
(2011) 06 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 8262 of 2011

Dr. Sadhna Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Citation : (2011) 06 PAT CK 0041

Judgement

Ajay Kr. Tripathi, J.—These are a batch of writ applications before this Court, which came to be filed by all such students who were allotted seats in two private medical colleges in the State of Bihar, namely, Katihar Medical College, Katihar and Mata Gujri Memorial Hospital and College (MGMMC), Kishanganj.

2. A prospectus was issued by the Bihar Combined Entrance Competitive Examination Board for PGMAT admission for the year 2011-12. The prospectus besides other things also indicated the number of seats under the State quota in the colleges whose names figure in the prospectus. The names of these two colleges in question figure in table-2. 50% seats of State quota under various disciplines have been clearly indicated.

3. After the declaration of the result and counselling these Petitioners were directed to seek admission under the State quota in the two institutions. Admissions have been refused by these two institutions on the ground that they are minority institutions and they have full discretion to take admission according to the parameter they have worked out for themselves and they are not bound by any recommendation made by the State of Bihar for admission in any of the disciplines.

4. Left with no option to the stone walling by these two institutions all the students rushed to the Court of law seeking suitable relief in their favour which includes a direction upon the two institutions to permit entry in the subject they have been offered admission by the State.

5. When the writ applications were initially taken up two interim orders came to

be recorded on two different dates. By order dated 10.5.2011 the management of Katihar Medical College has been restrained to take admission in Post Graduate medical courses in any faculty in the current year. Later on vide order dated 20.5.2011 as an interim arrangement the Petitioners were allowed entry into the college with a direction that their attendance shall be marked separately. That interim direction of the Court had been of no avail because the management did not honour the direction of the Court on the ground that they have no available vacancy to accommodate any candidates because under the management scheme admission have already been offered to other successful candidates and therefore now it is too late in the day to allow any further entry into two institutions much less under State quota.

6. There is however some variance on the actual position as to the stand taken by two colleges. Katihar Medical College is stated to have honoured the interim direction of the Court but the MGMMC, Kishanganj has refused. That is the stand of the students who are present in Court. They also inform the Court that before filing of the writ applications they have approached the District Magistrate but the District Magistrate expressed his inability on the issue.

7. Respondents were directed to file their counter affidavits as to the stand or justification for refusing admission to those candidates who were recommended under State quota according to their merit position.

8. The primary submission which is made at the bar on behalf of learned Senior counsel representing the two Medical Colleges is that they are minority institution of unaided kind and as per the decision given by the Hon"ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, Rajeshwar Pandey Vs. State of Bihar and Others, they have no obligation to honour any quota coming from any quarter much less the State.

9. This submission is sought to be enforced on the interpretation which has been given to Article 30(1) of the Constitution of India. They proclaim absolute discretion in the matter of management of the affairs of the two institutions arising from the right guaranteed to them under the Constitution of India. It is also their stand that admissions have already been taken by these two colleges under the arrangement worked out on some order passed by Hon"ble Supreme Court in their case earlier. Therefore there is no seat left under the State quota. Not only this they also state that they have no obligation on the two colleges to honour Regulation 9 brought into effect by Medical Council of India in 2009. Since this Regulation is subject matter of challenge before the Hon"ble Supreme Court and so long that position is not finally settled by the Apex Court then according to the interpretation as it exists on the issue in P.A. Inamdar case they cannot be compelled to take admission on the basis of State quota.

10. Another stand which has been taken on behalf of the two colleges is that when the prospectus was printed or circulated they protested but nothing has been done by the State to undo the act of showing reservation of 50% seats in

the said prospectus.

11. Learned Additional Advocate General-1 was requested by the Court to appear on behalf of the State and make their stand clear on the issue whether the Petitioners had any right in their favour, as declared arising from the prospectus, printed and circulated by the State and whether based on this reservation and merit list in the Combined Entrance Test they have allowed to be admitted in the two medical colleges.

12. The stand of A.A.G. 1 is that there is no final law or declaration with regard to validity of Regulation 9 as promulgated by Medical Council of India. The relevant notification issued by the Medical Council of India is dated 21st July, 2009. Regulation 9 is the bone of contention in the present writ application.

13. Regulation-9 is reproduced hereinafter for ready reference:

Clause 9 under the heading "Selection of Postgraduate Students" shall be substituted as under:

(1)(a) Students for Post Graduate medical courses shall be selected strictly on the basis of their Inter-se Academic Merit.

(b) 50% of the seats in Post Graduate Diploma Course shall be reserved for Medical Officers in the Government services, who have served for at least three years in remote and difficult areas. After acquiring the P.G. Diploma, the Medical Officers shall serve for two more, years in remote and/or difficult areas.

(2) For determining the "Academic Merit", the University/Institution may adopt the following methodology:

(a) on the basis of merit as determined by a "Competitive Test" conducted by the State Government or by the competent authority appointed by the State Government or by the University/group of Universities in the same State; or

(b) On the basis of merit as determined by the centralized competitive test held at the national level; or

(c) On the basis of the individual cumulative performance at the first, second and third MBBS examinations provided admissions are University wise.

Or

(d) Combination of (a) and (c):

Provided that wherever "Entrance Test" for postgraduates admission is held by a State Government or a University or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 per cent for general category candidates and 40 per cent for the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes:

Provided further that in Non-Governmental institutions fifty per cent of the total seats shall be filled by the Competent Authority notified by the State Government and the remaining fifty per cent by the management(s) of the institution on the basis of Inter-se Academic Merit.

14. The stand of A.A.G.-1 is that the recognition has been guaranteed by Medical Council of India as well as by university to which these two medical colleges are affiliated. If that be so then the Regulation formulated both by Medical Council of India as well as the University will bind; their conduct and they have an obligation so long they are under the recognition of two institutions. They have permitted freedom in management, by virtue of being a minority unaided institution but such freedom is not absolute freedom where they have right to give a go-by to the 50% seats reserved under the State quota in the two institutions. Enforcing that argument learned Addl. Advocate General-1 also submits that so long Regulation-9 is in place there is obligation to fill up 50% of the post graduates courses under State quota. The plea and defiance shown by two medical colleges amounts to violating the Regulation unless the Regulation-9 is declared to be unconstitutional or ultra vires.

15. The stand of the Petitioners is in the similar line. Learned Senior counsel representing the Petitioners submits that so long as the statute or the Regulation is in place no institution or citizen has absolute right to ignore it or violate till it is declared to be unconstitutional by a proper court having competent jurisdiction in the matter.

16. If this is the factual position and since the Court is considering the issue on the interim side of the matter the Court has no hesitation in coming to the conclusion that so long as Regulation-9 is in existence, merely by inference or declaration made by Hon'ble Supreme Court in P.A. Inamdar case Regulation-9 can not per se become ultra vires and not binding upon the two institutions. They have an obligation to honour the Regulation and it is in this background that the State authority had fixed 50% quota in the two institutions in various disciplines as indicated in the prospectus. As of today no institution or citizens have liberty to suo motu declare any provision of the statute to be unconstitutional or ultra vires. The same can be done at their own peril. If the two medical colleges have denied admission to the Petitioners they have done so in breach of law which they cannot be allowed. The two institutions do not have total freedom to grant or not to grant admission. Prima facie therefore the two medical colleges can not deny admission under State quota and this Court can not permit them to do so as long as Regulation-9 is not declared to be bad in law either by this Court or by Hon'ble Supreme Court. The two institutions have an obligation to take admission of the students who were recommended under 50% State quota.

17. Submissions have also been made on behalf of those students who have been given admission by these institutions under management quota. According to them they cannot be dislodged by giving direction in favour of these Petitioners who are before this Court since they have already acquired right and

that right cannot be snatched away now.

18. The Court can only declare or hold that admission of those students is unilateral act of the two institutions which has been done in open defiance of the reservation as per Regulation as was declared in the prospectus well before admission process began. They have an obligation to provide to the State Government 50% seats to those students who were recommended on the basis of Combined Competitive Test conducted by the State. Whatever exercise have been done was a hasty exercise to kill the right of these students after they were declared to be successful in the Combined Entrance Examination. The right of those students therefore cannot be killed or ignored by this Court as it will amount to giving a nod or approval to an illegal act.

19. Learned Counsel of Medical Council of India submits that the date of admission is over and in view of the declaration made by the Hon''ble Supreme Court in various decisions including the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others,

20. So far the declaration made by Hon''ble Supreme Court is concerned, it is taken note of that these writ applications were filed much before the closing date. Interim orders were passed. The litigation has dragged on for one reason or the other attributable to some of the Respondents because they have taken their own time to file their response as well as to formulate their strategy. On this background the observation of the Hon''ble Supreme Court will have to be read so as to see that the right which has been guaranteed in favour of the citizens is not taken away merely because adjournment was given by the Court to help adjudication and not to defeat a right.

21. In the totality of the facts and circumstances of the case and taking cue from the Hon''ble Supreme Court in a subsequent order has extended last date for admission till 30th of June of the year in question as also the fact that till Regulations of Medical Council of India is declared to be unconstitutional the private medical college of India do not have a right to resist admission under, 50% State quota which has been provided for in the year 2009. Obviously the two institutions have decided to take decision at their own will. They have intentionally created a situation to thrust the claim of the Petitioners.

22. The two institutions are directed to refund the full fees to those students who have been permitted to take admission by ignoring the State quota or claim of 50%. The Court further directs the two institutions to offer admission forthwith to all the Petitioners who are before this Court upto 30th June, 2011. If they fail to carry out the direction the matter will be dealt with suitably and even M.C.I. and the State will have freedom to act against them.

23. In view of above I.A. No. 3553 of 2011 in CWJC No. 8262 of 2011 and I.A. Nos. 3552 of 2011 and 3767 of 2011 in CWJC No. 8314 which have claimed identical relief under identical situation are allowed.

24. Let a copy of this order be handed over to the counsel for two medical colleges for needful.
25. Let the matter be placed for admission in due course.