

Shilpi Gupta Vs. Professional Examination Board and ors.

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Court : Madhya Pradesh

Decided On : May-07-2001

Reported in : 2001(5)MPHT637

Judge : Dipak Misra, J.

Acts : Admission to First Year of Bachellor of Engineering/Bachellor Architecture Courses Rules, 2000 - Rule 2.5.1, 2.5.2.1, 2.5.2.2, 2.6.1, 2.6.3, 2.6.4, 2.6.8 and 2.6.10

Appeal No. : Writ Petition Nos. 156, 382, 388 and 508/2001

Appellant : Shilpi Gupta

Respondent : Professional Examination Board and ors.

Advocate for Def. : Rakesh Shrotri, Adv. for the Respondent No. 1 and ;A.S. Raizada, Govt. Adv. for the Respondent Nos. 2 and 3

Advocate for Pet/Ap. : Manikant Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Dipak Misra, J.

1. The factual matrix and grounds of law raised being similar this batch of writ petitions was heard analogously and are disposed of by this common order. As a detailed return has been filed in writ Petition No. 156/20011 will deal with the facts of the said case for the sake of convenience and clarity. I will also refer to the grievances of the writ petitioners in other writ petitions at the appropriate place.

2. In Writ Petition No. 156/2001 the facts as have been unfolded are that the petitioner was selected for the purpose of engineering education. She was called at the Selection Centre situate at Bhopal. As she had not obtained adequate marks she was given admission without allotment of any Branch. She was directed to appear at the Engineering College, Jabalpur. The petitioner in compliance of the said direction appeared and according to her merits was allotted B.E. Mechanical Branch. After due formalities she started attending her classes. At that juncture an advertisement was published in the Local Newspaper 'Nav Bharat' dt. 5-1-2001 mentioning therein that as per the instructions given by the Director, Technical Education, the allotments of Branches made in the Engineering courses on 23-12-2000 has been cancelled and that those who have participated in the counselling held on that date would compulsorily apply for the fresh allotment of the branches. It is putforth in the petition that Rule 2.6.1 of the Rules for Admission to First Year of B.E./B. Arch. Courses 2000 (hereinafter after referred to as 'the Rules') contains the procedure for admission of the students. Rule 2.6.3 contains the procedure for payment of fees and allotment of branches. Rule 2.6.4 specifically lays down that if a candidate fails to appear at the time of counselling he/she will lose his/her chance to get the branch according to the merit and subsequently if he/she appears then he/she will be given allotment of seat/institution/branch according to the availability. Reference has also been made to Rule 2.6.8 of the Rules which stipulates a condition that once a candidate takes admission in any course/institution/branch he would not be allowed to change the course or institution or the branch. After issuance of the impugned notice the petitioner enquired and she was given a form to fill up, though she never intended to change her branch. It has been putforth that she was compelled to fill up the form which contains the heading 'Application for Change of Branch in the Institution'. It has been urged in the petition that the action taken by the respondents is without any authority and the branches allotted to the students cannot be cancelled when the

formalities have been completed. With these averments a prayer has been made for quashment of notice whereby the allotment of the branches made on 23-12-2000 has been cancelled and further to issue a direction restraining the respondents from proceeding further with regard to issue of different branch to the petitioner in Engineering course.

3. A return has been filed by respondent No. 1, Professional Examination Board, M.P., taking the stand that the said respondent had conducted the examination and prepared the merit list and forwarded the same to the Director of Technical Education and the concerned Engineering Colleges for further action. It is also put forth that the counselling is conducted and regulated by respondents No. 2 to 4 and the Board has nothing to do with it.

4. A counter affidavit has been filed by the respondents No. 2 to 4 contending, inter alia, that the petitioner has not come with clean hands as she has stated that she had successfully cleared in the Pre Engineering Test (P.E.T.), in fact, she has secured 148 marks out of 900 i.e. 16.44% and the minimum qualifying marks is 33% as per Rule 2.5.2.1 of the Rules. It has been stated that the first counselling was held at Bhopal in between August and September, 2000. It is also stated that on account of increase in number of seats because of creation of new seats of Information Technology and left out seats of other branches and additional seats in some of the branches, the Director decided to hold a fresh counselling and in this counselling everybody was allowed to participate. The said counselling was done from 12th November to 17th December, 2000 at Bhopal. In the said counselling the entire list of general category candidates who had secured 33% marks was exhausted. Thereafter, the answering respondents took recourse to the mode of selection on the basis of marks obtained in the subjects of Physics, Chemistry and Maths commonly known as PCM by the 12th Class students. In this kind of selection if there are no clear vacancies in a particular subject the candidates are admitted without branch, and thereafter, a particular College in which they are sent is required to act in accordance with the merits while allotting branches. An example has been given to the effect that if there are 10 vacancies of mechanical branch in a particular institution then while considering the case of the candidate who has been admitted without branch preference will be given to

the students of that institution on the basis of the marks obtained by the students in P.E.T i.e. to say a student who is already studying in the institution if he wants to opt for a new subject and he is more meritorious then he will be selected. The relevant Rule in this connection is 2.6.10. It is stated that in the instant case that the petitioner was selected not on account of her qualifying marks in the P.E.T but on the marks obtained by her in the subject of Physics, Chemistry and Maths of 12th Class and she was not allotted any branch from Director, Technical Education, Bhopal. She was admitted on 20-12-2000 without any branch in the College. Due to inadvertence when the students were called for counselling to be held on 23-12-2000 for allotment of branch, instead of calling all the students from the College/Institution admitted prior to the petitioner they could not be called for counselling as per Rule 2.6.10. As the students were not called, the petitioner was inadvertently admitted in the mechanical branch, contrary to the Rules. It has been stated that 23rd December was Saturday, 24th was Sunday and 25th was also a Holiday. On 26th December, 2000 the students who were meritorious had protested. Copy of letter of the student who had secured 311 marks has been brought on record as Annexure-R-2. Thereafter, the respondents realised their mistake and sought guidance from the Director. The Director after due consideration directed that persons who have been admitted on the basis of PET should be considered and then only the cases of PCM should be considered. According to the answering respondents they issued notice which was published in the local newspaper, and thereafter, the counselling was held. It has been stated that the counselling has been done on 11-1-2001 and the petitioner has been allotted the Industrial Production Branch. It has been stated that the petitioner was given the mechanical branch due to inadvertence which was not in conformity with the Rules and therefore, she cannot claim any benefit for the same.

5. It is note worthy to state here that after the counter affidavit was filed an application for amendment was filed by the petitioner clarifying the situation to the effect that the petitioner had mentioned that she had qualified in the Pre Engineering Test whereas as an actual fact she was called for the counselling on the basis of the marks obtained by her in PCM. It was also putforth in the amendment that there is no justification for recounselling programme.

6. A rejoinder affidavit has been filed by the petition to the return filed on behalf of respondents No. 2 to 4 highlighting that the allotment made in favour of the petitioner has been arbitrarily cancelled. Reliance has been placed to certain Rules to justify the allotment of branch. It has been put forth that some students who were more meritorious than the petitioner were also called for the counselling held on 23-12-2000 and they have been allotted the branches. It has been put forth in the rejoinder affidavit that the whole action has been taken to accommodate one student, namely, Shri Samarth Gautam who is the real nephew of Mr. I.K. Gautam, Head of the Department (Maths) who had been selected through PET basis and allotted Industrial Production Branch. It has also been put forth that said Samarth Gautam did not appear in the counselling held on the date fixed, and therefore, he was not allotted the Branch. Internal counselling was held on 7-12-2000 on which date certain students appeared for counselling and were permitted to change their branch but said Samarth Gautam did not appear on 7-12-2000, and therefore, he is not entitled to change the branch. It is also stated that as said Samarth Gautam is nephew of Head of Department of Mathematics in Engineering College, he has been given undue preference in utter violation of the procedure in Rule 2.6.4.

7. In W.P. No. 382/2001 the petitioner was allotted mechanical branch on the counselling held on 23-12-2000 and the grievance of the petitioner is that the same was cancelled and he has been given electrical branch.

8. In W.P. No. 388/2001 the petitioner has prayed for cancellation of change of branch by recounselling and prayed for giving her the branch which she had got in the counselling dated 23-12-2000. It is put forth by her that she had been given admission in B.E. Mechanical Branch by subsequent allotment vide Annexure-P-12 dated 11-1-2001.

A return has been filed justifying the action of the authorities and reference has also been made to the detailed return filed in Writ Petition No. 156/2001.

9. In W.P. No. 508/2001 the petitioner was allotted mechanical branch in the counselling held on 23-12-2000 but the same was changed to electrical branch. The grounds urged are similar to that of W.P. No. 156/2001.

10. I have heard learned counsel for the petitioners in each case. Mr. Rakesh Shrotri, learned counsel for the respondent No. 1/Professional Examination Board, and Mr. A.S. Raizada, learned Government Advocate for the respondent State.

11. When the matter was taken up for hearing it was submitted by Mr. A.S. Raizada, learned Government Advocate for the State, that many meritorious students who had qualified in PET but were allotted other branches could not be noticed, and therefore, they could not appear in the counselling held on 23-12-2000, and under that circumstance the petitioners had a march overthem. This was seriously disputed by Mr. Manikant Sharma, learned counsel for the petitioner, who submitted that except said Samarth Gautam all other students had appeared and the whole proceeding has been reopened to accommodate said Samarth Gautam. To unravel the truth a direction was issued to the State Government to file an affidavit indicating how many students who had secured more marks than the petitioners were left out and their cases were not considered on the date of allotment of the branches. Pursuant to the aforesaid order an affidavit was filed by the Principal of the Engineering College, Jabalpur indicating that 74 students were left out from the counselling for allotment of branch held on 23-12-2000. The names of the students have been mentioned alongwith the marks obtained by them in PET.

12. The main thrust of the matter is whether the petitioners could have been allotted the branches as it has been done on the basis of counselling held on 23-12-2000. In this context, reference to certain Rules is essential Rule 2.5.1 deals with the Selection Procedure for Admission. Rule 2.5.2.1 provides that minimum qualifying marks is 33%. Rule 2.5.2.2. stipulates that after giving admission to the students who have been qualified in the PET Examination the admission will be given to those students who have secured 50% marks in PCM. Rule 2.6.1 deals with Admission Procedure. It provides that the admission shall be given on the basis of counselling. Rule 2.6.4 provides that if a student does not make himself available for counselling or is not in a position to produce the documents he will lose his right of admission on the basis of his merit and if he is present in the subsequent counselling his case will be considered. If eventually he does not appear it will be presumed that he is not interested for taking admission. Rule

2.6.8 provides that once a candidate takes admission in a particular course/institution/branch he/she will not be entitled to change the same but if seats will fall vacant the said candidate can claim for taking admission as per procedure prescribed in Rule 2.6.10. Rule 2.6.10 which has been placed heavy reliance upon the respondents reads as under :--

2-6-10 izos'k dh vafre frfFk 14 vxLr 2000 ?kksf'kr dh tkrh g SA bl frfFk ds i'pkr~dkmalfyax }kjk izos'k dh dk;Zokgh iw.kZ djus ds mijkar fjDr jg xbZ lhVksa ds fo#rFkk laLFkkvksa esa izosf'kr Nk=ksa }kjk viuk izos'k fujLr djok ysus ls vFkokfdUgha vU; dkj.kksa ls fjDr gqbZ lhVksa ds fo# izos'k dh dk;Zokgh lacaf/kr laLFkkvksa }kjk lapkyu rduhdh f'k{kk e-iz- }kjk iznk izrh{kk lwph dsmEehnokjksa ls dh tkosxhA izos'k dh ;g dk;Zokgh lacaf/kr laLFkkvksa }kjk ?kksf'kr,d fuf'pr frfFk dks dkmaflfyax }kjk] lapkyd rduhdh f'k{kk e- iz- ds izfrfuf/k dhmifLFkfr esa esfjV ds vk/kkj ij dh tkosxhA lacaf/kr laLFkkvksa }kjk izos'k dhdk;Zokgh fnukad 14 flrEcj 2000 rd iw.kZ dj yh tkosxhA bl frfFk ds ckn fdlh HkhlaLFkk esa izos'k ugha fn;k tkosxkA

laLFkkvksa esa izosf'kr Nk=ksa}kjk viuk izos'k fujLr djok ysus ls ;k fdUgha vU; dkj.kksa ls fjDr gqbZ lhVksads fo# izos'k ysus okys mEehnokjksa dks fcuk czkap (WithoutBranch) ds izos'k fn;k tkosxkAczkap dk vkoaVu izosf'kr laLFkk ds izkpk;Z }kjk mudh esfjV ds vk/kkj ij fd;ktk;sxkA izkpk;Z laLFkk esa iwoZ izosf'kr Nk=ksa dh esfjV ds vk/kkj ij fjDrczkapksa esa izos'k dh dk;Zokgh djsaxs vkSj rnuqlkj czkapksa esa gqbZ fjfDr;ksadks blh izdkj Hkjs tkus dh izf;k rc rd tkjh j[ksaxs tc rd fd ml laLFkk dh mPpesfjV vad izklr Nk= czkap vkoaVu ds fy;s vius fodYi dk mi;ksx ugha dj ysrsA bldsi'pkr~ gh cph gqbZ czkap fjDr LFkku ds fo# izosf'kr mEehnokj dks vkoafVr dh tkldsxhA laLFkk }kjk dh tksu okyh czkap vkoaVu dh bl izf;k esa fdlh Nk= dks fdlhizdkj dh vkifk gksus dh fLFkfr esa og l{ke vf/kdkjh lapkyd rduhdh f'k{kk}e;izns'k dks fnukad 23 fnlEcj] 2000 rd vihy dj ldsxkA

1- lapkyd rduhdh f'k{kk e- iz-}kjk laLFkkvksa dks izrh{kk lwph miyC/k u dj;k;s tk ldu dh fLFkfr esalaaLFkkvksa fjDr LFkkuksa dh tkudkj nsrs gq;s lekpj i=ksa esa foKflr tkjh dji izos'k dh ik=rk j[kus okys mEehnokjksa dks ,d fuf'pr frfFk dks laLFkk esa cqykdi izos'k dh dk;Zokgh lapkyd rduhdh f'k{kk e- iz- ds izfrfuf/k dh mifLFkfr esaesfjV ds vk/kkj ij dkmaflfyax }kjk dj ldsaxhA

2- izos'k dh bl izf;k esaih-bZ-Vh- 2000 esa U;wure vgZdkjh vad izklr mEehnokjksa dks izkFkfedrk nhtkosxhA**

On a perusal of the aforesaid Rule it becomes crystal clear that the students who have been chosen to be admitted without branch will be allotted the branch on the basis of merit by the Principal of the College and at that juncture the Principal would consider the cause of those students who had earlier been selected on the merit base. The said Rule also provides for giving adequate publicity to the same. In the present case, as it appears, no notice had been given to the meritorious students and the counselling took place on 23-12-2000. On a perusal of the list which has been filed alongwith the affidavit of the Principal it transpires that 74 students who were more meritorious than the petitioners and had taken admission were not called for counselling held on 23-12-2000. It is the admitted position that due publicity was not given. In course of hearing learned counsel for the petitioners were asked time and again by this court whether there was notice to the students who had taken admission in different branches and whether there was adequate publicity, but they failed to satisfy this query. Quite apart from the above, it becomes quite apparent that had proper notice been given 74 students could not have been left out. The authorities have admitted that they have committed a mistake and there is no reason to disbelieve them. It cannot be forgotten 'To err is human'. Initially Mr. Sharma, learned counsel for one of the petitioners, had raised a colossal complaint that the whole process was reopened to accommodate one Samarth Gautam who is the nephew of Head of the Department (Maths) but the said complaint melts into insignificance in view of the list given by the Principal of the Institution. It is not a case to accommodate one student the counselling had to be reopened. When 74 students were left out who are more meritorious than the petitioners, the petitioners cannot claim a benefit because of the mistake committed by the authorities.

13. In view of my preceding analysis I do not perceive any error in the action taken by the respondents, and hence, I do not find any substance in the submissions raised by the learned counsel for the petitioners. Consequently, the writ petitions are dismissed without any order as to costs.

