

**SECRETARIAT**

**Admission and Fee Regulatory Committee**

(A statutory body established through an Act of Government of Madhya Pradesh)

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No.Sectt/Appeal/05/2020/ 614

Date: 28-07-2020

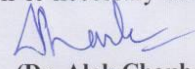
To,

✓ The Chairman/Secretary/Director,  
R.D. Gardi Medical College,  
Agar Road, Village Surasa,  
Ujjain-456001

**Sub: Order passed in Appeal No. 05/2020.**

.....

I am directed to send you a copy of the order dated 24.07.2020 in above appeal, passed by the Appellate Authority for your information & necessary actions.

  
(Dr. Alok Chaube)  
Secretary/O.S.D.

Endt. No.Sectt/ Appeal-05/2020/

Date:

Copy to: (1) Hon'ble Appellate Authority, AFRC, Bhopal for kind information.

(2) Office Copy- AFRC Secretariat- along with a copy of order dt.10.07.2020.

Sd-  
(Dr. Alok Chaube)  
Secretary/O.S.D.

BEFORE THE APPELLATE AUTHORITY CONSTITUTED UNDER THE  
MADHYA PRADESH NIJI VYAVSAYIK SHIKSHAN SANSTHA (PRAVESH  
KA VINIYAMAN AVAM SHULK KA NIRDHARAN) ADHINIYAM, 2007, (AS  
AMENDED)

Presided over by Justice Alok Verma.

Appeal No. 05/2020

R.D. Gardi Medical College,  
Ujjain

..... Appellant

V E R S U S

1. The Admission and Fee Regulatory Committee,  
Bhopal
2. Dr. Kamna Chaudhary

..... Respondents

ORDER

(Date:24<sup>th</sup> July, 2020)

1. This appeal is filed under Sec. 10 of Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan), Adhiniyam, 2007 (hereinafter referred to as "Act of 2007") against the order passed by the Admission and Fee Regulatory Committee (AFRC for short) dated 18.03.2020 giving a finding that admission given to respondent no. 2 Dr. Kamna Chaudhary, by the appellant was irregular, and therefore, the AFRC imposed a fine of Rs. 10,00,000/- on the appellant institution, under the provisions of the Act.
2. The background facts are that, respondent no. 2 was given admission by the appellant R.D. Gardi Medical College, Ujjain, in academic session 2016-17 in M.D. (Pathology). The respondent no. 2 appeared in AIPGME examination conducted on all India level and obtained 823.27 marks out of total 1500 Marks. As she was from Punjab, she did not know that the candidates, who did their graduation from outside the state, were permitted to take part in the counselling process held in Madhya Pradesh, on the basis of their performance in AIPGME examination. Due to this reason she could not take part in the counselling held by DME, Govt. of Madhya Pradesh. However, since she was already admitted by the college, she deposited the requisite amount of fees and pursued the course for three years.



3. Subsequently, her application and papers were sent to M.P. Medical Science University, Jabalpur, for issuing an enrolment number, but enrolment was not granted to her. Her repeated request for granting enrolment was denied by the University challenging legality of admission given by the college on the basis of college level counselling.
4. Aggrieved by the refusal of the University, she filed a complaint/representation before AFRC. Her representation was rejected in following manner:-

*“The Committee took cognizance of the complaint made by Dr. Kamna Choudhary who took admission in R.D. Gardi Medical College, Ujjain in M.D (Pathology) through College Level counseling but was denied enrolment by M.P. Medical Science University, Jabalpur.*

*Opportunity of hearing was given to the representative of the Medical College and the student.*

*The Committee is of the view that this matter relates to non- allotment of enrolment to the student by the University. It is an issue to be decided by the R.D. Gardi Medical College, Ujjain who enrolled the student through College Level Counselling.*

*During discussions Director, Medical Education informed that the candidate was not admitted through common counseling conducted by DME.*

*The Committee decided to reject the representation of Dr. Kamna Choudhary.”*

5. On rejection of her complaint, respondent no. 2 file an appeal before this Authority, which was registered as Appeal No. 190/2019 and disposed off by order dated 11<sup>th</sup> December, 2019. The matter was remanded back to AFRC with following directions:-

*“10. Accordingly, this appeal is allowed the order passed by AFRC dated 14.11.2019 is set aside. The matter is remanded back to the AFRC for decision afresh. The AFRC is directed to give specific findings regarding legality of admission given to the appellant after hearing the appellant, the college and the University in accordance with relevant provisions of law.*

*The appeal stands disposed off.”*

6. When the matter reached AFRC for the second time, the AFRC its meeting dated 13.02.2020, in which respondent no. 2 is also appeared

before the Committee, after hearing Dr. Kamna Chaudhary, passed the following resolutions:-

*The other Members of the Committee observed that the student has already studied the whole duration of course i.e. 3 years and if at this juncture her admission is cancelled her future will be adversely affected and also no one else will be benefitted by her vacant seat. Hence after long deliberations the Committee decided to regularize the admission of Dr. Kamna Choudhary in MD(Pathology) Course in 2016-17 at R.D.Gardi Medical College, Ujjain.*

*In accordance with the decision of the Admission and Fee Regulatory Committee, a fine of Rs.10.00 lakhs (Rupees Ten Lakhs)only is imposed on R.D.Gardi Medical College, Ujjain Ujjain for admitting Dr.Kamna Choudhary for MD(Pathology) Course in violation of Admission Rules, 2016-17 as per provisions contained in Section-4 sub section 9(c)(i) only of THE MADHYA PRADESH NIJI VYAVASAYIK SHIKSHAN SANSHTHA (PRAVESH KA VINIYAMAN AVAM SHULK KA NIRDHARAN) ADHINIYAM, 2007 (as amended by Act No. 32 of 2013) which empowers AFRC to impose penalty upto Rs. 10.00 lakhs on the institution for any violation in the admission process. The penalty should be paid in the accounts of Admission and Fee Regulatory Committee within 30 days from the date of this order, failing which appropriate action will be taken according to the law.*

*The Committee after considering the points raised by the Hon'ble Appellate Authority and on the basis of submissions made by the students and after assessment of the peculiar circumstances of the case, decided to regularize the admission of Dr.Kamna Choudhary at R.D.Gardi Medical College, Ujjain for MD(Pathology) course during 2016-17.*

*The Committee has taken this decision based on peculiar facts and circumstances of this case. It is made clear that this will not create precedence for future.*

7. Aggrieved by the imposition of fine of Rs. 10,00,000/-, now, this appeal is filed by the appellant on following grounds inter-alia:-

- I. That the appellant was made to pay fine by the AFRC while no opportunity was granted to the appellant for any kind of hearing. According to appellant this is violation of natural justice, and hence, the order is liable to be set aside.
- II. The appellant institution received a communication from Madhya Pradesh Medical Science University, Jabalpur dated 25.06.2020, in which, order of Hon'ble High Court, Indore



was quoted and it was pointed out to the appellant institution that since respondent no. 2 was admitted without counselling, her admission was illegal. It was also pointed out in the letter that the AFRC was not aware of the order, and therefore, it was apparent that the impugned order was passed without taking into consideration the observations of the Hon'ble High Court. Copy of the letter was filed by the appellant and it is available on record.

- III. According to the appellant, some vacancies were left unfilled during the academic session 2016-17, which were not allotted to any candidate. This fact was intimated to Director, Medical Education, Bhopal. When, no action was taken by Director, Medical Education to fill the vacancies, the appellant institution granted admission to respondent no. 2, as she was already qualified, otherwise. The admission of respondent no. 2 was conveyed to The Medical Council of India, the University and the Director, Medical Education, Bhopal. No objection was taken by the University or the Medical Council of India. However, subsequently the university refuse to issue enrolment to respondent no. 2, on which she approached AFRC.
- IV. The appellant placed reliance on judgment of Hon'ble Apex Court, in case of Priya Gupta V/s State of Chahattisgarh (2012) 7 SCC 433, in which, it was directed by the Hon'ble Apex Court that none of the seats of the medical colleges should be left unfilled on the last date of counselling, because medical colleges invest heavily in the infrastructure, and therefore, they should not be made to suffer losses.
- V. The appellant also placed reliance on case of Dr. Faraz Naseem V/s Union of India, WP No. (Civil) 433/2013 order dated 11.07. 2014 in which it was held that:-

*““In above of the above and in the peculiar facts and circumstances of this case, we now permit the colleges mentioned in the aforementioned letter to fill up 33 seats that are available to be filled up in post-graduate Medical courses from taking students from AIPGMEE-2014 within seven days from today”*

VI. The appellant also placed reliance on case of Modern Dental College and Research Centre V/s State of MP and another civil appeal IA 83/2015 of 4060 of 2009, in which Hon'ble Apex Court held as under:-

*“In the aforesaid circumstances, we permit the applicants, to select candidates, on the basis of their inter-se merit, for admission to 2016-17 batch of postgraduate course from the afore stated list of successful candidates.”*

VII. According to the appellant, the Director, Medical Education conducted three round of counselling up to 31.05.2016, which was left out round. On the basis of third round, students were allotted to various colleges on 31.05.2016. After that, 19 seats remained vacant and this was informed to the Director, Medical Education.

8. Thereafter, the appellant college issued an advertisement and invited applications for admission, and granted the admission to respondent No. 2 in the background of aforesaid mentioned facts and circumstances. The appellant submits that admission given to respondent no. 2 was justified as it was in accordance with directions issued by Hon'ble Court, and imposition of fine by the AFRC was not called for and should be set aside.

9. The first contention of the appellant is that no opportunity was granted by the AFRC. On going through the record of the AFRC, it was found that notice was not given to the appellant institution before imposition of fine. However, when this appeal was finally heard, the AFRC was not working, as the Chairman resigned and appointment of the new Chairman is awaited. In such circumstances, it was directed to the appellant to file his written submission before this Authority, which shall be taken into consideration. The appellant has filed detailed written submissions and also submitted oral arguments, and now, this appeal is being disposed off taking into submissions made by the appellant, and accordingly, this ground is taken care off.



10. Next contention of the appellant is that as some seats remained vacant after final round of counselling by the Director, Medical Education, following directions issued by Hon'ble Apex Court in Priya Gupta case (supra) and also in case of Modern Dental College and Research Centre (supra), the appellant institution gave admission to the respondent no. 2 and this was intimated to various authorities like M.C.I., the Medical University and Director, Medical Education and at that time, no objection was taken by the University and by the Medical Council of India. While, subsequently, enrolment was not issued to the respondent no. 2. According to the appellant, the admission given to the respondent no. 2 is in accordance with law, direction given by Hon'ble Apex Court, and therefore, the imposition of fine by AFRC is unjustified.

11. In this regard, observations by this Authority in its order dated 4<sup>th</sup> October, 2019 passed in Appeal No. 51/2019 and 136/2019 may be quoted:-

*“13. From this definition, it is apparent that function of appropriate Authority is to lay down norms and conditions for ensuring standards of professional education. The appropriate Authority for our purpose here is Director, Medical Education, Bhopal, whose function is to lay down norms and conditions to ensure standards of professional education including medical education. Thereafter, in case any dispute arises regarding admission given by unaided private medical college to any student in contravention of norms and conditions fixed by Competent Authority, then as per section 4(9) of Act of 2007, appropriate authority for conducting an enquiry and giving a finding is AFRC. Since in this case appellant were admitted directly by Index Medical College, they are to be heard and AFRC is under an statutory obligation to conduct an enquiry and give its findings whether the admission was legal or not.”*

12. From the above observations, it is apparent that Director, Medical Education is sole authority to lay down norms and conditions for issuing standards of professional education. It is also apparent that in case the admission given any private institutions in alleged violation of norms laid down by Director, Medical Education, legality of such admissions is to be determined by AFRC. In the present matter,

relevant rules are Madhya Pradesh Private Medical and Dental Post Graduate Course Admission Rules- 2016 (hereinafter referred to as "the rules").

13. The Hon'ble High Court in Writ Petition No. 11117/2019, in its order dated 29.07.2019, observed as under:-

*"This Court cannot legalize something which is per se illegal, nor this Court has the power to enact a statute. The statute which governs the field is very clear, there cannot be any admission without the process of counselling and without following the M.P. Private medical and Dental Post Graduate Course Admission Rules, 2016. It is really unfortunate that in spite of repeated orders passed by the Hon'ble Supreme Court as well as by this Court, admissions are being granted through backdoor ignoring the statutory provisions, interim orders are passed permitting the students to continue, as has been done in the present case by the appellate Authority vide order dated 18/04/2019 and finally it is the student who suffers. This court cannot legalize an invalid admission by taking a lenient view, contrary to the statutory provisions."*

14. From this observation, it is apparent that every admission should be done through counselling and through Director, Medical Education and if, admission is given directly by the college, it is irregular.

15. The rules also do not provide for any College Level Counselling. Rule 14 of the rules provide the detailed procedure for conduction of the counselling, there is no provision for College Level Counselling in these rules. In such circumstances, in light of observations made by the Hon'ble High Court in Writ Petition No. 11117/2019, it is apparent that admission given to respondent no. 2 is irregular and as such, the findings given by AFRC was correct and consequently, when admission was irregular the imposition of fine was also justified.

16. Coming to quantum of the fine, I have come across an order passed by this Authority (by my learned predecessor) in Appeal Nos. 129/2014 to 134/2014, order dated 21.05.2015. This matter related to admission given by private colleges directly to students, without following state quota, which was to be filled through merit list issued on the basis of



Pre Medical Test examination and management quota filled on the basis of D-MAT examination. The AFRC made a distinction and imposed penalty of Rs. 5,00,000/- in such case, where admission was granted to candidates, whose names appeared in Pre Medical Test merit list and in case of admission granted to candidates whose names were not included in the merit list, fine was Rs. 10,00,000/-. This admissions were given against state quota and it may be seen that in case of candidates who were qualified as they appeared in PMT examination, fine was at Rs. 5,00,000/- in other case fine was Rs. 10,00,000/-. Since in this case, respondent no. 2 was qualified as she obtained more than 50% marks in AIPGME examination, in my considered view, amount of Rs. 10,00,000/- is on higher side, and to maintain parity, the amount of fine imposed by AFRC should be reduced from Rs. 10,00,000/- to Rs. 5,00,000/-.

17. The next aspect is suppression of facts by respondent no. 2, as she was pursuing her remedy before Hon'ble High Court by filing the Writ Petition there. This Writ Petition was pending, when she filed a complaint before AFRC and was pursuing, parallelly, her remedy before AFRC. As such, she suppressed facts from the AFRC and from this Authority. For this, I impose a cost of Rs. 1,00,000/- on her, which shall be condition precedent for declaration of her result by the University.

18. The last point is regarding issue raised by the medical University, in its letter dated 25.06.2020, which is available on record. The University and AFRC both are statutory authorities functioning under a particular statute. Their scope for functioning are different and they are two different bodies. The medical University does not have any administrative or judicial control over the orders passed by AFRC, and therefore, the language used in letter is unfortunate and beyond the scope of functions and powers of the University. It is not necessary for AFRC to mention or quote the judicial pronouncement on the basis of which the decision was made. Certainly the observations by the University were misconceived, because the AFRC rightly found admission given to respondent no. 2 irregular and also imposed fine on the appellant institution, and therefore, the observations made by

University should be ignored. It is expected that University will honour the decisions given by the AFRC and this Authority.

19. In view of the above discussion, this appeal stands disposed off by modification in the impugned order passed by AFRC. Fine imposed by AFRC in impugned order is reduced from Rs. 10,00,000/- to Rs. 5,00,000/-. The other observations regarding admission given to respondent no. 2 is hereby affirmed. Cost imposed on respondent no. 2 for suppression of facts, from AFRC and from this Authority, is to be deposited by the respondent no. 2 in account of AFRC within 15 days. The payment of cost shall be condition precedent of declaration of her result in University.

20. With aforesaid modification in the impugned order, and the observations, the appeal stands disposed off.

**(Justice Alok Vērma)**  
**Appellate Authority**



