. Prof. Deptt. Of PSM as Nodal Officers and 6 other doctors was constituted for scrutinizing the documents of new candidates (Annexure R-4/25)

23. From the aforesaid chart, it is clear that the work was distributed by the concerned respondent(respondent no.4) to various committees so that the work of counselling, admission, management, supervision, inquiry is properly conducted.

24. Dr. Sharad Thora, HPD of Paediatrics was requested to represent the Acting Dean Dr. R.K. Mathur in the counselling for NEET 2016 State Quota for First Year, MBBS for the academic session 2016-2017 for various Medical Colleges from 5/10/2016 to 8/10/2016. The aforesaid chart also shows that an error has been committed by MP Online and by the Counselling Committee because no verification was done.

25. It is also submitted by the learned Senior Counsel for the respondent No.4 the Hon"ble Supreme Court by order dated 30/11/2016 disposed of the SLP No.29209/2016(Annexure-R- 4/26) and made the following observations :-

"Needless to say, the present order has been passed as there has been a mechanical error by the State authority i.e. Counselling Committee, which consists of Director and senior professors. Keeping in mind the saying "to err is human" and we are satisfied that it is an error, we have issued this direction."

In the earlier part of the order, it was stated that -

"Mr. Mukul Rohatgi, learned General for India appearing for the State of Madhya Pradesh has submitted that the persons who are in-charge of the admissions have committed an error, but there is no malafide in the said error. It is urged by him that the concerned persons render unconditional apology for the mistake that has occurred. As there is unconditional apology, we accept the apology and the observations made by the High Court are expunged."

26. Learned Senior Counsel submitted that on 30/11/2016, Dr. G.S. Patel, medical Education, respondent No.4 - Dr. R.K. Mathur, Acting Dean, MGM, Medical College, Indore and Dr. Ulka Shrivastava, Dean, Gandhi Medical College, Bhopal were present before the Hon'ble Supreme Court. The learned Attorney general, who was appearing on behalf of State of M.P., very categorically admitted that there is no malafide in the error committed by the incharge of the admission. The concerned persons render unconditional apology for the mistake that has occurred, which was accepted by the Hon'ble Supreme Court and observations made by this Court are expunged.

27. He also submitted that the order dated 25/11/2016 is for removal of respondent No.4 from the post of Acting Dean, MGM Medical College, Indore and show cause notice dated 25/11/2016 with regard to excess admissions which were subject-matter of SLP No.29209/2016 were issued and published in the newspapers on 26/11/2016 just to shift the entire responsibility on respondent No.4 for excess admissions, but the Hon'ble Supreme Court has held that the Counselling Committee headed by DME and other professors for the error of excess admissions were responsible. The respondent No.4 requested to withdraw both these orders in view of the Apex Court order dated 30/11/2016, but no such order was withdrawn. He has also drawn our attention to the observations made in Contempt Petition No.769/2016 and Para -12 of the affidavit of Dr. G.S. Patel, Director, Medical Education and submitted that the vacant seat is originally of ST, but how it has been changed into SC, it can be explained only by the DME and Counselling Committee. He submitted that all these documents have been signed by the present Acting Dean - Dr. Sharad Thora. The respondent No.4 has no role to play. It is unfair on the part of DME to shift the entire blame on respondent No.4 for any mistake because constantly the Head of Department, - Dr. G.S. Patel and Chief Executive of the Department and Principal Secretary - Shri Prabhanshu Kamal were throughout present from 5/10/2016 to 7/10/2016 supervising the process of counseling with the help of Dr. Sharad Thora who was representing the then Dean, respondent No.4. Thus, in order to avoid responsibility, the DME has issued the show cause notice without any fault of respondent No.4 to make him a escape goat. All the three penal orders dated

25/11/2016 and 9/12/2016 have been passed to shift the responsibility of counselling committee headed by DME - Dr. G.S. Patel constituted under the admission Rules, 2016 on the shoulders of respondent No.4. Now the State Government has suspended Dr. G.S.Patel(Director of Medical Education) and his Headquarter has been shifted to Jabalpur. The Principal Secretary - Shri Prabhanshu Kamal has also been shifted from the post of Principal Secretary, Medical Education to some other post and, therefore, necessary direction be issued to the respondent No.1 to take appropriate steps in the matter.

28. Considering the facts and circumstances and so also the fact that the Hon"ble Apex Court directed to grant admission till 7/10/2016, no direction for grant of admission to the petitioner, as prayed can be issued nor there is any fault in counselling by which provisional admission was granted to the petitioner at Shyam Shah, Medical College, Rewa.

29. For these reasons, the petition filed by the petitioner is liable to be dismissed. In respect of the allegation made by the Director, Medical Education against the respondent No.4 in his affidavit dated 18/12/2016, we are of the view that at the relevant point of time, Dr. Sharad Thora, was acting and representing as Dean in the counselling for five Medical Colleges from 5/10/2016 to 8/10/2016 and as per the order passed by the Hon"ble Supreme Court on 30/11/2016, all the action taken against the respondent No.4 is illegal and, therefore, we direct the respondent No.1 to consider his reply(Annexure-R-4/33) dated 3/12/2016 and representations made by him before the respondent No.1 and pass appropriate orders therein in the light of observations made by this Court on 29/11/2016 in Contempt Petition, order dated 30/11/2016 passed by the Hon"ble Supreme Court and observations made in the present writ petition and file the compliance report supported with the affidavit of respondent No.1 before the Principal Registrar of this Court, within four weeks from the date of receipt of order.

30. With the aforesaid, the writ petition stands disposed of.