
(2002) 12 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 6913 of 2002

Dr. Md. Nazim Shamne

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Citation : (2003) 2 PLJR 734

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Ramakant Sharma, for the Appellant; S.K. Ghose and Mayanand Jha for State, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioner seeks quashing of the order of the State Government contained in memo No. 454 (17) dated 6.6.2002 of the Examination Controller, Health Services, Bihar cancelling his admission to the M.S. (General Surgery) course for the session 1998-2001, and the consequential order of the Dean, Faculty of Medicines, Patna University contained in memo No. MF/599 dated 7.6.2002 directing the Petitioner to refund the amount of stipend received by him during the period of his studies as M.S. student. The said two orders are at Annexure-1 to the writ petition.

2. The case of the Petitioner is as follows. The Petitioner appeared at the All India Competitive Entrance Examination for the Post-Graduate Medical Course for the session 1996-99. He was selected for such admission and allotted M.D. (Anaesthesiology) course in Motilal Nehru Medical College, Allahabad where he took admission. While prosecuting his studies in the Motilal Nehru Medical College, he again appeared at the entrance examination for the session 1997-2000 and he was allotted E.N.T. in the Patna Medical College which he did not accept. Again in the year 1998 he appeared at the All India Competitive Examination for the session 1998-2000. This time he was allotted M.S. (General Surgery) course in the Patna Medical College. He took admission in the said

course and college on or about 14.4.98. After taking admission he went to Motilal Nehru Medical College and continued his studies in M.D. (Anaesthesiology). After completing the course there he again came to Patna Medical College and- filed application before the Dean, Faculty of Medicine stating that due to some unavoidable circumstances he did not perform the duties from 4.5.98 to 3.3.99, he wanted to continue the P.G. course (in General Surgery) from March 1999 onwards." His application was recommended by the Professor and Head of the Department Dr. A. A. Hai with a condition that the Petitioner will work extra ten months before being eligible for appearing in the examination. That was on 11.3.99. The P.G.R.C. endorsed the recommendation of the H.O.D. and accordingly the Petitioner was re-admitted in the M.S. (General Surgery) course with effect from 3.3.99. The Petitioner in course of time completed the course. A controversy arose about his Guide between (Prof.) Dr. Rajendra Prasad Singh and (Prof.) Dr. A.Q. Siddiqui. The Petitioner has made certain allegations against Dr. A.Q. Siddiqui, which it is not necessary to notice in this order. Suffice it to say that the Petitioner was alleged to have committed certain acts of indiscipline which led to initiation of disciplinary action against him. At this stage the fact that the Petitioner had taken admission in the M.S. (General Surgery) course in the PMCH while he was prosecuting studies in Motilal Nehru Medical College, Allahabad in M. D. (Anaesthesiology) came to light. On 18.3.2002 the P.G.R.C. resolved to suspend the Petitioner till decision of the Inquiry Committee vide Principal, Patna Medical College memo No. 1133 dated 18.3.2002. The Petitioner appeared before the Inquiry Committee and submitted his explanation. According to the Petitioner copy of the report of the inquiry committee was never communicated but he reliably learnt that the Committee took the view that as the case lodged by Dr. Siddiqui was subjudice in the criminal court it was not recording any finding. Even then it was resolved to take action against the Petitioner for his taking admission in the P.G. course while he was doing another P.G. course in the other college. The impugned decision was finally taken at the government level and his admission was cancelled.

3. It is not in dispute that the Petitioner was prosecuting studies in M.S. (Anaesthesiology) course in the Motilal Nehru Medical College, Allahabad during session 1996-99. It is also not in dispute that in terms of the prospectus of the Post-Graduate Medical Admission Test (PGMAT) 1999 a candidate already prosecuting studies in Degree or Diploma course on the basis of previous examination was not eligible for admission in another course without quitting the old course. It is further not in dispute that the Petitioner at the time of his admission in the Patna Medical College made a false declaration in this regard to the effect that he was not student of any other course (Degree/Diploma) in any institution of India. The case of the Petitioner is that he signed the declaration format under misconception without deleting or crossing the declaration in the prescribed format". It is also his case, vide paragraphs 9 and 10 of the writ petition, that as per the eligibility clause, namely, Clause 5 of the Prospectus, there was no restriction that the student pursuing a P.G. Degree or Diploma

course in any other University or the same University will not be entitled for admission unless and until he completes the course though there is such condition in the Bulletin of Information of All India Entrance Examination vide Clause 6(b) to that effect. The Petitioner contends that purpose of putting restriction on dual admission is only to ensure that once student is admitted in a particular course/college he should complete the course before he takes fresh admission. And inasmuch as by 1999 he completed the course in M.D. (Anaesthesiology) in Motilal Nehru Medical College, his admission in M.S. (General Surgery) course in the Patna Medical College in which he was re-admitted for the session 1999-2002 ought not to be disturbed. This aspect of the case was highlighted by the counsel in course of hearing. It was submitted that in any case the Petitioner has acquired experience and knowledge over period of 3 years. Having almost completed the course he should not be penalized for any mistake committed by him earlier. The court should take sympathetic view of the matter and condone his mistake.

4. The case of the Respondents is that the Petitioner obtained admission by fraud. He suppressed a fact-which made him ineligible for admission. The Prospectus clearly mentioned that a candidate already in a P.G. course would not be admitted without quitting, that course. Had the fact that the Petitioner was already prosecuting studies in another course and college come/brought to the notice of the authorities he would not have been admitted. His admission deprived a candidate placed next below him at serial No. 41. (Petitioner was at serial No. 413) of admission in M.S. (General Surgery) in Patna Medical College. The material facts were; suppressed at different stages including this writ petition and there has been an attempt to mislead this Court. His admission being illegal ab initio, secured by fraudulent and deceitful means, he is not entitled to the relief.

5. It was submitted on behalf of the Respondents that the plea of innocent mistake is not borne out by the conduct and is like proverbial crocodile's tears. In fact on the writ petition there is no such admission of the mistake or the guilt. It is only the counsel who has admitted the mistake when confronted with unimpeachable facts. Reference was made to the conduct of the Petitioner at different stages which I shall presently notice hereafter.

6. I have considered the submissions of the counsel for the parties. It is true that the Petitioner has almost completed the course. But it is not a case where on equitable considerations he can be granted any relief. The foundation of the Petitioner's case is fraud and fraud and equity do not go together. Had there been a solitary mistake, though not bona fide, perhaps, the Court might have shown compassion.

7. Para 6(v) of the Prospectus of the concerned examination (PGMAT 1999) very clearly stated that the candidate already enrolled for Degree or Diploma course pursuant to previous examination was not eligible for admission in a new course without leaving the old course. The condition was binding on every candidate and

the Petitioner cannot say that he was unaware of the same. It would be useful to quote the above para/clause as under:

A candidate who is enrolled for degree or diploma from a previous examination, will have to leave that course permanently if he is selected for a new course in subsequent examination and placed for admission on that basis. Once he quits the old course to join new course he will not be permitted to rejoin the old course thereafter.

The Petitioner was also aware of the conditions laid down in the Bulletin of Information for the All India Entrance Test Examination (which finds mention in paragraph 9 of the writ petition), to the effect that admission to the PG course in the particular University will be subject to the regulations of that University in view of the fact that in some of the Universities admission of candidates already pursuing the P.G. course in another University is barred. The above clause contained in para 6(b) of the Bulletin of Information may also be quoted as under:

Some of the Universities are having regulations that candidates who are already pursuing the PG Course in their University or in another University are not eligible for admission till they complete the course. The candidates who are already pursuing PG Courses either through All India Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility conditions of that University in this regard. Refusal of admission to such candidates shall not be the responsibility of DGHS. Such candidates may opt for the subject and the college at their own risks and costs.

8. The Petitioner was, thus, aware that while prosecuting studies in M.D. (Anaesthesiology) in Motilal Nehru Medical College, Allahabad, he was not eligible to take admission, in the M.S. (General Surgery) course, in Patna Medical College on the basis of PGMAT 1999. He conveniently suppressed this fact. He not only signed the declaration form but also made an endorsement to that effect in his own hand. The declaration is to the following effect.

I also declare that I am not a student of any other course (Degree/ Diploma) or "in the same course or sent-up/Ex-student at present In any of the Institution of India. I hereby solemnly and sincerely affirm that the statement made and information furnished by me are true and correct. I have not kept any information secret, should it however be found that any information furnished as fraudulent, incorrect or untrue in materials and particulars, I realize that I am liable to criminal prosecution and I also agree to forgo seat in the college. Further that the selection and admission to the course liable to be cancelled....

The Petitioner has stated in paragraph 8 of the petition that he signed the declaration under "'misconception". But as just now indicated, apart from signing the declaration, he also made an endorsement in his own hand, as under:

I am not doing any RG. Course not in service anywhere.

Sd/-

9.4.98

9. The above endorsement made in own hand belies the Petitioner's case of signing the declaration without understanding its implications. It is relevant to mention here that Annexure-4 purporting to be true copy of the declaration form is really not the true copy. The hand written portion, quoted hereinabove, has cunningly, if I may say so, been omitted. The true copy of the original has been brought on retard along with affidavit of the State as Annexure-A. The attempt on the part of the Petitioner to mislead this Court in this manner has simply to be deprecated. If Annexure-4 is not the true copy of the original and an argument has been built up of the Petitioner's signing the declaration form under some "misconception", the obvious inference would be that the Petitioner tried to mislead this Court as well.

10. The Petitioner after completing the course at Allahabad appeared before the HOD (General Surgery) on or about 11.3.99 with an application addressed to the Dean, Faculty of Medicines to re-admit him in the M.S. (General Surgery) course. Even at this stage he suppressed the fact that he had taken admission in the Motilal Nehru Medical College and was prosecuting studies in the M.D. (Anaesthesiology). All that he said was that he was unable to attend the duties due to "some unavoidable circumstances" The relevant part of the application reads as under:

With due respect hereby I am stating that I am a P.G. resident of M.S. (Gen. Surgery) Course of Session 1998-2001. I had joined the department of surgery as P.G. resident on 14.4.98. I worked for about twenty days. Following this I was unable to attend the duty due to some unavoidable circumstances. I didn't perform the duty from 4th May '98 to 3rd March, '99. Keeping these facts in light I want to continue my P.G. course from March '99 onwards and my period of absence will be extended for ten (10) months and session be adjusted according to this and as per rule.

Apparently, the Petitioner had made another suppression and, if I may say so, played another fraud at this stage. It is doubtful if the HOD/Dean Faculty of Medicine would have permitted him to continue the course had he been told about the Petitioner's taking admission in violation of the prospectus.

11. It is relevant to mention that the Petitioner made similar suppression before the authorities of the Motilal Nehru Medical College, Allahabad, which is evident from Annexure-B to the counter affidavit, where he remained absent from the course/ college without any information from 1.4.99 to 29.4.99. From Annexure-B it appears that the result of the M.D. (Anaesthesiology) was published in June, 1999. Apparently having attended requisite period of the course there he absented himself from the college so as to pick up the M.S. course in Patna Medical College. That is how he has been shown to be absent from the course/ college from 1.4.99 onwards. His passing the M.D. (Anaesthesiology) course on

the basis of his work done earlier is a different matter.

12. Yet another suppression by the Petitioner was of the fact that though provisional permission to appear at the forthcoming examination of 2002 vide memo No. G/6972 dated 23.5.2002 stood withdrawn vide memo No. 892/PU dated 15.6.2002, Annexure-C/1 to the counter affidavit, the Petitioner in paragraph 26 of the writ petition placed reliance on the earlier memo dated 23.5.2002. This clearly was another attempt to mislead this Court for getting favourable order.

13. The Petitioner has tried to find motives with the present HOD (Prof.) Dr. A. Q. Siddiqui. At the same time he also relies on the testimonial granted by him on 16.11.2001 vide Annexure-9 to the writ petition. It is not necessary to make comments on this aspect of the Petitioner's case. Whatever be the circumstances in which the Petitioner's past came to light, there being no dispute regarding material facts, the question as to whether and as to extent Dr. Siddiqui was instrumental in getting the admission cancelled, is of no consequence whatsoever.

14. It is true, as observed above, that the Petitioner has spent about three years and also completed the course in M.S. (General Surgery), but in the facts and circumstances, should the Court on that ground alone grant relief? If the Court were to do so, it would only encourage similar misadventures by similar unscrupulous persons. It is not a case of innocent mistake or mistakes committed by the Petitioner one after the other. The Petitioner apparently did so with a design. His action "deprived a bona fide candidate of the chance, of admission in the particular Course/College for which he cannot be compensated. In fact, as pointed out by the counsel for the State, in the writ petition there is not a word of regret or owning up the so called mistake. The Petitioner has rather tried to justify his admission. The terms of the prospectus and bulletin are very clear and binding on him. Not only his admission was in violation of the terms, in order to override them he resorted to acts of misrepresentation and fraud. The writ jurisdiction of the High Court is inequitable in nature and where the person approaches the Court with unclean hands he cannot be granted any relief.

15. In the above premises, I would dismiss this writ petition but without any order as to costs.