
(1999) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1327 of 1999

Vishal Madan

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 MPLJ 593

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : S.C. Sharma, for the Appellant; Deepak Okhade, Government Advocate for Respondents Nos. 1 to 3 D Silva, for the Respondent

Judgement

C.K. Prasad, J.

Petitioner, a doctor, instead of being allowed to pursue his Post Graduate Course in General Surgery has been forced to file this writ petition under Article 226 of the Constitution of India seeking relief inter alia for a direction to respondent No. 3 to grant him admission in M.S. (General Surgery) Course in Netaji Subhashchandra Bose Medical College, Jabalpur.

Shorn of unnecessary details, facts giving rise to the present writ petition are that the petitioner after passing the M.B.B.S. examination appeared in the M.P. Pre-Post Graduate Examination for the session 1998-1999 and was selected for admission in M.D. course in Skin and V.D. in Netaji Subhashchandra Bose Medical College, Jabalpur (hereinafter referred to as the Medical College). Petitioner also appeared in All India Pre-P.G. Examination for admission to Post-Graduate Medical courses and dental courses and was declared successful in the same. Office of the Director General, Health Services by its communication dated 9-3-1999 informed the petitioner that he has been selected for admission to M.S. (General Surgery) course of duration of three years at Government Medical College, Jabalpur. It may be stated that the Government Medical College, Jabalpur is now named as Netaji Subhashchandra Bose Medical College. It is

worthwhile mentioning here that All India Pre-P.G. examination is conducted for admission to the Post-Graduate courses against open merit seats in accordance with the Regulation specified by the Government of India. Paragraph 6(b) of Bulletin of Information for Guidance for All India Pre-P.G. Examination, 1999 in which the petitioner appeared inter alia provides that some of the Universities are having Regulations that candidates who are already pursuing the P.G. course in their University or in another University are not eligible for admission till they complete the course. Accordingly while informing the petitioner of his selection for admission in the M.S. (General Surgery) course he was advised to refer to paragraph 6 of Bulletin of Information for Guidance referred to above. Petitioner appeared before the Dean of the Medical College for his admission, but the Dean, in the light of the condition put in paragraph 6 of the Bulletin of Information for Guidance referred to above, wrote to the Vice Chancellor of Rani Durgavati University stating therein as follows:--

"Kindly state if the Rani Durgavati University has any objection in this regard, so that if not, he may be allowed to join M.S. Course in General Surgery."

Vice Chancellor of the University, as is expected from him, swiftly and on the same day wrote that the University has no objection for his admission in M.S. course in General Surgery. This could have been the end of the matter and the petitioner ought to have been granted admission. However, the petitioner was not given the admission on the ground that question of admission of the petitioner is under consideration of Principal Secretary, Department of Medical Education and Director Medical Education. Respondent No. 3, however, extended the joining time of the petitioner from time to time. As the matter was being delayed and the petitioner apprehending that the delay may result into forfeiture of his claim for admission in the M.S. course, he filed this writ petition on 30-3-1999.

Return has been filed on behalf of respondents 1 to 3 and the petitioner's claim for admission is being resisted on the ground that the petitioner having appeared in the Pre-P.G. examination 1998 conducted by the M.P. Professional Examination Board in accordance with the M.P. Medical and Dental Post-graduate Entrance Examination Rules (hereinafter referred to as the M.P. Rules) and he having been admitted to a post-graduate course in M.P. and having not completed the same is not eligible to take examination upto three years from the date of his previous admission as provided under Rule 3(VI)(iv) of the Rules.

I have heard Shri S.C. Sharma for the petitioner, Shri Deepak Okhade for respondents 1 to 3 and Shri D'Silva for respondent No. 4. At the outset I may state that Shri D'Silva appearing on behalf of the respondent University has stated that the University has no objection for admission of the petitioner in the M.S. course and the Regulations of the University do not render any student pursuing P.G. course in the University or another University ineligible for admission.

Shri Sharma appearing on behalf of the petitioner contends that petitioner having appeared in All India Pre-P.G. Examination, his right shall be governed by the conditions incorporated for conduct of the said examination. He submits that paragraph 6(b) of the Bulletin of Information for Guidance for conduct of All India Pre-P.G. Examination, petitioner would not have been eligible for admission, in case the University in which the petitioner is pursuing the P.G. course presently had made Regulation that candidates already pursuing the P.G. course in the University or another University are not eligible for admission till completion of the course. He submits that the petitioner was pursuing his M.D. course in skin and V.D. in Rani Durgavati University and the said University having no such Regulation and having granted no objection to the petitioner, action of respondent No. 3 in not granting him admission is arbitrary.

Shri Deepak Okhade, however, appearing on behalf of respondents 1 to 3 submits that in view of Rule 3(VI)(iv) of the M.P. Rules, petitioner having been admitted to post-graduate course in skin and V.D. and having not completed the same, is not eligible to take the examination upto three years from the date of his previous admission. It is common ground that the period of three years has not expired from the date of admission of the petitioner in M.D. skin and V.D. course. He submits that the matter stands concluded by a Division Bench judgment of this Court in the case of Dr. Swati Wandana Sinku Kuzur disposed of on 22-9-1997 (Anne. R-2).

Paragraph 6(b) of Bulletin of Information for Guidance for All India Pre-P.G. course 1999 reads as follows:--

"6. Option for Medical Courses/Colleges.

(a)

(b) Some of the Universities are having Regulations that candidates who are already pursuing the P.G. course in their University or in another University are not eligible for admission till they complete the course. The candidates who are already pursuing P.G. courses either through All India Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility conditions of that University in this regard. Refusal of admission to such candidates shall not be the responsibility of DGHS. Such candidates may opt for the subject and the college at their own risks costs."

Rule 3(VI)(iv) of the M.P. Rules on which respondents 1 to 3 are seeking to justify their action, reads as follows:--

"3.

(VI)

(iv) A person admitted to any post-graduate course in Madhya Pradesh in previous year who has not completed the post-graduate course is not eligible to take the examination upto three years from the date of his previous admission.

The candidates who were allotted post-graduate seat in Madhya Pradesh at the time of counselling for which candidate agrees, but later did not join the course in particular subject in Medical College of Madhya Pradesh are not eligible to take the examination upto three years from the date of previous counselling."

(v)

A plain reading of paragraph 6(b) of the Bulletin of Information for Guidance for admission to All India Pre-P.G. courses clearly puts prohibition for admission in relation to those Universities; which have framed Regulation that candidates pursuing P.G. courses in their University or another University are not eligible for admission till they complete the course. Petitioner was pursuing his study in a College of Rani Durgavati University and nothing has been brought to my notice to show that Rani Durgavati University has framed any Regulation prohibiting admission of students pursuing P.G. course in their University or another University. In fact, Shri D'Silva, appearing on behalf of respondent-University has clearly stated that no such Regulation exists and University has no objection for admission of the petitioner in M.S. (General Surgery) course. Thus, the conditions engrafted in the Bulletin of Information for Guidance for All India P.G. course does not create any impediment in the way of the petitioner for admission in the M.S. (General Surgery) course.

Having answered the aforesaid question now I consider as to whether petitioner can be denied admission in view of Rule 3(VI)(iv) of Rules referred to above. Aforesaid rule prohibits a person admitted to any post-graduate course in M.P. in previous year and has not completed the course to take the examination upto three years from the date of his previous examination. Expression "Examination" as used in the aforesaid rule has been defined under Rule 2(c) to mean the competitive entrance examination as provided under these Rules. Thus, in view of Rule 3(VI)(iv) the petitioner is not eligible to appear in the competitive entrance examination upto three years from the date of his previous admission conducted under the M.P. Rules. Petitioner has not appeared in the examination conducted under the said Rules, but selected for admission in M.S. (General Surgery) course on the basis of All India Pre-P.G. Examination 1999. As held earlier the Rules of All India Pre-P.G. Entrance Examination 1999 do not create any hindrance in the way of the petitioner for taking admission in M.S. (General Surgery) course and the M.P. Rule is inapplicable while considering the right of the petitioner to take admission the basis of All India Pre-P.G.

examination.

Now reverting to the decision of the Division Bench of this Court in Dr. Swati Wandana Sinku Kuzur 's case (supra), I am of the opinion that the same is wholly inapplicable. In the said case the vires of Rule 3(VI)(v) of the M.P. Rules was under challenge. A Division Bench of this Court on in depth analysis held the rule; neither to be arbitrary nor violative of any of the constitutional provision. Accordingly it held the said rule intra vires. Petitioner claims admission in M.S.

(General Surgery) course on account of his success in the All India Pre-P.G. entrance Examination held in the year 1999 and the conditions governing the said examination, as held earlier, do not create any impediment in the way of the petitioner getting admission in M.S. (General Surgery) course. Petitioner is not claiming admission on the basis of the examination conducted under the M.P. Rules and as such Rule 3(VI)(v) of the Rules, on the strength of which respondents 1 to 3 are resisting the petitioner's admission is wholly inapplicable. Accordingly, the judgment relied on has no bearing on the merits of the case. Irresistible result of the aforesaid discussion is that the petitioner is being wrongly denied admission to the M.S. (General Surgery) course.

In the result, the writ petition is allowed. Respondents are directed to take admission of the petitioner in the M.S. (General Surgery) course forthwith. Petitioner shall also be entitled to cost of this litigation. Hearing fee Rs. 5,000/-.