

(2018) 07 RAJ CK 0211

In the Rajasthan High Court

Case No : Civil Writ Petition No.14729, 14885 of 2018

Kiran @APPELLANT@Hash Union of India & Ors

Date of Decision : 20-07-2018

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2018) 07 RAJ CK 0211

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Tanveer Ahamad, Manish Parihar, S.K. Gupta, Angad Mirdha, Vishwas Saini, M.S. Raghav

Final Decision : Dismissed

Judgement

Both the petitions are identical on facts and the issue of law and hence being disposed of under this judgment. The facts in SBCWP No.14729/2018

titled Kiran & Others vs. Union of India & Others will however be adverted to for the purpose of disposing of these petitions.

The petitioners passed the Senior Secondary School Examination in the year, 2015 in the Science stream with Physics, Chemistry and Maths.

Subsequently in terms of CBSE Examination Byelaws the petitioners appear to have written the examination in Biology as an additional subject at

the Senior Secondary Examination 2016. Thereupon considering themselves to be eligible they wrote the National Eligibility cum Entrance Test

(NEET UG -2018) seeking admissions into MBBS Course/s beginning 2018.

Based on petitioners qualifying the NEET 2018 examination, they applied for online counselling for allotment of College/s as per their preference and

merit in the State quota. They came to be allotted different Colleges and proceeded to deposit their fee by way of Demand Drafts (DDs). The DDs

without being encashed were however returned with the objection that the

petitioners were not eligible to be admitted in the MBBS Course 2018 in terms of the proviso to Regulation 4(2)(a) of the Medical Council of India Regulations on Graduate Medical Education, 1997 (hereinafter "Regulations of 1997") as amended in 2017 and notified on 22nd January, 2018. Aggrieved the petitioners are before this Court.

The proviso to Regulation 4(2)(a) of the Regulations of 1997 as amended on 22nd January, 2018, reads as under: "Provided that two years of regular and continuous study of Physics, Chemistry and Biology/ Biotechnology taken together shall be required at 10+2 level for all the Graduates.

Candidates who have passed 10+2 from Open Schools or as Private Candidates shall not be eligible to appear for National Eligibility cum Entrance Test. Furthermore, study of Biology/ Biotechnology as an Additional Subject at 10+2 level also shall not be permissible."

From a bare look at the proviso aforesaid, the inescapable conclusion is that students who study Biology/ Biotechnology as an additional subject at the 10+2 level in the subsequent academic year and not as a part of the regular two years course in the Senior Secondary Level in the first instance would not be considered eligible for admission into MBBS course.

Mr. Tanveer Ahamad appearing with Mr. Manish Parihar, counsel for the petitioners, on a specific query put to him fairly admits that under the said

proviso to the Regulations of 1997 those students who study the subject of Biology/ Biotechnology as an additional subject at 10+2 level in the year

subsequent to passing the Senior Secondary Exam in the first instance without Biology as a subject have been rendered ineligible to be admitted into

MBBS course. And indeed the said proviso has not been set aside in any proceedings by this Court or any other Court/s in the Country. Mr. Tanveer

Ahamad however submitted that he is advised that the Division Bench of the Delhi High Court yesterday has allowed those students who had studied

Biology as an additional subject at the Senior Secondary level following their passing in said exam with Physics, Chemistry and Maths in the earlier

academic year and were admitted to the MBBS have been allowed to continue under an interim order and the question of their eligibility is to be finally

decided in the writ petitions. It was submitted that on parity the petitioners be similarly allowed in the interim to avail the benefit of their being allocated

Medical College/s for the MBBS course in the counselling on their merit in the

NEET Examination, 2018.

Mr. Angad Mirdha appearing for the respondent-MCI has emphatically submitted that as long as the proviso to Regulation 4(2)(a) of the Regulations

of 1997 introduced effective 22.1.2018 by way of an amendment remains on the statute, the petitioners can have no case whatsoever. He submitted

that this Court even in the exercise of its equitable extraordinary jurisdiction cannot pass an order interim or final contrary to the law as it stands.

Counsel also relied on the judgment of the Apex Court in the case of Medical Council of India & Others vs. Aiman Kamal & Others in Civil Appeal

No.3952/2018 @ SLP (C) No.35683/2016 decided on 18th April, 2018 where even while seized with admissions to MBBS prior to the amendment of

2017 effective 22nd January, 2018, yet noting the amendment of 22.1.2018 to the proviso to Regulation 4(2)(a) of the Regulations of 1997 rendering

those who had studied Biology/ Biotechnology as an additional subject at 10+2 level ineligible for admission into MBBS course, took a view that

admission of such candidate in the MBBS course could not be considered as they were plainly ineligible. He submitted that however in the aforesaid

case before the Apex Court, as the respondents had in the meantime completed their MBBS course, the Court saved them from the consequence of

their ineligibility. Mr. Angad Mirdha submitted that the Apex Court's relief to the respondent before it can be traced to Article 142 of the

Constitution of India. But Mr. Angad Mirdha submitted such a situation does not obtain in the case at hand where the petitioners have neither been

admitted nor studied a single day in the MBBS Course.

Heard. Considered.

This Court in its equitable jurisdiction cannot pass interim orders or render final judgments against the plain terms of law. The proviso to Regulation

4(2)(a) of the Regulations of 1997 as brought on the statute 22nd January, 2018 inter alia clearly provides that those students who study Biology/

Biotechnology as an additional subject at 10+2 level in a year subsequent to having passed the Senior Secondary Examination without having studied

Biology/ Biotechnology on a regular basis for two years, would not be eligible for admission into MBBS course. The plain language of the proviso

leaves no room for escape by way of any extended or twisted interpretation of law founded upon the vague ground of arbitrariness without more

based on mere emotive arguments or assertions of parityâ?"overlooking that parity founded on underlying similarity on all aspects is a positive not a

negative concept which cannot thus be set up for perpetuating an illegality. In this view of the matter reliance placed on the purported interim order of

the Delhi High Court even a copy of which has not been placed before this Court, is of no avail. Further the purported interim order of the Delhi High

Court cannot weigh as the petition itself is being disposed of finally on its merits by the Court.

I find no force in these petitions. They are dismissed.

A copy of this order be placed in connected file.