
(2018) 04 SC CK 0057
In the Supreme Court Of India
Case No : CIVIL APPEAL NO.3874 OF 2018

ANITTA JOB

APPELLANT

Vs

THE STATE OF KERALA

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

THE KERALA PROFESSIONAL COLLEGES OR INSTITUTIONS (PROHIBITION OF CAPITATION FEE, REGULATION OF ADMISSION, FIXATION OF NON-EXPLOITATIVE FEE AND OTHER MEASURES TO ENSURE EQUITY AND EXCELLENCE IN PROFESSIONAL EDUCATION) ACT, 2006 — Section 4

Citation : AIR 2018 SC 2254 : (2018) 6 Scale 174 : (2018) 4 Supreme 307 : (2018) 5 SCR 326 : (2018) 16 SCC 792

Hon'ble Judges : A.K. SIKRI, ASHOK BHUSHAN

Bench : Division Bench

Advocate : ZULFIKER ALI P. S

Final Decision : Allowed

Judgement

ASHOK BHUSHAN, J.

1. The appellants, ten in numbers, have filed this appeal against the Division Bench Judgment of the High Court of Kerala dated 04.01.2018 by which

their writ petition challenging the order of Admission Supervisory Committee dated 03.06.2017 has been dismissed.

2. The brief facts of the case which need to be noted for deciding this appeal are: The Malabar Medical College and Research Centre has sanctioned

intake capacity of 150 students in MBBS Course. With effect from 20162017 admission in MBBS Course was to be conducted on the basis of NEET

examination. This Court vide its order dated 06.05.2016 in Sankalp Charitable Trust and another vs. Union of India and others, (2016) 7 SCC 487, has

directed that no examination shall be permitted to be held for admission to MBBS

or BDS studies by any private college or association or any private/deemed university. All admissions in the MBBS Course were to be done on the basis of National Eligibility cum Entrance Test (NEET). All the appellants appeared in the NEET examination and declared qualified with their respective ranks. The State of Kerala has issued various Government orders pertaining to admission procedure in Government/Management/NRI seats in the private/selffinancing Colleges. As per the orders issued by the Government of Kerala, the Commissioner of Entrance Examination shall make allotment for MBBS in the Government Management/NRI seats in all private/selffinancing Colleges.

3. The Writ petitions were filed by different Medical Colleges challenging the Government Orders. The Kerala High Court in a bunch of writ petitions, leading writ petition being No.28041 of 2016 on 26.08.2016 stayed the orders issued by the State of Kerala with certain directions pertaining to admission in MBBS/BDS Courses. The Malabar Medical College (hereinafter referred to as the 'College') submitted a 3 prospectus to the Admission Supervisory Committee (hereafter referred to as the 'ASC') and got it approved on 06.09.2016. As per the order passed by the Kerala High Court dated 26.08.2016 and as per procedure laid down by the ASC, the applications for admissions were to be made online. Last date for submitting application online for admission was 09.09.2016. The respective Colleges were also directed to publish the list of applications received online so as to enable the ASC to supervise and guide the entire admission process.

4. The appellants' case is that although they obtained the demand drafts from banks pertaining to the fee for admission prior to 09.09.2016, but their online applications could not be submitted due to some snag in the website of the College. On 13.09.2016 College published a list of 1335 candidates in which the names of the appellants were not there. Certain other candidates whose names were not included in the list filed complaints before the ASC. The ASC taking cognizance of the complaints issued an order on 22.09.2016 noticing the stand of the College that their names shall be included in the list of eligible candidates. After receiving the aforesaid order dated 22.09.2016 a notice was also issued by the College on their website on 23.09.2016.

5. The notice dated 23.09.2016 represented to the students that applications

from all those with proof of

(i) their unsuccessful attempts for registration and

(ii) with demand draft taken before the scheduled cut off date, shall be accepted by the College.

The appellants in pursuance of the notice 23.09.2016 by the College submitted their applications along with proof that the demand drafts were taken

before the scheduled cut off date. Supplementary list of 33 eligible students was published by the College on 27.09.2016 in which names of all the

appellants were included. The College had earlier made two attempts for admission in the Management quota/NRI quota but seats could not be filled up.

6. On 28.09.2016, the appellants were admitted by the College and on 30.09.2016, the list of 142 students including the names of the appellants were registered with the Kerala University of Health Sciences. Eight seats belonging to Management/NRI quota which remained unfilled were surrendered

to the Government and on the basis of order dated 05.10.2016, candidates were forwarded to the College by the Commissioner of Entrance

Examination which were also admitted by the College. After their admissions, the appellants started attending their classes, the details of admissions

taken by the College of Management/NRI quota was forwarded to ASC. The ASC by order dated 04.03.2017 withheld the admissions of 78

candidates under Management quota and 8 candidates under NRI quota made by the College.

On 05.10.2016, the Management had already forwarded the details of all the admissions including the admissions of the appellants to the ASC. The

ASC by order dated 03.06.2017 rejected the case of four of the candidates who had admitted in the College in the Management quota on the ground

that their names are outside the list published by the Medical College and with regard to six appellants who are admitted under NRI quota, their

admissions were disapproved as they have not included in any of the online application lists submitted by the Medical College.

7. Then aggrieved by the order dated 03.06.2017, appellants filed Writ Petition (C) No.24133 of 2017 in which an interim order was passed on

27.07.2017 permitting the appellants to appear in the First Year MBBS Examination. The writ petition was ultimately dismissed by the Division Bench

of Kerala High Court vide its judgment dated 04.01.2018 against which this appeal has been filed.

8. This Court while entertaining the appeal on 16.02.2018 directed that in the meantime, interim order that was passed during the pendency of the writ proceedings before the High Court shall operate.

9. We have heard Shri Huzefa Ahmadi, learned senior counsel for the appellants and Shri Jaideep Gupta, learned senior counsel appearing for the Admission Supervisory Committee. We have also heard learned counsel for the State of Kerala, the Kerala University of Health Sciences as well as Principal of Malabar Medical College.

10. Learned counsel for the appellants submitted that appellants were admitted by the College in accordance with procedure prescribed and directions issued by the ASC. It is submitted that although the appellants were unsuccessful in making online application before the cut off date, i.e., 09.09.2016 but when the notice was published on 23.09.2016 permitting all applicants who could not successfully submit online applications along with demand draft prior to cut off date, they submitted their applications in pursuance of the notice and were granted admission on 28.09.2016. He submits that cut off date fixed by the Medical Council of India and as approved by this Court is 30.09.2016 and admissions of the appellants having been taken prior to cut off date, there was no illegality.

He further submits that admissions of the appellants were made according to their ranks in NEET and no complaint had been made by any candidate or any other person against the admissions of the appellants. No candidate having any higher rank in the NEET has come up before ASC or before any Court alleging that he applied for admission in the College and had higher rank to the appellants. The admission of the appellants being on the basis of NEET merits ought not to have been interfered by the ASC.

11. Shri Jaideep Gupta, learned senior counsel appearing for the respondent ASC submits that only method for making application for admission to a College was online, the date published for submitting online applications was 09.09.2016 and admittedly the appellants had not submitted their applications prior to 09.09.2016 and their names were also not included in the list which was published by the College of the eligible candidates, they were clearly not entitled for admission and ASC had rightly disapproved their

admissions. It is further submitted that order dated 22.09.2016 issued by the ASC could not have been availed by the College to permit the College to entertain applications of others apart from the candidates who had made complaints regarding their online applications. The College could not have entertained the appellants' applications.

12. Learned counsel for the University as well as learned counsel for the State of Kerala have also adopted the arguments made by Shri Jaideep

Gupta, learned senior counsel for the ASC. Learned counsel for the Principal supported the case of the appellants and submitted that admissions of the appellants were properly made on the basis of their NEET ranking.

13. We have considered the submissions of the learned counsel for the parties and perused the records.

14. We have already noticed above that Kerala High Court has passed interim order on 26.08.2016 under which the High Court issued certain

directions regarding admission in MBBS/BDS Courses 20162017. Paragraph 9 of the judgment which is relevant in this context is as follows:

9. Accordingly, there shall be an interim stay of operation and implementation of the 9 impugned orders, G.O.(Rt) No. 2314/2016/H & FWD dated

20.08.2016 and G.O.(Rt) No. 2336/2016/ H & FWD dated 23.08.2016, subject to the following conditions:

(i) Admissions to the MBBS/BDS courses shall be only on the basis of the ranking of candidates in the rank list of NEET, 2016, on the basis of the

interse merit among the candidates, who have applied to the respective colleges.

(ii) All the colleges agree that, the applications for admission are received only through online and that, the said process provides transparency with

regard to the merit as well as the identities of the applicants. Such applications shall therefore be uploaded for the scrutiny of the Admission

Supervisory Committee also immediately on the expiry of the last date for submission of applications.

(iii) Since the counsel for the Admission Supervisory Committee has voiced a complaint that some of the colleges have not obtained approval of the

Admission Supervisory Committee, for their Prospectus, the admission process shall be proceeded with only on the basis of a Prospectus, for which

approval of the Admission Supervisory Committee has been obtained.

(iv) The Admission Supervisory committee is directed to either approve or

disapprove the Prospectus, submitted to them for approval, within three days of such submission.

15. It is relevant that against the interim order of the Kerala High Court dated 26.08.2016, Union of India has filed an SLP which was disposed of by this Court on 28.09.2016 in C.A.No.9862 of 2016. This Court set aside only that part of Condition No.1 wherein the respective Colleges are allowed to conduct the counseling and admit the students without going into the merits. This Court, however, specifically observed that this Court is not interfering with the admissions of students which have been done by the respective Colleges as those were done after reaching arrangement with the State Government. Last two paragraphs of this Court's order dated 28.09.2016 are as follows:

Having regard to the aforesaid facts as stated by the learned Solicitor General as well as the counsel for the respondents, we set aside that part of

Condition No.1 wherein the respective colleges are allowed to conduct the counseling and admit the students without going into the merits. This issue

shall be finally thrashed out and decided by the High Court in the writ petitions which are pending before it. However, we are not inclined to interfere

with the admissions of students which have been done by the respective colleges as these are done after reaching arrangement with the State

Government. In that behalf, the conditions which are mentioned in the impugned order shall continue to apply. The appeal stands disposed of in the

aforesaid terms.

16. The admission of the appellants admittedly was completed on 28.09.2016 as per the interim order of Kerala High Court dated 28.09.2016. We thus

have to consider the admissions as per the directions of the Kerala High Court and the directives of the ASC as applicable on the relevant date.

17. There cannot be any dispute with the procedure which was prescribed for admissions in MBBS Course, students were to make applications online

and last date for making such applications was 09.09.2016. There is also no dispute that appellants could not succeed in making any online application

prior to 09.09.2016 although they claim to have prepared a demand draft before the last date of admission.

18. In the admission list which was published on 13.09.2016 by the College of all eligible candidates the names of appellants were not included. It has

come on the record that appellants made applications to the College only after publication of notice by the College on 23.09.2016 in pursuance of order dated 22.09.2016 issued by the ASC. The ASC has issued order dated 22.09.2016 on complaints received by candidates alleging that their names were not included in the published list of eligible candidates of Medical College. The ASC issued the following order dated 22.09.2016:

ORDER

Complaints have been received from seven complainants alleging that their names are not included in the Published eligible lists of Malabar Medical College, in short the Medical College.

2. When the matter was taken up, Advocate Devaprasad, was present and representing the Medical College. The details of above seven complainants

were handed over to him. He submitted, after contacting the Medical College, that on receiving the details of these seven students, the Medical

College would list them also along with the already published eligible list of the applicants.

3. Alan Philips did not give any application details or other particulars. Hence, he had been directed to furnish all the details to the Medical College, so that his name will also be considered by the College.

4. The Medical College is directed to publish Management and NRI quota lists separately with NEET rank so as to enable the applicants to know their rank and position. The rejected list, if any, should also be published.

5. The Medical College shall adhere to the Directives issued by the ASC, particularly the Directives dated 19.09.2016.

6. Email this order to the Principal of the Malabar Medical College, and add to the website of the ASC for the information of all the complainants, as

no separate communication is addressed to them from the ASC office. Dated on this the 22nd day of September 2016.

Sd/

CHAIR MAN

19. After the aforesaid order dated 22.09.2016, the College has issued notice in its website on 23.09.2016, last paragraph of the notice is as follows:

As directed by the (illegible) Admission Supervisory Engineer, we undertake to accept all such applications received in the college office with the

(illegible) of their unsuccessful attempts for registration alongwith DD taken before the scheduled cut off date. These applications will be (illegible) to vacant seats.

20. The ASC has been constituted in the State of Kerala in pursuance of a State enactment, namely, the Kerala Professional Colleges or Institutions

(Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in

Professional Education) Act, 2006. Under the Act, ASC is to supervise and guide the entire process of admission of students to unaided professional

colleges or institutions. Subsections (6) and (7) of Section 4 are as follows:

Section 4. Admission Supervisory Committee.

(1) xxx xxx xxx

(6) The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to the unaided professional colleges or

institutions with a view to ensure that the process is fair, transparent, meritbased and nonexploitative under the provisions of this Act.

(7)The Admission Supervisory Committee may hear complaints with regard to admission in contravention of the provisions contained herein. If the

Admission Supervisory Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided

professional colleges or institutions, it shall make appropriate recommendation to the Government for imposing a fine upto rupees ten lakhs and the

Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or any other course of action

as it deems fit and the amount so fixed together with interest thereon shall be recovered as if it were an arrear of public revenue due on land.

The Admission Supervisory Committee may also declare admission made in respect of any or all seats in a particular college or institution to be de hors

merit and therefore invalid and communicate the same to the concerned University. On the receipt of such communication, the University shall debar

such candidates from appearing for any further examination and cancel the results of examinations already appeared for.

21. The order dated 22.09.2016 has to be treated as passed by the ASC in exercise of the abovesaid statutory power. It is true that in the order dated

22.09.2016, there was no clear direction that names of other candidates who

have not even submitted complaints should be included or any fresh applications be invited but College taking guidance from the aforesaid order issued the notice extending the similar protection to all the candidates who come with their unsuccessful attempts for registration but with the rider that they should come up along with demand drafts taken before the scheduled cut off date.

The requirement of demand draft taken before the scheduled cut off date was an important factor which prohibited the candidates who had never

thought of making an application in the College to come up with their applications with any fresh demand draft. Notice dated 23.09.2016 clearly

prohibited all the candidates who had not taken demand draft prior to 09.09.2016 which was the last date of admission. In the present case College

had filed details of demand drafts of the appellants and it was not disputed that they submitted their applications with demand drafts taken before the

last date of application.

The High Court has taken a view that since they have not made online applications prior to 09.09.2016 they were not entitled for admission and

requirement of submitting online application was a condition which having not been fulfilled, their applications were disapproved by the ASC and the

High Court has also come to the conclusion that their applications were made after 09.09.2016 and they were admitted in the College on 28.09.2016.

There cannot be any dispute that as per procedure prescribed and the interim order of the Kerala High Court dated 26.08.2016 students were to

submit admission applications to the 16 respective Colleges online and the admissions were to be taken on merit as reflected in the NEET examination.

22. During the course of hearing we had repeatedly asked learned counsel appearing for the respondents as to whether any candidate having merit

higher to the appellants in the NEET examination, has submitted any complaint or made any protest to any authority complaining that he had made

application to the College having secured higher rank to the appellants and has been denied the admission. The respondents could not point out any

such details of any candidate who was included in the list published by the College and who had higher NEET rank to the appellants and has raised

grievance regarding nonadmission. It is also on the record that in fact after admission made in the Management quota and NRI quota still 8 seats were

not filled up which were surrendered to the Government by the College.

23. Details of names of eight candidates, invited for spot admission against the still vacant seats, forwarded to the College were admitted on

07.10.2016 (within the date as extended). The details of 8 candidates who were admitted on the basis of the allotment made by the Government is

found at Annexure P7 and on perusal of the names along with their NEET rank, the inter se ranks of the candidates which were admitted subsequent

to the appellants clearly indicate that four candidates are lower in the NEET rank to the appellants. After receiving the applications from appellants

and after being satisfied that they had demand draft prior to 09.09.2016 and had made unsuccessful attempts for their registration the College

published their names on 27.09.2016 which list is also on the record.

The ASC which is entrusted to supervise and guide entire admission process having issued the order dated 22.09.2016 asking the College to include

the names of 7 candidates whose names were not earlier included, the College extended the said benefit and the facility to other candidates who come

with proof of unsuccessful attempts for registration along with demand drafts taken before the scheduled cut off date of admission. We are unable to

see any mala fide or any oblique motive in publishing notice dated 23.09.2016 by the College. They received order for inclusion of 7 such candidates

whose names were included in the list and extended the same benefits to other similarly situated.

24. The High Court has referred to the judgment of this Court in Rishabh Choudhary vs. Union of India and others, (2017) 3 SCC 652. The High

Court has relied on paragraphs 15 and 16 of the judgment which are to the following effect:

15. The question before this Court is not who is to be blamed for the present state of affairs- whether it is the students or the College or the State of

Chhattisgarh. The question is really whether the rule of law should prevail or not. In our opinion, the answer is unambiguously in the affirmative. The

College and the State of Chhattisgarh have not adhered to the law with the result that the petitioner became a victim of circumstances giving him a

cause of action to proceed against the College and the State of Chhattisgarh being a victim of their maladministration. The plight of the petitioner is

unfortunate but it cannot be helped.

16. We were told during the course of submissions that some similarly placed students participated in NEET and qualified in the examination. Those students like the petitioner who did not participate in NEET and placed their trust only in the College and the State of Chhattisgarh took a gamble and that gamble has unfortunately not succeeded. While our sympathies may be with the petitioner and similarly placed students, we cannot go contrary to the orders passed by this Court from time to time, only for their benefit.

25. The case of Rishabh Choudhary (supra) was a case of candidate who was admitted by the College in the year 2016/2017 in MBBS Course on the basis of examination conducted by the College. This Court noticed in the aforesaid judgment that this Court having already passed an order dated

11.04.2016 recalling the judgment of this Court dated 18.07.2013 in Christian Medical College, Vellore and others vs. Union of India and others, (2014)

2 SCC 305, the notification issued by the Medical Council of India on 21.12.2010 reviewed that the examination was to be conducted by NEET.

This Court in Rishabh Choudhary case (supra) has also noticed the order of this Court dated 06.05.2016 in Sankalp Charitable Trust (supra) where

this Court has directed that no examination shall be permitted to be held for admission to MBBS or BDS studies by any private college. In paragraphs

9 to 12 following was held:

9. By an order dated 05/2016 in Sankalp Charitable Trust, it was made clear that no examination shall be permitted to be held for admission for MBBS

studies by any private college or association or any private/deemed university.

10. Subsequently on 09/2016 this Court declined to modify the order dated 05/2016. An order was also passed making it clear that all such candidates

who could not appear in NEET I and those who had appeared but had an apprehension that they had not prepared well, would be permitted to appear

in NEET II subject to an option from these candidates to give up their candidature for NEET I. It was further clarified that only NEET would enable

students to get admission to MBBS studies.

11. In view of all these orders passed by this Court from time to time, it is more than abundantly clear that the Notification dated 21/12/2010 stood

resurrected and that admissions to the MBBS course could only be through NEET I and NEET II. No other process of admission was permissible.

Given this background, the Director of Medical Education in Chhattisgarh wrote

to the College on or about 13/7/2016 to take steps to cancel all the admissions made by the College in terms of the examination CGMAT 2016 held for students for the management quota and NRI quota. Eventually by a Letter dated 28/7/2016 the Director of Medical Education in Chhattisgarh recommended to the College to cancel admissions made to the MBBS course. This prompted the petitioner to file a writ petition in this Court.

12. It is submitted and prayed by the petitioner that since he had already been granted admission by the College after the examination CGMAT 2016 was conducted by the College and supervised and monitored by the State of Chhattisgarh and in which there were no allegations of impropriety, his admission should not be disturbed. It is submitted that the petitioner was certainly not at fault and there is no reason why he should be the victim of an apparent wrong committed by the College as also by the State of Chhattisgarh.

26. The observations were made in paragraphs 15 and 16 in the background of facts in that case. Present is not a case where the appellants did not appear in the NEET examination or they were granted admission disregarding the merits of other candidates in NEET. No details of any candidate who secured higher rank or merit to the appellants and was not given admission in the College has been brought to our notice.

It may be true that the order of the ASC dated 22.09.2016 did not expressly permit the College to invite all the candidates who had earlier made their unsuccessful attempts for online registration to come up for being included in the list of eligible candidates of the College but the College having given such opportunity to others in addition to 7 candidates who had complained to the ASC, such action of the College cannot be termed the mala fide or with oblique motive especially when similarly situated candidates were included in the list of eligible candidates.

The High Court had not given due consideration to the important condition which was put by the College in the notice dated 23.09.2016 that candidates who come, claiming that they made unsuccessful attempts for online registration and come up with proof to show that they had prepared demand draft of fee which was of prior date to the last date of admission. The above safeguard was enough to ward off applicants who never thought of admission in the College prior to last date of admission.

27. It is not disputed that the appellants had proof of demand drafts in the name

of College which were prior to the last date of admission. In the facts of the present case where admission was also notified by the University on 30.09.2016 and the ASC for the first time disapproved their admissions only on 03.06.2016 and further the appellants were also permitted to appear in the examination of MBBS First Year by the High Court, at this distance of time, we are not inclined to throw the appellants out of the College on account of the above shortcomings as pointed by the ASC and the High Court.

28. In the result, we set aside the order of the High Court as well as the order of the Admission Supervisory Committee. The appeal is allowed.