

Dr. Varun Kumar Agarwal Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: Aug. 9, 2010

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Ashish Bhagat, Abdhesh Choudhary, Nilendu Vastyayan and Manisha Suri, for the Appellant; Atul Nanda, CGSC for Respondent No. 1 and Sunil Fernandes, for Respondents 3 and 4, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The petitioner preferred this petition claiming the following reliefs:

(i) directions to the respondents to follow the terms and conditions as mentioned in their own prospectus for admission to MS/MD/MDS courses

for July, 2010 session and consequently cancel the candidature of those students who have already done/are pursuing MD/MS/MDS in any

subject at the time of counselling of AIIMS.

(ii) directions to the respondent to offer the petitioner a seat in the MS/MD course at AIIMS.

(iii) and/or to reserve/keep vacant a seat in the MS/MD course for the petitioner till the final disposal of the instant writ petition.

(iv) and/or to reserve/keep vacant a seat in the MS/MD course for the petitioner in the following semester i.e. November, 2010 session.

2. The petitioner had appeared in the entrance examination held by the respondents 3 & 4 (All India Institute of Medical Sciences (AIIMS)) for

admission to the Post Graduate Courses and secured 179th position in the merit list and was called for counselling. It is the case of the petitioner

that the counselling was originally scheduled for 11th June, 2010 but was postponed to 18th June, 2010 owing to ""hanky-panky"" being practiced

and owing to differences between the respondent No. 2 Directorate General of Medical Education (DGME) and respondent No. 3 AIIMS. The

case in crux of the petitioner is that respondent No. 3 AIIMS in the said counselling was admitting even those students who had already taken

admission for Post Graduation Courses in other Medical Colleges/Institutes and who had till then not resigned their seats in the other Medical

Colleges/Institutes and who were thus debarred from counselling.

3. Notice of the petition was issued vide order dated 23rd June, 2010. On the next date i.e. 28th June, 2010, it was the case of the petitioner that

respondent No. 3 AIIMS had filled up its Post Graduation seats with those students who ought not to have been considered for the reason of

having already taken admission elsewhere. This Court accordingly directed respondent No. 3 AIIMS to file a short affidavit in this regard.

4. An affidavit was filed by respondent No. 3 AIIMS stating that counselling was conducted on 18th June, 2010 and 22nd June, 2010 and during

which all the seats had been allotted and were dully filled up and there was no vacant seat available in any discipline in any category. It was further

stated therein that the counselling had been done in compliance of the terms and conditions of the prospectus and as per which each candidate

appearing before the Counselling Committee had been required to furnish an undertaking to the effect that he/she was not pursuing any other

MD/MS course at present anywhere in India. It was also stated if at a later stage, it was found that any of the candidate had given a false

undertaking, his/her admission would be cancelled. The respondent No. 1 UOI and the respondent No. 2 DGME also filed a counter affidavit. It

was stated therein that respondent No. 3 AIIMS in the counselling commenced by it on 11th June, 2010 was found to be entertaining even those

candidates who had already been admitted in other Medical Colleges in the counselling held by the Director General Health Services (DGHS)

prior thereto. Certain other grievances were also made with respect to the admission procedure followed by respondent No. 3 AIIMS.

5. This Court vide order dated 30th June, 2010, on the submission of the petitioner that respondent No. 3 AIIMS was violating Rule 12 of its

prospectus by admitting at least 4 candidates who were not eligible to be so considered in terms of Rule 12, directed the DGME (respondent No.

2) to report in this regard. Subsequently, on 14th July, 2010, certain further directions were issued in this regard. On 23rd July, 2010, it was

informed by the counsel for respondent No. 2 DGME that as per information collected by it, 13 students admitted for Post Graduation courses in

respondent No. 3 AIIMS, on the date of counselling had paid fee for pursuing Post Graduation courses in other Medical Colleges and had till the

date of counselling not withdrawn their admission from such other Medical Colleges. Respondent No. 2 DGME was as such required to file an

affidavit in this regard. Respondent No. 2 DGME has filed an affidavit submitting the names of 22 candidates admitted to respondent No. 3

AIIMS and who on the date of counselling had already taken admission to Post Graduation courses in other Medical Colleges.

6. The counsels for the parties have been heard. The controversy aforesaid relates to Clause 12.A.1. and Clause 12.E.3. of part VI of the

Admission Prospectus of respondent No. 3 AIIMS and which are set out herein below:

12. Other Terms & Conditions

A. Important

1. Please note (sic note) that the candidates who have already done/are pursuing MD/MS/MDS in any subject at the time of counselling shall not be

considered for admission to MD/MS/MDS courses. If it is found at a later stage that the candidate has given false undertaking at the time of

counselling, his/her candidature/registration will be cancelled.

Clause 12. E.3.

3. Any candidate (Indian citizen) who have taken admission elsewhere in India & Abroad and have deposited all their original certificates with that

concerned College/Institution, will be allowed to attend the first counselling at AIIMS subject to the condition that he/she provide the documentary

evidence from the said College. A seat purely on Provisional basis will be offered depending upon the availability of a seat at his/her rank and the

choice exercised by the candidate. They have to submit their original document on or before the date of second counselling for consideration of

their admission during the second counselling along with other candidates called for second counselling on the following terms and conditions.

7. The counsel for respondent No. 3 AIIMS has at the outset contended that the entire exercise undertaken as aforesaid in the present case is

infructuous and to no avail in view of Clause 12.E.3. (supra). It is contended that a candidate called for first counselling is not disentitled from

admission to respondent No. 3 AIIMS merely for the reason of his having taken admission elsewhere and having deposited his original certificates

with such other College; such a candidate is entitled to provisional admission subject only to the condition of providing documentary evidence of

having deposited his original certificates in some other College and producing the original certificates on or before the second counselling. It is thus

contended that merely because a candidate is shown by respondent No. 2 DGME to have been admitted to some other College prior to/on the

date of first counselling in respondent No. 3 AIIMS is no ground for respondent No. 3 AIIMS to have not entertained the said candidate. It is

further stated that all such students have produced their original certificates on the date of second counselling on 22nd June, 2010. The said

statement has not been controverted by the counsel for the petitioner or the counsel for the respondents 1 & 2 and the hearing proceeded on the

said premise. The counsel for respondent No. 3 AIIMS thus contends that there is no breach of the admission procedure prescribed in the

prospectus.

8. The counsel for the petitioner has laid much emphasis on Clause 12.A.1. (supra) and contends that anyone who has already taken admission to

another Medical College is deemed to be ""pursuing"" MD/MS/MDS in such other Medical College and was not entitled to be even considered for

admission to respondent No. 3 AIIMS. It is contended that the 22 students named in the affidavit filed by respondent No. 2 DGME have thus

taken admission to respondent No. 3 AIIMS contrary to the prescribed procedure and respondent No. 3 AIIMS is at fault in admitting them and

the admission of the said 22 students is liable to be struck off/revoked and the petitioner is entitled to be admitted in their place.

9. The entire case revolves around the meaning to be given to the words ""are pursuing"". The contention of the petitioner and the respondents 1 & 2

is that mere admission to another Medical College amounts to ""pursuing"" the course therein making the said candidates ineligible even to appear for

counselling and if they have so appeared, their admission is to be revoked.

10. Black's Law Dictionary (Sixth Edition) defines ""pursue"" as ""to follow, prosecute, or enforce, to pursue the practice of any profession or

business, contemplates a course of business or professional practice and not single isolated acts arising from unusual circumstances. Shorter

Oxford English Dictionary also defines ""pursue"" inter alia as follow up, carry on further, continue a course of action.

11. The words ""are pursuing"" in Clause 12.A.1. is in alternative to ""have already done"". The purport of the said Clause appears to be to bar those

candidates from admission to respondent No. 3 AIIMS who have already done their post graduation or who are in the process of doing their post

graduation. The word ""pursuing"" has a meaning different from the word ""admission"", specially when both expressions have been used in the same

document. ""Pursuing"" connotes having moved forward from the threshold. Speaking from the point of view of a lawyer, a mere engagement of a

lawyer cannot be construed as the lawyer ""pursuing the case"". The question of pursuing would arise when the lawyer after engagement does some

other act on behalf of the client. In the present case, it is the admitted position that none of the 22 students had commenced their studies for the

Post Graduation in any other Medical College. All that they had done till the date of counselling in respondent No. 3 AIIMS was to have

deposited their fee in the other College. The session was then still to begin/commence. The undertaking given by the said candidates to respondent

No. 3 AIIMS was only to the effect that they were not ""pursuing"". The undertaking was not to the effect that they had not taken admission.

12. The prospectus on the basis whereof the petitioner as well as the other candidates appeared in the examination clearly permits that even those

candidates who had taken admission to Post Graduation courses in other Colleges, if prefer respondent No. 3 AIIMS, could take admission in

respondent No. 3 AIIMS. If the intent had been to treat the said students as pursuing Post Graduation courses in other Colleges, the occasion for

Clause 12.E.3. would not have arisen.

13. The counsel for the petitioner has however contended that if such candidates were not pursuing the Post Graduation courses in other Colleges,

the question of their resigning therefrom as they have done, would not have arisen. In my view, merely because such students have informed the

Colleges where they had first taken admission that they are now no longer interested in continuing there, would not make them any the more

pursuing"" the course than if they had not written such letters.

14. The Post Graduation course is ordinarily a two year course; admissions to respondent No. 3 AIIMS are held twice in a year i.e. in July &

December; it is quite possible that candidates admitted to Post Graduation courses in other Medical Colleges in July may attempt to join Post

Graduation courses in respondent No. 3 AIIMS in December or may be even in next July, even at the cost of one year. Clause 12.A.E. is

intended to prohibit such persons who have already commenced learning in the Post Graduation Courses in other Colleges from seeking admission

to respondent No. 3 AIIMS.

15. In my opinion, reading Clause 12.A.1. (supra) in the fashion and/or giving the meaning as contended by the petitioner to ""are pursuing"" would

tantamount to making the Clause 12.E.3. redundant/otiose. Such interpretation cannot be accepted particularly when it is possible to harmoniously

construe the two.

16. Both, the counsel for the petitioner as well as the counsel for the respondents 1 & 2 DGME have contended that the Clauses aforesaid have to

be interpreted in the spirit in which they are incorporated. It is contended that the reason for the aforesaid Clauses was to prevent seats for Post

Graduation in any of the Institutes/Colleges from being wasted. It is urged that if the candidates are allowed to take admission in multiple Colleges,

ultimately, the seats in some of the Colleges would be wasted. It is contended that the candidates cannot be permitted to so block the seats. It is

also contended that arguments urged today by respondent No. 3 AIIMS are an afterthought and were not taken at any of the earlier hearings,

when orders were being made by this Court for respondent No. 2 DGME to conduct the enquiry of the students admitted to respondent No. 3

AIIMS who had already taken admission in other courses. The counsel for the respondent No. 1 UOI/respondent No. 2 DGME has also

contended that respondent No. 3 AIIMS inspite of being funded by the Government does not consider itself governed by the Medical Council of

India and in the manner aforesaid is attempting to appropriate to itself the best of the students and which cannot be permitted. It is also pointed out

that at least few of the aforesaid 22 candidates have till date not even relinquished their seats in other Colleges and/or have not intimated the other

Colleges of having also taken admission in respondent No. 3 AIIMS and are thus deemed to be continuing in other Colleges and thus pursuing

Post Graduation in other Colleges.

17. I am afraid, none of the arguments can override the procedure prescribed in the prospectus of respondent No. 3 AIIMS. I have repeatedly

enquired from the counsels as to on what basis, it is contended that a seat in the Post Graduate course cannot be permitted to be blocked and

whether respondent No. 3 AIIMS owes any duty to any other College/Institute to ensure that the seat in the other College/Institute is not wasted.

The counsel for the petitioner and the counsel for the respondents 1 & 2 have been unable to show anything casting such obligation on the

respondent No. 3 AIIMS. Else, I am of the opinion that an Institute/College is entitled to attract the best talent and nothing wrong can be found

with the desire of respondent No. 3 AIIMS to have the most meritorious students. Similarly, if a meritorious candidate considers respondent No. 3

AIIMS better than another College, he cannot be prevented from getting admission to respondent No. 3 AIIMS for the mere reason of having

taken admission earlier elsewhere. A candidate/student can never be sure of admission to the College in which he may aspire to be and cannot be

faulted with for taking admission where ever available at the earliest. The admission procedure being such which permits different Colleges to have

different admission dates, nothing wrong can be found in candidates taking admission in Colleges where the same is offered first and on admission

being opened in another College on a subsequent date, if perceiving the later to be better, to opt for the same. I may also add that the counsel for

the respondent No. 3 AIIMS has also stated that the petitioner and the respondent No. 1 UOI are raising a bogey of the seats being wasted

without any basis thereof in the petition. It is further stated that the seats in other Colleges occupied by candidates who have now taken admission

to respondent No. 3 AIIMS can be allocated to others in the subsequent rounds of counselling in the other Medical Colleges.

18. The counsel for the petitioner has then contended that respondent No. 3 AIIMS illegally increased the number of candidates called for

counselling from four times to eight times. However, the prayer in the petition as set out herein-above is only on the basis of the Clauses aforesaid

of the petition and not on any other ground. Faced with the same, the counsel for the petitioner invited attention to Ground IV in the memorandum

of petition. However, the petitioner having chosen to make a specific claim, cannot now be permitted to expand the scope of the petition and

particularly when the petition till now as aforesaid has proceeded on that ground only.

19. There is no merit in the petition, the same is dismissed. No order as to costs.