
(1990) 05 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Appeal No. 1166 of 1990

Vivek

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 25-05-1990

Acts Referred:

Citation : (1990) 42 DLT 254 : (1990) 19 DRJ 167

Hon'ble Judges : S.N. Sapra, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : K.K. Buchar and A. Mariaputham, for the Appellant;

Judgement

S.N. Sapra, J.

(1) Rule D.B.

(2) By the present writ petition filed under Article 226 of the Constitution of India, petitioner seeks to challenge the refusal/inaction, on the part of respondent No. 1. to give him admission, in the first years course of M.B , 1989, in Maulana Azad Medical College, Delhi.

(3) In May, 1989, petitioner appeared in the entrance examination, conducted by respondent no 1, for admission to the M.B.,B.S. and Bds courses. Petitioner secured 772 marks out of the maximum of 1200 marks, and was placed at 239 position, in the merit list, along with 8 others at the same rank, who had secured the same marks. Finally petitioner's rank was declared at 247. In the first instance, respondent no. 1 allotted M.B,B.S. seats to the first 223 students in its various colleges, according to the preference of each of the candidates. Petitioner was, however, allotted Bds course, which he relinquished. Subsequently, respondent no. 1 allotted seats in the M.B , course to selected candidates up to the ranking of 245 Thus, petitioner was second in the waiting list for admission to the M.B,BS. course, in Maulana Azad Medical College According to the petitioner, he has not been given admission to the said course in the said college, dispute the availability of seats.

(4) It may be noticed that the said entrance examination was conducted by respondents no. 1 for the 85% of the total seats. For the remaining 15% of the total seats of respondent no. 1, in M.B.,B.S course, as well as, for the 15% seats all over India, applications were invited by the Central Board of Secondary Education, for entrance, examination. Petitioner. appeared in the entrance examination for the 15% All India Quota in May, 1989. The results of the said examination were declared on July 11, 1989, whereupon, a list of 1600 successful candidates, for admission to 1600 seats was drawn up. Though, petitioner's name was included in the list of 1600 candidates, yet respondent no. 3 did not allot seats to selected candidates beyond 1406 position.

(5) Number of writ petitions were filed in the Supreme Court of India by selected candidates assailing the action of respondent no. 3, in not transferring seats to the colleges, opted by them, near to the place of their residence, in view of the vacancies having arisen there. It is alleged that out of 1406 seats allotted by respondent no.3, about 600 vacancies remained unfilled, while the number of the candidates of the waiting list was only 530. .

(6) By order dated December 20, 1989, Supreme Court of India was pleased to lay down guidelines, regarding completion of admission in the All India Quota. Pursuant to the guidelines, petitioner has been allotted a seat in Bhopal. which he has already joined. One of the directions, issued by the Supreme Court was, that if, candidates on the waiting list, did not report at colleges, to which they were allotted, by February 7, 1990, the seats would deem to have become vacant and would revert to the respective States. . Later on, the last date was extended to February 9, 1990.

(7) The case of petitioner is that upon completion of the admission in Delhi Colleges, under the All India Quota, about six seats in the Maulana Azad Medical College remained unfilled till February 9, 1990. As a result of the directions of the Supreme Court, the six seats were deemed to be vacant and stood reverted to respondent no. 1 from February 9, 1990.

(8) After the order of the Supreme Court the candidate placed at rank 246, that is, first in the list of selected candidates, has been allotted a seat in Delhi College. Petitioner has been approaching respondent no. 1, for being granted admission, to the First year M.B.,B.S. course, in Maulana Azad Medical College, in which six seats had fallen vacant. By a letter dated February 23, 1990, petitioner requested respondent no I to grant him admission, in view of the fact that the six seats have fallen vacant. Respondent no. I failed to reply to the letter. Vide letter dated February 24. 1990, petitioner sought justice from the Dean of Maulana Azad Medical College, but no reply has been received. Thereafter, petitioner filed a civil writ petition. in Supreme Court of India, on March 9, 1990. .The writ petition was withdrawn. Thereafter, petitioner again sent another reminder to respondent no. 1, and also to respondent no. 3, but there was no response.

(9) In answer to show cause, respondents 1 and 2 have alleged that in

accordance with the directions of the Supreme Court, for the academic session 1989, 62 seats, representing 15% of the total seats, were placed at the disposal of the Director General of Health Services, to be filled up, on All India basis. The remaining seats were to be filled up, by the Delhi University, based on the result of the entrance examination, held by it. It is further alleged that on January 17, 1990, Delhi University received a communication from the Assistant Director General (M.E.), enclosing a copy of the judgment of the Supreme Court, in writ petition No. 1253 of 1989, for information and necessary action. In response to the said communication and on January 22, 1990, the University requested respondent no. 3 to send the list of candidates, who have been permitted transfer, as per the directions of the Supreme Court, thereby pointing out, that in Delhi University, admissions to M.B , course were centralised. A reminder was sent on January 30, 1990. However, no list of candidates, who were permitted transfer or offered fresh admission, was sent to the University.

(10) On learning from Maulana Azad Medical College, of the existence of 6 vacancies, in the 15% All India Quota, after the prescribed date, i.e., February 7, 1990. the Delhi University, on February 27, 1990, sought permission of the Director General of Health Services, For filling up the vacant seats, from amongst the candidates, who had appeared in the entrance examination, held by it. Since no reply was received, so on March 2, 1990, a reminder was sent to the respondent no. 3. in this regard. Again, no reply was received. On March 16, 1990, the Assistant Director was contacted on telephone and the University was assured that a decision in this regard would be communicated to it, by March 19, 1990. However, no communication, as promised, was received by the University.

(11) In its meeting, held on April 6, 1990, the Medical courses Admission Committee, taking into account, inter-alia, the fact, that the Academic year would be coming to an end shortly, with the closing of the colleges for summer vacation from May 8, 1990, and, if students were admitted at this late stage, it would not be possible for them to undergo the required 18 months of study, before taking the first professional examination, decided not to make any further admission, to the 1989 academic session,

(12) Mr. A. Mariaputtham, learned counsel for respondents 1 and 2, contends that after the receipt of the communication, along with copy of the judgment of the Supreme Court, from the Assistant Director General (M.E.) respondent no. 1. vide its letter dated January 22, 1990, requested respondent no 3. to send the list of candidates, who had been permitted transfer, as per the directions of the Supreme Court. However, no list of candidates, as asked for by respondent no. 1, was sent to it by respondent no. 3. On learning: from Maulana Azad Medical College, of the existence of six vacancies, in the 15% All India quota, after the prescribed date, i.e., February 7, 1990. respondent no. 1, vide its letter dated February 27, 1990, sought permission of respondent No. 3, to fill up six seats from amongst the candidates, who had appeared in the entrance examination, held by it. Again, on March 2, 1990, a reminder, in this regard, was sent to

respondent no. 3 In spite of reminder, respondent no. 1 did not receive any reply from respondent no. 3. Even on telephone, the Assistant Director, in the office of respondent no. 3 was contacted on telephone by respondent no. 1 and respondent no. 1 was assured that a decision in this regard, would be communicated to it by March 19, 1990. However, no communication, as promised, was received from respondent no. 3.

(13) Mr. A. Mariaputtham further urges that 1981 academic year has come to an end, with the closing of the colleges for summer vacation from May 8, 1990, and it is not possible to admit the petitioner in this course, at this later stage, because it will not be possible for him to undergo the required 18 months of study, before taking the first professional examination In fact, Medical Courses Admission Committee took the decision in this regard, at its meeting, held on April 6, 1990.

(14) Vide its order dated December 20 1989, the Supreme Court directed that if, candidates on the waiting list did not report at colleges, to which they were allotted, by February 7, 1990, the seats would deem to have become vacant and would revert to respective States. The last date was later on extended to February 9, 1990 This direction was issued to ensure that all the vacant seats should be filled up in the medical colleges, all over India. If, the candidates on the waiting list of 15% All India quota, failed to .report at colleges, to which they were allotted, by the aforesaid date, then, the seats became automatically vacant and reverted to the respective seats.

(15) Admittedly, six seats out of 15% All India Quota, were vacant in Maulana Azad Medical College, after February 9, 1990. The candidate, at Serial No. 246 of the waiting list, prepared on account of the entrance examination, held by respondent no. 1, was allotted a seat in the Delhi quota. After this, petitioner was the first on the waiting list and his first option, admittedly, was Maulana Azad Medical College. Respondent no 1 was under an obligation to give him the seat in Maulana Azad Medical College, after February 9, 1990, because under the directions of the Supreme Court, the six seats, out of All India Quota, were vacant and reverted to Delhi quota, instead of giving admission to petitioner respondent no. 1 approached respondent no. 3, for permission to fill up these six seats. In our view, it was not at all necessary for respondent no. 1 to seek such permission.

(16) In its letter dated February 27, 1990, respondent no. 1 informed respondent no. 3, that six seats for M.B..B.S. course were vacant in Maulana Azad Medical College, under 15% quota. We would like to refer to the letter dated March 2, 1990, written by Assistant Registrar (M) of respondent no.1, to the Assistant Director General (ME) of respondent no. 3 which letter reads as under :

REF.No. FM/2584 Faculty Of Medical Sciences University Of Delhi Delhi-110007
Dated 2nd March, 1990. The Assistant Director General (ME) Directorate General of Health Services. Ministry of Health & Family Welfare, Government of India

(Medical Cell). Nirman Bhawan, New Delhi-110001. Dear Sir, Kindly refer to this office letter No. FM/2568 dated 27-2-1990 regarding filling up of the seats under 15% Cbse quota in 1st M.B.,B.S./BDS course (copy enclosed for ready reference). You are again requested to let us know whether we may fill up the vacant seats of 15% Cbse quota from the candidates of 85% quota of Delhi University latest by 6th March, 1990. In case no reply is received by the aforesaid date the vacant seats will be filled in by the University of Delhi as stated above. Yours faithfully, sd/- Asstt. Registrar (M) 2-3-1990

(17) It is thus clear that respondent no I took the stand that in case, no reply was received by March 6. 1990. then, the six vacant seats would be filled in by the University of Delhi, from the candidates of 85% quota of Delhi University. It is a matter of regret that in spite of this, no action was taken.

(18) Failure to fill seats in medical colleges, not only deprives the candidates, of their right of admission, but is against the public interest. There was no justification, what so ever, on the part of respondents to refuse admission to petitioner, in the first year course of M.B.B.S.in Maulana Azad Medical College. Petitioner has been denied admission, on account of the failure on the part of the authorities concerned, to act in the matter and to follow the guidelines, laid down by the Supreme Court of India.

(19) While finding no defense to the petition, the contention of the learned counsel for the respondents was that the academic session for 1989-90 having come to an end on May 8, 1990, it was not possible to grant admission, This contention overlooks the fact that the petitioner is already studying in M.B.B.S. at Bhopal and admittedly the course is the same. In case, fresh admission is not possible, it can be treated as a case of migration. The petitioner would also be satisfied if he could be accommodated by migration in the next academic session.

(20) In order to meet the ends of justice, we make the Rule absolute and direct the respondents to admit the petitioner in Maulana Azad Medical College by fresh admission or migration. However, if there is any valid hitch in complying with this direction, the petitioner may be assured of migration in the next academic session. No order as to costs.