
(2016) 07 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6120 of 2016

Dr. Sanand Prem

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Citation : (2017) 1 PLJR 523

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Raj Nandan Prasad-SC9, for the Respondent in CWJC No.6522 of 2016; Mr. GA13-Smt. Namrata Mishra, Advocate, for the Respondent in CWJC No.6967 of 2016; Mr. Kundar Kumar, AC to SC32, for the Respondent in CWJC No.7410 of 2016; Mr. Tuhin Shankar, Advocat

Final Decision : Allowed

Judgement

Mr. Ajay Kumar Tripathi, J. (Oral) - On a prayer being made by counsel for the petitioners as well as the respondents all the four writ applications were clubbed together and heard together, since it is the decision of the Medical Council of India (hereinafter referred to as "M.C.I." for short), contained in Annexure-4, to all the writ applications, dated 02.12.2015, except in C.W.J.C. No. 6967 of 2016, where the date of impugned Annexure ? 4 is 21.01.2016, all these petitioners, who had been admitted in Post Graduate Courses by different institutions in the session 2014-2015 have been ordered to be discharged. The primary reason for doing so is said to be admission granted to these students after the cut-off date fixed by Hon"ble Supreme Court of India, which is 10th of July, 2014.

2. The petitioners are seeking not only quashing of impugned Annexure ? 4, but also a direction upon the respondents not to interfere with their studies, since they have been continuing their studies uninterruptedly till the M.C.I. decided to pass the directive to discharge the petitioners.

3. The facts are not a matter of dispute and in fact there is commonality therein.

Petitioners were all successful candidates in the examination, which was held by Bihar Combined Entrance Competitive Examination Board (for brevity "Board") for admission in Post Graduate Courses in different medical colleges of Bihar. The examination in question was held in the year 2014. The Board fixed different dates for counselling, which was rescheduled as per their own decision for one reason or the other. The counselling got staggered and it is not a matter of dispute that the third round of counselling was done until 03.08.2014 and admissions allowed and accepted till 11.08.2014. Thereafter the petitioners have been continuing their studies without any let or hindrance.

4. While the petitioners were pursuing their Post Graduate education they came to know through newspapers that their admissions are going to be annulled on the basis of a decision taken by the M.C.I. on the purported ground that admission have been granted to such students after the cut-off date fixed by the Hon"ble Supreme Court. It in the above background the petitioners had to seek shelter of the Court.

5. The main thrust of the argument advanced on behalf of the petitioners is that all these petitioners were bona fide students and only after having been successful in the competitive examination and counselling, held by the Board that they had been granted admission for studies in the Post Graduate Courses. Since admission of these petitioners were permitted by the authorities saddled with the responsibility of conducting the examination and counselling, the petitioners' future cannot be jeopardized for any official delay committed by the Board in completing the counselling within the time-frame.

6. It is nobody's case that there is any other omission or aberration in grant of admission to these petitioners except that the formality of admission was delayed by about a month. Since the delay is not attributable to these petitioners, therefore, they cannot be punished by terminating their admissions on that ground.

7. Counsel for the petitioners also demonstrated before this Court that many of these petitioners, who have been made a victim, had been granted admission much before the cut-off date. The only folly which they committed is that due to the on going counselling they got an opportunity to opt for a course of their liking, which somehow extended to 8th of August, 2014.

8. Re-scheduling of the various rounds of counselling is established by the fact that public notices were issued by the Board and petitioners have annexed some of those notices with the writ applications to show that it was an official and conscious decision publicly made by the Board, since it was prevented from completing the process of counselling within the fixed time-frame.

9. Counsel for the petitioners also takes a plea that by allowing the impugned decision of the M.C.I. to stay, would amount to giving a seal of approval to an act on which these petitioners had no control or contribution to make.

10. In the peculiarity of facts, the Court directed the Board as well as M.C.I. to file their counter affidavit. The counter affidavit has been filed in C.W.J.C. No. 6120 of 2016 and has been adopted in all the writ applications by the respondents.

11. In the counter affidavit filed on behalf of the Board they have explained themselves and accepted the fact of delayed counselling. The Court would like to re-produce what the Board has offered as their explanation with regard to the admission in the Post Graduate Course for the year 2014.

"7. That in the year 2014, the PGMAT-2014 was conducted on 09.03.2014 and the merit-list based on PGMAT-2014 was published vide Advertisement no. BCECEB (PGMAT) 2014/03, dated 19.03.2014. Later on counselling was rescheduled vide Advertisement No. 2014/11, dated 28.03.2014. Accordingly the first round of counselling based on PGMAT-2014 was held during the period from 19.04.2014 to 29.04.2014. During the aforesaid first round of the counselling all the qualified candidates in each category were called and Course/Institution were allotted as per the option of the candidate appearing in the counselling on merit-cum-choice basis on the seats as allocated and provided by the Department of Health, Government of Bihar. It is to point out that during the 1st counselling, the seats reserved for Medical Officers, served in remote area of the State were not allotted in view of the fact that the definition of remote area was not provided by the Department of Health, Government of Bihar.

8. That after conclusion of the first round of the counselling based on PGMAT-2014 for the next and second of the counselling considering the delay in getting the "definition" of remote area from the Department of Health, Government of Bihar, it was decided to conduct second round of the counselling only after getting the definition of remote area also through online allotment procedure. Accordingly the Advertisement no. BCECEB (PGMAT)-2014/07, dated 11.06.2014 was published by the BCECE Board. As per the aforesaid Advertisement, the options were online invited from the candidates, who were desirous to participate in second round of counselling in order to either change their Course/Institutions allotted earlier (during the first round of counselling) or to exercise their option afresh on available seats on merit-cum-choice basis. The candidates, through the above said advertisement were asked to submit their online options from dated 12.06.2014 to 17.06.2014. In the meantime the Department of Health, Government of Bihar vide notification no. 2/Court-59/13-695 (2), dated 17.06.2014, which was received in BCECE Board office on 19.06.2014, communicated the "definition" of the remote area of Bihar State.

9. That the Department of Health, Government of Bihar prior to issuing the communication with regard to definition of "remote/difficult areas" vide letter no. 2/Court-59/13-695 (2), dated 17.06.2014 had directed to BCECE Board vide letter no. 2/Court-59/13-906 (2), dated 27.07.2013 that the matter regarding the decision of the "remote/difficult area" is under consideration of the State

Government and the same is defined and notified, no candidates be allowed to allot any seat based on their certificate issued earlier for having worked three years in remote/difficult areas.

10. That it is pertinent to point out here that the provision contained in Para ? 5.4 in the prospectus of PGMAT-2014 reads as follows :-

(a) (i) 50 % of the seats in the Post Graduate Diploma Courses will be reserved for Medical Officers in the Bihar, Government service, who have served for at least three years in remote and difficult areas of the State and will produce authentic original certificate from Civil Surgeon of the concerned district and counter signed by the District Magistrate of the same district, to this effect at the time of Interview/counselling. Also they will have to give undertaking to serve for two more years in remote or difficult areas after acquiring the PG Diploma degree. Such reserved seats are included in the available Post Graduate Diploma seats.

(ii) If eligible candidates are not available after the allotment of seats in any reservation category, the remaining vacant seats will be made available for all other eligible candidates of the same category.

(b) (1) For being eligible for the above mentioned reservation, the concerned Medical Officers have to submit a certificate in the format given in Annexure ? 4 duly issued by the Civil Surgeon of the concerned district and counter signed by the District Magistrate of the same district that he has rendered Government service in remove/difficult areas of the State of Bihar as has been identified by the Department of Health, Government of Bihar vide notification no. 2/ Court-59/13-1037 (20/swa, dated 27.08.2013.

(ii) For being eligible for the above mentioned reservation, the concerned Medical Officer will also have to submit an undertaking by an affidavit in the Format given in Annexure ? 3 that he is ready to serve for a further period of two years in remove/difficult areas of the State.

11. That with regard to aforesaid provision the M.C.I.'s regulation vide notification no. MCI-18(1)/2009-Med./22653, dated 21.07.2009 species as follows :-

"50 % of the seat in the Post Graduate Diploma Course shall be reserved for Medical Officers in the Government service, who have served for at least three years in remote and difficult areas. After acquiring the PG Diploma, the Medical Officer shall serve for further two years in remove and/or difficult area. The aforesaid provision was further modified, amended by the M.C.I. vide notification no. MCI 18 (1)/2010-Med./3493, dated 16.04.2010 and added that the "remote and difficult area" as provided above, will be decided by the competent State authorities from time to time.

12. That in view of the facts mentioned above, the completion of the process of Online seat allotments of PG Medical courses during the second round of the

counselling based on PGMAT-2014, was completed only on 25.06.2014. Accordingly the details with regard to such allotments of PG Medical seats during 2nd round of Online counselling was informed to the Principals of the concerned Medical Colleges vide letter no.-1C/2014, dated 25.06.2014. Through this letter all the Principals of the Medical Colleges were directed to complete the admission process by 28.06.2014 and were requested to report regarding remaining vacancies on the same day.

13. That BCECE Board vide letter no. 1547/2014, dated 06.07.2014 had also requested Department of Health, to provide report regarding remaining vacancies, inclusive of the surrendered Central quota seats latest by 07.07.2014, so that the next round of allotment process and admissions based on those allotments could be completed upto 10.07.2014. (Within the period as specified by the Hon''ble Apex Court). In response to the above vacancies provided by the concerned Medical Colleges and finally signed by the authority/representative of the Department of Health, Department of Health were made available in BCECE Board only 19.07.2014.

14. That in this context it is pertinent to point out here that as per procedure adopted for the convenience of the candidates, the vacancies/seat matrix (Institution wise/course wise/category wise availabilities) are generally made public through different communication mode, such uploading on website of the BCECE Board or/and publishing in leading local dailies of Bihar for wide circulation. After having made the vacancies open, options from eligible candidates are invited within fixed time-frame. Thereafter using such options the list of eligible candidates, in order of their merit is prepared and accordingly counselling for allotment of seats is completed in an impartial and transparent manner.

15. That with consent of the representative/authority of the Dated of Health, Government of Bihar for conducting third round of counselling based on PGMAT-2014, the stepwise programme was published vide Advertisement no. BCECEB (PGMAT-2014/15 dated 15.07.2014. More so the above programme of conducting third counselling was also sent to the Principal Secretary, Department of Health, Government of Bihar and requested for necessary guidelines vide letter no. 1631/2014 dated 17.07.2014.

16. That it is pertinent to mention here that the work and responsibility of BCECE Board is confined to conduct PGMAT (Post Graduate Medical Admission Test), publish merit-list and conduct counselling for allotment of PG Medical seats. For carrying out such procedure, the Principals or their representative of concerned Medical Colleges along with the representative of Department of Health, Government of Bihar recalled to participate in counselling and allotment process. The role of the BCECE Board is limited to allotment of PG Medical seats to eligible candidates on Merit-cum-choice basis but the admission based on such allotments are to be taken by the concerned Medical Colleges after due verification and following the requirements of the M.C.I. as the medical Colleges

are the admitting authority.

17. That the BCECE Board has never thought remotely to violate the directives of the Hon"ble Apex Court. The matter with regard to delay in conducting third round of the counselling and admissions based on allotments made during third round of the counselling (after 10.07.2014) was only a circumstantial compulsion. It is not out of the context to mention here that due to parliamentary election in Bihar during the period from April-2014 to May-2014 had added the disturbance in conducting third round of the counselling.

18. That it is pertinent to mention here that except the petitioner no. 5, Navin Kumar, all five petitioners of the present writ applications were allotted course and Institutions during the first counselling held during the period from 19.04.2014 to 29.04.2014. However, all the writ petitioners (except petitioner no. 5) were reallocated course and Institution against available vacancies after 10th of July 2014. As such they should not be construed having admitted afresh after the 10.07.2014, the last date fixed for admission in PG Medical courses.

19. That in view of the matter explained above, the delay in allotments/ admissions in PG Medical course after 10.07.2014 may be considered as compelling situation and therefore condoned. Accordingly the present writ application may be allowed and the MCI may be directed to restrain from cancelling the admission of the writ petitioners for their getting admission after 10.07.2014."

12. If the stand of the Board is understood in its entirety then there was certain compelling reasons as to why the exercise of counselling could not be completed before 10.07.2014, but to the credit of the Board they have taken the onus upon themselves and have very fairly placed the factual position before the Court and also taken a plea that under the above circumstances, the decision of M.C.I. should not be acted upon. It is also evident that many of these petitioners had taken admission on the basis of the 1st and 2nd counselling well before cut-off date. But because of options and openings coming their way due to fresh counselling in courses which in their opinion was a better opening that they are in this difficulty. It is contended, therefore, on behalf of the petitioners that it will not be fair to make these petitioners suffer, merely because they took admission a second time over when the initial opening or admission was allowed much before the cut-off date i.e. 10.07.2014.

13. Counsel, representing the M.C.I. takes a plea that they are bound by the directives and the calendar fixed by the Hon"ble Apex Court in the case of Mridul Dhar v. Union of India etc. and therefore, to maintain and enforce the calendar, when the M.C.I. was made aware of admissions, having been granted to the petitioners after the cut-off date, their hands were forced and the impugned orders with the directive was issued.

14. Counsel, representing the Board, submits before the Court that there was neither any intent or desire to breach any directive of the Hon"ble Apex Court,

but their hands were forced for the reasons explained in their counter affidavit and whatever decision was taken was done keeping in mind the interest of the students in public domain and there was no hide and seek or any element of mischief or mala fide involved.

15. Counsel for the petitioners submits that no doubt the cut-off date fixed by the Hon''ble Apex Court is sacrosanct but the Hon''ble Apex Court itself in certain given facts and situation has given a window of opening to the Courts to intervene in some rarest of rare cases or exceptional circumstances. The present set of facts which speak for themselves is a fit case where the Court should interfere keeping in mind the future and career of the students and non-interference with the impugned decision will make or mar the entire life of these students.

16. Attention of the Court has been drawn to a decision of the Hon''ble Apex Court, which is the case of *Asha v. Pt. BD Sharma University of Health Sciences*, reported in 2012 (7) SCC 389. Reliance is placed on paragraph 29 to 34, which are reproduced herein below :-

29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year concerned, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in *Medical Council of India v. Madhu Singh*, *Ms. Neelu Arora v. Union of India*, *Aman Deep Jaswal v. State of Punjab*, *Medical Council of India v. Naina Verma*, *Mridul Dhar v. Union of India*.

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

(emphasis mine)

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS

course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. Refer *Arti Sapru v. State of J & K*, *Chhavi Mehrotra v. Director General Health Services*, *Aravind Kumar Kankane v. State of UP*.

(emphasis mine)

33. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without compensation.

34. This brings us to the last phase of this case as to what relief, if any, the appellant is entitled to. Having returned a finding on merits in favour of the appellant, the Court has to grant relief to the appellant even, if necessary, by moulding the relief appropriately and in accordance with law. This Court must do complete justice between the parties, particularly, where the legitimate right of the appellant stands frustrated because of inaction or inappropriate action on the part of the concerned respondents. In fact, normally keeping in view the factual matrix of this case, we would have directed the admission of the appellant to the MBBS course in the academic year 2011-2012 and would further have directed the respondents to pay compensation to the appellant towards the mental agony and expense of litigation and the valuable period of her life that stands wasted for failure on the part of the respondents to adhere to the proper procedure of selection and admission process. May be the Court would have granted this relief subject to some further conditions. However, we are unable to grant this relief to the appellant in its totality for reasons of her own doing. She has completely faulted in pursuing her academic course in accordance with the Rules and like a diligent student should do. "

17. If the above principle laid down by the Hon"ble Apex Court is taken into consideration, then the Court does feel that there is no hanky panky in granting admissions to these petitioners after the cut-off date. The reason for delay has been well explained by the authorities, who are saddled with the responsibility of not only holding of examination, but also the counselling and that these petitioners have had no role in delaying the admission after the cutoff date. In fact many of them had already taken admission well before the cut-off date but

for sake of argument if it can be said that it is the indiscretion on their part to take admission afresh because of opening which was provided to them then it is not a case of any mischief or an effort made to over-reach the guidelines or the cut-off date fixed by the Hon"ble Apex Court.

18. The Court, however, does feel that Board should have approached the authorities or may be even the Apex Court for permitting them to complete the process of counselling if they faced certain difficulty in the year 2014 that should have been in fairness of things.

19. However, in totality the Court comes to a considered opinion that in the interest of justice and keeping in mind the future, which is at stake of these students and their bona fide being above board, the impugned orders, dated 02.12.2015 and 21.01.2016, contained in Annexure-4, is required to be quashed. Petitioners should be permitted to complete their studies without further dispute on this aspect of the matter.

20. Keeping the aforesaid facts and circumstances in mind, writ applications stands allowed.