
(2009) 03 MP CK 0045
In the Madhya Pradesh High Court
Case No : W. P. No. 813 of 2008

Vivek Khare

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 1 MPLJ 145

Hon'ble Judges : A.K. Patnaik, C.J;A.K. Saxena, J

Bench : Division Bench

Advocate : Aditya Sanghi, for the Appellant; Vivekanand Awasthy, Government Advocate, for the Respondent

Judgement

The petitioner has filed this petition under Article 226 of the Constitution of India against the demand and recovery of higher fees from him for the MBBS course to which he was admitted.

The relevant facts briefly are that by the Gazette Notification dated 8-5-2003 of the State Government, the seats in Government Medical Colleges were divided into three categories for the purposes of fees and these were "free seats" for which tuition fees of Rs. 35,000/- per annum was payable, "payment seats" for which tuition fees Rs. 1,50,000/- per annum was payable and NRI seats for which tuition fees Rs. 10,000 US\$ per annum. The petitioner appeared in the premedical test as a general category candidate for admission to the MBBS course in the Medical Colleges in the State of Madhya Pradesh and secured 994.64 marks out of 1200 and he was allotted a "payment seat" in the Government Medical College at the time of counselling on 14-7-2003. Accordingly, the petitioner was admitted in the payment seat" for MBBS course in Gandhi Medical College, Bhopal. Consequently, he has been paying a tuition fee Rs. 1,50,000/- per annum in the MBBS course.

The petitioner"s case is that on the basis of his merit position, he was entitled to get admission to a "free seat" and he was liable for only tuition fee Rs. 35,000/-

per annum instead of tuition fee Rs. 1,50,000/- per annum. The counsel for the petitioner has prayed for a direction from the respondents to charge Rs. 35,000/- per annum for the MBBS course from the petitioner and to refund the excess amount already collected from the petitioner every year for the MBBS course.

In the return, the respondents had not clearly stated whether the petitioner in this case was entitled to get admission in the "free seat" on the basis of his position in the merit list either in the private Medical College or in the Government Medical College. The Court accordingly directed in its order dated 25-11-2008 that the respondents will obtain instructions and file an affidavit on the specific point whether the petitioner was entitled to admission in free seats either in a private Medical College or in the Government Medical College on the basis of his position in the merit list of the pre-medical test in the year 2003-04.

Pursuant to the order, the respondents have filed an additional return in which, it is stated that the last free seat in the private Medical College in the State of Madhya Pradesh, namely R. D. Gardi Medical College, Ujjain, in MBBS course was allotted to one Arpan Dubey, who has scored 985.58 marks and was in the waiting list, whereas the petitioner was placed in the merit list at SI. No. 247 and had scored 994.64 marks.

The learned counsel for the petitioner Shri Aditya Sanghi submits that in the case of Deepak Chaturvedi Vs. State of M.P. and Others, a Division Bench of this Court has already held relying on Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., that the scheme formulated by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., of free seats for private professional colleges with nominal fees for "free seats" and higher fees for "payment seats" was not applicable to a College financed and controlled by the State Government. He submitted that in the case of Deepak Chaturvedi (supra) this Court has also taken the view that the right to equality guaranteed under Article 14 of the Constitution entitled the students to be treated in the matters of admission and fees on the basis of merit and this being a fundamental right guaranteed by Article 14 of the Constitution cannot be waived. He submitted that even though the petitioner had taken admission in Government Gandhi Medical College, Bhopal in "payment seat", this conduct of the petitioner cannot estop the petitioner in filing the writ petition under Article 226 of the Constitution of India claiming that on the basis of his merit position, he was entitled to get admission in "free seat" and that he was not liable to pay the annual tuition fees for "payment seat", but to pay only tuition fee payable for "free seat".

Following the judgment of the Division Bench of this Court in the case of Deepak Chaturvedi (supra) we dispose of this writ petition with a direction that the petitioner, who has already paid tuition fees of Rs. 1,50,000/- per annum to the respondents, will be refunded the excess tuition fees over and above Rs. 35,000/- per annum to the petitioner within a period of three months from receipt of a certified copy of this order by the respondent No. 3. No order as to

costs.