

Parimal Kumar Roy Vs. All India Institute of Medical Sciences and ors.

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SooperKanoon Citation : sooperkanoon.com/695845

Court : Delhi

Decided On : Sep-01-1996

Reported in : 64(1996)DLT313

Judge : Dalveer Bhandari, J.

Appeal No. : Civil Writ Petition No. 994 of 1996

Appellant : Parimal Kumar Roy

Respondent : All India Institute of Medical Sciences and ors.

Advocate for Pet/Ap. : M.K. Chatterjee,; K. Iyer,; Mukul Gupta,;

Judgement :

Dalveer Bhandari, J.

(1) This matter has been remanded to this Court by the Division Bench by its order dated 15th May, 1996 passed in L.P.A. No. 60/96.

(2) I have heard the learned Counsel for the parties at length.

(3) The petitioner is a sponsored candidate of the Government of West Bengal and is desirous of pursuing the M.D. Course in Medicine or Obstetrics and Gynaecology. The procedure for admission for sponsored candidates has been mentioned in the Prospectus for the course starting from January, 1996. The

procedure has been set out in the judgment delivered in Cwp 994/96 on 22nd March, 1996. According to the procedure, the sponsored candidates are permanent employees of Central/State Government or the Armed Forces, They are sponsored by their respective Governments or defense forces.

(4) For the first time in the January session of 1996, apart from the written examination (theory paper), viva voce test of 50 per cent marks was introduced for admission to the M.D. Course. Again from July Semester (session) of 1996. the respondent has reverted to the earlier procedure of admission to M.D. Course, meaning thereby that again now the admissions are granted only on the basis of written examination (theory papers). Only for one (session of six months), i.e. January, 1996, the procedure for admission was changed.

(5) The case of the petitioner is that he had secured higher marks in theory papers in comparison to respondents Nos. 3,4 and 5. These respondents have been given admission to the M.D. Course whereas the petitioner has been denied.

(6) As far as respondent No. 5 is concerned, admittedly, respondent No. 5 has got admission on account of reservation of seat under a bilateral agreement between the two sovereign States - India and Nepal. thereforee, as far as respondent No. 5 is concerned, his admission cannot be challenged on this count.

(7) The petitioner had obtained higher marks in theory papers, in the examination conducted in January Semester of 1996 but when the marks obtained in viva voce test are combined with the marks of theory papers, then respondents 3 and 4 admittedly had obtained higher marks than the petitioner. On that basis, respondents 3 and 4 have been given admissions and the petitioner was denied admission. The basis of admission to the M.D. Course for January session of 1996 has been the performance of candidates both in theory papers as well as in viva voce test. The petitioner has precisely challenged this basis of admission because this was done only for one session (January session of 1996)

(8) In para 30 of the judgment of 22nd March, 1996 (CIVIL WRIT994/96), it was mentioned that even if the old criteria of evaluating the performance on the basis of theory test is taken into consideration, then also, the petitioner could not have

got admission. These facts were incorporated on the basis of results shown by the respondent-AIIMS in Court. On the basis of old criterion (marks of theory papers) also, there were some students, who could not get admission despite the fact that they had higher marks than the petitioner and the respondents 3 and 4. thereforee, even on the basis of old criterion, neither the petitioner nor respondents 3 and 4 could have got admission in subjects where they had indicated their preferences.

(9) Another significant factor which has to be taken into consideration is that the petitioner had received intimation of the viva voce test and had in fact appeared in viva voce examination. In *Madan Lal and Others v. State of J&K and Others*, reported in : [1995]1SCR908 , their Lordships of the Supreme Court laid down as under:

'IT is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.'

In view of the aforesaid judgment, the petitioner is now estopped from challenging the admission on this count.

(10) On the basis of the aforesaid judgment of the Supreme Court and the submissions made afresh by the learned Counsel for the parties, it is clarified that only in January, 1996 Semester, the admissions were granted by the respondent/Aiims on the basis of the marks obtained by the candidates combined in theory as well as the viva voce test. Before January 1996 and again from July, 1996, the admissions to the M.D.Course have been granted on the basis of marks obtained only in the written examination (theory papers). Though the criterion of admission which was changed in the January session of 1996 was not mentioned in the prospectus but the fact that the petitioner and other candidates were intimated and had participated in the viva voce test, thereforee, the criterion changed by the Aiims only for January, 1996 session has to be upheld in view of the aforesaid judgment of the Supreme Court. Consequently the petitioner is not entitled to get admission. The petition is accordingly disposed of.