

Mona Aggarwal Subhashkumar Aggarwal Vs. Mahatma Gandhi Institute of Medical Sciences Through Its Dean, Sewagram District Wardha and ors.

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Court : Mumbai

Decided On : Jun-30-1995

Reported in : 1996(2)BomCR64; (1995)97BOMLR655

Judge : M.B. Ghodeswar and ;V.S. Sirpurkar, JJ.

Acts : Rules for Admission to Post Graduate Courses in Medicine, 1993 - Rule 7; [Evidence Act, 1872](#) - Sections 3, 58 and 115

Appeal No. : Writ Petition No. 855 of 1995

Appellant : Mona Aggarwal Subhashkumar Aggarwal

Respondent : Mahatma Gandhi Institute of Medical Sciences Through Its Dean, Sewagram District Wardha and ors.

Advocate for Def. : S.V. Manohar, Adv. for respondent No. 1, ;A.P. Shinde, Adv. for respondent No. 2 and ;A.B. Choudhary, Adv. for respondent No. 3

Advocate for Pet/Ap. : D.K. Deshmukh, Adv.

Disposition : Petition allowed

Judgement :

V.S. Sirpurkar, J.

1. Rule, returnable forthwith. Heard learned Counsel.

The petitioner herein challenges the selection of respondent No. 3 for the graduate diploma course in Gynaecology and Obstetrics and claims the said registration for herself.

For understanding the controversy, the following background is necessary :--

2. Respondent No. 1-Mahatma Gandhi Institute of Medical Sciences has the facility for Post Graduate Disciplines in the medical education. The said institution is affiliated to the respondent No. 2-Nagpur University. The petitioner passed her final M.B.B.S. examination and admittedly is qualified to pursue the Post Graduate Study. It is the case of the petitioner, and it remains unchallenged, that the respondent No. 1-Institute is a 'State' within the meaning of Article 12 of the Constitution of India, since it is run on the State Finances. The petitioner claims that she became eligible for admission for the Post Graduate courses in January, 1995. She points out that previously it was essential for a student to render two years of rural health service for being eligible to apply for registration for Post Graduate Degree or Diploma Courses. This was Rule 8 governing the Rules for Admission. However, this Rule was challenged by some students in Writ Petition No. 2951 of 1992. This Court had directed the respondent No. 1 to advertise the seats for Post Graduate courses beginning from academic year 1993. It was also directed to prepare the list of candidates who were to be admitted. However, the admissions were not to be made. The respondent No. 1, while issuing the advertisement, again amended the Rules governing the admission and introduced a new Rule No. 7, which runs as under :--

'Definition of Rural Service :

The candidates must have resided and worked preferably for two years or more in order of priority.

(i) In non-Governmental voluntary organisation working for health care (Recognised by MGIMS, Sevagram).

- (ii) Government Hospitals/Public Health Centres catering to rural population, and
- (iii) In the case of private practice, the place of resident practice should be situated in rural areas (non-municipal notified area) away from cities (Detailed information to be given in the format attached with the application form).

The authority to issue certificates in the case of (i) and (ii) will be Medical Officer/appointing authority/in-charge of the Hospital.

In case of (iii) the certificate should be issued by the Sarpanch of the Gram Panchayat and it should be counter-signed by a Government Official, viz., Tahsildar or any other equivalent officer.'

The petitioner points out that this amended rule was also challenged in the pending Writ Petition No. 2951 of 1992 and the said rule came to be struck down by this Court and the respondent No. 1 was directed to fill in the seats for Post Graduate Courses on the basis of the Rule of merit, if necessary by issuing a fresh advertisement, in pursuance of the directions of this Court. However, the petitioner further points out that the said judgment of this Court was challenged before the Supreme Court, which has stayed the operation of the order of this Court. We shall, therefore, proceed on the basis that the original Rule 7 which we have already quoted above is in vogue.

2. It is the case of the petitioner that she sent a telegram on 24-1-1993 and informed the respondent No. 1 that she was doing private practice in village Nangal Choudhary in Haryana from 16-1-1993, and on that basis, the petitioner sought an approval letter from the respondent No. 1. The respondent No. 1 sought information from the petitioner regarding the rural service. It is the claim of the petitioner that she had supplied all that information alongwith a certificate. In fact, the respondent No. 1 had addressed a letter to an authority requesting it (the authority) to verify whether the petitioner was practising in the rural area and if so, to issue a certificate in that behalf. It is the case of the petitioner that such a certificate was ultimately issued which is annexed to this petition as Annexure-D. In short, the petitioner claims to have complied with item (iii) of Rule 7.

3. After this, according to the petitioner, the respondent No. 1 issued a fresh advertisement on 24-12-1994. In pursuance of this advertisement, the petitioner gave choice of three posts, viz., Diploma in Gynaecology and Obstetrics; (2) M.D. Pathology and (3) D.M.R.D. The petitioner points out that on 20th January, 1995, the respondent No. 1 published a merit-list of the students. That was the preliminary list. In this list, the petitioner appeared at serial No. 17 with 2182 marks, while respondent No. 3 appeared at serial No. 24 with 2062 marks. Insofar as the subject of Diploma in Gynaecology and Obstetrics was concerned, the petitioner was shown to have secured 2446 marks and was shown at second number, while the respondent No. 3 was shown to have secured 2205 marks and her serial number for registration for Diploma in Gynaecology and Obstetrics was shown to be '4'. Ultimately, a final list came to be published on 2-2-1995 in which two seats were shown to be allotted for Diploma in Gynaecology and Obstetrics - one to Dr. Ujjawala Bhure and the other, not to the petitioner but to the respondent No. 3. The petitioner points out that though both Dr. Ujjawala Bhure and the respondent No. 3 had lesser marks than her in the subject of Gynaecology, they were selected. According to the petitioner, one of the seats, as per the merits, must go to her and not to the two incumbents who have been selected; but since she is claiming only one seat, she stakes her claim against the seat granted to the respondent No. 3, because the respondent No. 3 admittedly has lower marks than Dr. Ujjawala Bhure. The petitioner further submits that she thereafter made a representation objecting to the selection pointing out that she is better placed in merit; on which, the respondent No. 1-Institution offered to register her for D.M.R.D. The petitioner, therefore, wrote the second representation dated 11th February, 1995 complaining the denial to her of the registration for Diploma in Gynaecology & Obstetrics is arbitrary and highhanded. The petitioner then contends that thereafter she was selected for the Post Graduate Degree in the subject of Pathology which she has ultimately accepted. She claims that her representation dated 11-2-1995 has still not been replied to by the respondent No. 1. In short, the petitioner's contention is that the merit rule has been offended in the denial of the registration of Gynaecology and Obstetrics.

4. The respondent No. 1 and the respondent No. 3, the selected candidate, have both opposed the petition vehemently. According to the reply of the respondent

No. 1, the petition should be dismissed on the ground of delay. It is pointed out in the reply of the respondent No. 1 that the provisional list was published on 20th January, 1995, while the final list was prepared on 2-2-1995 and though the petitioner had made two representations on 3-2-1995 and 11-2-1995 respectively, she has filed the present petition only on 27-3-1995, i.e., after the period of more than one-and-a-half months. Respondent No. 1, therefore, submits that in view of the fact that she was offered the registration in the subject of Pathology and in view of the fact that she accepted that offer, this delay was fatal. Respondent No. 1 also submits that in accepting the seat for M.D. Pathology, without any protest, the petitioner has waived her claim and that she cannot now stake her claim for the admission in Diploma in Gynaecology and Obstetrics.

5. The respondent No. 3 has vehemently opposed the petition. She claims that she has completed internship on 30-5-1995 and thereafter practised in rural area and rendered rural service in non-Governmental voluntary organisations for a period of two years. She, therefore, claims that she is covered in Rule 7, Item (i). She pointed out that the petitioner is covered if at all, only in Item (iii) of Rule 7 and, therefore, she (respondent No. 3) claims to be in higher category. The respondent No. 3, therefore, contends that since she is in higher category in order of priority, she was rightly preferred by the respondent No. 1. She claims that if she was fully qualified for being granted registration, then she being in the higher category, her case was rightly considered. A faint suggestion has already been given that the certificate in favour of the petitioner was not proper.

6. Considering the rival claims, it will have to be seen that firstly there is no dispute that the petitioner is a better candidate as compared to the selected candidates for admission to the Diploma in Gynaecology and Obstetrics. Neither the respondent No. 1 nor the respondent No. 3 had disputed the superiority of the petitioner insofar as the merit is concerned. It will have to be, therefore, seen whether the merit could be given a go-by by the respondent No.1 in favour of respondent No. 3, and the admission in favour of the respondent No. 3 in preference to the present petition could be justified in law.

7. Shri Choudhary, learned Counsel for the respondent No. 3 strenuously argues that the opening words of Rule 7 for the admission which requires Rural Service, are to the following effect :

'The candidates must have resided and worked preferably for two years or more in order of priority.'

He points out that thereafter three categories have been provided in the Rule. He, therefore, contends that if the respondent No. 3 could be covered, as is her case, in the first category and if the petitioner is covered under the third category, then the respondent No. 3 had to be preferred to the petitioner. He also submits that, in fact, the certificate in favour of the petitioner is not proper and was not in keeping with the rule.

8. Taking his second contention first, we will have to hold that once this certificate in favour of the petitioner is accepted by the respondent No. 1, there would be no scope for the respondent No. 3 to question that certificate. Indeed, the respondent No. 1 has not, in any manner, disputed the certificate as produced by the petitioner. We have seen the annexures ourselves and found that it can be safely inferred that the petitioner had put in two years of private practice in the rural areas and as such she was covered in category (iii) of Rule 7. This argument of Shri Choudhary must, therefore, fail and the respondent No. 3 could not be allowed to raise that point.

9. As regards Shri Choudhary's first contention, also the position is no different. It will be seen that the priorities regarding the rural service as provided in the Rules would be applicable only if on merits the two candidates are on the same pedestal. This priority regarding the rural service cannot be used to by-pass the merit. If the petitioner and the respondent No. 3 had the equal marks in the subject of Gynaecology and Obstetrics, then and then alone the further priorities could be seen, and in that case, the respondent No. 3, who was covered by category (i) of Rule 7 governing the Rules of Admission, could have been preferred to the present petitioner. But where the petitioner is clearly a better candidate having secured more marks in the subject of Gynaecology and Obstetrics, her case cannot be compared with the respondent No. 3, nor could her claim for the

registration be denied on the ground that she was placed in category (iii) of Rule 7. This is a plain and apparent meaning of Rule 7. The argument of Shri Choudhary that if both the petitioner and the respondent No. 3 were eligible for being admitted, then the priorities as envisaged in Rule 7 must be honoured, is obviously incorrect. It is needless to say that merit is a first consideration for admission to these courses. The priorities in Rule 7 would work only if there is a question of comparison between the two candidates, which comparison could be only on the basis of merits. In the matter of merits, the petitioner being a better candidate her case is not comparable to the respondent No. 3 and, therefore, there is no question of the priorities being involved. We have also carefully seen the Rules for Admission. Rule No. 9 clearly provides the method of calculation to determine the comparative merit of the candidates. It is an admitted position that the Selection Committee here, after calculating the comparative merit, in keeping with Rule 9 of the Rules, has found the petitioner to be a better candidate in comparison to the respondent No. 3. The argument of Shri Choudhary, therefore, has to be rejected.

10. Shri Manohar, learned Counsel appearing on behalf of the respondent No. 1, pointed out that the petitioner had accepted the registration in M.D. Pathology, which was offered to her. He points out that the petitioner is, therefore, not entitled to now turn back and claim the registration in Diploma in Gynaecology and Obstetrics. He also points out that M.D. Pathology was also a second choice of the petitioner and since the petitioner had accepted the registration in M.D. Pathology, there will be no question of her now claiming the registration in Diploma in Gynaecology and Obstetrics.

11. The petitioner had made two representations, the first being dated 3-2-1995, and in that representation, in para-2, she has complained that Diploma in Gynaecology and Obstetrics was her first choice and has been allotted to both such candidates who rank lower to her in merit. No. doubt, she has also made complaint regarding the second choice of M.D. Pathology, as in the preliminary list, she was not found admitted to that subject. In respect of M.D. Pathology, she had complained that a candidate lower to her was admitted. It will be seen that in the first list, the petitioner was not given admission at all and, therefore, it was but natural for her to have complained regarding her both the choices. It seems that

thereafter, she was allotted registration in D.M.R.D. on 4th February, 1995 and, therefore, she complained on 11-2-1995, requesting for a change in the subjects. There also she had given the first choice as D.G.O. (Diploma in Gynaecology and Obstetrics) and second choice as M.D. Pathology. She again reiterated in her representation dated 11-2-1995 that she had requested for Diploma in Gynaecology and Obstetrics, as she was better than both the candidates selected for registration for Diploma in Gynaecology and Obstetrics. In the last paragraph of her representation dated 11-2-1995, she has specifically claimed the registration for Diploma in Gynaecology and Obstetrics. Under such circumstances, it cannot be said that she had, in any manner, given up her claim for registration in Diploma in Gynaecology and Obstetrics, merely because she was offered the registration in M.D. Pathology, which she was obliged to take. After all, the petitioner had lost everything in the sense that she was not admitted to any of the courses. If ultimately the registration in M.D. Pathology was offered to her, she could legitimately take it without losing her rights to claim the registration in Gynaecology and Obstetrics. We pointedly asked Shri Manohar to produce any document suggesting that the petitioner had given up her claim for registration in Gynaecology and Obstetrics, when she accepted her admission to M.D. Pathology course; he was unable to point out anything in that behalf. After all, it cannot be forgotten that the petitioner was always a better candidate and that has been an admitted position. Respondent No. 1 could not have, therefore, denied the claim on the spacious ground that the petitioner was offered registration in some other subject. It would be clearly arbitrary for the respondent No. 1 to ignore the petitioner's choice and give her the admission to some other course, as per its own franchise, completely ignoring the established principles of merit. The argument of Shri Manohar, therefore, must be rejected. A faint attempt was made by him to suggest that the petition was filed late. The argument must be mentioned only to be rejected. The petition has been filed one-and-a-half months after finalisation of the admissions. That, we do not think, is a period which could not-suit the petitioner. In that view of the matter, we reject that argument of Shri Manohar, also.

12. In the result, the petition succeeds. Respondent No. 1 is directed to offer registration to the petitioner for the Post Graduate Diploma Course in Gynaecology

and Obstetrics for January, 1995 term, if necessary by cancelling the registration in favour of the respondent No. 3. The respondent No. 1 shall be free to consider the case of the respondent No. 3 for adjusting her to the same or any other course. With these observations, the rule is made absolute, with costs.

13. At the stage of pronouncement of the judgment, Shri Choudhary, learned Counsel for the respondent No. 3, made a request that the effect of the judgment should be stayed for a month to enable him to go to the Supreme Court. We do not think that the judgment can be completely stayed. We would only direct that the admission of the respondent No. 3 may not be cancelled for one month. However, the entry of the petitioner to the course cannot be stayed.

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