
(2009) 08 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (C.) No. 6635 of 2007

Vivek Pratap Singh

APPELLANT

Vs

Vice Chancellor and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0156

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Shiv Sagar Tiwari, for the Appellant; Sanjeev Goel and Praveen Kumar, for the Respondent

Judgement

Anil Kumar, J.—The petitioner by present petition seeks refund of fees deposited by him amounting to Rs. 30,000/- along with interest at the rate of 18% per annum from the date of deposit. The petitioner also seeks quashing of communication dated 7th November, 2006 by which the request of the petitioner for refund of fees was disallowed. The petitioner has also sought payment of Rs. 5.00 lakh towards damages caused to the petitioner and his family members.

2. Brief facts to comprehend the dispute between the parties are that the petitioner had applied for admission in MBBS Course under the handicap category for the academic year 2006-2007. The petitioner contended that he was called for counseling. Relying on the Bulletin of Information for Admission to the MBBS course, it is contended that after admission during first counseling, if a student had applied for withdrawal of admission on or before 12th July, 2005, his 50% of the fee was liable to be refunded, however, if any candidate was found unfit in the medical examination, such a candidate was entitled for refund of his entire fees. According to the petitioner, the first counseling was on 3rd August, 2006. The petitioner, therefore, got the demand draft of Rs. 30,000/- made which was payable at State Bank of India, Service Branch, New Delhi, in favour of Principal MS V.M.M.C. & S.J. Hospital, Delhi which was deposited at the time of counseling.

3. At the time of admission the petitioner had submitted certificates from the appropriate authority regarding his disability indicating the extent of his disability. The certificate which was given by the petitioner was issued by Government of India and had shown his disability to be 50% to 60%. After the admission was given to the petitioner, a Medical Board was constituted at the instance of the college and the Medical Board by communication dated 8th August, 2006 opined that the petitioner does not qualify for admission under physically handicapped quota as his disability was assessed to be below 3% and therefore the admission of the petitioner was cancelled.

4. Pursuant to the cancellation of the admission, as the petitioner was found unfit in the medical examination, according to the petitioner, he became entitled for refund of entire fees, but the respondent on the contrary forfeited his entire fees. The petitioner represented against the forfeiture of his fee and after the respondents failed to refund the fee, the present petition was filed.

5. The petition is contested by the respondent contending inter alia that the petitioner has not come to the court with clean hands and he is misleading and mis-representing. Reliance has been placed on Clause 22 (x) of Bulletin of Information, which is as under:

22(x) It will also be the sole responsibility of the candidates themselves to make sure that they are eligible and fulfill all the conditions prescribed for admission. Before filling up the verification slip at the time of counselling/allotment of seats, candidate should ensure that he/she fulfills all eligibility conditions as laid down in his Admission Brochure. If it is found at any stage during the entire period of the programme that the candidate does not fulfill the requisite eligibility conditions, his/her admission will be cancelled and also disciplinary action will be initiated against him/her and entire fee will also be forfeited.

6. The respondent has contended that the petitioner sought admission and was granted provisional admission under physically handicapped category. The petitioner had also submitted the medical certificate in the prescribed form which did not indicate the extent/percentage of disability as required. According to the respondent, candidates seeking admission under physically handicapped category were required to have 50% to 70% locomotive disability, however, after the Medical Board of the Vardhman Mahavir Medical College, examined the petitioner and the disability was assessed to be only 3% and consequently the Medical Board did not find the petitioner fit for admission. It is also contended that since the petitioner had mis-stated the facts the respondents forfeited the amount of the entire fee. According to the respondents, the certificate which was issued by Government of India, vocational rehabilitation centre for handicapped did not give complete and full information. The college therefore, intimated the petitioner about his disability being only 3% by letter dated August 8th, 2006. The letter sent to the petitioner categorically stipulated that he did not qualify for admission under physical handicap quota. The assertion of the respondent is that Clause 20 of the admission brochure is not applicable to the case of the

petitioner as he had applied for admission under physically handicapped category. The case of the petitioner, according to the respondent, is covered under Clause 22(x) of bulletin of information and therefore, his fees was forfeited.

7. Under Clause 20 of the bulletin of information it is contemplated that in case any candidate is found unfit in the medical examination, his fees will be refunded. Clause 20 is as under:

20:- Withdrawal of admission and refund of fee: After admission during first counseling, if a student applies for withdrawal of admission on or before 12th July, 2006 upto 5.00 pm the fee after deduction of 50% of the entire fee will be refundable. The request for withdrawal of admission is to be submitted in Room No. 108 in the office of Deputy Registrar (Academic-I) of the University and proper receipt will be issued by the University in this regard. However, if any candidate found unfit in the medical examination, his/her entire fee will be refunded. In case withdrawal application is received after 5.00 pm of 12th July, 2006 then no money excepting the security deposit of Rs. 5,000/- shall be refunded.

8. This is not disputed that the petitioner had submitted his disability certificate issued by the Government of India. The plea of the respondents is that the certificate submitted by the petitioner about his disability did not disclose the extent of his disability, as he could be admitted in the said category only if he had 50% to 70% locomotive disability. This plea on behalf of the respondents is not correct. An additional affidavit was filed by the respondents along with the copy of the medical certificate submitted by the petitioner. The said certificate categorically stipulated that the disability of the petitioner is 50% to 70%. If that be so then the petitioner had submitted the certificate in compliance with Clause 22 (x) of bulletin of Information about the extent of his disability.

9. This cannot be disputed by the respondents that the petitioner was asked to appear before the medical board constituted by the college. The petitioner did not appear before the medical board on his own but at the direction of the college. This also cannot be disputed by the respondents that the petitioner was assessed to be having less disability and therefore he was found to be medically unfit for admission in the category of physically disabled candidates. Physical disability in a person also makes such a person medically fit. Under Clause 20 of bulleting of information, if any candidate is found unfit in medical examination, he becomes entitled for refund of entire fees. If on the account of physical disability a candidate is denied admission, it is because the candidate was found to be unfit in medical examination.

10. Reliance of the respondents on Clause 22(x) of bulletin of information in forfeiting the fees of the petitioner, in the facts and circumstances, is therefore, misplaced. The said clause contemplates that if the admission of a candidate is cancelled, then disciplinary action shall be taken against him and his entire fees will also be forfeited. Admittedly no disciplinary action has been taken by the

respondents against the petitioner. The petitioner had submitted an appropriate disability certificate which was not issued by some private medical practitioner but by Government of India, vocational rehabilitation centre. In the circumstances it cannot be said that the petitioner did not file the appropriate certificate regarding his disability. Since the respondents were not satisfied with the extent of disability of the petitioner, therefore, the petitioner was subjected to medical board constituted by the college. The medical board of the college has reassessed the petitioner as unfit medically as his disability was not found to be 50% to 70%.

11. A bare reading of Clause 22(x) reveals that not only at the time of admission, but the admission of a candidate can be cancelled on account of not fulfilling the eligibility conditions during the entire period of programme. The respondents under the said clause were also entitled to take disciplinary action and were also entitled to forfeit his fees. Admittedly no disciplinary action has been taken against the petitioner and just after giving him provisional admission, he was asked to appear before the medical board constituted by the college which board did not find the disability of the petitioner to the extent it would have entitled him for admission under physical disability quota and therefore, the petitioner was found to be medically unfit.

12. In the circumstances it is inevitable to infer that the petitioner had applied for the withdrawal of admission as he had been found unfit in the medical examination conducted by the respondent. In these peculiar circumstances the case of the petitioner shall be covered under Clause 20 of bulletin of information which will entitle him for refund of the fees.

13. The petitioner has also claimed interest on the said amount of Rs. 30,000/- at the rate of 18% per annum. The learned Counsel for the petitioner is, however, unable to show any provision under the bulletin of information which would entitle him to interest at the rate of 18% per annum. Even by letter dated September 27th, 2006 while demanding return of fees, the petitioner did not demand interest on the amount of fees at the rate of 18% per annum. What was demanded was only return of fees as early as possible. The request of the petitioner for refund of fees on account of cancellation of his admission on account of his medical unfitness was declined by the respondents by their letter dated November 7th, 2006. The reason as alleged now by the respondents were not disclosed. The petitioner had written yet another letter dated November 10th, 2006 seeking a refund of his fees. Even at that time no demand was made for payment of interest by the petitioner to the respondent. In the circumstances the petitioner is not entitled for any interest from the respondents on the amount of fees which the respondents are liable to refund to the petitioner.

14. The next demand of the petitioner is for compensation of rupees 5 lakhs. The learned Counsel for the petitioner is however, unable to explain as to how the petitioner is entitled for damages of rupees five lakh. This has not been established that the admission of the petitioner was cancelled unlawfully or

illegally. The extent of disability of the petitioner was assessed by the medical board of the college to be less than what would have entitled the petitioner for admission in the physically disabled category, which was accepted by the petitioner. The decision of the respondents to cancel the admission of the petitioner as he had been found to be medically unfit has not been challenged. In the circumstances the petitioner is not entitled for any damages/compensation from the respondents.

15. Therefore, for the foregoing reasons, the writ petition is partly allowed. The respondent is directed to refund the entire fee of Rs. 30,000/- (Rupees thirty thousand) to the petitioner within two months failing which the respondents shall be liable to pay simple interest on the said amount @ 9% per annum from the date of this order till the time the amount will be paid to the petitioner. The petitioner, however, shall not be entitled for interest @ 18% from the date the amount was paid by the petitioner and as has been claimed by him. The relief of the petitioner to claim Rs. 5.00 lakh as damages is also declined. Parties are also left to bear their own costs.