
(2010) 09 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8382 of 2010

Subham Joshi (Dr.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2011) 2 RLW 1718

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Ashok Gaur, for the Appellant; N.A. Naqvi, A.A.G., Vishnu Sharma for A.K. Sharma for Respondent No. 3 and Rajendra Soni, for the Respondent

Final Decision : Allowed

Judgement

Mahesh Chandra Sharma, J.—By filing instant writ petition the petitioner has prayed to give him admission/allot seat in MD (General Medicine) Course in SMS Medical College, Jaipur and the admission of private respondent-Dr. (Miss) Aditi Mittal in MD (General Medicine) at SMS Medical College, Jaipur be declared illegal and be also quashed and set aside. On 29.6.2010 after hearing, the Co-ordinate Bench of this Court issued notices to the respondents and the respondent No. 2 was directed to keep one seat of MD (General Medicine) Courses vacant for the petitioner in SMS Medical College, Jaipur.

2. Heard learned counsel for the petitioner as learned counsel appearing for the respective parties.

3. Learned counsel for the petitioner submits that the petitioner in March 2010 passed MBBS Course from SMS Medical College, Jaipur. On 31.1.2010 the respondent No. 3 decided to conduct Pre-PG Medical Entrance Examination, 2010 for admission to MD/MS/Diploma Course in Medical College of Rajasthan. Petitioner being fully eligible for admission in non-service category, filled up the application form, before the stipulated last date. Thereafter, the petitioner was allotted the roll number in general non service category candidate. Thereafter, he

appeared in the aforesaid written examination. The respondent No. 3 declared the result of the aforesaid examination and in the result the name of the petitioner appeared amongst the successful candidates and he secured 988 marks and his rank was 22 in non-service general category. Petitioner also appeared in All India Pre-P.G. Medical Entrance Examination, 2010 in which he secured 1361 rank in unreserved general category. Counseling of All India Pre-PG Medical Entrance Examination, 2010 was conducted by the Director General of Health Science, Medical Examination Cell Government of India from 23.2.2010 to 17.3.2010. Petitioner was selected for admission in MS (General Surgery) at JLN Medical College, Ajmer. From 12.4.2010 to 14.4.2010 the respondent No. 2 announced the dates of counseling. Petitioner having rank at No. 22 in Rajasthan Pre PG Medical Entrance Examination, appeared in counseling in Rajasthan University of Health Science. The petitioner had given his choice for admission in MD (General Medicine) at Ravindra Nath Tagore College, Udaipur. On 13.4.2010 the petitioner was given allotment letter for his admission in MD (General Medicine) at RNT Medical College, Udaipur in first round of counseling. Since the petitioner had got subject of his choice in first counseling, he resigned on 19.4.2010 from the seat allotted in Central Quota. On 20.4.2010 the petitioner had joined the course of MD (General Medicine) at RNT Medical College, Udaipur. On 18.6.2010 the office of respondent No. 1 issued notification for second round counseling of Medical & Dental PG on 18.6.2010 in daily newspapers for service candidates. The petitioner being fully eligible for participation in second round counseling, 2010 appeared before the counseling board and had given preference for allotment of seat in MD (General Medicine) in SMS Medical College, Jaipur, as he had secured 988 marks and his rank was also No. 22. He was also not allotted seat/granted admission by counseling board and he was told that he has already been allotted seat of MD (General Medicine) at RNT Medical College at Udaipur and in his place one candidate Dr. (Miss) Aditi Mittal has been allotted the seat, of MD (General) Medicine at SMS Medical College, Jaipur and she was called in counseling prior to the petitioner. On 24.6.2010 the petitioner immediately submitted a representation to the respondent No. 2 pointing out that in first All India/Dental Counseling, 2010 the respondent No. 4 was allotted MD (Anesthesia) in SGPG Institute, Lucknow. He further pointed out that in second round of All India Medical & Dental Counseling, 2010, the respondent No. 4 was allotted MS (Ophthalmology) in MS Medical College, Jaipur and she could not hold two seats at one time and as such she was wrongly permitted in second round of counseling. On 5.3.2010 the respondent No. 4 participated in All India Medical & Dental Counseling, 2010 and she was allotted MD (Anesthesia) in SLPG Institute, Lucknow. The respondent No. 4 participated in the first counseling in non-service category in Rajasthan and she was allotted admission in MD (Paed) in SPMC Medical College, Bikaner. The respondent No. 4 had submitted her joining in SPMC Medical College, Bikaner for pursuing her MD (Paed) Course. On 24.4.2010 the second round of All India Medical & Dental Counseling, 2010 was held and the respondent No. 4 again illegally participated in the said counseling and she was allotted admission in MS (Optho) in SMS

Medical College, Jaipur.

4. Mr. Gaur, has drawn attention of the Court to Annex. 11 which runs as under:

5. According to Mr. Gaur on 9.4.2010 instructions were issued by Assistant Director (MD) Ministry of Health, New Delhi to the respondent No. 2 asking him to take specific action in respect of such candidates. It was informed that those candidates who have been allotted seat/admission in All India Pre PG first counseling and if they give their joining in Rajasthan, such candidates are required to give resignation from All India seat and further it was notified that the Board should ensure that a candidate should give his joining on one seat at one time.

6. Mr. Gaur has also filed an affidavit of the petitioner in which it was stated that he has challenged admission of respondent No. 4, as she could not have been permitted in second counseling in the State of Rajasthan. On 29.6.2010 after hearing the Co-ordinate Bench of this Court, issued notices to the respondents and the respondent No. 2 was directed to keep one seat of MD (General Medicine) Courses vacant for the petitioner in SMS Medical College, Jaipur. He mentioned in the aforesaid additional affidavit that the stay order was passed before 10:00 AM on 29.6.2010 because at the relevant points of time the court timings were from 7:30 AM to 12:30 AM. He immediately on stay order being passed, informed to the Principal, SMS Medical College, by way of letter with receipt No. 19506 dated 29.6.2010. He also mentioned in the aforesaid additional affidavit that after obtaining the certified copy of the same i.e. 29.6.2010, he submitted an application along-with copy of the stay order dated 29.6.2010 and requested that one seat of MD (General Medicine) was required to be kept vacant.

7. On the other hand Mr. N.A. Naqvi, learned AAG appearing on behalf of the respondents No. 1 and 2 has seriously opposed the aforesaid submissions of Mr. Gaur and submits that the respondent No. 4 had appeared in the Rajasthan State first round of the PG Counseling along-with her original documents and she was allotted M.D. (Paediatrics) seat at SP Medical College, Bikaner. She joined on 19.4.2010 and deposited her original documents on the same day at S.P. Medical College, Bikaner. Hence, she becomes eligible for appearing in second round of P.G. Counseling. Consequently, she appeared in the second round of Rajasthan State counseling and at that time her original documents were under the custody of S.P. Medical College, Bikaner. He further submits that a candidate who is allotted the seat in the Medical Colleges situated within the State, was permitted to participate in the second round of counseling on the basis of photo copies of the documents because his original documents were already in the concerned State Medical College. At the time of second round of counseling, all the Principles or their representatives were present and participated in the counseling as Members of counseling the candidates who opts subjects in the second round of counseling, his resignation from the College, where he was given admission was accepted by the Principal or his representative of the

concerned State Medical College from the previously opted seat and the vacant seat after the resignation was included in the second round of counseling immediately in order to ensure that no seat shall remain vacant in the State Medical Colleges. Therefore, only those candidates who had opted the P.G. seats in Rajasthan State Medical Colleges under All India Quota or State quota were exempted from depositing their original documents because their original documents were already in the custody of the respective State Medical Colleges at the time of earlier round of counseling.

8. Lastly, Mr. Naqvi, submits that if this Court allows the aforesaid writ petition, in such circumstances the transfer of present petitioner and the respondent No. 4 be made vice-versa.

9. Mr. A.K. Sharma, learned counsel appearing for the respondent No. 3, filed a reply in which he specifically mentioned that the present petitioner is aggrieved by the action of respondent No. 2 i.e. Convenor, Central Medical & Dental P.G. Admission Board-cum-Principal & Controller, S.P. Medical College and Associate Group of Hospitals, Bikaner, Rajasthan. The only role of respondent No. 3 is to conduct the examination and declare the result. After declaration of the result, the counseling is conducted by respondent No. 2 and if the petitioner is feeling aggrieved by the action of the respondent No. 2 in not permitting him in the second round of counseling without original documents, the answering respondent No. 3 cannot be held responsible for the same. It is pertinent to mention here that the Members of the Board are appointed/nominated by the State Government in which the answering respondent has no role to play.

10. Mr. Rajendra Soni, learned counsel appearing for the respondent No. 4, seriously opposed the aforesaid submissions of Mr. Gaur and submits that the respondent No. 4 was rightly given admission by the respondents in SMS Medical College, Jaipur, as she was at No. 21 and the petitioner was at No. 22 in the merit list of Pre P.G. Entrance Examination, 2010. He mentioned in the reply that the petitioner and the respondent No. 4 appeared in All India Pre PG Entrance Examination, in which the respondent No. 4 secured 1318 rank, whereas the petitioner was having 1361 rank.

11. When the Court asked from Mr. Rajendra Soni about Annex. 11 then he straight way told before the Court that he had no knowledge about the same.

12. First of All, this Court has to consider that on 29.6.2010 the Coordinate Bench of this Court after hearing the respondent No. 2 was directed to keep one seat of M.D. (General Medicine) Course vacant for the petitioner in S.M.S. Medical College, Jaipur. At the relevant point of time the court timings were from 7:30 AM to 12:13 AM. From the additional affidavit submitted by the petitioner it is specific clear that on 29.6.2010 the petitioner immediately informed about the aforesaid order to the Principal, SMS Medical College, Jaipur and on 29.6.2010 vide receipt No. 19506 itself the petitioner submitted a letter and after obtaining the certified copy of the order dated 29.6.2010 he submitted the same before

the respondent No. 2 despite that the respondent No. 2 did not keep one seat vacant. Annex. 11 which has reproduced hereinabove clearly shows that those candidates who have been allotted seat/admission in All PG first counseling and if they give joining in Rajasthan, such candidates are required to give resignation from All India Seat and further it was notified that Board should ensure that a candidates should give his joining on one seat at one time. The respondent secured 21st rank and she was rightly eligible for first round of counseling in Rajasthan whereas she was allowed MD (Pead) seat at Bikaner. Prior to her allotment of seat at Bikaner, she had already joined MD (Anesthesia) at SGZP, Lucknow, allotted to her from All India PG admission Board. The respondent No. 4 on 19.4.2010 i.e. the date of her joining MD (Pead) at SPMC, Bikaner, was required to produce resignation as per the rules of Pre PG Counseling. The respondent No. 4 had failed to produce any resignation letter from All India quota and this fact is corroborated by the fact that she attended the second round of counseling of All India Pre PG dated 26.4.2010 and she was allotted her seat of MD (Optho) at SMS Medical College, Jaipur. The respondent No. 4 was retaining more than one PG seat from 19.4.2010 to 26.4.2010 (one at SPGI, Lucknow and second is at SPMC, Bikaner). The respondent No. 4 could not have retained two seats at a time.

13. In note No. 3, of the schedule, it was specifically mentioned that candidates who were absent or rejected or not joined or by committee or resigned after seat allotted in the first round of counseling, will not be eligible for reallocation of the seat in the second round of counseling.

14. For these reasons mentioned here-in-above, the writ petition is allowed and the respondents are directed to give admission to the petitioner in MD (General Medicine) in SMS Medical College, Jaipur. However, the respondent No. 4 be put in admission in place of petitioner in RNT Medical College, Udaipur. There shall be no order as to costs.