

MADHYA PRADESH HIGH COURT

Rekha Saxena

Vs.

State (M.P)

Misc. Civil Petn. No. 215 of 1984
(G.L. Oza, Actg. C.J. and Rampal Singh, JJ.)

17.10.1984

JUDGMENT

Oza, Ag. C.J.

1. This petition has been filed by the petitioner challenging an order passed by the Joint Director, Medical Education, Madhya Pradesh, Bhopal, dt. 26th April 1984, refusing admission to the petitioner for Diploma Course in Post-Graduate Studies at Gajra Raja Medical College, Gwalior.

2. According to the petitioner, the petitioner passed her M.B.B.S. Examination in the year 1981 as a student of the Gajra Raja Medical College, Gwalior and thereafter did her internship from 10th Aug: 1981 to 9th Aug. 1982 from J. A. Group of Hospitals attached to the Medical College and thereafter she was awarded the degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.). The petitioner after obtaining this degree with a view to pursue her further education joined the House Job in Gynecology and Obstetrics of J. A. group of Hospitals on 10th Aug. 1982 and completed it on 9th August 1983.

3. That the Dean of the G. R. Medical College, Gwalior (Respondent 3) issued a notice dated 2nd Feb. 1983 inviting applications on prescribed forms for admission for M.D./M.S. and Diploma Courses at G. R. Medical College, Gwalior, under the rules framed by the Government of Madhya Pradesh and communicated to the Dean of the Medical College by letter dt. 30th May 1981 from the candidates who were to complete their House Job during the year 1983. The last date for submitting forms was 26th Feb. 1983 which was further extended by respondent No. 3 by thirty days and thus the last date was 25th Mar. 1983 as the petitioner was to complete her House Job

before the date of admission, i.e., 10th Aug. 1983, the petitioner submitted an application in March 1983 for admission to Diploma Course in Gynecology and Obstetrics. It is further alleged that as per Rule 2.1 for Diploma Course, the Dean of the Medical College has been authorized to fix the seats with the prior consultation of the concerned University and the Medical Council of India. Respondent 3, the Dean of G. R. Medical College, Gwalior, had Fixed 7 seats for the Diploma Course in Gynecology and Obstetrics. These seats were to be distributed on the basis, of 50% for merit candidates and rest for Assistant Surgeons serving in the State and by this process respondent 3 had fixed 3 seats for merit candidates in the Diploma Course of Gynecology and Obstetrics. Apart from the petitioner, one Dr. Smt. Urmila Shukla had also applied for admission to the Diploma Course in Gynecology and Obstetrics and Smt. Shukla had also applied for admission to post-Graduate Course in the same subject for the year 1983-84. According to the rules framed by the State Government for admission to the post-Graduate Studies, the total number of seats available for admission would be equal to the number of sanctioned posts of teachers, in the department up to the rank of Lecturers and there being 7 teachers up to the rank of Lecturers in the department of Gynecology and Obstetrics in this Medical College, the seats for Post-Graduate studies for Master's Degree in Surgery in the above subject came to 7.

4-5. That, according to R.2.7 of the Rules for post-graduate studies the number of seats available each year to the candidates as per merits 2/3 and remaining 1/3 seats to candidates who are in the service of the State Government as Assistant Surgeons. According to this, the seats available for merit candidates for post-graduate studies came to 4,666 which were rounded up to 5.

6. That, accordingly, the selection of students for merit seats was done for postgraduate as well as for diploma courses and a provisional list was declared on 17th May 1983 and a notice to that effect was issued by respondent No. 3 inviting objections up to 27th May 1983. In that list, Dr. Smt. Urmila Shukla was placed at No. 5 for the M.S. course and at No. 1 for the Diploma course in Gynecology and Obstetrics. The petitioner has filed along with this petition a copy of the notice. A copy of this notice was also forwarded to the Secretary, College and Hospital Council, J. A. Group of Hospitals, Gwalior, and the head of the Department concerned.

7. The petitioner, who had applied for Diploma course, was also declared selected as

per statement showing the merit list of candidates for admission to the said department and she was placed at No. 4 in the said list. A copy of this list is filed along with this petition.

8. It is further alleged that according to Rule 2.7 of the rules for post-graduate admission, Dr. Smt. Urmila Shukla was to be selected as the 5th candidate for M.S. course and, as such, her name at serial No. 1 in the list of Diploma course should have been deleted and by that process the petitioner should have been placed at serial No. 3 as there were only two more candidates in the merit for Diploma over and above the petitioner. They were, according to the petitioner, Miss Neeta Bhatnagar and Smt. Usha Sharma and as there were 3 seats for merit candidates in Diploma course, the petitioner being the third one ought to have been automatically admitted as the third candidate.

9. The lists were considered by the College and Hospital Council in its meeting dated 30th May 1983 and as per the decision in this meeting a list of selected candidates for admission to M.D./M.S. course for the year 1983-84 was issued on 30th May 1983 with a condition that the same was to be finally sanctioned by respondents 1 and 3. The candidates selected out of the provisional list for the course of M.S. in this subject were (1) Dr. Miss Anuradha Mange, (2) Dr. Ku. Archana Sharma, (3) Dr. Ku. Rene Bhardwaj and (4) Dr. Ku. Nisha Sharma. It is alleged by the petitioner that only four candidates out of merit candidates were selected for admission in violation of Rule 2.7 according to which five out of seven seats were to be filled in from the merit list.

10. Similarly, the council approved three candidates for admission to Diploma course in this subject and they were (1) Dr. Smt. Urmila Shukla, (2) Dr. Miss Neeta Bhatnagar and (3) Dr. Smt. Usha Sharma. According to the petitioner, she being 4th in the merit list was not given admission as Dr. Smt. Urmila Shukla was placed at No. 1 in the list of admission to the Diploma course although she was entitled to be admitted for M.S. course.

11. Dr. Smt. Urmila Shukla represented to the College Council (Respondent 5) and respondents 1 and 2 vide her representation dated 2-8-1983 claiming that according to the rules for admission for merit candidates she deserves to be admitted in the M.S. Course in the subject. The College Council under the Chairmanship of Respondent 3 considered the representation of Dr. Smt. Urmila Shukla and holding that the ratio between the merit candidates and Assistant Surgeons is 5:2, Dr. Smt. Urmila Shukla

was entitled to be admitted in the M.S. Course and the petitioner according to para 2 to Rule 2.2 being the candidate next in the waiting list became entitled for admission to Diploma course and therefore the petitioner also applied for being given admission in Diploma course vide her application dt. 26-8-1983. It is significant that in this application the petitioner prayed for provisional admission till the matter of Dr. Smt Urmila Shukla was settled and also offered to work without any stipend. It is alleged that on this application of the petitioner an assurance was given that as soon as Dr. Smt. Urmila Shukla will be given admission in the M.S. Course, the petitioner being the next candidate in the waiting list would get admission for Diploma course and the petitioner was also advised not to take up any employment as it would be a disqualification for her admission. According to the petitioner, she did not take any employment since August 1983 till the date of filing of the petition.

12. Misc. Petition No. 297 of 1983 filed by Dr. Smt. Urmila Shukla was heard on 16th Mar. 1984 and was allowed by order dt. 17th April 1984 directing the respondents to admit Dr. Smt. Urmila Shukla to the course of M.S. in the subject and accordingly Dr. Smt. Urmila Shukla was admitted by respondent 2 by order dt. 24th April 1984.

13. After the judgment in Misc. Petition No. 297/83 the petitioner again moved for her admission in the Diploma course stating that as Dr. Smt. Urmila Shukla has been admitted in M.S. Course, her seat has fallen vacant in Diploma course and therefore the petitioner is entitled to admission. It is alleged that the College Council (respondent 3) also recommended the petitioner's case for admission in Diploma course vide its order dated 24th April 1984 but respondent 3 rejected the said request on the ground that the petitioner cannot be given admission in 1984 against the quota of selection in 1983 treating as if the selection of 1983 was only for the year 1983 but it is alleged that in fact it was for the year 1983-84. According to the petitioner, the selections done for admission in 1983 were not for the calendar year 1983 but were for the academic year 1983-84 which is apparent from the selection list and also from Rule 2.3. It is also alleged by the petitioner that respondent 3 in the case of Dr. Smt. Dixit did not follow this rule and she was given admission in M.S. Course in the month of March 1983 though she was doing Diploma course in the year 1982-83 and, therefore, it is alleged that the respondent No. 3 has applied different yardsticks in different cases and thereby has discriminated against the petitioner. The petitioner, therefore, has challenged the refusal to her for admission in the Diploma course on the seat having fallen vacant as Dr. Smt. Urmila Shukla has been selected for M.S.

Course.

14. In the return filed by the respondents, the facts are not disputed. What is contended is that as against the judgment of this Court in Dr. Smt. Urmila Shukla's case an appeal has been taken to the Supreme Court of India and, therefore, her seat in the Diploma Course is kept vacant and has not yet been declared to be available for any other candidate and it is on this basis, it is contended, that as there is no seat vacant, admission was not granted to this petitioner. The main contention on behalf of the respondents, therefore, is that as Dr. Smt. Urmila Shukla's case is still pending before the Supreme Court, although the seat is vacant but has not been declared vacant and it is only on this basis, it is contended, that admission to the petitioner for the Diploma course could not be given. Even at the time of hearing, the learned counsel appearing for the State stated that the case of Dr. Smt. Urmila Shukla has yet not been decided and is still pending.

15. It is not disputed that in fact Dr. Smt. Urmila Shukla was given admission in M.S. course in the month of August 1983, may be provisionally, and that is why the petitioner submitted an application on 26-8-1983 and the petitioner made a categorical statement in this application "So I may kindly be permitted to join as D.G.O. candidate provisionally. I am not willing to claim any stipend from the college till the decision". It is very clear from this application made by the petitioner that as Dr. Smt. Urmila Shukla was admitted for M.S. Course in August 1983, this petitioner submitted this application praying for her admission provisionally so that if ultimately Dr. Smt. Urmila Shukla has to come back to the Diploma course, the petitioner will walk out. There can be no better and reasonable request which could have been made on behalf of the petitioner. It is strange that this request of the petitioner dt. 26-8-1983 was ultimately turned down by the respondents by an order dt. 25-4-1984, practically eight months after this prayer was made by the petitioner. This delay in taking a decision on such matters when every day that passes in the life of a professional candidate is material, speaks volumes about the efficiency of this department and the rejection is on this basis that the petitioner was selected for the year 1983 and could not be admitted in the year 1984. This logic of this order, it appears, is not defended in the return and a new defence has been raised in the return that as the case of Dr. Smt. Urmila Shukla is not yet finally decided and is pending in the Supreme Court, the seat has not been declared vacant although it is not disputed that the seat is and was vacant in fact. It is peculiar that if Dr. Smt. Urmila Shukla could be given a provisional

admission, why the petitioner could not have been given provisional admission immediately when she had herself offered in terms which would throw no liability on the respondents if ultimately she had to go back, but it appears that her application was not considered and ultimately practically major part of the session was wasted and then the refusal was on the ground of delay for which the authorities themselves were responsible. It is, therefore, plain that this kind of attitude could not be justified.

16. It is also interesting that in fact the selection of a candidate for admission to a course is for the academic session which is August 1983 to August 1984 and therefore when this order in April 1984 was passed, the session was still in the offing and if the petitioner was granted admission, there was no question of consideration of merit for the year 1984. It is also plain that the seat remained vacant as Dr. Smt. Urmila Shukla had been admitted in the M.S. Course. The question of declaring the seat vacant when it is in fact vacant is only an imaginary concept which does not find any justification whatsoever as apparently by now the petitioner would have completed one academic year full in the Diploma course but for the manner in which the respondents treated the case of the petitioner and the delay that was done in consideration of her application.

17. Their Lordships of the Supreme Court had occasion to consider a similar situation in the decision in (1)....."If admission to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the Courts are faced with in these cases is, that it is not until a period of six months or a year elapses after the admissions are made that the intervention of the Court comes into play. Writ petitions involving a challenge to such admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this Court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the *Punjab Engineering College v. Sanjay Gulati*,¹ true legal position. Students who are wrongly admitted do

not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul: Once you are in, no one will put you out. Law's delay work their wonders in such diverse fashions. We find that this situation has emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution we might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. We have decided, regretfully, to allow the aforesaid sixteen students to continue their studies, despite the careful and weighty finding of the High Court that at least eight of them, namely, the seven wards of employees and Ashok Kumar Kaushik, were admitted to the Engineering Course in violation of the relevant rules and regulations."

In this case also a contention as raised before their Lordships that as the decision has taken some time, even if the petitioners are found entitled to admission no seats may be available and to meet such a situation their Lordships observed (at p. 582 of AIR) :

"It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admission contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional Seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. Since in this case eight students, and perhaps sixteen were wrongly admitted, we direct that, over and above sanctioned strength for the next academic year commencing in July 1983, sixteen additional seats shall be created, to which sixteen students shall be admitted to the Punjab Engineering College from the lists which were prepared

for the 1982-83 academic year. These sixteen seats shall be apportioned in an equal measure between the local students belonging to Chandigarh and the general group of students belonging to areas outside Chandigarh. That is to say eight students will be admitted from the Chandigarh List of students and eight from the General List of students, which were prepared for the last academic year, viz. 1982-83." It is clearly laid down that even if a person was wrongfully kept back and ultimately is entitled to admission, and if there is no seat, a seat will have to be created for admission of such a candidate.

18. In the present case, as it is clear that in the vacancy of Dr. Smt. Urmila Shukla the petitioner was entitled to admission immediately in August 1983, itself and if the respondents had chosen to keep her away by not considering her prayer, it could not be contended that now it is too late for her to be admitted.

19. The petition is, therefore, allowed and it is directed that the petitioner shall be admitted to the Diploma Course in Post Graduate Studies in Gynecology and Obstetrics immediately and whatever is necessary to be done to grant her admission by way of creation of seat shall be done by the respondents without undue delay. The petitioner shall be entitled to costs of this position. Counsel's fee Rs. 250/- if certified. Security amount deposited by the petitioner shall be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. 1983 Cur Cri LJ (SC) 209 : (AIR 1983 SC 580)

