

(1982) 02 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1609 of 1979

Amresh Kumar

APPELLANT

Vs

Principal, Bhagalpur Medical College, Bhagalpur and Another

RESPONDENT

Date of Decision : 04-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1982 Patna 122 : (1982) 30 BLJR 238

Hon'ble Judges : Yadunath Sharan Singh, J; S.K. Jha, J

Bench : Division Bench

Advocate : Shyama Prasad Mukherjee, Arvind Kumar Singh and Shanti Pratap, for the Appellant; S. Hoda, Standing Counsel No. 3, Mihir Kumar Jha, Jr. Counsel to Standing Counsel No. 3 and Ramesh Chandra Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. In this application under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of an appropriate writ quashing the order of the Principal, Bhagalpur Medical College (Respondent No. 1) contained in Memo No. 1167 dated 7-5-1979, as contained in Annexure-12 to the writ petition. By that order contained in the memo the petitioner's admission to the Medical College in the year 1975 has been cancelled and rescinded. There are other incidental and consequential prayers made which we need not dilate upon because the main question to be decided is the legality and validity of the impugned order as contained in Annexure-12.

2. The relevant facts for the disposal of this application are short and simple. They may be narrated thus. After having been selected at the test for admission into the MBBS degree course, the petitioner was interviewed by the selection Board on 24-11-1975 and selected for admission. The letter dated 23rd Sept. 1975 issued to the petitioner regarding his provisional selection for interview for admission in the 1st year M.B.B.S./Dental Course 1975 of State Medical/Dental

College of Bihar, on the basis of the results of the Pre-medical and Pre-dental Test, 1975, has been marked Annexure-1" to the writ application. Paragraph 8 (a) of that letter regarding provisional selection for interview for admission reads thus :

"Caste certificate from the District Magistrate or Civil S. D. O. or District Welfare Officer of the area concerned, if the candidate belongs to Scheduled Caste/ Scheduled Tribe/Backward Classes (Annexures I and II). Caste and category should be specifically mentioned."

The petitioner at the time of his Pre-medical and Pre-dental Test, 1975, had produced a caste certificate from the Block Development Officer, Sadar, Patna. showing that he was a "Dhobi" by caste and belongs to the category of a scheduled caste. The petitioner was thereafter interviewed by the interviewing Board and selected for admission on 24-11-1975. On 5-12-1975, he was admitted into the First Year M. B. B. S. course by the Principal, Bhagalpur Medical College (Respondent No. 1). Although it is not so stated either in the petition or in the counter affidavit, learned counsel for all the parties including the State have admitted that in the year 1977 the petitioner passed Part-I of his M.B.B.S. course. Thereafter he was prosecuting Ms studies for the final completion of the M.B.B.S. course and in the year 1979 the petitioner was in the final year of the M.B.B.S. class bearing Roll No. 36.

At this stage by the impugned order of Respondent No. 1 dated 7-5-1979 his (petitioner's) admission to the first Year M.B.B.S. course was cancelled on the ground that as a result of a report by the District Welfare Officer, Bhagalpur, in which it was found that he was actually not a "Dhobi" by caste but belongs to an upper caste. It may also be pertinent to mention here that some time in the year 1976 even after the petitioner's admission when the petitioner was called upon to submit a caste certificate from the District Welfare Officer, he did so produce a certificate from the District Welfare Officer, Patna. Subsequent thereto the petitioner was asked to produce a caste certificate from the District Magistrate which was not at all warranted under the terms of Annexure-1. The certificate of the District Welfare Officer was deemed to be a valid certificate under paragraph 8 (a) of Annexure-1. It has been rather vaguely stated in the counter affidavit filed on behalf of respondents that on a complaint having been received by the Principal (Respondent No. 1) that the petitioner did not belong to a scheduled caste an enquiry was set afoot and it was consequent thereupon that the petitioner was asked to furnish the District Magistrate's certificate. This the petitioner was unable to do.

As has already been stated above, on some sort of enquiry having been made by the District Welfare Officer, Bhagalpur, who had not granted caste certificate to the petitioner (which has been granted by the District Welfare Officer, Patna), the report being dated 17-1-1979, a copy of which has been marked Annexure-A to the counter-affidavit, the petitioner's admission to the First Year M.B.B.S. course in 1975 was cancelled on 7-5-1979 when he was completing his final year

M.B.B.S. course. It may also be mentioned here that admittedly the so-called enquiry made by the District Welfare Officer, Bhagalpur, was made behind the back of the petitioner and without any knowledge to him as the petitioner was on the verge of completing his M.B.B.S. course at the time when the impugned order was passed. He had to rush up to this Court for an appropriate relief as the cancellation order of 7th May, 1979 rescinded his admission in the First Year M.B.B.S. course 1975 relegating him to the position of merely an Intermediate Science passed candidate.

When a rule nisi was issued in this case, an interim order was passed that the petitioner shall be entitled to prosecute his studies and attend lectures and sit at the examinations subject to the final result of this application. During the pendency of this writ application in July, 1980, the petitioner successfully completed his M.B.B.S. course and was declared to have been passed. The case of the respondents is that what was required by the petitioner to submit was a caste certificate from either the District Magistrate or the Civil S.D.O. or the District Welfare Officer of the area concerned and since the petitioner had not furnished any such certificate before his admission his admission was illegal-The further case of the respondents is that in any event in spite of the caste certificate granted to the petitioner before his admission by the Block Development Officer, Sadar, Patna, and after his admission, by the District Welfare Officer, Patna, such reports were found to have been granted on misrepresentation of facts made by the petitioner. The petitioner's admission to the 1st year M.B. B.S. course in the year 1975 was itself illegal and therefore was liable to be cancelled. These are the only relevant facts upon which the fate of this case hinges.

3. The petitioner must succeed on a very short and simple ground. In the year 1975, when he was admitted to the 1st year M.B.B.S. course, there was already from before the competent authorities the caste certificate granted by the Block Development Officer, Sadar, Patna, and with their open eyes and ignoring the provisions in paragraph 3(a) of Annexure-1 that the caste certificate should be granted by the District Magistrate or by the Civil S.D.O. or by the District Welfare Officer of the area concerned they admitted the petitioner to the course. Even subsequently when the petitioner was called upon to furnish a certificate from the District Welfare Officer he did so furnish a certificate of the District Welfare Officer, Patna. It is not alleged that any of these certificates was forged. The only contention of the respondents is that those certificates had been obtained by the petitioner on a misrepresentation of facts before those authorities. The report of the District Welfare Officer, Bhagalpur, against the petitioner is based on an enquiry having been initiated at the instance of respondent No. 1 admittedly on the basis of a complaint made by some busy body or the other challenging the caste of the petitioner. And, this enquiry was admittedly made behind the back of the petitioner in violation of the principles of natural justice.

The petitioner's case is fully covered by the decision of the Supreme Court in the

case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, . In the case of *Shri Krishan (supra)* the candidate in question was allowed to take the examination in Part-II law Examination and then it was discovered that some suppression of facts has been made by the petitioner at the time of the issuance of his admit card which amounted to fraud. It was held by the Supreme Court that once the candidate is allowed to take the examination rightly or wrongly then the Statute which empowers the University to withdraw the candidature of the applicant had worked itself out and the candidate could not be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. It has further been held in that case that if the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate. Moreover, it was also held that where a person on whom fraud is committed is in a position to discover the truth by due diligence which is not done then fraud is not proved. Because it would neither be a case of *suggestio falsi*, or *suppressio veri*.

In the instant case the competent authorities had before them a genuine caste certificate granted by the Block Development Officer, Sadar, Patna, to the petitioner and they were fully aware of the condition laid down in paragraph 8 (a) of the letter of selection dated 23rd Sept. 1975 (Annexure-1) that the Block Development Officer was not a competent authority to grant a caste certificate for the purpose of admission. And, yet they did not insist upon the petitioner producing any caste certificate from either the District Magistrate or the Sub-divisional Officer or the District Welfare Officer and admitted the petitioner to the 1st year M.B.B.S. course. Even after the petitioner was admitted when he was called upon to produce a caste certificate from the District Welfare Officer, he did so produce a genuine caste certificate from the District Welfare Officer, Patna. It was thereafter that it was insisted upon the petitioner producing a caste certificate from the District Magistrate in the year 1977, by the time he had already passed his Part-I M.B.B.S. course. If it would have been a case of forgery in obtaining any of those two certificates produced by the petitioner the matter may have been different. But it is not the case of the respondents that those certificates were not genuine. Their only case is that they had been obtained by the petitioner on mis-representation of facts. Having admitted the petitioner to the 1st year M.B.B.S. course in the year 1975, and having permitted him to prosecute his studies up to the final year in the year 1979, the respondents could not be permitted in law to cancel the admission of the petitioner (made in the year 1975) in the year 1979, by the impugned order Annexure-12. No fraud can be said to have been committed by the petitioner. It is manifest from the facts stated above, that the respondents acquiesced in the infirmities which the selection letter (paragraph 8 (a)) contained and allowed the petitioner his admission. No fraud can be said to have been committed by the petitioner in the circumstances.

4. There being acquiescence on the part of the authorities concerned and no forgery alleged or fraud committed by the petitioner, it was too late on 7th May, 1979, when the petitioner was finishing his final year M.B.,B.S. course to have cancelled his admission to the 1st year M.B.B.S. course as far back as in the year 1975. The petitioner must succeed on this ground alone.

5. Learned counsel for the petitioner rightly pressed into service a decision of the Rajasthan High Court in the case of Harphool Singh Vs. State of Rajasthan and Others, . In that case a student had secured admission in medical college on reservation quota by giving a false declaration. It was held that the cancellation of his admission to the College after 3-4 years by the authorities was barred by the principle of estoppel. Although in strict terms the principle of Section 115 of the Evidence Act may not be said to have been attracted, the principle of quasi estoppel or equitable estoppel would apply to such a case. We were in full agreement with the learned Judge in Harphool Singh's case (supra) that (at p. 10) "even if the admission of this boy is cancelled, It would not be possible to undo the mischief done earlier of depriving a boy of Scheduled Tribe because what could have been done in 1973 for admission cannot be done now". In the instant case, if the impugned order is allowed to stand, it will lead to a ridiculous situation, too harsh and against the petitioner not commensurate with the fault, if any, committed by him before his admission. For he having passed his M.B.B.S. course successfully will now be deemed to have been relegated to the position of a candidate merely having passed an intermediate science course.

6. Learned counsel for the respondents invited our attention to a decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . We do not see how this decision in any way adversely affects the petitioner's case. In so far as the question of quasi estoppel is concerned, this decision rather supports the petitioner's case, and there is no question of waiver involved.

7. On the facts and in the circumstances mentioned above the petitioner must succeed. The application is accordingly allowed and the impugned order of respondent No. 1 contained in the memo dated 7-5-1979 (Annexure-12) is quashed. We, however, make no order as to cost.