

Dr. Sameer Harshey Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : May-10-1999

Reported in : AIR1999MP234; 2000(1)MPLJ65

Judge : R.S. Garg, J.

Acts : [Constitution of India](#) - Article 226; Madhya Pradesh Medical and Dental Post-Graduate Entrance Examination Rules, 1998 - Rule 10(3), 10(4) and 10(5)

Appeal No. : W.P. No. 1627 of 1999

Appellant : Dr. Sameer Harshey

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : Ajay Mishra, Dy. A.G.

Advocate for Pet/Ap. : Udayan Tiwari and ;R.K. Shrivastava, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

R.S. Garg, J.

1. This order shall also dispose of W.P. No. 2121/99 (Dr. A. Rajiv Sunny v. State of M.P. and Ors.), W.P. No. 956/99 (Ku. Bhawana Tiwari v. State of M.P. and Ors.)

and W.P. No. 1181/99 (Swapnil Jakheria v. State of M.P. and Ors.).

2. The facts necessary for the disposal of the petitions are that Dr. Sameer Harshe, petitioner of W.P. No. 1627/99 according to his merit has been admitted to the post-graduate diploma course in ENT in Netaji Subhash Chandra Bose, Medical College, Jabalpur. He was given the said diploma course in the first counselling. According to him because of availability of the degree course in ENT he is entitled to be given the degree course. According to the petitioner he give a notice demanding justice on 11-3-1999 requesting the respondents to give the said seat to him but as nothing has been done in his favour, he was required to file the petition. According to Dr. Harshe about 290 post-graduate degree seats on clinical side are available. According to him 132 seats for P.G. Diploma in various subjects are available. The details of the reservation are given in paras 5.3 and 5.4 of the petition. Dr. Harshe appeared in Jan., 1998 examination and at the time of first counselling no degree seats was available to the petitioner therefore, left with no other choice he had to opt for diploma in ENT known as D.L.O. He was admitted to the course and joined the same on 1-5-1998. It is submitted by the petitioner that the second counselling could take place before second July of the year but in the present case the second counselling was to take place in Feb., 1999. The petitioner's claim is that as at the time of first counselling the seat was not available and as it has now fallen vacant he is entitled to the degree seat. In his submission the respondents cannot be permitted to play with the future of the petitioner and they are bound to allot the seat to him. According to the petitioner the said degree seat had fallen vacant on 22-3- 1999. The seat must be allotted to him. The respondents have filed their return and have submitted that the petitioner is not entitled to the degree seat. The respondents submit that since the petitioner is prosecuting his studies in the diploma course, he is not entitled to change in accordance with the rules therefore, the petition deserves dismissal. Referring to the rules it was further submitted that the petitioner is forbidden for a period of 3 years from making any change either in course or in the subject or institution. They have prayed that the petition be dismissed.

3. In the matter of W.P. No. 956/99 on the identical grounds the petitioner-Dr. Ku. Bhawana Tiwari submits that she was allotted seat (D.O.M.S.) in the first

counselling but as the degree seat in Ophthalmology is available she deserves to be admitted in degree course. According to her, she is entitled to change the course and as she is not seeking any change either in the subject or in the institution the respondents are duty bound to allot the seat to her.

4. In the matter of W.P. No. 2121/99 the petitioner-Dr. A. Rajeev Sanni has submitted that the petitioner was allotted diploma in Orthopaedics but as a seat in M.D. course of medicine has fallen vacant the petitioner be awarded the said degree seat in his favour.

5. In W.p. No. 1181/99 the petitioner submits that he appeared in pre-post-graduate test held in the year 1998 and was placed at serial No. 72. The petitioner was called upon to appear in the counselling held on 24-4-1998 but since in the first counselling the petitioner was not getting the subjects of his choice viz. Surgery/Ophthalmology she preferred to remain in waiting list and as the seats have been made available, the petitioner be considered and be awarded the seat according to her qualifications. The respondents in their return have submitted that the respondents are not allotting available seats without going through the process of counselling and as the State Govt. has taken a decision by order dated 28-4-1999 to fill up the vacant seats of general category and different reserved category seats from the waiting list as per the procedure prescribed under the rules, the petitioner should not have any apprehension.

5.1 At the very outset Shri P. D. Gupta learned Govt. Advocate referring to a judgment of this Court in the matter of Manish Garg v. State of M.P., 1999 (1) MPLJ 2:50 submitted that the petitioners submission that they are not seeking change in the subjects would not be correct because this Court has already held that the words 'subject' as used in Rule (X)(iii) of the Rules has to be taken as taking its colour from the preceding words 'Particular course' and the emphasis underlying the rule is on the particular course of study in a subject. Shri Tiwari and Shri Diwakar learned counsel for the petitioners submit that the words 'course' 'subject' and 'institution' are to be read in their true prospective and the judgment in the matter of Manish Garg has not taken the said words in their true perspective. According to them course would mean diploma or degree while

subject would mean a different curriculum and the word institution would mean the institution where the candidate has to prosecute the studies. Referring to the Rule (X)(ii) of the M.P. Medical and Dental Post-graduate Entrance Examinations Rules, 1998, they submit that the candidate is entitled to elect only one course, subject and one institution and he would be admitted to that subject and the institution so elected. According to them the petitioners do not propose to change the subject therefore, they are entitled to the degree course. Their further submission is that Rule (X)(iii) would not come in their way because according to Rule (iii) a re-request for change of subjects or institution shall not be entertained but as the petitioners are not seeking any change in the subjects or institution they would certainly be entitled to allotment of the degree course. His further submission is that if a person better qualified is allotted the diploma course then it would run contrary to the common sense that the seats available in the degree course is granted to a person less qualified. In his submission if the degree course is available in the same subject then a candidate prosecuting his studies in diploma course can be permitted to change the course but if the proposed change requires any change either in the subject or in the institution then it would not be permitted. Placing reliance in the matter of *Dr. Sadhana Devi v. State of U.P.*, 1997 (3) SCC 90 : (AIR 1997 SC 1120) it was submitted that the Court must consider the merits because the higher one goes in any discipline, lesser should be the reservation of whatever kind. According to him the petitioner is entitled to a change. His further submission is that the Supreme Court in the matter of *State of U.P. v. Anupam Gupta*, AIR 1992 SC 932 has clearly directed that the specialities should be decided on the foundation of merits. His further submission is that if the persons are allowed to take chance by giving up their claim at the time of the first counselling then it would lay down a bad precedent because the people less qualified may get a better subject which otherwise they are not entitled to. According to him a person less qualified is placed in the waiting list should not get preference over the person who is better qualified but has been allotted a diploma course.

6. Shri Gupta, learned Govt. Advocate submitted that the word 'course' and 'subject' are to be read in juxta position. According to him, an independent reading of these words may lead to a chaos. Referring to Rule X(iv) he submitted that a candidate who was not willing to be admitted to any of the subjects available

at the time of counselling may so indicate in writing and such candidate would forfeit his right to admission to any subject available at the time of his counselling and will not be admitted to any subject and his name will be placed in the waiting list in the order of merit, and if any seat falls vacant then only his name would be considered, In his submission Rule (iv) does not refer to a chance. It gives an option to a candidate to accept or not to accept the subject course and institution offered to him. At the risk of forfeiture of his right, he keeps himself in waiting list and if a seat is made available, then only he shall be considered, otherwise he will again have to appear in the next year's examination. Shri Gupta submits that whilefilling up the vacant seats, candidates already admitted to any subject in any institution will not be considered and candidates in waiting list will be considered. His submission is that a candidate is entitled to elect only one course subject and one institution, and would be admitted to that subject and the institution so elected. According to him, the word 'course and subject' take their colour from each other and are required to be read together. According to him, as the petitioners have already opted for the diploma, course and have secured admissions and are prosecuting their studies, they are not entitled to lodge their claim because the seats now available would be given to the candidates awaiting their turn.

7. I have heard the parties at length.

8. Before considering the rival contentions of the parties, it is necessary to refer to the judgments cited by the learned counsel for the petitioners and learned counsel for the respondent. In the matter of State of U.P. (AIR 1992 SC 932) (supra), the Supreme Court observed that to maintain excellence and P.G. medical courses in medical colleges have to be commenced on schedule and to be completed within the schedule so that the students would have full opportunity to study full course to meet their excellence and come at par excellence. While considering the admission in the midstream, the Supreme Court observed that admission in the midstream would disturb the courses and also works and handicap to the candidates themselves to achieve excellence. The Supreme Court observed that vacancies of the seats would not be taken as a ground to give admission and the direction by the High Court to admit the candidates into those vacancies cannot be sustained. The Supreme Court also observed that exercise of equity jurisdiction

and prescription of minimum cut-off are mutually incompatible and counter productive. It would frustrate the excellence. True it is that the Supreme Court was making a reference to the excellence and the merits, but that was in altogether, a different context. The Supreme Court did not say that in view of the rules governing the admission, the person already admitted would be entitled to a change.

9. In the matter of Dr. Sadhana Devi, the Supreme Court while considering the case of backward classes, observed that the State may, if feel it necessary to do so, encourage backward classes by reserving seats at the under-graduate level for persons belonging to SC/ST and OBC. The Supreme Court also observed that it was doubtful whether this policy of reservation could be extended to the post-graduate level. The Supreme Court without deciding the question, however, observed before parting with the case that 'the higher you go in any discipline, lesser should be the reservations of whatever kind.' In the opinion of this Court, the observations made in the judgment of Dr. Sadhna Devi are of no assistance to the case of petitioners- Dr. Harshe, Dr. Rajeev and Dr. Bhawana Tiwari. In the present case, the question for consideration is whether the petitioner who at the time of the first counselling opted for a particular course subject and institution is entitled to a change in the event of a seat falling vacant.

10. In the matter of Manish Garg (1999 (1) MPLJ 250) (supra), the interpretation of Rule X(iii) came up for consideration. The learned Judge held that the emphasis of training for MD/ MS and diploma courses as required under the regulations are quite different. It was also observed that though the subject may be same, the course of study as well as the training for a postgraduate degree and a post-graduate diploma are quite different. The learned Judge observed that the word 'subject' as used in Rule X(iii) of the Rules has to be taken as taking its colour from the preceding word 'particular course' and the emphasis underlying the rule is on the particular course of study in a subject. It was also observed that if the provisions contained in Rule X(iii) of the Rules were interpreted in the manner as suggested by the counsel for petitioner, it would render the expression 'particular course' redundant. Though the question has been concluded by the judgment in the matter of Manish Garg, learned counsel for petitioner submits that the

interpretation given by the learned single Judge requires reconsideration.

For considering the rival contentions of the parties, it would be necessary to refer to para 3(x) titled as 'Counselling.' 11-12. The candidates would be called in batches for counselling at their own cost by the Director of Medical Education. The candidates shall appear before a committee consisting of particular persons. If a candidate is unable to appear before the Committee for counselling, he/she can nominate his/her representative in writing. The candidate will be informed of the available subjects and institutions in which the course are available at the time of his/her counselling. He/she would be entitled to elect only one course subject and one institution and he/she will be admitted to that subject and the institution so elected. A candidate so admitted and assigned to a particular course, subject and to a particular institution will not be entitled to seek change of subject or institution later, on any ground. No request for change of subject or institution shall be entertained. The candidate shall also give an undertaking that he/she shall not make any application, representation or petition for change of subject/institution so allotted/assigned to him/ her. From Sub-rules (ii) and (iii), it would clearly appear that the candidate would be informed of the subjects and institutions in which the courses are available. The candidate would be entitled to elect only one course subject and one institution. Shri Tiwari submits that the words 'one course subject and one institution' must be read as one course, one subject and one institution. While according to Shri Gupta, a candidate is entitled to elect only one course subject and one institution. The language of the rule does not say that the candidate would be entitled to elect one course one subject and one institution. The words 'one course subject' are to be read in togetherness. If the rules wanted to provide that a candidate would be entitled to elect one course one subject and one institution, then the rules could so provide. If the rules are read in their true perspective, it would only mean that a particular person is entitled to elect only one course subject because the course and subject are so interlinked that the subject available may be in different courses. One may say on the availability of a course in a particular subject that he would select that particular course in that particular subject. If diploma course is available in a particular subject, then the candidate is required to elect the diploma in that subject. He cannot say that the 'course' is to be read in disjunction with the word 'subject.'

13. From Sub-rule (iii) it would appear that a candidate so admitted and assigned to a particular course subject and to a particular institution will not be entitled to seek change of subject or institution later, on any ground. The submission of learned counsel for the petitioner that the banis on change of subject and institution only cannot be accepted. Sub-rule (ii) and Sub-rule (iii) read together would clearly show that the admission is in a particular course subject and in a particular institution. There may be a case where a particular course is available in an institution, but the subject is not available; similarly a sub-ject might be available but the course preferred may not be available. When somebody has to make an election and has to exercise his option, then he has opportunity to exercise his option for a particular course subject and a particular institution. If the rules wanted to say that the baa is applicable to subject or institution and not to the course, then the opening words of Sub-rule (iii) would have been 'a candidate so admitted and assigned to a particular course, particular subject and to a particular institution.....' The Sub-rule (iii) further provides that request for change of subject or institution shall not be entertained. In the opinion of this court, the word 'subject' would mean 'particular course subject.' Any interpretation contrary to it would run contrary to rule itself and would make the other provisions of these rules redundant.

14. According to Sub-rule (iv), a candidate who does not wish to be admitted to any of the subjects available at the time of counselling may so indicate in writing. The effect of the refusal would lead to forfeiture of the right of the candidate and such a candidate would again be considered for admission if any seat falls vacant and his name will be placed in the waiting list. This rule does not provide a chance element. In fact a candidate who is otherwise qualified and eligible finds that a subject course and institution of his choice are not available then he may withdraw himself and permit the others to occupy the seat. This withdrawal of the candidature infact forfeits his/her right to admission to any subjects available at the time of counselling. Not only this the penalty is that he would be placed in the waiting list in order of merits. If the providence provides some benefits to him, then his case would again be considered. Such would not be a case of chance. If case of such candidate is compared with case of the petitioner, it would clearly emerge that the petitioner was not ready to give up his turn and secured admission; while

on the other side, the other candidate gave up his chance and was ready to wait. It is not necessary that such a candidate who has given up his chance may secure subject of his like. For the next year he would again have to qualify himself. The petitioner who was not ready to give up his chance cannot come and say that though he was not ready to give up his turn would still be entitled to be considered because he is meritorious in comparison to the others who are placed in the waiting list.

15. Sub-rule (v) provides that if seats remain or fall vacant in any subject in any institution, the same would be filled up from the waiting list strictly in the order of merit. When filling up subject vacant seats candidates already admitted to any subject in any institution will not be considered and candidates in waiting list will be considered. Assuming for a moment that the 'courses' and 'subjects' are different, then too (sub-rule (v) would seal the fate of a candidate who has already taken admission in any subject. Undisputedly a candidate who has already taken admission in some subject, the rule in its true application removes him out of the zone of consideration. The language of Sub-rule (v) is clear, unambiguous and positive then it says that the candidates already admitted to any subject in any institution will not be considered while filling up the vacant seats. Undisputedly the petitioners seeking change have taken admission in some subject.

16. From Sub-rule (viii)(i), it would also appear that the candidate shall be allotted the subjects/institutions as per their choice and availability at their turn. A candidate may also elect to be in waiting list. The option exercised by the candidate shall be final and he/she shall not be permitted to change it later under any circumstances. From this rule, it would clearly appear that the candidate shall be allotted the subjects/ institutions as per his/their choice. Once he exercises his option regarding subjects/institutions then he shall not be permitted to change it later under any circumstances. From a wholesome reading of the rules, it would clearly appear that a candidate at the time of counselling is required to exercise his option on basis of the availability of the subjects and institutions. The subjects may be available in different courses, but he has to elect the subject and the institution. He may opt for particular subject/institution or may prefer to remain in the waiting list, but in either of the case, he would not be permitted to change it

later on. If a candidate elects a particular course of a particular subject, then he cannot be permitted to say that because subject is the same, he would be entitled to change the course. I am unable to hold that the judgment delivered in the matter of Manish Garg (1999 (1) MPLJ 250) (supra) requires reconsideration. I am in respectful agreement of the said judgment. The Petitions Nos. 1627/99, 2121/99, 956/99 deserve to and are accordingly dismissed. W.P. No. 1181/99 is disposed of with the direction that if the petitioner is still in the waiting list, then the respondents shall invite him for the counselling and shall proceed in accordance with the rules. No costs.

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