

(2007) 07 UK CK 0040

In the Uttarakhand High Court

Case No : Writ Petition No's. 281 and 363 of 2007

Gaurav Prakash Singh and Another

APPELLANT

Vs

H.N.B. Garhwal University and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 UC 98

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : U.K. Uniyal, Sobhit Saharia, in Writ Petition No. 363 of 2007 and Sharad Sharma, in Writ Petition No. 281 of 2007, for the Appellant; L.P. Naithani J.P. Joshi, for Respondent Nos. 1 and 2, Subhash Upadhyay, Brief Holder for Respondent No. 3, V.K. Kohli I.P. Kohli, in Writ Petition No. 363 of 2007, L.P. Naithani and J.P. Joshi, for Respondent Nos. 1 and 2 in Writ Petition No. 281 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—Since a common question of law is involved in both these petitions, therefore, these petitions have been heard together and are being disposed of by this common Judgment.

2. By means of aforesaid two petitions moved under Article 226 of the Constitution of India, the Petitioners have sought the following common reliefs:

i) issue a writ, order or direction in the nature of certiorari quashing the impugned paper publication dated 10-03-2007 published by the Respondents in daily news paper "Amar Ujala".

ii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and which may be passed in favour of the Petitioners.

iii) Award the cost of writ petitions.

3. Brief facts for the disposal of writ petition No. 363 of 2007 (M/B) are that the Petitioners Dr. Gaurav Prakash and Dr. Nupur Singh have completed their M.B.B.S. Course from Himalayan Institute of Medical Sciences in the month of March 2005. The Petitioners have also completed their rotary internship on 31-03-2006. In writ petition No. 281 of 2007 (M/B), the Petitioner Dr. Parul Gupta had completed M.B.B.S. from Chaudhary Charan Singh University, Meerut and also completed rotary internship on 31-03-2006. Whereas the Petitioner No. 2 Dr. Abhishek Sharraf had completed his M.B.B.S. Course from Himalayan Institute of Medical Sciences. Vide G.O. No. 2874/XXVIII(1)2004-150/2005 dated 29-12-2006, Government notified that H.N.B. Garhwal University, Srinagar Garhwal would conduct the competitive entrance examination on 11-02-2007 for admission to M.D./M.S., Diploma course in Allopathic Medical College of Uttarakhand viz. Himalayan Institute of Medical Sciences, Jolly Grant, Dehradun for the year 2007. Thereafter, the Respondents issued the brochure regarding the mode and manner of the said examination and invited the application from suitable candidates. The Respondents issued the Admit Cards for the examination scheduled on 11-02-2007 after scrutinizing the application forms. They also appeared in the examination conducted by Respondent No. 1 H.N.B. Garhwal University, Srinagar. The Respondents published the merit list dated 28-02-2007 in which Dr. Gaurav Prakash Singh Petitioner No. 1 appeared at S. No. 5 whereas Dr. Nupur Singh -Petitioner No. 2 appeared at S. No. 9. Whereas in writ petition No. 281 of 2007 (M/B) Dr. Parul Gupta Petitioner No. 1 appeared at serial No. 10 and Dr. Abhishek Sharraf appeared at serial No. 8. Thereafter, the Petitioners were anticipating publication by a press notification for counselling but they were surprised to know that yet another merit list dated 10-03-2007 for the examination of U.P.G.M.P.E.E., 2007 was published by the Respondent No. 2 which deprived the Petitioners and other candidates included in the list published on 28-02-2007. Feeling aggrieved by the subsequent list dated 10-03-2007, the Petitioners have preferred these two Petitioners.

4. The Respondents have filed the counter affidavit and had stated that the result published in the newspaper "Amar Ujala" dated 28-02-2007 was incorrect and incomplete. All qualified candidates were allotted the Set "A question paper however, the result of the other Set of question paper i.e., Set B, C, &D was not evaluated. At this relevant point of time, question paper of Set A jumbled in question paper of Set B, C & D to avoid their copying by each other candidates who were appearing in the examination. Such mistake was noticed after some time in the question papers of Set B, C & D when they were checked and after complete checking of Set A, B, C & D the result was published in the newspaper Amar Ujala dated 10-03-2007. It was also averred in the counter affidavit that this fact was indicated in the headnote of the said publication to the effect that some errors were observed in the previously published merit list of qualified candidates who appeared in U.P.G.M.E.E.-2007. Thus while preparing and publishing the first list bonafide mistake occurred and with a view to rectify the said bonafide mistake the second list was published by the University for

protecting the interest of those candidates who were otherwise meritorious and eligible for seeking admission in Post Graduate Course but could not be included in the first list on account of the said bonafide mistake.

5. We have heard learned Counsel for the parties and perused the record.

6. It is not disputed that the Respondents had undertaken the counselling on the basis of the impugned result. It is not disputed that the Petitioners had not qualified the eligibility test and as such they could not be selected for the admission after their counselling. The Petitioners had appeared in the first counselling. Sri V.K. Kohli, Sr. Advocate appearing for the Respondent-Himalayan Institute of Medical Sciences, Jolly Grant Dehradun has raised the preliminary objection that the Hon''ble Apex Court in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, has provided the time schedule for postgraduate and superspeciality courses admission. As per the schedule for counselling in the medical colleges, the last date for joining the alleging allotted seats for post graduation under the State quota is 1st May. There is no provision for second counselling. The students whose names were sent for the admission have to join the college latest by 1st May and in case of their non-joining or the vacancy remaining unfilled for any reason, the college has a right to fill-up those vacancies latest by 31st May. Sri V.K. Kohli, Sr. Advocate further contended that by flux of time, the Petitioners now are not entitled to get the admission in the Himalayan Institute of Medical Sciences. Learned Counsel for the Petitioners contended that seats have been still lying vacant after first counselling on account of the fact that the candidates who were allotted seats in the first counselling are not pursuing their courses and the following candidates have joined All India quota in other Government College:

a) Vikas Giri, Roll No. at SI. No. 7 has joined R.N.T. Medical College, Udaipur.

b) Ashish Pandey, Roll No. at S. No. 8 has joined G.V. Medical College.

Learned Counsel for the Petitioners further contended that he has also filed his affidavit to this effect before this Court on 24th May, 2007.

7. In view of the dictum of the Apex Court in the case of Medical Council of India Vs. Madhu Singh and Others, and subsequent direction issued by the Medical Council of India with regard to the time schedule for postgraduate courses and the dictum of the Hon''ble Apex Court in the case of Mridul Dhar v. Union of India (Supra), the Central Government, State Governments and other authorities have to adhere to the strict compliance of the time schedule prescribed for admission to the M.B.B.S., B.D.S. and postgraduate courses by all the universities and medical college. It is incumbent on the part of the university to complete the admission exercise including the counselling before 1st May of every year. In the case in hand, the counselling had been completed before 1st May 2007. As per the affidavit filed by the Himalayan Institute of Medical Sciences, all the students whose names were sent by the Government had deposited the fee and they joined their respective seats allotted to them. It was also alleged that on 30th

May, 2007 some of the students vacated their seats on account of their admission in some other college and the vacancy so occurred were filled from the list of students selected through common entrance test under the Management Quota. It is also averred in the affidavit that there is no vacancy for the postgraduate courses in the Institution. It was further contended that as per the dictum of the Apex Court after 31st May, no students could be admitted. In the case of Mridul Dhar and Anr. v. Union of India and Ors. (Supra), the Hon'ble Apex Court has prescribed the time schedule for the postgraduate and superspeciality course admission for the All India quota as well as State Governments quota. Para 31 is quoted hereunder:

31. The time schedule for postgraduate and superspeciality course admissions may also be noted as under:

TIME SCHEDULE FOR POSTGRADUATE AND SUPERSPECIALITY COURSE ADMISSION

Schedule for admission Postgraduate course Superspeciality courses All India quota State quota

Conduct of entrance Examination Second Sunday of Mid-Jan to January Mid-June Mid-Feb.

Declaration of result of Qualifying exam Third week of February By 28th February
By 30th June

First round of Counselling/admission Last date of joining the 5th March to 22nd March 7th April To be over by 25th April 1st May To be over by 25th July 31st July

Allotted college and course Second round of Counselling or allotment No second counselling No second counselling No second counselling

of seats from waiting list Last date for joining for candidates allotted seats in second round of counselling or from the After 7th April vacant seats will stand surrendered back to the State/ colleges Not applicable Not applicable

Commencement of academic session 2nd May 1st August

Last date upto which students can be admitted against vacancies arising due to any reason 31st May 30th September

It was further held by the Apex Court in para 35 as hereunder:

35. Having regard to the aforesaid, we issue the following direction:

1.

2.

12. The time schedule for grant of admission to postgraduate courses shall also be adhered to....

8. This matter was also considered by the Division Bench of this Court in Writ Petition No. 761 of 2005 (M/B), Dr. Uttam Singh Mehta v. State of Uttaranchal and Ors. decided on 20-07-2005. The Division Bench has observed as follows:

8. Learned Counsel for the Petitioner then contended that the Petitioner was informed of his selection for admission only through Annexure 3 Government letter dated 27-06-2005 and therefore he could not have reported to the third Respondent for taking admission on or before 31st May, 2005. Learned Counsel submitted that the delay was not due to any fault or omission on the part of the Petitioner and therefore he should not be made to suffer and lose admission to Post Graduate Course. It is also pointed out that the Petitioner will be over-aged for admission in the next academic year. It is true that the Petitioner cannot be blamed for the failure to report to the third Respondent on or before 31st May, 2005. The said failure was due to the delay on the part of the Government in making the selection of candidates and forwarding the names of selected candidates. It may also be true that the Petitioner will be over-aged for admission in the next academic year. But in view of the clear directions contained in the judgment of the Hon''ble Supreme Court, the third Respondent could not have given admission to the Petitioner. This Court also is bound by the directions contained in the judgment of the Hon''ble Supreme Court and therefore, we have no discretion to direct the third Respondent to admit the Petitioner in violation of the order of the Supreme Court. Even though serious hardship will be caused to the Petitioner by the denial of admission for no fault of his, we are helpless.

9. In view of the above observations, the Respondents could not have given admission to the Petitioners after 31st May. This Court has to follow the directions contained in the judgment of the Apex Court. Thus, this Court has no discretion for directing the second counselling which is not permitted under the aforesaid observation of the Hon''ble Apex Court. Further, this Court cannot direct the Respondents to conduct the counselling after the time schedule which has already elapsed.

10. In view of the foregoing discussion, the other issues raised in the writ petitions now are of academic interests only. The Court cannot issue mandamus to conduct the second counselling to admit the Petitioners in the college after 31st May in view of the dicta of the Hon''ble Apex Court.

11. Therefore, we do not find any ground of interference. Both writ petitions devoid of merit & are liable to be dismissed and are dismissed accordingly.

12. No order as to costs.