
(2013) 05 MP CK 0130

In the Madhya Pradesh High Court

Case No : Review Petition No. 666 of 2010

Shiv Kumar Sharma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Citation : (2014) 3 MPLJ 243

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

1. This application is filed seeking review of the order dated 30-9-2010 passed in Writ Petition No. 13958/2010. The petitioner herein was a successful candidate in Pre Medical Test (PMT) Examination, 2010. He was allocated in State quota against free seats in the college of respondent No. 3 Index Medical College. The petitioner could not deposit the requisite fees on 30-9-2010, though an order was passed in this regard in Writ Petition No. 13958/2010 on 30-9-2010. For ready reference, we reproduce the aforesaid order which reads as under:--

"The petitioner has sought following reliefs:--

"(i) This Hon''ble Court may kindly be pleased to direct the respondent No. 3 college to act in pursuance to the directions issued by the respondent No. 2 committee, under Rule 17 of Admission and Fee Regulatory Committee (Transaction of Business) Regulation, 2009.

(ii) This Hon''ble Court may kindly be pleased to direct the respondent No. 3 college not to cancel the admission of the petitioner without consent of the respondent No. 2 committee.

(iii) This Hon''ble Court may kindly be pleased to direct the respondent No. 3 college not to admit students directly in violation of Rule 7(1)(2)(3) of Admission Rules, 2008.

(iv) Any other relief which this Hon''ble Court thinks fit."

Learned counsel for petitioner submitted that the petitioner got the admission in M.B.B.S. Course in College of respondent No. 3. Though he has tried to submit his papers along with the fees, but it was intimated to the petitioner that his admission has been cancelled, however the original documents were retained by the College. It is submitted by the petitioner that in spite of order passed by respondent Nos. 1 and 2 Annexure P-5 and Annexure P-6, petitioner has not been given admission by respondent No. 3.

Shri Rajendra Tiwari, learned Senior Advocate appearing on behalf of respondent No. 3 opposed the aforesaid contention vehemently, who submitted that there was no question of denying the admission to the petitioner. The petitioner's admission was not cancelled, but the petitioner has not appeared in the College of respondent No. 3 and has not deposited the fees. Apart from this mere is no document to support the contention of petitioner that he has deposited the original documents. He further submitted that there is no document to show that petitioner prepared Demand Draft for a sum of Rs. 3,14,000/- payable in the name of respondent No. 3 for admission.

Shri Tiwari learned Senior Advocate after seeking instructions from respondent No. 3 submitted that me College is still ready to give admission to the petitioner, provided petitioner appears in the College of respondent No. 3 today itself along with a Demand Draft payable in the name of College for a sum of Rs. 3,14,000/- along with original documents required for admission.

On raising such contention, learned counsel for petitioner submitted that petitioner is not possessing the original documents and if petitioner is allowed 5 days time from today to produce the documents, petitioner shall produce the original documents. However, petitioner shall produce the photo copies of all the documents along with the Demand Draft for seeking admission in the college of respondent No. 3.

Though initially the aforesaid prayer is opposed by Shri Rajendra Tiwari, learned Senior Advocate, but subsequently he has agreed to this contention of petitioner that within a period of 5 days from today the original documents, as required for the admission shall be produced by the petitioner before the College of respondent No. 3.

In view of aforesaid contention, this petition is finally disposed of with following directions:--

1. The petitioner to deposit fees by way of Demand Draft payable in the name of respondent No. 3 for an amount of Rs. 3,14,000/- (Rupees three lakhs fourteen thousand only) and photo copies of original documents, in case the petitioner is not able to produce the original, in me College of respondent No. 3 today by 6.00 P.M.
2. The petitioner is allowed 5 days time from today to produce the original documents which are required for the admission in the college by respondent No.

3.

3. On compliance of aforesaid respondent No. 3 shall permit the petitioner to be admitted in the College and prosecute his studies of M.B.B.S. Course.

4. As the order is passed in presence of both the parties, both the parties shall communicate the order to their respective parties telephonically in respect of the order passed by the Court and respondent No. 3 shall accept the aforesaid Demand Draft and documents submitted by petitioner today itself.

Considering the facts of the case there shall be no order as to costs."

2. The contention of the petitioner is that on 30-9-2010 after passing the order, petitioner had tried to get Demand Draft prepared from the Bank, but it was Bank holiday so Demand Draft could not be prepared. However, the petitioner had appeared along with cash to be paid in the college of respondent No. 3, but it was not accepted. On the next day i.e. on 1-10-2010, the petitioner had got prepared the Demand Draft of Rs. 3,67,700/-, but it was not accepted by respondent No. 3 on the ground that the time period provided by the aforesaid order had expired and the petitioner was denied admission in the college of respondent No. 3.

3. Considering the grievance of the petitioner, we have entertained this review petition and issued notice to respondents. On 19-6-2012, when the case was listed for hearing, we had directed learned counsel for the State to seek instructions from the respondents, whether the petitioner can be accommodated for admission in the next academic session, so he may not lose his career. But it appears that respondents No. 1 and 2 have denied the aforesaid prayer of the petitioner and to adjust the petitioner in the next academic session. This matter has been placed before us for considering the grievance of the petitioner.

4. Shri Aditya Sanghi, learned counsel for the petitioner relied upon a judgment of Apex Court in Parmender Kumar and Others Vs. State of Haryana and Others, and submitted that the petitioner can be accommodated in the next academic session. He has also relied on Deepak Kumar Dugaya (Dr.) Vs. State of M.P. and Others, in support of his contention.

5. Learned counsel for the State has opposed the aforesaid contention and submitted that seat in the year 2012 cannot be allocated, for the next academic sessions. An affidavit of Dr. S.C. Tiwari, Director, Medical Education, Bhopal (M.P.), has been filed in this regard.

6. Learned counsel for respondents No. 3 submits that he has no objection, if the petitioner is accommodated government quota in the next academic session.

7. Shri S.C. Tiwari, in his affidavit has opposed the prayer of the petitioner, which reads as under:--

"3. That the counseling for admission in MBBS Course in Government as well as private medical colleges against government quota for the year 2012-13 is going

on and the counseling is online counseling. It is submitted that last date of counseling is 27-8-2012 and thereafter the seats will be allotted to the students against the government quota in private medical college. It is submitted that petitioner's admission relates to the year 2010 and in that year seat in Index Medical College against government quota were allotted and if the petitioner or somebody has been denied admission wrongly the seat of State quota for subsequent year cannot be allotted to the petitioner.

4. It is also submitted that if there is any mistake on the part of private medical college, the seats of subsequent year for which another students will be entitled as per merit cannot be allotted to the petitioner. It is further submitted that if this Hon"ble Court comes to the conclusion that petitioner was wrongly denied admission in the private medical college by the management of the college, the private medical college is responsible for the same and the seat of government quota deserves to be allotted to the petitioner."

8. From the perusal of the record, it is apparent that the main objection of the respondent No. 2 is in respect of conduct of respondent No. 3. However, in that regard/respondent No. 2 may take action against respondent No. 3. At present the petitioner is suffering and has not been allowed admission in spite of the order passed by this Court on 30-9-2010, we find it appropriate to consider the grievances of the petitioner and permit him to prosecute studies in the next academic session. In the matter of Parmender Kumar and others v. State of Haryana and others, the Apex Court considering the similar problem, held thus:-- "3. For the sake of convenience, we shall refer to the facts from SLP (c) No. 15974 of 2011, filed by Dr. Parmender Kumar and others. As indicated hereinabove, the appellants in all these appeals are candidates for admission to the postgraduate courses conducted by respondent No. 2 University against the Haryana Civil Medical Services (HCMS) reserved quota. As provided for by the Prospectus dated 6-1-2011, a common entrance examination was held for candidates who applied for admission against seats reserved for the HCMS quota, as also seats under the open merit category. The prospectus sets out the total number of seats in each course and the seats earmarked for the HCMS reserved category and also in respect of open merit.

4. According to the Prospectus, seats available for the postgraduate courses in the different disciplines indicate a total number of 145 seats available, of which 73 seats were reserved for the all India- quota, 29 seats were reserved for the HCMS reserved quota and 43 seats were reserved for the open merit category. As per the Prospectus, the last date of receipt of application was 24-1-2011 within 5 p.m. The common entrance examination was held as per schedule on 2-3-2011 and results were declared on 3-3-2011. Counseling was scheduled for 6-4-2011 and the academic session was due to commence on 10-5-2011.

30. It is no doubt true that the benefit of admission in the reserved category are many, but the same is the result of the policy adopted by the State government to provide for candidates from the reserved category and since the appellants

had been selected on the basis of merit, in keeping with the results of the written examination, the submission made by Mr. Patwalia that such admissions in the reserved category will have to be made keeping in mind the necessity of upholding the standard of education in the institution, as was observed in Mamata Mohanty case, is not applicable in the facts of this case. The appellants have shown their competence by being selected on the basis of their results in the written examination.

31. The submission: made by Mr. Vikas Singh for the State, the NOCs had been given to the appellants from the open category, also does not appeal to us, since the appellants were candidates in respect of the reserved category of the HCMS.

32. We, accordingly, have no hesitation in allowing the appeals and setting aside the judgment and order of the Division Bench of the Punjab and Haryana High Court. However, we appear to be facing the same problem, as was faced by this Court in Vinay Rampal case. The counseling process in these appeals was to be conducted on 6-4-2011 and the academic session was to commence on 10-5-2011. In other words, the appellants have already lost about six months of the courses in question. As was observed in Vinay Rampal case, the sands of time had run out which is inevitable in judicial process. Following the same reasoning, as was adopted in the aforesaid case, we direct that the appellant shall be admitted in the postgraduate or diploma courses, for which they have been selected, for the next academic year without any further test of selection."

The Apex Court in peculiar circumstances had allowed the prayer and directed that the candidate be accommodated for the next academic session without any further test and selection. The position is same in the present case, the petitioner could not get admission in spite of the order passed on 30-9-2010. In these circumstances, we find it appropriate to allow this application and issue the following directions:--

"1. The petitioner shall be permitted to prosecute his studies for MBBS Course in the next academic session i.e. 2013-14 in government quota, in the college of respondent No. 3 by allocating one seat in this regard.

2. Respondent No. 1 shall issue appropriate order in this regard within a period of 60 days from today.

3. Respondent No. 3 shall allow admission to the petitioner under the government quota for the next academic Session 2013-14."

C.C. as per rules.