
(1984) 10 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 19, 20 and 21 of 1984

Vijay Ramawat and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-10-1984

Acts Referred:

Rules of Admission to Medical Colleges in Rajasthan, 1983 — Rule 4(2)

Citation : (1984) WLN 534

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—In S.B. Civil Writ Petition Nos. 19, 20 and 21 of 1984, as per request of the learned Counsel for the parties, the following order was pronounced on April 27, 1984-

The writ petitions are allowed and the order Anx. 1 dated December 17, 1983 relating to the petitioners is quashed. Further consequence as a result of the aforesaid order shall follow. This will, however, be subject to the Rules, Regulations or any other instructions governing admissions to I M.B.B.S course. There will be no order as to costs of these writ petitions.

It was stated that reasons will be recorded later on.

2. Now, I proceed to set out the reasons. All the three writ petitions involve common questions. They were heard together and the order Anx. 1 dated December 17, 1983 is under challenge, in all the three writ petitions. This is a common order containing the reasons.

3. The petitioners in each of the writ petitions took the P.M.T. 1983 Examination which was held in the month of July, 1983. Results of the said Examination were declared on September 1, 1983. Petitioner Vijay Ramawat in S.B. Civil Writ Petition No. 19 of 1984 secured 234 marks and was shown to have been placed

at the 466th position in the merit list. Petitioner Ashok Kumar in S.B Civil Writ Petition No. 20 of 1984 secured 234 marks and was placed at 473rd position in the merit list. Petitioner Amra Sayeed in S.B. Civil Writ Petition No. 21 of 1984 secured 234 marks and was placed at 467th position in the merit list. Call for interview in the process of admission to M.B.B.S. Course, in the first instance was sent to those whose names were in the merit list upto the 465th position, being consolidated who had secured 235 marks or above. The petitioners received call for interview before a Board on October 20, 1983 at Jaipur. The petitioners appeared before the Selection Board consisting of the Principals of the five Medical Colleges of Rajasthan. They were interviewed. Before being interviewed, the petitioners were called upon to fill in a form stating that if they are not selected for M.B.B.S. they will join a Bachelor of Dental Surgery Course. The petitioners chose to do so because they were told that unless they do so they will not be interviewed at all. The names of the petitioners were shown in the list of candidates selected for M.B.B.S. at Dr. S N. Medical College, Jodhpur. They proceeded to report in the office of the Principal and Controller, Dr. S.N. Medical College and Associated Group of Hospitals, Jodhpur (non-petitioner No. 2). They were also called upon to undergo a medical examination which the petitioners underwent. Each of them deposited Rs. 406/- being the fee required in this behalf. They did so on different dates. Subsequently each of the petitioners received the copy of the order Anx. 1 dated December 17, 1983 by which they were told that their admissions to M.B.B.S. Course were wrongly made because of bonafide clerical mistake and so the same are cancelled with immediate effect and they could collect their fees. The petitioners filed the writ petitions praying that the order Anx. 1 dated December 13, 1983 may be declared to be invalid and it may be quashed and the State of Rajasthan (non-petitioner No. 1) and non-petitioner No. 2 may be forbidden from giving effect to the same. The writ petitions were filed on January 2, 1984.

4. On behalf of the non-petitioners caveat was lodged. Reply was filed on behalf of the non-petitioners on January 9, 1984 along with Office Order (Ex. R. 1/A) dated October 29, 1983. Extract copy of merit list (Ex. R.I), communication (Ex. P/2) dated October 11, 1983, Chart of B.D.S. (Ex. R. 2/A), marks obtained by the petitioner in Science subject I Year T.D.C. (Ex. R/3) any copy of order of admission in M.B.B.S. dated November 9, 1983 Ex, R 4). It was stated that the Selection Board was constituted of five Principals of Medical Colleges along with Director Medical and Health Services Rajasthan Jaipur. The Principal of S.M.S., Medical College, Jaipur was Convenor of the Selection Board. It was averred that originally there were 550 seats for M.B.B.S. Course, 10 were sanctioned for B.D.S. (Bachelor of Dental Surgery). Subsequently 7 more seats were increased towards reciprocal basis with Jammu and Kashmir candidates. Out of 550 seats of M.B.B.S., 77 were reserved for Scheduled Caste and Scheduled Tribe candidates. Five seats were reserved for Jammu & Kashmir (now 12). Fifteen seats were reserved" for Central Government nominees. Total seats were thus 557. Against the general quota 449 candidates were admitted according to merit.

The last candidates against the quota admitted had obtained 235 marks in P.M.T. Examination. Against 10 B.D.S. seats the remaining four candidates who obtained 235 marks were given admission and 4 more candidates who obtained 234 marks were admitted in the B.D.S. course. One seat was filled by Scheduled Caste Candidate and 1 seat was filled by Scheduled Tribe Candidate. R. 4(2) of the Rules of Admission to Medical Colleges in Rajasthan for 1983 (for short "the Rules" herein) provided that candidates securing equal number of marks in the Pre-Medical Tests will be admitted in the order of preference mentioned therein. The petitioners could not be admitted as the last candidate admitted had obtained 235 marks. 234 marks were obtained by 16 candidates. The sixteen candidates were called for interview by the communication dated October 11, 1983 to appear before the Selection Board on October 20, 1983. They were called for interview on the condition that if there is vacancy in the M.B.B.S. Course or in the B.D.S Course, they might be admitted. Out of 449 candidates admitted against the general quota, no candidate dropped. It was stated that four candidates who had obtained 234 marks had more marks than the petitioners in their First Year of the Three Year Degree Course. Vijay Kumar Ramawat obtained 330 marks, Miss Suman Rawat obtained 310 marks, Mr. Sudhir Pal Singh obtained 296 marks and Miss Samina Behman obtained 295 marks. Ashok Rathi had obtained 294 marks and so he could not be admitted to B.D.S. Course, Miss Asra Sayeed obtained 271 marks she could not be admitted. Vijay Ramawat had obtained only 250 marks and, therefore, he could not be admitted. It was submitted that the petitioners could not be admitted in M.B.B.S. Course or in the B.D.S. Course but the error apparent was committed in admitting them and the same was rectified by cancelling their admissions. In para 4 of the reply it has been stated as under:

When it was brought to the notice of the Principal, Jodhpur, on 1-12-1983, that though these 3 petitioners had been admitted but their admission orders have not been received from the Convenor of the Selection Board from Jaipur. A communication is addressed by the Principal to the Convenor of the Selection Board to ascertain the correct position. The Convenor asked Principal to come down to Jaipur along with all the record. The Principal, Medical College, Jodhpur went to Jaipur and matter was scrutinised then it was found that those 3 candidates have not been admitted to M.B.B.S. or D.B.S. Courses. But they have been admitted wrongly without their being proper order of their admissions from the Convenor of the Selection Board. The matter was discussed by the Principal and Convenor with the Government and it was decided that this bonafide mistake has been committed therefore the same should be rectified by cancelling the admission of these candidates.

5. Arguments for the purpose of admission of the writ petitions were heard and concluded on January 12, 1983. On January 16, 1984 learned Counsel appearing for the parties stated that the writ petitions may be disposed of finally. It was submitted by them that the pleadings of the parties which were referred to on January 12, 1984 are complete in all respects and no supplementary pleadings

are necessary in this connection. They also stated that they do not want to advance any additional arguments. In the proceedings of April 27, 1984 inter alia it has been recorded as under:

Learned Counsel appearing for the parties submit that as these cases relate to the admission of the petitioners to I M.B.B.S Course, the orders in these cases may be pronounced and the reasons may be recorded later on. As considerable time has elapsed after the arguments were heard, the learned Counsel appearing for the parties were afforded opportunity to make further submission if they so like. Learned Counsel appearing for the parties availed of that opportunity and made submissions.

6. It was contended on behalf of the petitioners that the notices for interview were issued to the petitioners. They were interviewed and thereafter the order admitting them were passed by non-petitioner No. 2. They deposited their fees and spent money on books and there was no fraud on their part and so their admissions could not be cancelled by means of the order Anx. 1 dated December 17, 1984 by non-petitioner No. 2. The decision of estoppel is attracted against non-petitioner No. 2. The material part of Anx. 1 dated December 17, 1983 is as follows:

The admission of the following students to I M.B.B.S. Course were wrongly made because of bonafide clerical mistake. The names of the students did not appear in the admission list for M.B.B.S. Course. Therefore, the admission of these students made under order No. 1(3)C/No/JU/83/12668-61 dated 7th November, 1983 Miss Asra Sayeed; No. F. 1(3)G/HC/JU/83-84/12786-68 dated 9-11-83 only Vijay Ramawat and No. F. 1(3)G/MC/JU/83/13345-50 dated 25-11-83 Ashok Kumar Rathi is hereby cancelled with immediate effect and they can collect their fees.

Int. No. Roll Name of candidate Father's name

470 5387 Vijay Ramawat S.N. Ramawat 471 5434 Asra Sayeed (Miss) S.M. Sayeed 474 10124 Ashok Kumar Rathi P.D. Rathi

Sd/- Principal Controller

Reliance in this connection was placed by the learned Counsel for the petitioner on Geeta Misra v. Utkal University AIR 1971 Ori. 276, K.R. Shivdatta v. Government Medical College AIR 1972 Mysore 135, Anil Kumar Srivastava Vs. University of Allahabad and Another, , Pratima Das Vs. State of Orissa and Others, and Bundelkhand University v. Laxmi Narain Yadava AIR 1983 All. 378.

7. Mr. A.K. Mathur, learned Additional Advocate General on behalf of the non-petitioners submitted that there was a mistake in admitting the petitioners and that mistake cannot be allowed to be perpetuated. According to the Rules the petitioners could not have been admitted and so non-petitioner No. 2 was right in cancelling their admissions. Learned Advocate General pressed that all admissions made were purely on the basis of marks obtained by the candidates

and no candidate securing less than 235 marks could have been admitted in M.B.B.S. against general quota list and since the petitioners' total marks obtained by them were 234, they were not admitted. The candidates who had obtained 234 marks and marks obtained by them in Science subject in First Year IPC Course were also brought to my notice i.e. R/3 was referred.

8. I have considered the rival contentions of the learned Counsel for the petitioners as well as the learned Additional Advocate General. It appears from Ex. R. 2 dated October 11, 1983 which is issued for Convenor Admission Board and Principal and Controller that the petitioners along with other candidates who had secured 234 marks out of 400 marks in P.M.T. Examination were required to appear for interview on October 20, 1983. There is no order of admission in regard to the petitioners issued by the Convenor, Admission Board (Selection Board). A perusal of Ex. R. 1 shows that the Office Order showing that petitioner Vijay Ramawat who was provisionally selected for M.B.B.S. Course was found medically fit and as he had deposited the college fees he was directed to report himself to the Professor and Head of Department of Anatomy/Physiology Biochemistry and P.S.M. of the College immediately for further instructions to attend the regular classes. Reference was made to the office Order dated November 7, 1983 of Associated Hospitals Jodhpur. It is clear that the admission List in regard to the vacancies were issued from time to time. It appears from Anx. 1 that the names of the petitioners did not appear in the Admission List for M.B.B.S. Course which was issued by the Selection Board. It is not the case of the petitioners that the Convenor, Admission Board and Principal and Controller of Associated Group of Hospitals, Jaipur, had admitted the petitioners. The Principal, Dr. S.N. Medical College and the Associated Group of Hospitals, Jodhpur, issued orders for admission of each of the petitioners on different dates as is borne out from Anx. 1, representing them that they have been admitted. In these circumstances the question is whether the Principal of Dr. S.N. Medical College and the Controller of the Associated Group of Hospitals Jodhpur could cancel admission of the petitioners when he himself asked them and represented that they have been admitted to M.B.B.S. Course and asked them to deposit fees. It is clear from Ex. R. 4 that they were medically examined and found fit and were asked to attend the regular classes. Could he cancel their admissions by issuing Anx. 1 dated December 17, 1983?

9. This has necessitated to read Clauses 4(D), (E)(F) and (G) of the Rules. They are as follows:

(D)(1) The eligible candidates will be admitted in the order of merit for the general as well as reserved seats (excepting the seats belonging to category (a) and (c) of Rule 2 judged on the basis of marks secured at the Pre-Medical Test.

(2) Candidates securing equal number of marks in the Pre-Medical Test will be admitted in the following order of preference-

(i) One who had secured more marks in Science subject of 1st year examination

of the Three Year Degree Course, or its equivalent examination.

(ii) Among candidates securing equal number of marks in the 1st Year Examination of the Three Year Degree Course or its equivalent Exam, as also, those who have passed in lesser number of attempts will be given preference if there is a further tie, candidates securing more marks in Higher Secondary Examination or in its equivalent examination will be given preference.

(E) Interview By Admission Board : Candidates eligible for admission shall be called for interview by the Principal Sawai Man Singh Medical College, Jaipur to appear before the Admission Board constituted by the State Government. Interviews will be taken in about 10-15 days after the Pre-Medical Test result is declared. The list of candidates called for interview will be put on the notice Board of the SMS. Medical College, Jaipur three days before the date of interview. The candidates found unsuitable by the Admission Board will be rejected.

(F) Allotment of place of study : The Admission Board after duly considering the place of residence and preference given by the candidate in his/her application shall allot selected candidates to the various medical Colleges at its discretion.

(G) Medical Examination : A provisional list of candidates selected by the Admission Board will be put on the Notice Board of the S.M.S. Medical College Jaipur. No intimation will be given to the Candidates individually. All candidates provisionally selected will be examined by the Medical Board appointed by the Principal of the respective Medical College on the basis of criteria evolved for Medical Examination by the Principal regarding their general and physical fitness for medical studies. The candidates found unsuitable will be rejected. The decision of the Board in this respect will be final.

10. Clause 5 of the Rules is also relevant for the purpose which is as follows:

5. The Government reserves the right to admit or reject admission of any candidate without assigning any reason.

11. I proceed to examine the question of estoppel against non-petitioner No. 2.

12. A Division Bench of the Orissa High Court in Geeta Mishra's case AIR 1971 Ori. 276 held that the principle of estoppel applies to a representation made under a mistake and fraudulent intention is also not necessary to create estoppel. In that case there was gross negligence on the part of the University as a result of which there was a detriment to the interest of the petitioner. In that case she could not apply for the Supplementary Examination in English in time with the necessary Examination fees. The treatment which the petitioner thus suffered was the proximate or immediate cause of negligence of the University. In the facts and circumstances of the case it was ordered that the concerned respondents Nos. 1 to treat the petitioner having passed in English in the same Examination.

13. Section 14(b) and Rule 16 of the Mysore Medical College (Selection for Admission) Rules 1975 came up for consideration in K.H. Shivadatt's case AIR 1972 Mysore 135. In that case a candidate obtained admission. Subsequently University discovered that he is ineligible for admission. Section 14(b) of the Rules provided that such a candidate shall have no claim to continue his studies. Rule 14 of the aforesaid Rules also did not confer any power on the Selection Committee to review selection once made. R. 16 was also held to be not applicable. It was held that the Selection Committee causes to function on the publication of selection list of selected candidates and thereafter cannot cancel his seat. Before a learned Judge of the Allahabad High Court in Anil Kumar Srivastava Vs. University of Allahabad and Another, the University represented to an examinee for M.Sc. (Part I) Examination that he passed that examination by forwarding the mark list showing himself to be successful and subsequently confirmed the said representation by informing in response to his application for scrutiny of certain answer books that there was no change in the marks obtained by him. It was held that the University could not after his having completed M.Sc. (Final) Selection Course as per recruitment prohibit him on the eve of M.Sc. (Final) Examination from appearing at that Examination on the plea that he in fact did not pass M.Sc. (Previous) Examination. Geeta Mishra's case AIR 1971 Ori. 276 and K.H. Shivadatta's case AIR 1972 Mysore 135 were noticed in Pratima Das Vs. State of Orissa and Others, Pratima Das Vs. State of Orissa and Others, . In that case the petitioner studying in the B.Sc. class was selected for admission to the M.B.B.S. Course on the basis of the marks obtained in the competitive Entrance Examination for the M.B.B.S. Course. The petitioner left her studies in the former College as she was admitted to the Medical College and after some time her admission was cancelled as it was found that in the entrance examination she secured less marks than some other candidates who were not selected. The petitioner had all the qualifications prescribed for selection. It was opined that the petitioner had suffered heavy financial loss on account of the negligence of the authorities, for, it was not possible for the petitioner to go back to her former college and pursue her studies there. In these facts the principle of estoppel was attracted and the order for cancelling her admission was quashed. Anil Kumar Srivastava Vs. University of Allahabad and Another, was considered in Bundelkhand University's case AIR 1983 All. 378. In that case a mark sheet was issued to the student by the University showing that he passed B.Sc. Part I Examination. That mark sheet was found to be genuine and in conformity with the tabulation chart maintained by the University and on the basis of that mark sheet the student was admitted to and appeared in B.Sc. Part II Examination and because of the said mark-sheet the student did not reappear at the B.Sc. Part I Examination. It was held that the University was estopped from withholding the result of the student of the B.Sc. Part II Examination on the ground that the student was wrongly admitted to the B.Sc. Part II Examination because he had in fact failed in the B.Sc. Part I Examination and the revised: mark-sheet was a forged document. In Bundelkhand University's case AIR 1983 All. 378 reliance was also placed on Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, .

It is clear from these authorities that principle of estoppel can be invoked to a case against an Authority which represents though under a mistake that a student has been admitted or that he has passed a particular examination. The Principal and Controller of Associated Group of Hospitals (non-petitioner No. 2) represented the petitioners by issuing the orders that they have been admitted to M.B.B.S. Course at Dr. S.N. Medical College and asked them to undergo medical test and intimated that they have been found medically fit. The fees were also deposited by them and they were asked to attend the regular classes. Even if there was any bonafide clerical mistake as stated in Anx. 1 the Principal, Dr. S.N. Medical College and Controller of Associated Group of Hospitals, Jodhpur (non-petitioner No. 3) had no jurisdiction to cancel their admission, for, he represented them that they have been admitted to M.B.B.S. Course. The Principle of estoppel is attracted. On this ground alone Anx. 1 cannot be sustained and it has to be quashed.

14. It may be stated that the admission Board has not been made party to the writ petitions. The petitioners were not selected for admission by the Medical Board. No order was issued directing them to go for medical test. Under Rule 4(b) the admission Board has to allot place of study in its discretion. Under Clause (C) of Rule 4 only a provisional list of candidates selected by the Admission Board has to be put on the Notice Board of the S.M.S. Medical College, Jaipur and the candidates provisionally selected are to be examined by the Medical Board appointed by the Principal of the respective Medical Colleges on the basis of criteria evolved for Medical Examination by the Principal regarding their general and physical fitness for medical studies. Admittedly no act was done by the Admission Board under Clause (G) of Rule 4 of the Rules.

15. The writ petitions are allowed and the order Anx. 1 dated December 17, 1983 relating to the petitioners is quashed. Further consequence as a result of the aforesaid order shall follow. This will, however, be subject to the Rules and Regulations or any other instructions governing admission to I.M.B.B.S. Course. There will be no order as to costs of these writ petitions.