
(2013) 07 PAT CK 0110
In the Patna High Court
Case No : CWJC No. 14704 of 2011

Ashutosh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 750

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Yugal Kishore, Virendra Pd. and Sanjay Kr, for the Appellant; Girijesh Kr., for the Respondent

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—This case has a chequered history. As pleadings are complete, with consent of parties, this writ petition has been taken up for disposal at this stage itself. The petitioner, pursuant to Medical Entrance Test, qualified and got admission in Anugrah Narayan Magadh Medical College, Gaya, a Government Medical College in the academic session 2003-2004. He avers that soon thereafter his mother fell seriously ill and being the only literate person, who could look after her, he had to leave the Medical College for her treatment. He was, as such, after due intimation to the College authorities, absented for a few years. He then, on or about 17.8.2006, sought permission from the Principal of the said Medical College to resume his classes from the first MBBS course. He was asked to give an affidavit. It may be noted that soon after petitioner got admission in Medical College, two investigations by the Central Bureau of Investigation (CBI) were taken up, one at Delhi and the other at Patna in which petitioner also figured. The Principal also required the petitioner to give an affidavit whether he had been arrested in any case or not. Petitioner, accordingly, filed an affidavit on 7.9.2006 clearly stating that in no police case or any criminal case, he was ever arrested which fact is a truth and it has not changed since. It may also be noted here that so far as the Delhi case is concerned being Vasant

Kunj Police Station Case No. 738 of 2003, petitioner was granted bail by the Investigating Officer himself. So far as the Patna case is concerned that is RC 24A of 2003, he was never even arrested and ultimately CBI filed a charge-sheet stating that there being no material against the petitioner, no action was to be taken as against him.

2. The Medical College concerned being a Government Medical College, the application of the petitioner to the Principal was forwarded by the Principal to the Government in the Department of Directorate of Health Education. Petitioner had represented giving specific instances where after long periods of absence, State Government had allowed different students in Medical Colleges in Bihar itself to continue their studies. Petitioner has also given instance where after 12 years of break, Medical Council of India permitted student to rejoin the medical course. As State, as usual, was deliberating over the matter at its own pace, there being inordinate delay, petitioner was forced to move this Court by filing CWJC No. 7322 of 2008. In retrospect, a wrong decision on his part. Why it was wrong decision would be apparent from the fact that no sooner the writ petition was filed and State got information in regard thereto, it sought an opinion from the office of Advocate General as to what should the State do in the matter pending before it for grant to rejoin the course. Strangely enough, the office of the Advocate General advised the State that as the matter is subjudiced, the Advocate General cannot render any advice in the matter, most curious stand. Based upon this, State filed a counter affidavit in the writ petition that matter now being subjudiced before the Court, it would await the decision of the Court. Again a very curious stand because as the State was not taking action promptly and deciding the matter, petitioner was forced to come to this Court and once petitioner came to this Court, State withdrew its hand as if it was required to act now. In spite of having come to know that the petitioner come to Court, State should decide the matter so that if anything remained, the validity of the decision could be tested before the Court. The bureaucratic attitude is writ large. If you take no decision, you will never be wrong. Leave it to the Court.

3. This matter was kept pending in this Court. In 2010, a counter affidavit was filed on behalf of the Additional Director, Medical Education-cum-Examination Controller, Health Services, Government of Bihar, Patna which is Annexure-10 to the writ petition. In paragraph 10 of the counter affidavit, State stated thus:--

10. That the deponent humbly states and submits that the petitioner has since now been not charge-sheeted by the CBI in criminal case bearing No. RC 24A/2003 Pat, the Respondents would consider his case for allowing him to complete his left over studies.

4. In view of the facts and in view of the statement as made in the counter affidavit as quoted above, the writ petition being CWJC No. 7322 of 2008 was disposed of on 28.3.2011 (Annexure-11), inter alia, holding thus:--

Now, that it has come on record that petitioner has not been charge-sheeted in

the CBI case i.e. RC Case No. 24A/2003, I do not think that there is any impediment for the petitioner being permitted to continue his classes subject to an undertaking given by the petitioner that he would abide by the decision in RC Case No. 24A/2003.

For the aforesaid purpose the petitioner may apply to the Principal Secretary of the Department/Health Commissioner, Bihar, Patna to grant him permission to resume his studies as has been done in the case of Nand Kishore Kumar, Girija Kishore, Santosh Kumar and Kapildeo Choudhary vide memo no 6137, dated 14.9.2004 and 6774, dated 18.9.2009 (Annexures-9 and 10) if the petitioner is found similarly situated.

5. It was, thus, expected that now State, in view of the stand taken in the counter affidavit, fortified with the order of this Court, as quoted above, would have granted permission but that was not to be. By order dated 15.6.2011 (Annexure-12), the impugned order, taking a hyper-technical view of the matter which in fact is not germane, petitioner's application for grant of permission to continue and complete his medical education was refused.

6. Upon reading of the impugned order, as contained in Annexure-12, it appears that primarily two reasons seem to have prevailed over the authorities, one that the interruption in other cases was not very long. Unfortunately, the office has forgotten that petitioner was of the batch 2003-2004. He had sought to rejoin the course in the year, 2006 itself and it is because of the lethargic attitude of the State that the matter could not be decided in 2006 and now to say that the period of absence had been too long is putting the cart before the horse. Had the State taken a decision in the year, 2006 when it was required to take a decision, the plea of delay would not have arisen. What virtually the State is saying because my officer slept over the matter and delayed in taking a decision, the right of the petitioner has lost. Nothing can be more absurd.

7. The next ground given is that in the affidavit filed before the Principal in the year 2006, petitioner had not disclosed the case in which he was an accused at Delhi. In my view, that would not have been a material suppression. The reason is what the petitioner was to give an affidavit was with regard to that he being arrested and taken into custody in any case. He was never arrested and sent to jail in any case. Moreover, a material suppression, as has been held by the Apex Court in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, is what is likely to given undue advantage to the person who suppresses the information which he would not have got had he disclosed the information. Testing it from that point of view, had petitioner disclosed that he was an accused in a case in Delhi would it have made any difference? In my view, none., Therefore, making an issue out of a non-issue, cannot be permitted.

8. Thus, I find both the grounds, as given for denying permission to the petitioner to resume his medical education, are irrelevant. It is well settled that if an administrative authority acts on issues which are irrelevant then the order is

perverse and requires to be set aside in judicial review.

9. I, accordingly, set aside the order of the State Government and direct the State Government to grant permission to the petitioner to resume his medical education.

10. However, considering the long period of absence that is about three years because of petitioner's own cause and over six years because of inaction of the State, I deem it proper to direct that the petitioner would resume the studies from the very first MBBS course in the batch which is to start from August, this year in the said College. Authorities would act accordingly. Necessary permission must be communicated by the State to the petitioner and College immediately so that another year of the petitioner is not lost. The writ application, with the aforesaid observation and direction, is allowed.