
(1995) 05 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 10048 of 1995

Aparna Jha

APPELLANT

Vs

B.H.U., Varanasi and Others

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (1995) 05 AHC CK 0092

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Dismissed

Judgement

N. L. Ganguly, J.—The petitioner applied for M. D. (Anatomy) Course after having the degree of M. B. B. S. The respondent University Inducts Entrance examination to various Post Graduate Medical Degree Courses in the Institution through the Controller of Examinations. More than 300 candidates approximately 313 had applied for appearing in the Entrance Test Examination for various Post Graduate Degree Courses. The petitioner prayed for a writ quashing the select list subjectwise merit list of the candidates for M. D./M. S. admission tests January 1995 declared on 10th April, 1995. Further prayer was for quashing the admission list Annexure 2 dated 14/2/1995.

2. It has been pleaded that after the roll numbers were assigned to the candidates alphabetically in the subjects of Anatomy (113), E. N. T. fl4?3) Physiology (183190*, Biochemistry (5566). Biophysics (6782), Forensic Pharmacology (178182), Psychiatry (101262), Radiotherapy (263278) and Prosthodontice (279298) again the Roll numbers have been added to M. D. Anatomy (299300), Microbiology (301), Forensic Medicine (302304) Physiology (305308) and Miscellaneous (309), Aiophysics (310311) and 313, Psychiatry (313) and Physiology. It was also stated that in the Addendum for physiology for which there is no alphabetic order, roll No 308 has been assigned to E. N, T. It was stated that the irregularities about were "gap" Roll Nos. 309311 have been entered in the handwriting followed by typed list while Roll Nos. 312 and 313

have been written in handwriting. Similarly, after list carefully scrutinise gap m preparing the list have been left under Radiotherapy (Roll No 968) and Prosthodontics (Roll No 283) followed by Ireallotment for Roll) No. 74, Roll No. 182, Roll No. 218 and Roll No. 260. The gap Roll numbers 268 and 283 have not been allocated to any candidate while the remaining four under the said heading have been brought by regular alphabetical list.

3 The petitioner stated that the admission card for appearing in the entrance test on 1421995 was issued and examinations were held. The petitioner has stated that it came to her knowledge that many students who were already doing P. G. in various clinical subjects like Medicine, Surgery etc in various Medical Colleges, had appeared in the said examination. It was also complained that many students appeared in the examination by changing their names and photographs which was purposefully not detected by the Invigilator.

4 A letter dated 2321995 was bent to the ViceChancellor, a copy is annexed as Annexure No. 3 to the writ petition with the signatures of about t8 candidates The petitioner has also filed a supplementary affidavit containing three annexures with it. The petitioner has stated that 1741994 was the date fixed for realisation of the list o! successful candidates. The writ petition was argued by the learned counsel on 1841995 and prayer for filing of supplementary affidavit was made which was allowed.

5. The petitioner herself has stated in Para 1 of the writ petition that the Vicechancellor is the Chief Executive Officer of the University The Director of Institute of Medical Science is the Head of the said Institution which has two wings, Hospital and Medical College. The examination of the University was conducted by the Controller of Examination of the University. Thus, the admitted fact is that the ViceChancellor is the Chief Executive Head of the University.

6. The learned counsel for the petitioner laid emphasise on the Information leaflet for registration to three years M. D./M.S./M. D. S. CourseJanuary, 1995 Session. A copy is annexed as Annexure I with the writ petition. Reliance has been placed on Paragraphs 4 and 5 of the said Leaflet which are quoted as under :

"The decision of the Director, IMS, BHU shall be final and binding on the candidate in respect of the admission test. The decision of the Post graduate Medical Board, Faculty of Medicine, Institute of Medical Sciences, BHU in all the matters of admission/ registration shall be final and binding on the candidate."

7. The petitioner"s learned counsel Shri Arup Banerji placed a copy of the letter dated 15th April, 1995 addressed to .the Director of the Institute of Medial Science sent by the petitioner annexing a copy of the said letter to the ViceChancellor. It was complained in the said letter that the details of malpractices adopted by the University in preparation of the admission list and holding of the examination was brought to the notice of the ViceChancellor. It was said that in spite of the application for taking appropriate action for

cancellation of the result, the result of the entrance admission test was fixed for declaration. It was prayed that until and unless proper enquiry as to the malpractices are not held, the result of the selected candidate be not declared.

8. In the supplementary affidavit the petitioner has stated that the copy of the letter dated 23/1/1995 addressed to the Vice-Chancellor by the Director of Institute of Medical Sciences complaining in regard to the entrance examination was annexed and drew the attention of the Court to the said letter. It was argued that the Director of the Institute of Medical Sciences is the final authority as made various manipulation in the said examination. He also submitted the Director of the Institute and Dean unanimously recommended for judicial enquiry and aha the result of the examination to be withheld. In spite of these, the Controller of the Examination informed the Director of the Institute to declare the result held on 14/2/1995. The learned counsel for the petitioner draw attention of the Court to Paragraph No. 3(c) of BHU Diary which shows that Post Graduate Medical Board of the Institute is the final decision making authority in all matters of registration which shall be final. The provisions of Diary 3(c) is quoted below:

"The Postgraduate Medical Board of the institute will admit the candidates on merit depending upon the seats available in any subject or specialty on the recommendation of the Research Committee of the respective Department or specially which will also recommend, supervisor and cosupervisor, if any, for each candidate. The names of the registered candidates alongwith names of the respective supervisors will be sent to the Registrar, Banaras Hindu University for records. The criteria on or determining the merit of the candidates will be framed by the Postgraduate Medical Board whose decision in all matters of registration, shall be final."

9. It was argued that the direction to declare the result of the successful candidates for Post Graduate Medical Course admission is wholly illegal and unwarranted liable to be quashed.

10. The learned counsel Sri V. K. Upadhyaya appeared for the BHU respondent and produced the record of the University concerning the M. D./ M. S./M. D. S. admission test of January, 1995. The original record of the University shows that the result was announced on 10/4/1995 after obtaining the signatures of Director and Dean and Vice-Chancellor. The record shows that the respondent before declaring the result have taken all possible precautions. After the test was over, markings were given by computer, merit list of each discipline was prepared separately. In such merit list, according to the number of vacancies are selected for admission. In making and preparing the merit list, roll number of a particular candidate was of least relevance. The performance i.e., the marks secured by a particular candidate was the only criteria for ranking in the merit list. Merit list was also to be prepared disciplinewise in performance of a candidate in the test. The allotment of roll number had nothing to do with the preparation of the final merit list in each discipline. The petitioner produced a copy of the letter Annexure SA 1, dated 7/3/1995 with the supplementary affidavit. This letter is

with the original record of the University. A perusal of the original record shows that on the top of it in capital letters, it was typed strictly confidential. The petitioner filed this copy of this letter and conveniently to suit her purpose, omitted to print the words "strictly confidential" with the annexure. The paragraph annexing Annexure A7 has been sworn to be on the basis of the record. It has not been disclosed how the strictly confidential record was available to the petitioner and in what circumstances, the petitioner omitted to print the word "strictly confidential" in the list Annexure SA 1. The petitioner has deliberately omitted to mention the said words with some motive in her mind. A person who comes to the court with unclean hands or concealed some material facts, is not entitled to seek the extraordinary relief under the extraordinary jurisdiction under Article 226 of the Constitution.

11. The learned counsel for the petitioner submitted that when the Director of the Institute requested the ViceChancellor of the University for recommending judicial enquiry to be instituted and made it time bound and the result of the entrance test may be withheld, till the enquiry report is made available. This was under the signature of the Director and the Dean of Faculty of Medicines. The letter was sent on 731995. From the original record of the University it appears that the complaint was thoroughly investigated by the Controller of Examination and the ViceChancellor who according to the petitioner's own admission is the Chief Executive Officer of the University himself and passed the orders after having the matter enquired into and was of the view that the result be declared. ViceChancellor himself had taken pains in the controversy with the aid of the Controller of the Examinations and was satisfied that the complaint of 18 candidates who had prayed for cancelling of the examination and the Director's request for getting a judicial enquiry held in the matter was not required, in view of the facts and circumstances of the case. The ViceChancellor being the Head of the Executive of the University, overall Incharge in respect of the entire academic matters of the University, took a decision in the matter, directed to declare the result. I do not think that this Court would be justified in interfering in the matters like this which is at the instance of those who perhaps failed to secure marks for being selected. The learned counsel for the University submitted that the petitioner has not been able to show that the alleged malpractices of many students who are said to be already doing P. O. in various clinical subjects (Like Medicine and Surgery etc.) in various Medical Colleges have appeared in the said examination. There is no prohibition nor any such prohibition has been shown by any Rule or Statute, Ordinance that the students already doing P. G. course in any other subject, is debarred from appearing in the test for some other subject. Further the allegations are so vague and showing that many students are not sufficient unless it was specified and details of such persons and material for proving the same was placed before the court, or the authorities below. The allegation that many students appeared in the examination by changing their names by photograph which was purposefully not detected by Invigilator is very vague allegation not substantiated at all. The learned counsel for the

respondents stated that soon after appearing in the test such candidates, who realised that they were not likely to be selected, appears to have moved such application with such allegations. Mere allegations are not sufficient unless there is some material fact to substantiate or giving any details of specific instances of such malpractices. The learned counsel for the respondents is right in making submission. The ViceChancellor being the Head of the Executive and overall Incharge of all affairs of the University was satisfied that neither any judicial enquiry was called for nor there was any justification for the staying the declaration of the admission test examination.

12. After hearing the learned counsel for the parties, I am of the view that no relief can be given to the petitioner and the writ petition is liable to be dismissed. The writ petition is dismissed summarily.