IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 513 OF 2009

Dr. Somashekhar Ashok Guravannavar,)
171/1A/41, Vidya Nagar,)
Gokak 591 307, Dist. Belgaum,)
State Karnataka, presently in Mumbai.).. Petitioner

Vs

1. The Directorate General of Health)
Services, Ministry of Health and)
Family Welfare Service,)
through the Government Pleader,)
Union of India, Aayakar Bhavan,)
Mumbai.)

2. Union of India,)
Through Government Pleader)
Office, Aayakar Bhavan, Mumbai.)

3. The Counsellors,)
All India Institute of Physical)
Medicine and Rehabilitation,)
Haji Ali, K.K. Marg,)
Mahalaxmi, Mumbai.).. Respondents

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Shri S.C. Naidu i/by C.R. Naidu & Co. for the Petitioner.
Shri S.S. Pakle, D.A. Dube, P. Khosla i/by Dr. T.C. Kaushik for the Union of India.

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CORAM : SWATANTER KUMAR, C.J. &
DR. D.Y. CHANDRACHUD, J

JUDGMENT RESERVED ON : 30TH MARCH, 2009
JUDGMENT PRONOUNCED ON : 16TH APRIL, 2009

JUDGMENT: (PER SWATANTER KUMAR, CJ)

The Director General of Health Services, Ministry of Health and Family Welfare Service, New Delhi, published a prospectus for admission to All India Post Graduate Entrance Examination for M.D./ M.S. or Diploma in M.D./M.S./Diploma and MDS Courses for the year 2009. Section 11 of the All India Entrance Examination for admission to Post Graduate Medical (MD)/ MS/ Diploma and Dental (MDS) Courses, 2009 relates to allotment of seats by personal appearance (Counseling). Section 11(i) thereof provides that Counselling would be by personal appearance in two rounds. It reads as under: -

> "11(i) there shall be two rounds of allotment by personal appearances:

(a) first round of allotment from 22/2/2009 to 16/03/2009 covering ranks from 1 to last rank of merit list (please see Appendix-V for schedule of 1st round of allotment by personal appearance); and

(b) second round of allotment is likely to be held from 22/04/2009 onwards.

(c) In the second round of allotment the candidate who had been allotted a seat in the 1st round and had joined the allotted college will be permitted for change of college/course in order of merit. The candidates who were absent or rejected or not joined or resigned after joining the seat allotted in the 1st round of counselling will not be eligible to participate in the 2nd round of counselling. The following candidates will be ELIGIBLE for consideration:-

(i) The candidates who have been allotted seats in the first round of allotment and have joined the allotted colleges may come for reallocation in the 2nd round of counselling, if interested. They must bring their Undertaking Form

(Appendix-VIII) with them for reallocation duly signed by the Principal/Dean of the allotted college at the time of 2nd found of counselling.

(ii) Application duly forwarded by any person other than Dean/Principal will be summarily rejected. In case of officiating Dean/Principal, the applications should be countersigned by the Head of the Administration of the institution.

(iii) The candidate who comes for re-allocation has to complete the above formalities failing which he/she shallnot be considered for re-allocation. On re-allocation, the allotment made earlier shall stand automatically cancelled with immediate effect and the candidate shall have no claim whatsoever on the earlier allotment. In case he/she does not opt for re-allocation due to any reason, his/her original seat will not be disturbed.

(iv) Candidates for re-allocation must bring the undertaking form for re-allocation, admission slip and admission fee receipts in original as a proof of admission to the earlier allotted college along with a

photocpy of Admit Card duly attested by a Gazetted Officer."

2. Constitutionality and legality of the above clause is challenged by the Petitioner on the ground that it is violative of Article 14 of the Constitution of India as it treats unequal as equals. It is further contended that it is unreasonable in its operation, results in patent arbitrariness and therefore contrary to the basic rule of law.

3. The Petitioner passed his M.B. B.S. Examination from Jawaharlal Nehru Medical College, Belgaum, affiliated to Rajiv Gandhi University of Health Sciences, Bangalore, in March, 2006. After completing his compulsory rotating internship, he was granted full medical registration by the Karnataka Medical Council on 2nd May, 2007. He was qualified and satisfied all pre-requisites for taking up post graduate studies. Common Entrance Test (CET) was conducted by State of Karnataka for students seeking admission in Medical or Engineering Degree Course for which the Petitioner

appeared and was successful in the said entrance examination. He was placed in merit list at Merit Rank No.949 for medical and rank 1234 for engineering course. The Petitioner, thereafter, also appeared for the All India Entrance Examination for admission to Post Graduate Course in Medicines conducted by All India Institute of Medical Science in January, 2009 and was declared successful, in which he secured an All India Rank No.2277. On 14th March, 2009, the Petitioner went to the Counseling Centre with his documents as required under the conditions of Brochure. However, he was declined registration and consequential allotment of seat as per his merit and was informed that his number was called out the previous day and the Petitioner' sabsence resulted in his disqualification for allotment of Post Graduate seat in this connection. The Petitioner met various authorities on that day and requested them to reconsider and permit him to appear for counselling in the morning session of Saturday or subsequent session, but the same was not granted by the Respondents.

4. Aggrieved by this action of the Respondents, the Petitioner has filed the present Writ Petition. It is primarily pleaded and it is the case of the Petitioner that his disqualification under Rule 11(i)(c) is ultra vires under Article 14 of the Constitution of India and is unscientific, irrational and unfair. Merely because the candidate is absent due to mis-happening or some emergency or error in judgment, his disqualification and not being permitted for participation in second round counseling is a question of serious consequence. It is an accepted principle of law that merit is the prime criteria in admission to post graduate courses. The admission process to these courses are to be regulated strictly in accordance with the terms and conditions of the Brochure which has been declared by the Authorities concerned. A Prospectus or Brochure which has been notified and published by the Authorities concerned i.e. the Government Authorities conducting counselling and examination is binding on both, i.e. the Authorities as well as the candidates. It has been repeatedly held by the Courts that any variation of the terms and conditions of the Brochure is not permissible. It is a solemn

document which should be adhered to strictly without any variation. A Full Bench of this Court in the case of *Mahatma Gandhi Missions Institute Vs. The State of Maharashtra & Ors., 2008(5) MH LJ 913,* held as under: -

> "26. For ensuring adherence to proper appreciation of a academic course, it is essential that the method of admission is just, fair and transparent. The first step in this direction would be publication of a brochure on the basis of which the applicants are supposed to aspire for admission to various institutions keeping in mind their merit and preference of colleges. Brochure, whether information or admission, firstly has to be in conformity with law and the statutory scheme notified by the competent authority. It is a complete and composite document as it deals with the scheme for conducting their entrance examinations, declaration of results, general instructions and method of admission, etc. This brochure is binding on the applicants as well as all the authorities. This brochure or admission notification issued by the State or other competent authority canot be altered at a subsequent stage particularly once the process of admission has begun. There is hardly any exception

to this accepted rule of law.

27. The Full Bench of the Punjab & Haryana High Court in the case of Raj Singh vs. Maharshi Dayanand University, 1994(4) Recent Services Judgements 289, following the earlier Full Bench of the Court in the case of Amardeep Singh Sahota vs. The State of Punjab, etc. (1993-2) Punjab Law Reporter 212, held that the brochure is binding on the applicant as well as the institute and has the force of law."

5. Thus the Respondents have to make admissions strictly in accordance with the terms and conditions of the Brochure. Clause 11 (i)(c) is one of the clauses relating to admission and counselling which is controlled inter alia by clause 11. It is stipulated that the allotment of seats shall be made to the candidates through personal appearance in the first round of counselling and second round of counseling as given in Appendix V annexed to the Brochure itself. Thus, which of the candidates will be called for counselling on which of the days was clearly stated in the Brochure itself. It required the candidates to bring their original documents. It was also stated that

the number of seats allotted by the respective colleges would be displayed on the Website. The allotment letters were to be issued as per Clause 11(i)(g) on the same day of counselling after conclusion of a particular session itself only to the person who appeared in the counselling session. It is in this background, the condition postulated in clause 11(i) has to be seen. The first round of counselling for allotment was to be with effect from 22nd February, 2009 to 16th March, 2009, from Rank 1 to last rank of the merit list as per the Appendix-V. The second round of counselling was to be held on 22nd April, 2009 onwards. The rule permitted change of seat for the candidates who had appeared in the counselling and were allotted a seat in order of merit but the candidates who were absent or rejected or did not join or resigned after joining in the first round of counselling were stated to be not eligible to participate in the second round of counselling. Thus reallocation or change was permitted to a restricted class of people but the candidates who absented themselves were disqualified for being allotted a seat in the second round of counselling. This contention we are unable to accept. The

contention raised on behalf of the Petitioner is that this clause is unreasonable and arbitrary. The prescribed methodology for admission has to be followed by the Authorities concerned. The candidates who were absent or the Applicants who took a seat resigned or did not join have been clubbed together and all these Applicants are stated to be disqualified for further round of counselling and consequential allotment of seats. This is a reasonable restriction and has been adopted by the Authorities concerned now for quite a considerable time. If a candidate choses to be absent at the time of the first round of counselling, then he earns a disqualification which cannot be termed either unreasonable or arbitrary. It is expected of every Applicant to be vigilant of his rights and to be more careful, especially in the present days, where admission to such professional courses is highly competitive. With reference to the facts of the case in hand, where the date of counselling was published in the Brochure itself there can be hardly any justification, much less a reasonable excuse, for the Applicant not to be present on the date scheduled for his counselling.

6. In the Rank letter issued to the Petitioner his Category Rank Number as well as overall Rank Number had been clearly stated and that too in bold letters, it was printed on the card that the counselling would be held as per the Category Rank number. The revised schedule published by the Authorities concerned clearly stated category rank number and the date of the Petitioner' s counselling. There is nothing unreasonable or irrational in the clause so as to render it ultra vires of the Constitutional mandate. These clauses have been in force and implemented by the Authorities for a number of years now. This practice itself has attained certainty, fairness and has been equally applied to the mentioned classes. Thus, the practice by itself gives genuineness to the clause and its implementation can hardly be faulted with. We are unable to find any merit in the contention raised before us in this Writ Petition, but we feel that it is a hard case and therefore leave it open for the Authorities to consider the case of the Petitioner if any seat ultimately remains vacant in M.D./ M.S. or Diploma in M.D./M.S. Course. This of

course will not be treated as a precedent in future.

7. The petition stands disposed of in the above terms, with no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J