
(2014) 09 RAJ CK 0123
In the Rajasthan High Court
Case No : Civil Writ Petition No. 121 of 2014

Vipin Kumar

APPELLANT

Vs

Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2015) 1 CDR 122 : (2015) 1 SCT 586

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned legality of order dated 17.12.13 issued by Director, National Ayurved Institute, Jaipur, admitting the respondent No. 4 herein to M.D. (Ayurved) in the subject Panchkarma during the academic session 2013-14. It is prayed that the respondents be directed to consider the candidature of the petitioner for admission to M.D./M.S. (AY) in the subject Panchkarma against the Central Government Nominee (CGN) quota. The relevant facts are that respondent-Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur invited applications for admission to part I of the Ayurveda Vanashasapti/Dhanwantari-MD/MS (AY) for the academic session 2013-14. The petitioner and the respondent No. 4 having the requisite qualification Bachelor of Ayurvedic Medicinal & Surgery (BAMS), applied for appearance in the P.G. Entrance Test (PGET).

2. There were 14 seats reserved under the CGN category for which the Central Government directly nominate the candidates under the different subjects and such candidates are not required to appear in PGET. However, in case, the Central Government do not nominate candidates by the date specified, the seats belonging to CGN quota, are filled up by the University from amongst the candidates in the waiting list sponsored by deficient States/Union Territories (UTs) in accordance with the marks obtained by them in the Entrance Test conducted by the University as per guideline of Ayush Department. Further, in

case the deficient States/UTs do not nominate candidate by the date specified, seats shall be treated vacant for Dr. S.R. Rajasthan. Ayurved University, Jodhpur and M.M.M. Government Ayurved College, Udaipur.

3. The petitioner belongs to State of Haryana where teaching facility in M.D. Ayurveda is not available. The petitioner was nominated by the State of Haryana, as candidate belonging to deficient State for admission to M.D. Ayurveda Course during the academic session 2013-14 vide communication dated 8.8.13 wherein the petitioner's name find mentioned at serial No. 13.

4. The PGET was conducted by the respondent-University on 28.7.13. The petitioner appeared in the examination. The result was declared on 5.9.13. The petitioner secured 60% marks in the said examination.

5. After declaration of the result of the Entrance Examination, counseling was conducted on 28.10.13. At the time of counseling, 104 seats were allocated to the respondent No. 3-National Institute of Ayurved (NIA) Jaipur. Out of the said seats, 14 seats were reserved for CGN category and 3 seats were reserved for the nominee candidates belonging to the BIMSTEC Countries i.e. Bangladesh, Bhutan, India, Myanmar, Sri Lanka, Nepal and Thailand.

6. The petitioner as per his position in the merit list, was accorded admission to the course in the subject Kaya Chikitsa (Anatomy) as a candidate belonging to OBC category (out of Rajasthan). After admission being accorded to the petitioner as aforesaid, the respondent issued a list showing the unfilled seats in the various subjects, Under the CGN category, total 5 seats out of 14 seats were shown vacant in the subjects namely, Dravygun, Kaya Chikitsa, Prasuti Tantra, Rog Evam Vikrati Vigyan and Swasth Vrit.

7. The reshuffling and recounseling for unfilled seats was conducted by the respondents on 21.11.13. The petitioner being not interested for admission to the course in the subjects of unfilled seats belonging to CGN category did not participate in the counseling. The five seats notified belonging to the CGN category were allotted to the candidates from amongst the candidates belonging to deficient States, who participated in the recounseling/reshuffling, as per their position in the merit list.

8. After the recounseling/reshuffling, the respondent No. 3-NIA issued an order dated 16.12.13, whereby the respondent No. 3 having 51.25% marks in PGET, was granted admission to M.D. First Year in the subject Panchkarma. No vacant seat in the subject Panchkarma belonging to CGN category, was notified by the respondents while undertaking reshuffling/recounseling. It is submitted that one Shri Alok Jain who was accorded admission against the subject Dravyaguna left the course after joining and therefore, the respondent No. 4 being in the waiting list, in respect of the subjects notified, at the most, she could have been offered admission in the subject Dravyaguna against the seat fallen vacant but she could not have been admitted to the course in the subject Panchkarma without considering the claim of the persons higher in the merit belonging to deficient

States/UTs. It is alleged that the respondent No. 4, a less meritorious candidate, has been accorded admission to the course in the subject Panchkarma by way of back door entry. Hence, this petition.

9. A reply to the writ petition has been filed on behalf of the respondent No. 1 to 3. It is not disputed that the petitioner belongs to the category of deficient State in the CGN category. It is also not disputed that out of 14 seats under the CGN category, 9 candidates directly nominated by the Central Government were granted admission and the 5 seats remained vacant which were to be filled in accordance with the procedure laid down under the Note (i) & (ii) appended to clause 2.3.1 of the Prospectus issued for PGET and Admission in Part I of Ayurveda Vachaspati/Dhanwantari-MD/MS (AY.) for the Academic Session 2013-14, which read as under:

"i. In case the Central Govt. do not nominate candidates by the date specified the University will fill up the seats by the candidates in the waiting list sponsored by the deficient States/UTS and in accordance with the marks obtained by them in the Entrance Test conducted by the University as per guideline of Ayush Dept.

ii. In case the State Govt. do not nominate Candidate by the date specified seat shall be treated vacant for the Dr. S.R. Rajasthan Ayurved University, Jodhpur and M.M.M. Govt. Ayurved College, Udaipur."

10. It is submitted that vide letter dated 27.11.13, the Ministry of Health & Family Welfare, Government of India, directed to fill up the vacancies under the Central Pool with the candidates from deficient State in order of merits obtained by them in the Entrance Test. It is submitted that the respondent No. 4 was given admission against the vacant seat of Dr. Visino Nakhro inasmuch as, he refused to take admission against the seat fallen vacant. It is submitted that at the time of first and second counseling/reshuffling, the subject Panchkarma was not available and as such it was not offered to any of the candidate.

11. A reply to the writ petition has been filed on behalf of the respondent No. 4 taking the stand that she belongs to State of Punjab, a deficient State and was granted certificate in this regard by the competent authority of State of Punjab on 20.11.13 and thus, she appeared in the second counseling on 21.11.13. It is averred that at the time of reshuffling/recounseling, the seat of M.D. (Panchkarma) was not vacant and the petitioner did not appear in reshuffling/recounseling conducted on 21.11.13. However, on 26.11.13, one Miss Kavita Bhardwaj, a candidate belonging to CGN category, expressed her inability to join the M.D. (Panchkarma) Course and therefore, the seat which was fortuitously fallen vacant was offered to Dr. Visino Nakhro of Nagaland and on his refusal, on 27.11.13, the said seat was offered to the respondent No. 4 on 28.11.13 as she was top in the waiting list of CGN candidates/deficient States/UTs. It is submitted that the second counseling was completed on 22.11.13 and thereafter, no counseling was required to be held and the seat fallen vacant fortuitously has rightly been offered to the respondent No. 4, a candidate belonging to CGN

category. It is submitted that the petitioner was selected in the first counseling in the subject of Sharir Rachana as per his own option as candidate belonging to OBC category (out of Rajasthan) and therefore, he is precluded from filing the present writ petition raising his grievance against the admission accorded to the respondent No. 4.

12. The petitioner has filed rejoinder to the reply on behalf of the respondent No. 1 to 3, taking the stand that earlier on each and every occasion when the seat had fallen vacant, the respondent No. 3 conducted the reshuffling/recounseling to invite the other candidates to fill up such seat. It is submitted that the respondents have undertaken recounseling/reshuffling pursuant to order dated 12.12.13 passed by this Court in S.B.C. Writ Petition No. 13791/13. It is submitted that Annexure R/1 is not a waiting list but, it is a list of CGN candidates whose names were recommended by the various States upto 23.10.13 and therefore, the respondent No. 4 who was nominated against the CGN quota on 20.11.13 could not have appeared in recounseling/reshuffling conducted on 21.11.13. According to the petitioner, the signature of the respondent No. 4 appears to have been taken on the said document after 21.11.13 so as to extend her an undue advantage of admission in the Panchkarma subject. It is submitted that the petitioner and one Shri Ankesh Kumar Agarwal, who were meritorious candidate than the respondent No. 4 were required to be called for reshuffling/recounseling against the said seat.

13. The respondent No. 4 while filing a counter to the rejoinder filed on behalf of the petitioner, has taken the stand that the respondent No. 4 had appeared in the second counseling and her nomination as CGN (deficient State) being prior to second counseling, her appearance cannot be doubted by the petitioner when he has failed to appear in second counseling. The applicability of the decision of this Court in Monu Gupta's case is sought to be distinguished by the petitioner saying that the facts of the said case are different.

14. A supplementary reply to the writ petition has been filed on behalf of the respondent No. 4 wherein relying upon clause 1.6(v) of admission procedure laid down under the Prospectus, it is submitted that the CGN candidates fortuitous seats were not required to be filled by reshuffling and the same were required to be offered to the candidates in un-exhausted merit list i.e. waiting list.

15. The petitioner, present-in-person, submitted that as per the Note (i) & (ii) appended to the clause 2.3.1 of the Prospectus issued by the respondents, the unfilled seats of CGN quota are required to be filled in from amongst the candidates in the waiting list sponsored by the deficient States/UTs in accordance with the marks obtained by them in the Entrance Test conducted by the University as per the guidelines of the Ayush Department. It is submitted that the waiting list refers to the merit list of the CGN category candidates and the question of offering the seats fallen vacant ignoring the merit list prepared for the purpose is not permissible. It is submitted that admittedly, as on the date of reshuffling/recounseling, no vacant seat belonging to CGN category in the

subject Panchkarma was available and since, he was not interested in admission to the course against the vacant seats of CGN category in the subjects notified, he did not participate in the reshuffling/recounseling. It is submitted that the seat in the subject Panchkarma in the CGN category had fallen vacant subsequent to reshuffling/recounseling conducted on 21.11.13 and therefore, the same was required to be filled up from amongst the candidates whose names appear in the merit list of CGN category candidates belonging to deficient States. It is submitted that as a matter of fact, the petitioner whose name does not appear in the list of CGN category candidates prepared as on 23.10.13 was not even entitled to be considered for admission to the course against the vacant seats of CGN category. It is submitted that even otherwise, the respondent No. 4 who had participated in the recounseling/reshuffling on 21.11.13 against the vacant seats of CGN category and was kept in the waiting list as stated by the respondents, could have been offered admission only if any of the seats notified for reshuffling had remained unfilled on account of non joining of the candidates offered admission. It is submitted that the admission accorded to the respondent No. 4 by the respondent-University through a planned device ignoring the meritorious candidates is ex facie illegal and arbitrary.

16. On the other hand, Mr. Shashi Shekhar Joshi, Controller (Examination) appearing on behalf of the respondent No. 1 to 3 submitted that the petitioner had already been admitted to the course M.D. (AY) in the subject Kaya Chikitsa, as per his position in the merit list of the candidates belonging to OBC category (out of Rajasthan) and he did not participate in the recounseling/reshuffling conducted for unfilled seats of CGN category and therefore, he cannot be permitted to raise the grievance against the admission of the respondent No. 4, who was admittedly top in the waiting list prepared as a result of recounseling/reshuffling conducted on 21.11.13. It is submitted that the admission process was required to be completed before 30.11.13 and therefore, it was not even possible to conduct fresh recounseling/reshuffling for the seat fortuitously fallen vacant on 26.11.13. It is submitted that the allegation levelled against the respondents regarding the admission being granted to the respondent No. 4 through a planned device by back door entry, is absolutely baseless. It is submitted that the academic session 2013-14 is at the verge of completion and the examinations are scheduled to be commenced in the month of October and therefore, at this stage, admission granted to the respondent No. 4 by adopting a fair procedure, should not be interfered with by this Court. It is submitted that one of the subjects taught in M.D. Kayachikitsa and M.D. Panchkarma courses being different, the petitioner who has not studied the said subject cannot be permitted to take up the examination of M.D. Panchkarma straight away and therefore, the petitioner is not entitled for the relief as prayed for, at this belated stage.

17. The respondent No. 4 has argued that the petitioner having been admitted to M.D. (AY) in the subject Kaya Chikitsa, as per his own choice as candidate belonging to OBC category (out of State), had no right to participate in

recounseling/reshuffling. It is submitted that while undertaking second counseling on 21.11.13, no candidate belonging to CGN category, who had already been granted admission, is considered for admission against the vacant seats. It is submitted that the seat fallen vacant in the CGN category after recounseling/reshuffling has rightly been offered to the respondent No. 4, who was on the top in the waiting list prepared at the time of recounseling/reshuffling. It is submitted that the reshuffling undertaken by the respondents on 17.12.13, does not relate to the candidates belonging to CGN category and therefore, the contention raised on behalf of the petitioner that the reshuffling/recounseling of CGN category candidates was required to be undertaken for filling up the seat fallen vacant after the recounseling/reshuffling undertaken on 21.11.13, is devoid of any merit. It is submitted that there was no date fixed for producing the certificate regarding the candidate belonging to deficient State and therefore, the respondent-University has committed no error in permitting the respondent No. 4 to participate in recounseling/reshuffling conducted for the candidates belonging to CGN category (deficient State) on the strength of the communication dated 20.11.13 issued by the competent authority of the State of Punjab. It is contended that the respondent No. 4 has already undertaken the studies of the course for about more than 8 months and the examinations are scheduled to be conducted in the month of October, 14 and therefore, at this stage, the respondent No. 4 cannot be made to suffer for no fault on her part.

18. The petitioner replying the arguments raised on behalf of the respondents submitted that many students namely Dinesh Kumar Barwa, Sarita Saini, Divesh Sharma, Deepak Kumar and Rajni, were allowed to change their subjects on 17.12.13 and thereafter in the month of January 2014, they were again allowed to change the subjects and their attendance were counted for examination since they had taken the admission in the institution and therefore, the contention sought to be raised on behalf of the respondent No. 1 to 3 that the petitioner cannot be permitted to take up the examinations in the subject Panchkarma straight away inasmuch as he has not undertaken the studies of one of the subjects, is absolutely devoid of any merit. In this regard, the petitioner has relied upon the documents placed on record alongwith the additional affidavit filed on 21.8.14.

19. I have considered the rival submissions and perused the material on record.

20. Indisputably, the petitioner as well as the respondent No. 4 appeared in the PGET for admission to MD/MS (Ayurveda) during the Academic Session 2013-14. The petitioner's application for admission to the course in CGN category was forwarded by the State of Haryana, a deficient State, vide communication dated 8.8.2013. It is also not in dispute that initially the respondent No. 4 had not applied for admission to the course in the CGN category and therefore, her name does not appear in the list of the candidates belonging to CGN" category (deficient State) initially prepared, however, her name was recommended by the State of Punjab, a deficient State, for admission in CGN category during the

recounseling/reshuffling for specific subjects namely Kaya Chikitsa Prasooti Tantra, Roga & Vikriti Vigyana and Swastha Vritta as per rules/guidelines.

21. It is to be noticed that 14 seats were reserved under the CGN category for which the Central Government directly nominate the candidates under the different subjects and such candidates are not even required to appear in PGET. There is no independent quota for admission to the courses for the candidates belonging to deficient States/UTs. Rather, on the seats belonging to the CGN category remaining unfilled are offered to the candidates belonging to the deficient States/UTs. As per Note (i) appended to Clause 2.3.1 of the Prospectus, in case the Central Government do not nominate candidates by the date specified by the University, the seats remaining vacant are required to be filled up from amongst the candidates in the waiting list sponsored by deficient States/UTs and in accordance with the marks obtained by them in the Entrance Test conducted by the University as per guidelines of Ayush Department. There being no reserved quota for deficient States, it goes without saying that the candidates in the waiting list sponsored by the deficient States/UTs refer to all the candidates who are sponsored by the deficient States and therefore, the unfilled seats were required to be offered to the candidates belonging to the deficient States/UTs as per their merit position in the Entrance Test. It is pertinent to note that as per Note (i) *ibid*, the unfilled seats of CGN category become available for allotment, only if the Central Government do not nominate the candidates by the date specified by the University and therefore, the unfilled seats could be offered to the candidates who were already there in the list of the candidates belonging to deficient State as on the date the unfilled vacancies become available i.e. the last date specified by the University for nomination of the candidates belonging to CGN category by the Central Government. Suffice it to say that the matter with regard to the name of the candidates being sponsored by the deficient State/UTs for admission against the unfilled seats of CGN category cannot be kept open for indefinite period and therefore, in the considered opinion of this Court, the respondent-University was not justified in permitting inclusion of the name of respondent No. 4 whose name was sponsored by the State of Punjab, a deficient State, a day before the date on which recounseling/reshuffling was undertaken.

22. Be that as it may, on 21.11.13 the recounseling/reshuffling was conducted by the respondent-University in respect of the subjects namely Kaya Chikitsa, Prasooti Taritra, Roga & Vikriti Vigyana, Swastha Vritta and Dravyaguna and not for the subject Panchkarma. The documents on record manifestly reveal that the respondent No. 4 intended to participate in recounseling/reshuffling as a candidate belonging to deficient States/UTs in respect of the subjects specified as above and therefore, in the recommendation letter issued by the Govt. of Punjab dated 20.11.13, the subjects are also specified. It is common ground between the parties that as on the date of recounseling/reshuffling the vacant seat in the subject Panchkarma in CGN category was not available and therefore, the petitioner who was not interested in taking admission in any of the subjects in respect whereof recounseling/reshuffling in the CGN category was undertaken,

rightly opted not to participate in the recounseling/reshuffling. As noticed above, as per Note (i) appended to Clause 2.3.1, the unfilled seats of the CGN category were required to be filled in from amongst the candidates whose name appeared in the list of the candidates belonging to the deficient States/UTs as per their merit position in the Entrance Test and therefore, the respondents could not have offered the admission to the respondent No. 4 in the subject Panchkarma against the seat fallen vacant subsequent to recounseling/reshuffling undertaken on 21.11.13 on the pretext that she was at Serial No. 1 in the waiting list prepared after recounseling/reshuffling, without inviting the meritorious candidates whose names appeared in the list of the candidates belonging to deficient States.

23. The contention of the respondent that the admission process was required to be completed by 30.11.13 and therefore, it was not possible to undertake the recounseling/reshuffling in respect of the seat fallen vacant on 26.11.13, to say the least, is absolutely baseless. As per the Note (i) appended to the Clause 2.3.1, the seat fallen vacant was to be notified and offered to the candidates in the waiting list sponsored by the deficient State/UTs in accordance with the marks obtained by them in the Entrance Test and therefore, it cannot be said that any lengthy procedure was required to be adopted for that purpose which could not have been completed within the time available to the respondent-University for completion of the admission process. In this view of the matter, this Court is firmly of the opinion that the admission accorded to the respondent No. 4 by the respondent-University, without notifying the vacant seat in the subject Panchkarma, ignoring the merit of the candidates belonging to deficient States/UTs, is avowedly illegal and arbitrary.

24. There is yet another aspect of the matter. Sub Clause (v) of Clause 1.6 which deals with admission procedure provide that vacancies arising due to any reason shall be filled by reshuffling on the basis of Reservations and Merit-cum-Preference List by 31st October 2013 (later extended to 30.11.13) from the candidates in the Waiting Lists (Except Central Govt. and BIMSTEC Nominee Candidates.). Obviously, the Central Government and BIMSTEC Nominee Candidates are excluded from process of reshuffling inasmuch as, as per Note (i) appended to Clause 2.3.1, the seats belonging to CGN category remaining vacant are required to be filled in from amongst the candidates belonging to deficient States/UTs, as per their merit in the Entrance Test and thus, as a matter of fact, it will not be a case of recounseling/reshuffling as such, rather it will be a case of initiating the admission process for the unfilled seats belonging to the CGN category. In any case, the admission process for admission of the candidates belonging to deficient States/UTs in respect of the unfilled seats of CGN category starts only after the completion of the admission process against the said category from amongst the candidates directly sponsored by the Central Government and therefore, merely because the petitioner was granted admission in MD (Kaya Chikitsa) as per his own merit amongst the candidates belonging to category of OBC (out of State), his right to claim admission against the unfilled seats of CGN category as candidate belonging to deficient State, shall not stand

extinguished. In this view of the matter, the respondents were under an obligation to consider the candidature of the candidates belonging to deficient States for admission to MD (AY) in the subject Panchkarma, as per their merit position in the Entrance Test, against the seat belonging to CGN category fallen vacant subsequent to alleged recounseling/reshuffling conducted on 21.11.13.

25. Coming to the petitioner's entitlement for the relief as claimed for in the petition, it is to be noticed that the admission was accorded to the respondent No. 4 in the institution, the respondent No. 3 herein, vide order dated 17.12.13. The present writ petition was filed by the petitioner on 6.1.14. It is not the case of the respondents that the petitioner has not pursued the litigation diligently and therefore, merely because the petition could not be disposed of by this Court expeditiously, the petitioner cannot be denied the relief for which he is legally entitled. So far as the contention of the respondents that the petitioner having not studied one of the subjects which he is supposed to study while undertaking the course of MD (AY) in the subject Panchkarma, cannot be permitted to appear in the examination straight away is concerned, suffice it to say that the deficiency in this regard could be removed by the respondents by arranging extra classes of the said subject for the petitioner. It is a matter of record that the respondents have permitted many candidates to change the subjects in the midst of the academic session and the petitioner having attended the classes throughout the academic year, on the facts and in the circumstances of the case, the question of shortage of attendance in a particular subject also should not come in his way.

26. Coming to the question of admission of the respondent No. 4, it is to be noticed that her name was sponsored by the State of Punjab, a deficient State, on 20.11.13 for participation in recounseling/reshuffling conducted by the respondents against the unfilled seats of CGN category in the subject specified, the vacant seat in subject Panchkarma was not even available. There is nothing on record to establish that the respondent No. 4 has been extended undue favour by the respondent-University in granting her admission to MD (AY) in the subject Panchkarma. There is nothing on record to establish that the respondent No. 4 procured the admission by committing fraud or manipulation. In this view of the matter, taking into consideration the fact that the respondent No. 4 has pursued the studies of the course throughout the academic session, in the considered opinion of this Court, it will be unjust to deprive her from the benefits thereof at this stage and therefore, she deserves to be adjusted, if required, by creating a supernumerary seat. In the result, the writ petition is allowed. The respondents are directed to consider the candidature of the petitioner for admission to MD (Ayurveda) in the subject Panchkarma against the seat belonging to CGN category, as a candidate belonging to deficient State as per his merit in the Entrance Test conducted for the Academic Session 2013-14. If the petitioner is found entitled for admission to the said course against the unfilled seat of CGN category as per his merit in the list of candidates belonging to deficient States/UTs, he shall be permitted to change the subject/admitted to MD

(AY) in the subject Panchkarma and pursue the course. The respondents shall arrange extra classes for the petitioner for study of one of the subjects which he has not studied while undertaking the studies of the course MD (AY) in the subject Kaya Chikitsa. On the admission being granted to the petitioner to MD (AY) in the subject Panchkarma, he shall be treated to be the regular student of the said course for all intent and purposes. The respondents shall not disturb the admission granted to the respondent No. 4 and for this purpose, if required, a supernumerary seat in the subject Panchkarma shall be created. The entire process of admission in terms of this order shall be completed by the respondents within a period of one week from the date of receipt of this order. To maintain the transparency in the admission process, the respondent-University is further directed that while conducting Entrance Test in future, the last date for submission of the applications for admission to the various courses against the unfilled seats of CGN category to be filled up from amongst the candidates belonging to deficient States/UTs, shall also be specified. No order as to costs.