
(2018) 08 PAT CK 0077

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13525 Of 2018

Jigyasa Ranjan

APPELLANT

Vs

Bihar Combined Entrance Competitive And Ors

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Indian Medical Council Act, 1956 — Section 10(D)
Medical Council Of India Regulations, 2000 — Regulation 4(2), 5(A), 5(A)(3)

Citation : (2018) 3 PLJR 867

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Amit Shrivastava, Prasoon Sinha, V.K. Tripathy

Final Decision : Allowed

Judgement

There are certain undisputed facts. The petitioner has passed 12th examination held by Central Board of Secondary Education (CBSE) with 94.60%

of marks. She had participated in National Eligibility Cum Entrance Test (UG) â?" 2018 (hereinafter referred to as â??NEETâ??). She has cleared

the test. In her online application to participate in the NEET, she has described her permanent address as Gurgaon in the State of Haryana. She has

grievance against the decision of the Bihar Combined Entrance Competitive Examination Board (BCECEB) (respondent no. 1), whereby her

candidature to participate in Under-Graduate Medical Admission Counselling, 2018 (UGMAC-2018), being conducted by BCECEB, has been declined

on the ground that she is not a domicile/resident of the State of Bihar in the background of the entry, which she had made in her online application for

NEET to the effect that she was permanent resident of Gurgaon in the State of Haryana.

Whereas the petitioner does not dispute the nature of entry made by her in the NEET application describing her permanent address as Gurgaon in the

State of Haryana, it is her claim that her candidature for UGMAC-2018 could not have been rejected by BCECEB on that ground. Reliance has been

placed on Clause-5.4(I) of the prospectus issued by BCECEB issued for holding UGMAC-2018.

The sole question, which the present writ application involves, is as to whether the respondents could have refused to consider the petitioner's

candidature for UGMAC-2018, only on the basis of the entry of permanent resident of Gurgaon, made in NEET application.

Mr. Amit Srivastava, learned counsel appearing on behalf of the petitioner has submitted that UGMAC-2018 is being conducted for admission against

85% State Quota seats.

According to him, the eligibility condition of a candidate to participate in the said counselling will have to be determined on the basis of the terms and

conditions of the prospectus issued by BCECEB for the said purpose and nothing else. He has contended that the entry made in the online application

in respect of permanent residence could not have been the basis for the BCECEB to treat her ineligible, since residence-eligibility condition is

to be determined in terms of Clause-5.4 of the said prospectus only.

A counter affidavit has been filed on behalf of BCECEB. It has been stated in the counter affidavit that counselling for UGMAC-2018 was conducted

by BCECEB on the basis of data of NEET-UGMAC-2018 made available by the Department of Health, Government of Bihar, in which the petitioner

has been shown to be permanent resident of Haryana, though in her application for UGMAC-2018 she mentioned State of Bihar as her birth State. It

is further stated that the petitioner's case and cases of persons similarly situated have been considered and they have been denied allotment of

seats by BCECEB.

Mr. Prasoon Sinha, learned counsel appearing on behalf of BCECEB contends that there is no illegality in the decision of the BCECEB, which is

based strictly on correct interpretation of Clause-5.4 of the prospectus.

As I have noted at the very outset, the only question, which the present writ application involves, is as to whether, on the basis of the averments made

in the writ application, the petitioner can be said to be fulfilling the eligibility

criteria of "residence" as contemplated under Clause-5.4 of the prospectus of UGMAC-2018 or not.

It is noteworthy that admission to Medical (UG) courses through NEET is mandated under Section 10D of the Indian Medical Council Act, 1956.

Before incorporation of the said provision, "multiple tests" were held for admission in various Medical Colleges across the country. Each State

used to hold separate test for admission to Medical (UG) courses in Medical Colleges of respective States. It was with the amendment in the Act and

subsequent corresponding provision made in the Medical Council of India Regulations on Graduate Medical Education, 1997 that common test is being

held. Securing qualifying marks in NEET has been made one of the eligibility criteria for admission to the Medical (UG) courses. The admission to the

course can be allowed only if a candidate qualifies in NEET, in terms of Clause (2) of Regulation 4 of the Regulations. Clause 5A of the Regulations

stipulates, common counselling for admission to MBBS course in all Medical Educational Institutions on the basis of merit list of NEET. Regulation 5A

reads thus:

"5A Common Counseling.

(1) There shall be a common counseling for admission to MBBS course in all Medical Educational Institutions on the basis of merit list of the

National Eligibility Entrance Test.

(2) The Designated Authority for counseling for the 15% All India Quota seats of the contributing States shall be the Directorate General of

Health Services.

(3) The counseling for all admission to MBBS Course in all Medical Educational Institutions in a State/Union Territory, including Medical

Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority

Institutions/Corporations or a Company shall be conducted by the State/Union Territory Government. Such common counseling shall be

under the over-all superintendence, direction and control of the State/Union Territory Government."

On a plain reading of Regulation 5A, it is evident that it contemplates two types of counsellings; one for 15% of All India Quota seats of the

contributing States and the other; against rest 85% of State seats. Whereas for 15% All India Quota seats, the Directorate General of Health Services

is the designated authority, counselling for admissions to MBBS and other allied in all Medical Educational Institutions in respective States is to be

conducted by the respective State Governments. The present process of counselling is governed by Regulation 5A (3) of the Regulations. It is in order

to complete the exercise, as stipulated in Regulation 5A (3), that BCECEB, which is the designated authority, has issued prospectus as noticed above.

The said prospectus prescribes eligibility criteria for counselling under Clause 5.1. Clause 5.1 (i) requires that a candidate must have passed

Intermediate Science Examination with the subjects mentioned therein. Clause 5.1 (ii) requires that a candidate must have scored cut off marks in the

NEET. Clause 5.2 prescribes the age criteria. Clause 5.4 is relevant, which lays down the eligibility condition of residence, which upon being

translated into English, would read thus:

5.4. Residential eligibility:-

Only those applicants who are residents of India may get admission on the basis of NEET (UG)-2018 AND

I. Whose parents are the permanent residents of Bihar.

OR

II. Whose parents are the registered refugees in Bihar.

OR

III. Whose parents are residents of other State but are the employees of the Government of Bihar.

OR

IV. Whose parents are such employees of the Government of Bihar before the reorganisation, whose cadre division has yet not been

done and whose posts are still transferable in Bihar/Jharkhand.

OR

V. Whose parents are the employees of the Central Government posted in Bihar or are the employees of the factories and Institutes

(Public Sector Undertaking of Government of India) run by the Government of India, situated in Bihar.

OR

VII. Whose parents are the employees of the United Nations and are currently posted in Bihar. (wrongly mentioned as VII)

(emphasis mine)

It is petitioner's case that the parents of the petitioner are permanent residents of the State of Bihar. In support of the said claim, the petitioner has brought on record certain documents as Annexure P/2, P/3, P/5 and P/7. The Court in the present proceeding is not on the question whether the

certificates, on which the reliance is being placed, are genuine and adequate to establish the petitioner's claim of her eligibility in terms of Clause

5.4 (I) of the prospectus. Evidently, merely on the ground that the petitioner disclosed her permanent residence, to be Gurgaon in the State of

Haryana, the BCECEB has rejected her candidature treating her to be ineligible, not fulfilling the eligibility criteria of residence.

Mr. Amit Srivastava has rightly drawn my attention to the result issued by the Central Board of Secondary Education of NEET in respect of the

petitioner, column 7 of which clearly states that the NEET result, category and domicile of the candidates, as mentioned in the said result, is to be used

to prepare merit list for 15% of All India Quota seats only. This is not being disputed in the counter affidavit filed on behalf of the BCECEB that the

parents of the petitioner are not residents of Bihar. If the petitioner is in a position to establish before the Board that her parents are permanent

residents of Bihar, her case cannot be declined by the BCECEB on the basis of any entry of the nature as noted above, in her online NEET

application.

The law needs no reiteration that the selection body is bound by the terms of prospectus for the purpose of making selection. It can not deviate from

the provisions declared by them in the prospectus. On close reading of Clause 5.4, it can be easily noticed that it clearly contemplates situation where

permanent residents of other States are also to be considered for counselling if they fulfill the criteria as prescribed under 5.4. For example, if parents

of a candidate, who are permanent residents of a State other than Bihar and are employed under the Central Government or working in any public

sector undertaking of the Government of India and are posted in the State of Bihar are also entitled to participate in the process of counselling.

In view of the clear language used in Clause 5.4 of the prospectus, I have no

hesitation in reaching definite conclusion that on the ground of entry made in online NEET application, residence-eligibility of a candidate cannot be decided for filling up 85% of State seats. Such seats are to be filled up on the basis of terms of prospectus and claim of a candidate while applying for admission against 85% State seats.

In no circumstance, a person, who has roots in the State of Bihar, can be declined to participate in the process of counselling on the ground that in

course of time, he has become permanent resident of another State. Mr. Amit Srivastava has rightly placed reliance on Supreme Court's decision

in case of Dr. Pradeep Jain and Ors. Vs. Union of India and Ors. (AIR 1984 SC 1420).

This application is accordingly allowed.

The respondent BCECEB is directed to consider the petitioner's candidature for the purpose of counselling, to be held in future, based on the

documents which she submits in support of her claim of being eligible under Clause 5.4 (I) of the prospectus of the UGMAC-2018.

There shall be no order as to costs.