

(2011) 07 PAT CK 0276

In the Patna High Court

Case No : LPA No"s. 944 (with IA 4275 of 2011) , 945 (with IA 4267 of 2011) , 969 (with IA 4404 of 2011) of 2011 in CWJC No"s. 8262, 8314, 8262 of 2011

Katihar Medical College

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Constitution of India, 1950 — Article 130, 15(5), 32
Indian Medical Council (Post Graduate Medical Education) Regulations, 2000 — Regulation 9
Indian Medical Council Act, 1956 — Section 20, 33

Citation : (2012) 2 PLJR 86

Hon'ble Judges : R.M. Doshit, C.J.;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : Yadu Vansh Giri, Dharmeshwar Mishra, Sheojee Prasad in 944, M/s Basant Kumar Chaudhary, Dharmeshwar Mishra and Sheojee Prasad in 945 and Mr. Abhinav Srivastava in 969, for the Appellant; Lalit Kishore (in 969) with Mr. Ravindra Kr. Choubey (in 944 and 445), Mr. Vikash Kumar (in 944, 945) for the BCECB, Mr. Kumar Brajnandan (in all) for the MCI and M/s Rajendra Pd. Singh, Subodh Kumar Jha, Krishna Murari, Bidhan Chandra Jha and Sarveshwar Tiwary (in 944 and 945), for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble the Chief Justice R.M. Doshit, C.J.—These three Appeals preferred under Clause 10 of the Letters Patent arise from the common order dated 27th June, 2011 made by the learned single Judge pending the above C.W.J.C. No. 8262 of 2011* and other writ petitions. The subject matter of dispute is the admission to post graduate medical courses granted by the Katihar Medical College and Mata Gujri Memorial Medical College, Kishanganj (hereinafter cumulatively referred to as "the Colleges"). Both the aforesaid Colleges are admittedly nongovernment, non-grant-in-aid, minority colleges. According to the Colleges, they being minority, non-grant-in-aid colleges, they have exclusive right of

governance and admission to medical courses. In exercise of the same they have granted admission to post graduate medical courses on the basis of the result of the Post Graduate Medical Entrance Test-2011 conducted by the Private Medical Colleges Association, Bihar (hereinafter referred to as "the Association"). Such admissions were granted in the last week of April 2011.

2. The said admissions have been challenged by the private respondents, the qualified Doctors, seeking admission to post graduate medical courses pursuant to the result of the Post Graduate Medical Admission Test-2011 conducted by the Bihar Combined Entrance Competitive Examination Board, Government of Bihar (hereinafter referred to as "the Examination Board"). According to the writ petitioners, they have successfully passed the aforesaid admission test conducted by the Examination Board. They have a right to admission to post graduate medical courses on 50% of the seats sanctioned by the Medical Council of India in the non-government, non-grant-in-aid medical colleges.

3. The learned single Judge has, after hearing the parties, pending the writ petitions held, "..... till Regulation-9 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." Consequently, the learned single Judge has directed the Colleges to refund the full fees to those students who have been admitted on 50% State quota. The Court further directed the Colleges, "to offer admission forthwith to all the petitioners who are before this Court up to 30th June 2011".

4. Feeling aggrieved by the aforesaid directions, the Katihar Medical College has preferred the above Letters Patent Appeal No. 944 of 2011 and the Mata Gujri Memorial Medical College has preferred above Letters Patent Appeal No. 945 of 2011. Letters Patent Appeal No. 969 of 2011 is preferred by one of the post graduate students with the leave of this Court. He apprehends that in case above referred directions are permitted to be implemented his admission to DCP (Pathology) (a post graduate medical course) in Katihar Medical College may be cancelled.

5. Learned counsel Mr. Y.V. Gin has appeared for the appellant Katihar Medical College. He has assailed the order of the learned single Judge on the basis of the observations made by the Hon'ble Supreme Court T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . He has submitted that Article 15(5) of the Constitution read with Article 130 of the Constitution read with the observations made by the Hon'ble Supreme Court in the above referred matter of T.M.A. Pai Foundation followed by the Hon'ble Supreme Court in the matter of P.A. Inamdar vs. State of Maharashtra, (2005) 6 SCC 537 : 2005(4) PLJR (SC) 77; the Colleges are, being minority, non-government, non-grant-in-aid institutions, fully empowered to control their administration and also admission to various courses offered by the Colleges. The State Government has no right to interfere in the said matters. Mr. Giri has particularly relied upon observations made in paragraphs 45, 50, 55 and 68 of the judgment in the matter of T.M.A.

Pai (supra) and paragraphs 109, 110, 121, 124, 129, 130, 132 and 134 of the judgment in the matter of P.A. Inamdar (supra). He has also submitted that against the prospectus issued by the State Government incorporating 50% of the seats sanctioned for the Colleges for common admission test conducted by the Examination Board, the Colleges had lodged objection as early as on 3rd March 2011. The Colleges, therefore, cannot be compelled to give admission to the successful students of the common admission test conducted by the Examination Board.

6. Learned advocate Mr. Basant Kumar Choudhary has appeared for the appellant Mata Gujri Memorial Medical College, Kishanganj, the appellant in Letters Patent Appeal No. 945 of 2011. He has adopted the aforesaid arguments advanced by Mr. Giri.

7. Learned advocate Mr. Abhinav Shrivastava has appeared for the appellant in Letters Patent Appeal No. 969 of 2011. He has submitted that if the impugned order made by the learned single Judge is sustained, some 20 students admitted to the post graduate medical courses in Katihar Medical College will lose their admission. It was, therefore, essential that such students were heard before the impugned order was made. The appellant, not being a party to the petition, his admission cannot be adversely affected by the impugned order.

8. The appeals are contested by the learned Government advocate Mr. R.K. Choubey and the learned Additional Advocate General Mr. Lalit Kishore appearing for the State of Bihar and by Mr. Rajendra Prasad Singh appearing for the writ petitioners. Reliance is placed on Regulation-9 of the Medical Council of India Post Graduate Medical Education Regulations, 2000. It is submitted that proviso to Regulation-9 of the said Regulations specifically provides, "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."

9. The aforesaid Regulations have been framed by the Medical Council of India in exercise of power conferred by Section 33 read with Section 20 of the Indian Medical Council Act, 1956 with the previous sanction of the Central Government. The said Regulations, unless held to be ultra, vires by a Court of law, are binding. All non-Government medical colleges are bound by the said Regulations. It is not in dispute that the constitutional validity of the aforesaid proviso to Regulation-9 of the Regulations is the subject matter of challenge before the Hon''ble Supreme Court in the Writ Petition (Civil) No. 584 of 2009 filed by the appellant Katihar Medical College under Article 32 of the Constitution. Pending the said writ petition the Hon''ble Court has, on 14th May 2011 made order as under:

As the State is in the process of sending candidates for the 50% seats and in fact, has already sent 8 students, interim relief is rejected. However, admission of the students sent by the State Government will be without prejudice to the

contentions of the petitioner and therefore will not be a precedent for the future.

10. It is thus evident that though the Hon"ble Court has said that the above order shall not be a precedent, the Court has not granted stay against the operation of the aforesaid proviso to Regulation-9 of the Regulations. It cannot be gainsaid that the State Government issued the prospectus for Post Graduate Medical Admission Test 2011 as early as on 11th December 2010. In the said prospectus half of the seats sanctioned for the Colleges have also been included in total number of the seats available for admission. Nevertheless, the Colleges did not take any action until the month of March 2011. Even then the Colleges thought it fit not to go further than lodging objection. In our view, it is apparent that lodging of the objection in the month of March 2011 was a mere formality followed with a view to saving the admissions that the Colleges intended to make in the month of April 2011.

11. In the above circumstances, we dismiss these appeals for the reasons:- (i) The order impugned is an interim order made pending the writ petitions; (ii) The Regulations framed by the Medical Council of India are statutory in nature and are binding to the appellant Colleges as well; and (iii) While granting admissions to the students on the basis of the competitive examination conducted by the Association the appellant Colleges were fully conscious of their obligation to spare half of the seats for admission from amongst the students passing the common admission test conducted by the Examination Board.

12. As to the Letters Patent Appeal No. 969 of 2011, the appellant merely apprehends that the axe may fall on his admission if the impugned order is permitted to be implemented. At the moment the admissions have not yet been worked out. It is not possible to find out who will be the victim of the illegal admissions granted by the Colleges.

13. Be that as it may, as the writ petitions are still at large before the learned single Judge, the said appellant and any other aggrieved person may join as party-respondent in the pending writ petitions.

14. For the aforesaid reasons the Appeals are dismissed. Interlocutory Applications are disposed of.