
(2014) 12 PAT CK 0037

In the Patna High Court

Case No : Letters Patent Appeal No. 1032 of 2012 in Civil Writ Jurisdiction Case No. 9338 of 2012, Interlocutory Application Nos. 4639, 5226 and 6502 of 2012 in Letters Patent Appeal No. 1032 of 2012, Letters Patent Appeal No. 1033 of 2012 in Civil Writ Jurisdiction

Abhishek Sharma

APPELLANT

Vs

The State of Bihar
 Ranjit Kumar Vs The Union of India

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 20, 33

Citation : AIR 2015 Patna 21 : (2015) 1 PLJR 434

Hon'ble Judges : Rekha M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh, Senior Advocate, Rakesh Kumar Singh, Mukesh Kumar Singh, Niranjan Kumar, Onkar Kumar, Alok Kumar Sinha-1 and Bhola Kumar, Advocate for the Appellant; Hemendra Prasad Singh, Basant Kumar Choudhary, Rajiv Dhawan, Sr. Advs., Rabindra Kumar Choubey, S.C., S.N. Pathak, Sr. S.C.C.G., Lalit Kishore, PAAG, Prashant Pratap, GP, Dev Kumar Pandey, AC to GP 6, Yogendra Prasad Sinha, AAG, Mithilesh Verma, AC to AAG, Dharmeshwar Mishra, Adv., Binay Kumar, A.C. to G.P., Minu Kumari, A.C. to S.C., Ashok Kumar Verma, A.C. to S.C., Rajiv Roy, G.P. and Neeraj Kumar, AC to SC, Gyan Shankar, Kumar Brajnandan, Sanjay Kumar Srivastava, Vikas Kumar, Arbind Kumar and Kumar Brijnandan, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.—This group of Appeals preferred under Clause 10 of the Letters Patent arise from a common order dated 18th July 2012 made by the learned single Judge in a group of writ petitions. The Writ Petitions are ordered to be heard with the group of Appeals. The appellants-writ petitioners are the qualified doctors seeking admission to Post Graduate Medical Courses in various disciplines.

2. The writ petitioners had appeared in the Post Graduate Medical Admission Test (PGMAT)-2012 conducted by the respondent- Bihar Combined Entrance

Competitive Examination Board. The appellants were the successful candidates and were admitted to various Post Graduate Courses offered by the respondent-Katihar Medical College, Katihar or the M.G.M. Medical College, Kishanganj affiliated to the respondent Bhupendra Narain Mandal University, Madhepura. In spite of the appellants" passing the Post Graduate Medical Admission Test successfully and they having been admitted to the concerned college by the State Government, the concerned College refused to accept the admission and to allow the appellants to join the concerned course.

3. Feeling aggrieved, the writ petitioners have approached this Court under Article 226 of the Constitution in above writ petitions.

4. According to the writ petitioners, they were entitled to admission to Post Graduate Course conducted by the Katihar Medical College, Katihar and the M.G.M. Medical College, Kishanganj pursuant to their admission by the State Government. The writ petitions were supported by the State Government and the Medical Council of India.

5. According to the State Government and the Medical Council of India, pursuant to the regulations framed by the Medical Council of India in exercise of powers conferred by the Indian Medical Council Act, 1956 the respondent colleges were duty bound to allow the appellants to join the concerned course pursuant to their admission by the Government of Bihar.

6. According to the respondent-Colleges, the respondent Katihar Medical College and M.G.M. Medical College are self financed minority Medical Colleges. The un-aided minority Medical Colleges have a right to fill in the seats in the Post Graduate Courses through their own selection process. The said Colleges were not obliged to admit students selected and admitted by the State Government through the Post Graduate Medical Admission Test.

7. The learned single Judge has relied upon several judgments of the Hon"ble Supreme Court to hold that the un-aided minority Medical Colleges have unfettered right to admit students in Post Graduate Courses according to their own selection process. The un-aided minority Medical Colleges are under no obligation to accommodate the students admitted by the State Government pursuant to the entrance test conducted by the State Government or the Bihar Combined Entrance Competitive Examination Board in the present case.

8. Feeling aggrieved, the concerned writ petitioners have preferred the above Appeals.

9. Learned counsel Mr. Rajendra Prasad Singh has appeared for the appellants. Mr. Rajendra Prasad Singh has taken us through the records, the prospectus for the Post Graduate Medical Admission Test (PGMAT) -2012 and the orders of admission made by the State Government. Mr. Rajendra Prasad Singh has submitted that the Post Graduate Medical Admission Test was conducted by the Bihar Combined Entrance Competitive Examination Board in accordance with the

prospectus issued by it. The prospectus clearly stipulates that the said admission process also included admission to the Post Graduate Courses in Katihar Medical College and M.G.M. Medical College, Kishanganj.

10. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared for the State Government and Mr. Kumar Brijnandan has appeared for the Medical Council of India. Both the State Government and the Medical Council of India have supported the Appeals.

11. Appeals are contested by the Katihar Medical College and M.G.M. Medical College, Kishanganj.

12. Learned advocate Mr. Kumar Brijnandan has submitted that the Regulations are statutory in nature. Unless held to be unconstitutional the presumption is that the Regulation is valid. In support thereof, he has relied upon the judgments in the matter of Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, and Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others, . Mr. Kumar Brijnandan has also relied upon the judgments of the Hon''ble Supreme Court in the matters of The State of Andhra Pradesh and Another Vs. K. Jayaraman and Others, ; of Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, ; of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; of New Delhi Municipal Committee Vs. State of Punjab, etc. etc., and; of Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, .

13. Mr. Kumar Brijnandan has also relied upon paragraphs 58 and 125 of the judgment of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

14. Learned counsel Dr. Rajiv Dhawan has taken the lead. He has contested the Appeals. He has submitted that the Post Graduate Medical Education Regulation, 2000 (hereinafter referred to as "the Regulation") framed by the Medical Council of India in exercise of power conferred by Section 20 and Section 33 of the Indian Medical Council Act, 1956 insofar as it requires un-aided Medical Colleges to fill in 50% of the seats through common entrance test held by the State Government has already been held to be ultra vires the Constitution. The respondent-Medical Colleges are under no obligation to share the seats with the State Government. The reference to the Katihar Medical College and M.G.M. Medical College, Kishanganj in the aforesaid prospectus of 2012 is of no consequence. The said reference has been made without consultation with the colleges or the management. Dr. Rajiv Dhawan has further submitted that the challenge to the action of the respondent-Colleges in not allowing the appellants to join the course is foreclosed by several judgments of the Hon''ble Supreme Court. Dr. Rajiv Dhawan has also submitted that in the matter of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has laid down a time frame for admission to medical courses. As held by the Hon''ble Court, no admission to post graduate medical course should be

made after 30th April of the year. In the present case, admittedly, the appellants were not admitted and had not joined the course by 30th April 2012. The appellants, therefore, have no right to admission to post graduate courses in the respondent colleges.

15. In my opinion, the voluminous records and the marathon arguments are of no consequence. The issue has been answered by the Hon''ble Supreme Court time and again in several judgments, more particularly in the matter of T.M.A. Pai Foundation and others (supra) and P.A. Inamdar and Others Vs. State of Maharashtra and Others, and recently in the matter of Christian Medical College Vellore and Others Vs. Union of India and Others, .

16. The learned single Judge has rightly followed the judgments of the Hon''ble Supreme Court to dismiss the writ petitions.

17. The Appeals and the Writ Petitions are dismissed. Interlocutory Applications are disposed of.

18. We are informed at the bar that pursuant to the ad-interim relief granted by this Court, the writ petitioners have been allowed to join the course to which they were admitted by the State Government. If that be so, the writ petitioners will be permitted to complete the course and to take the examination. If the writ petitioners appear at the final examination, their results will be duly declared.

Ahsanuddin Amanullah, J.

19. I agree.