

(2014) 11 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 11862 of 2013 and Civil Application No. 2338 of 2014 in Writ Petition No. 11862 of 2013

Asma Amin Siddiqui

APPELLANT

Vs

Maharashtra University of Health Science

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (2015) 2 ALLMR 813 : (2015) 1 MhLj 740

Hon'ble Judges : N.H. Patil, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : A.R. Shaikh, Advocate for the Appellant; R.V. Govilkar, A.I. Patel, AGP and S.R. Ganbavale, Advocate for the Respondent

Judgement

A.P. Bhangale, J.—Rule. Heard. Civil Application No. 2338 of 2014 for early hearing and disposal of this Writ Petition is allowed in terms of prayer (a) thereof. Writ Petition is heard finally on merits by consent of rival counsels.

2. The petitioner challenges the cancellation of her admission to the BUMS Health Science Course in the Tibbia College Malegaon, District Nashik.

3. It is case of the Petitioner that in the admission process to the Health Science Course BUMS, she was selected on 15-10-2013 in the open category. She reported to the M. Tibbia College, UMC (Unani Medical College) Malegaon, District Nashik and paid fees on 18-10-2013. She started attending classes from 21-10-2013. However on 25-10-2013, she was informed by the Principal of the College that as per DMER letter dated 24-10-2013, her admission is cancelled on the ground that she had secured less percentage of marks in Physics, Chemistry and Biology to be eligible for the the admission to the college.

4. Central Council Of Indian Medicine by letter dated 22-06-2013 informed registrars of all the Universities having faculty of Unani and forwarded the regulation notified on 24 May 2013 under the Indian Medicine Central Council

Act, 1970 (Act 48 of 1970). Thus under amended Indian Medical Central council (Minimum Standards of education in Indian Medicine) Regulations, 1985 in force with effect from 24 May 2013 eligibility for admission to the course of Bachelor of Unani medicine & surgery-B.U.M.S. Course is Intermediate (10+2) or its equivalent examination with fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology was essential. The object was to produce the competent unani graduates of profound experience having deep basis of Unani with modern scientific knowledge in accordance with unani fundamentals with extensive practical training so as to become unani Physician and Surgeon and research worker fully competent according to medical and health service of the Country. Thus acting upon the regulations Director Medical Education and Research Mumbai by letter dated 24 October 2013 insisted upon compliance thereof by the colleges concerned by canceling the admission given if any to ineligible candidates.

5. Our attention is drawn by the learned counsel for the Petitioner to the ruling in - Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others, , Hon"ble Supreme Court in the facts of that case observed thus :-

"4. If the petitioner"s eligibility for admission to the course for which he had applied is to be judged on the qualifications as set out in the advertisement, it is indisputable that he was eligible for admission under Clause (b)(iv) of the advertisement. Mr. Altaf Ahmed, however drew our attention to item No. 12 in Notification No. 4 of 1981 issued by the Government Medical College at Jammu, which recited that the selection of the candidates will be made strictly in accordance with the instructions issued by the Government. That may be so. But can it be urged that advertisement was issued ignoring Government instruction if any relevant to the subject. In any event such a vague direction that the selection of candidates will be made strictly in accordance with the instructions issued by the Government, in the face of advertisement, leave us cold because any such instruction must be in conformity with some rules and if there be rules the same must be in conformity with the Regulations framed by Indian Medical Council if its jurisdiction extends to Jammu and Kashmir. It was never suggested at any point of time that in issuing the advertisement there was any error."

Supreme court in the Vinay Rampal"s case held that since no reference was made in the advertisement about the subsequent Government order dated 23-03-1979, it was the requirements set out in the advertisement which should have provided the basis for selection and eligibility for admission of the Petitioner therein. That could not have been subsequently changed for to deny admission. In the present case however it appears that situation is different and the ruling is not attracted in the facts of the case. The prospectus Brochure for NEET UG2013 itself comprehensively defined the terms such as "Competent Authority", "Council" "Health Science Courses" and mentioned the essential terms as to eligibility for admission to health science degree courses. Some basic clauses appear thus:-

Educational qualifications required was mentioned

Clause 4.4 The candidate must have passed S.S.C or equivalent examination certificate from an institution situated in the State of Maharashtra (Please refer 4.6,4.7,4.8, Annexure "B" and "D" for exception).

Clause 4.18 mentions that admission to Health science courses is subject to the grant of eligibility by Maharashtra University of Health Science, Nashik. The Brochure information as on 20-06-2013 issued by NEET UG CET-2013 mentioned clearly that admission to various Health Science courses at the colleges shall be subject to permission/ approval/affiliation from : i. The Government of India, ii. Respective Central Council, iii. Government of Maharashtra and iv. Maharashtra University of Health Sciences Nashik. Candidate will be admitted to a given course and college if the permission from all the above authorities has been granted on the day of allotment of seat. No such compliance of conditions of the Brochure was made by the Tibbia College, Malegaon in this case before admitting the Petitioner in the College. It was duty of the College to carry out the the orders of the authority concerned which were binding upon it. If the Petitioner suffers cancellation of her admission due to this mess created by the college, casually proceeding to admit the Petitioner without compliance of the binding orders from the Central Council and the University concerned as to eligibility of a student for admission, then in our view the remedy of the Petitioner is to claim appropriate compensation from the College as may be open to her but at the same time merits and prescribed standards of medical education can not be sacrificed in the larger public interest by merely protecting the individual interest of the Petitioner. We do not find any legal right in the Petitioner to claim that her admission must be regularized in this case notwithstanding the wrong committed by the college to admit her contrary to the Regulations prevalent and which were in force at the time of her admission.

6. Second ruling cited before us on behalf of the Petitioner is Mahatma Gandhi Missions Institute Vs. The State of Maharashtra and Dr. Babasaheb Ambedkar Marathwada University, Bench: Swatanter Kumar CJ., A.P.Deshpande & Nishita Mhatre, JJ. dated on 22 August, 2008. Full Bench of this Court summarized the principles to admit the students to the educational, especially professional courses and stated thus in Para 1 :

.. "The rudiments can veritably be stated as under:

(a) The admission to academic course more so, to professional courses has to be strictly on merit.

Meritorious students should be given their choice, thus, admission on merit coupled with institution preference should be the basis.

(b) All courses and more particularly, professional courses should essentially commence on the date fixed for commencement for such courses.

In other words, the courses must start timely.

(c) Midstream/midterm admissions should be avoided and more particularly, the students in the professional courses must go through the complete course of education which should not be reduced or narrowed for adjusting such admissions.

(d) The professional and technical councils and State bodies should take appropriate steps to maintain proper educational standards in examination and teaching courses in all its institutions.

(e) The State, Universities and Institutions have an and duty to maintain requisite standard of professional excellence by giving admission on merit to eligible students by a fair and transparent admission process.

(f) Information and admission brochures should be timely issued by the respective authorities which would be binding upon the administration and the students equally. It is not expected of any of the authorities/institutions involved in the process of admission to alter the conditions or process of admission once the process has begun except in rare circumstances and that too in accordance with law."

Full bench had also referred to the ruling of the Constitution Bench in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, and quoted Para 8 therein.

"8. Right of a meritorious student to get admission in a post graduate course is a fundamental and human right, which is required to be protected . Such valuable right cannot be permitted to be whittled down at the instance of less meritorious students"

Thus what is required to be protected is fundamental and human right of meritorious students to get admission. Larger public interest demands that such valuable right of meritorious students to get admission to professional medical courses cannot be permitted to be whittled down by providing admission to less meritorious students to professional medical courses. Reasonable higher standards of medical professions in various disciplines must be maintained to create well trained competent Doctors with requisite expertise to treat or operate the patients. In cases of Admission to the professional medical courses, admission of a student who cannot satisfy the essential conditions as to eligibility must never be encouraged by all those medical educational authorities, i.e. College, University and Council concerned. Full bench of this Court in Para 25 and 26 Of M.G.M Institute's case (SUPRA) observed in this regard:-

"25. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education standards and judging upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over views of the State as well as that of the University. The concerned Department of the State and the affiliating University

has a role to play but it is limited in its application. They cannot lay down any guidelines or policies which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval and University its affiliation for increased intake of seats or commencement for a new course/college, its directions should not offend and be repugnant to what has been laid down in the condition of approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of proper imparting of education and ensuring maintenance of proper standards of education, examination and ensuring proper infra-structure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation they would be able to achieve the very object for which all these entities exist.

Information and Admission Brochure :

26. For ensuring adherence to proper appreciation of a academic course, it is essential that the method of admission is just, fair and transparent. The first step in this direction would be publication of a brochure on the basis of which the applicants are supposed to aspire for admission to various institutions keeping in mind their merit and preference of colleges. Brochure, whether information or admission, firstly has to be in conformity with law and the statutory scheme notified by the competent authority. It is a complete and composite document as it deals with the scheme for conducting their entrance examinations, declaration of results, general instructions and method of admission, etc. This brochure is binding on the applicants as well as all the authorities. This brochure or admission notification issued by the State or other competent authority cannot be altered at a subsequent stage particularly once the process of admission has begun. There is hardly any exception to this accepted rule of law.

7. Co-ordinated efforts are required from medical educational authorities concerned for to create and maintain high standards of medical education with prescribed educational qualifications. Admission process to such professional medical courses must be just, fair and transparent. Even to allow a student for appearing in the qualifying examination like common entrance test, essential merits of a student which are primary criteria as in examinations of eligibility (10+2 Courses) cannot be given a go bye. There cannot be undue magnanimity or misplaced sympathy at the cost of merit .College can not admit a student to a professional medical course by any back door entry method which is contrary to the provisions of governing Statute, and the prevalent rules and regulations notified by the Central Council duly intimated and prescribed by the Central Council of Indian Medicine through University concerned. Thus what is required to be protected is fundamental and human right of all meritorious students to get

admission. Larger public interest demands that such valuable right of meritorious students to get admission to professional medical courses cannot be permitted to be whittled down by providing admission to any Tom, Dick & Harry based on any sort of extraneous influences despite being less than meritorious. Reasonable high standards of medical professions in various discipline must be maintained to create well trained competent Doctors with requisite expertise to treat or operate the patients. In cases of Admission to the professional medical courses, admission of a student who cannot satisfy the essential conditions as to eligibility must never be encouraged by all those medical educational authorities, i.e. College, University and Medical Council concerned. The Full Bench of this Court in para 43 in Mahatma Gandhi Missions Institute's case (supra) observed further as under :

".... Notifications issued by the Government as well as AICTE specifies the various ingredients essential for maintaining the very object of excellence in education, proper completion of course and adherence to the standards and norms prescribed for infra-structure and amenities. While the Court is granting relief to the Petitioners on equitable ground, it is also desirable that Court keeps in mind that neither the statutory provisions are varied or relaxed in a manner that the object of education would be the casualty. It is much required that in the present day of competitive academics, the standards of education courses and merit cum preference are not given up in favour of mere prayer of the colleges that admission to seats have been denied for want of or co-operation or co-ordination simpliciter between these authorities. This is a matter of common knowledge that every college gets sufficient period to apply to the concerned authorities, particularly the Central Council which is responsible for adherence to standards applicable all over the country and it is necessary that the standards of education and infra-structure are maintained and they ought not to be compromised in a hurry or because of shortage of period. Institutions hardly suffer on any count as the seats would be available to them in the coming year. Wherever the institutions are desirous of taking benefit of additional seats or commencing new courses, it is expected of them to act timely and even approach the Court if they so desire, leaving sufficient time for the authorities to comply with the directions of the court, if issued, that too without jeopardising the process of admissions to the courses."

8. The last ruling brought to our notice is Parmender Kumar and Others Vs. State of Haryana and Others, . It is based on equitable principle of "promissory estoppel". The Apex Court held that if government orders were already in force when the prospectus was published, they would have bearing on the admission process. But state government can not alter the terms and conditions subsequently to deny opportunity of admission to the selected candidates on the basis of their written examinations. In the law of contracts, the doctrine that provides that if a party changes his or her position substantially either by acting or forbearing from acting in reliance upon a gratuitous promise, then that party can enforce the promise although the essential elements of a contract are not

present.

9. In our view the principle / the doctrine of promissory estoppel stated as above is not attracted in the case at our hand as there can not be estoppel against the Statute or binding legal provisions which are in force. Section 115 of the Indian Evidence Act defines estoppel: "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing." However the authority concerned cannot be compelled to something which is contrary to law, not allowed by law or prohibited by law. The doctrine of promissory estoppel cannot be invoked in case the authority concerned acted against the Statute as no one can be compelled to act in a manner which is contrary to law. In the facts and circumstances of the present case it is clearly seen that the Brochure mentioned in clause 4.18 that admission to Health Science courses is subject to the grant of eligibility by Maharashtra University of Health Science, Nashik. After giving the list of colleges footnote also mentions that the information is as on 20-06-2013 and that the admission to various Health Science courses shall be subject to permission/ approval/ affiliation from : i. The Government of India, ii. Respective Central Council, iii. Government of Maharashtra, iv. Maharashtra University of Health Science, Nashik. Candidate will be admitted to a given course and college if he permission from all the above authorities has been granted on the day of allotment of seat. In our view the appropriate government through competent authority of the Central or State Medical Council and University concerned can regulate admissions in professional medical courses with a view to create competent Doctors to treat the patients with medicines and to operate surgeries as required, in the larger interest of the public and society. This is for the Government, as best judge, to ensure that only meritorious students with requisite educational eligibility can appear for the qualifying examination. The public purpose would be served if meritorious students with requisite essential academic eligibility are admitted and allowed to undergo the rigors of extensive professional medical education and training and not anybody wielding extraneous influence of money or such other kind other than strict merit. The legal requirements as to admission of the student can not be overlooked by any Medical College while admitting a student. The society need competent Doctors with requisite professional expertise in various branches of medical disciplines. Wrong admission which is contrary to law of any student is unsustainable as individual interest being myopic must yield to the larger public interest as stated above. Wanton commercialization of the medical education by greedy elements intermingled in the administration of educational institutions on some pretext or other including availability of vacancies to admit unmeritorious, undeserving student in professional educational course requiring expertise in the educational discipline concerned, must be averted as intolerable in the larger interest of the people and society. A eligible student with prescribed requisite percentage of

success as basic educational eligibility in 10+12 standard examinations with necessary success in the competitive examination such as common entrance test as qualifying examination for admission to professional Health Science course concerned can alone be admitted. In other words, strictly meritorious and deserving student can alone be admitted by a fair, transparent, and unbiased admission process in accordance with law.

10. Thus after having considered the submissions advanced at the bar, the rulings cited and legal position and the reasons stated above, in our view, the eligibility criteria prescribed by the statutory rules in force must be strictly adhered to. Therefore, the decision taken in the case in hand to cancel the admission of the Petitioner student can not be branded as arbitrary, irrational, contrary to law or unreasonable so as to require interference by this court in exercise of extraordinary writ jurisdiction.

11. Petition is found without merit and hence dismissed. Rule is discharged accordingly.

12. Civil Application No. 2338 of 2014 also stand disposed of accordingly.

13. Under the circumstances stated, no order as to costs. We make it clear that remedy by way of Civil suit to recover back the fees, charges paid by the Petitioner shall be open to Petitioner including claim for compensation, if any.