

(2006) 03 PAT CK 0051
In the Patna High Court
Case No : CWJC No. 15979 of 2005

Kundan Kishore

APPELLANT

Vs

Bihar Combined Entrance Competitive Examination Board and
Another

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Citation : (2006) 2 PLJR 406

Hon'ble Judges : S.K.Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K.Katriar, J.—Heard Mr. Amresh Kumar Singh for the petitioner, Mr. P.K. Shahi, learned Advocate General for respondent No. 1, and Mr. Dharmeshwar Mishra for respondent No. 2. This writ petition has been preferred for a direction to respondent No. 2 to admit the petitioner to the M.B.B.S. (Degree Course) for the session commencing August 2005. According to the writ petition, a number of medical colleges in the State of Bihar are imparting education for M.B.B.S. Degree Course. Some of the medical colleges are owned and run by the Government of Bihar, and others are in private hands. Respondent No. 2 is one such unaided and minority medical college in private hands. Combined entrance test for admission in Government medical colleges is held every year by respondent No. 1, an instrumentality of the State Government. On the other hand, the private medical colleges have constituted a consortium for holding a combined entrance test for the different medical colleges. The petitioner had appeared at the combined entrance test conducted by respondent No. 1, but failed to get admission in any one of the Government medical colleges. Under instructions of the State Government, respondent No. 1 nominated 37 candidates of different categories for admission to the M.B.B.S. Degree Course to respondent No. 2, out of whom three took admission. At the behest of the State Government, respondent No. 1 conducted second counselling from 13.9.2005 to

16.9.2005, to select candidates for admission to Government Medical Colleges as well as private medical colleges, and the result was published which appeared in the local dailies on 16.9.2005 itself a copy of the result is marked Annexure-2 to the writ petition.

1.1) The petitioner belongs to the reserve category of B.C. candidates and was forwarded for admission to respondent No. 2. The petitioner's letter of allotment dated 16.9.2005 is marked Annexure-3 to the writ petition. It is further stated in the writ petition that he reported to the Principal of the College (respondent No. 2) on 26.9.2005, but he refused to take admission on the ground that the last date had already expired. The petitioner faxed his communication dated 26.9.2005 from Katihar to respondent No. 1, informing him of the refusal on the part of respondent No. 2 to admit the petitioner on the ground of delay. The petitioner thereafter moved the Supreme Court by preferring Writ Petition (Civil) No. (s) 575 of 2005 (Kundan Kishore vs. Bihar CECE Board and Anr.), for direction to respondent No. 2 to admit him to the course. The writ petition was disposed of by order dated 25.11.2005 (Annexure-6), and is set out hereinbelow for the facility of quick reference:

"Upon hearing counsel the Court made the following order:

Petitioner seeks permission to withdraw this petition with liberty to seek appropriate remedies before the High Court. Without prejudice to that, the writ petition is dismissed as withdrawn."

Hence this writ petition.

2. Respondent No. 1 has placed on record his counter affidavit wherein it is stated that the petitioner is entitled to admission to the course.

3. Respondent No. 2 has also placed on record its counter affidavit wherein It is stated that the petitioner cannot be admitted on account of the delay in nomination, Learned counsel further submits that the Supreme Court has held in the judgment reported in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, that admission to such medical course must close by 30th of August of each year. Only stray cases can be admitted up to 30th of September. It is submitted that the Supreme Court has further directed that failure to carry out these directions may result in cancellation of the degree, and prosecution of the persons responsible for such belated admission. He further submits that a similarly circumstanced student had approached the Supreme Court by filing I.A. No. 1 of 2005 in Writ Petition (Civil) No. 167 of 2005 (*Al-Karim Educational Trust and another vs. Medical Council of India and Ors.*), for identical relief. Respondent No. 2 has filed the said writ petition before the Supreme Court, challenging the nomination to the extent of 100% by the State Government for the session 2005-06 and 2006-07. The interlocutory application was dismissed by order dated 14.10.2005 (Annexure-D to the counter affidavit of respondent No. 2), and is set out hereinbelow for the facility of quick reference:

"Upon hearing counsel the Court made the following order:

Taken on Board.

No direction for admission after 30th September, 2005 can be made. The Application is accordingly dismissed."

3.1) It is further submitted that stray vacancies can be filled up up to 30th September, 2005, which includes vacancies caused by drop-out and transfer cases only.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears to me that admission to private medical colleges alongwith the fee structures has been the subject-matter of judgments of the Supreme Court some of which are as follows:

(I) Islamic Academy of Education and Another Vs. State of Karnataka and Others, ;

(II) Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, ;

(iii) P.A. Inamdar and Others Vs. State of Maharashtra and Others, .

5. In purported implementation of the judgment of the Supreme Court, the Government of Bihar issued orders that 50% seats of the professional educational institutions shall be filled up on the basis of the direction issued by the State Government from amongst the candidates selected out of the selection process held by respondent No. 1. It appears that some of these private institutions knowingly or unknowingly did not carry out the instructions for the sessions 2003-04 and 2004-05 as a result of which a large number of 50% seats of the quota of the State Government were not filled up by the candidates nominated by it (State Government). The State Government, therefore, issued notification dated 9.3.2005 (Annexure-A to the counter affidavit of respondent No. 2), interalia, directing that in order to make good the loss, such private medical colleges shall fill up all the seats of the first year M.B.B.S. course for the session 2005-06 to the extent of 100%. This was followed by the said notification to the same effect published in newspapers (Annexure-B to the counter affidavit of respondent No. 1). Respondent No. 2 has preferred the aforesaid Writ Petition (Civil) No. 167 of 2005, challenging this notification wherein the Supreme Court declined to pass any interim order and is pending adjudication.

6. The communication dated 6.9.2005 (Annexure-C to the counter affidavit of respondent No. 1), from the State Government to respondent No. 1, has been issued to ensure implementation of the terms of the said communication marked Annexures-A and B. Consequently, respondent No. 1 had initially nominated 37 students for admission to the M.B.B.S. Degree Course for the session commencing August 2005 out of which perhaps three students took admission, necessitating second round of counselling by respondent No. 1 which took place from 13.9.2005 to 16.9.2005. The result is marked Annexure-2 to the writ

petition. The petitioner belongs to the reserve category of B.C., was included in the result (Annexure-2), and was nominated for admission by communication/order dated 16.9.2005 (Annexure-3), issued by respondent No. 1. The petitioner had reported to the Principal of the respondent College on 26.9.2005 (Annexure-4) but he declined to admit the petitioner on account of belated nomination. The petitioner informed respondent No. 1 of this position by fax from Katihar, photocopy of which is marked Annexure-5 to the writ petition.

7. In the background of the facts indicated in the preceding paragraphs, the question for consideration is whether or not respondent No. 2 has rightly denied admission to the petitioner on the ground of belated nomination. Learned counsel for respondent No. 2 has relied on various portions of the judgment in Mridul Dhar (*supra*), including paragraph 14 which is set out hereinbelow for the facility of quick reference:

"14. The academic session commences between 1st August and 31st August and the last date for joining MBBS/BDS courses is 30th August. However, students can be admitted against vacancies arising due to any reason by 30th September, The date 30th September is not for normal admission but is to give opportunity to grant admissions against stray vacancies. The adherence to the time schedule by everyone is paramount for the timely grant of admissions, commencement of academic session and for closure of the admissions after 30th September each year. In fact, the timely holding of 10+2 examination and declaration of its results is also of paramount importance for the entire admission process. If the results of CBSE or other equivalent examinations are not declared well before the commencement of the first round of counselling/admission of all-India quota seats i.e. 20th June, it is likely to adversely affect the candidates who may otherwise be toppers in the All-India Entrance Examination. A candidate may be in the first 200 positions, out of about 2,00,000 candidates in the merit ranking, but if the results of his qualifying examination of CBSE or its equivalent are not available to him or to DGHS responsible for counselling, the candidate would lose chance to get admission in the college of his choice despite his merit position."

Paragraph 35(15) of the judgment reads as follows:

"35(15)-Time schedule provided in the Regulation shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with."

It appears to me on a plain reading of the judgment that the Supreme Court has allowed admissions up to 30th September. Paragraph-14 of the judgment reproduced hereinabove states that the main part of the admission should normally close by 30th August of each year. However, students can be admitted against vacancies arising due to any reason by 30th September. This has to be read with the factual position that the delay was not at all attributable to the petitioner. After all 37 students were initially nominated, only 3 were admitted, necessitating second round of counselling which concluded on 16.9.2005, and

the petitioner promptly reported after completion of formalities for admission on 29.9.2005. Respondent No. 2 has purposely taken a hair-splitting view of the matter to defeat the petitioner's admission.

8. Respondent No. 2 must always realise that the career of a young person is involved in such cases on which depends his entire future, and should refrain from taking such unreasonable, irrational, arbitrary and hair-splitting approach for commercial ends. Respondent No. 2 must realise its social responsibility to the young ones of this glorious nation. The unholy approach adopted by respondent No. 2 with respect to earlier sessions had been noticed by the State Government in its notification dated 9.3.2005 (Annexure-A to the counter affidavit of respondent No. 1), had noticed the efforts made by respondent No. 2 to defeat the nominations made by the State Government to fill up 50% of the vacancies, as a result of which it was constrained to find out a solution and take decision to fill up all the seats of the Sessions 2005-06 to make good the loss. I feel very unhappy at the approach of respondent No. 2. The Principal of the respondent college is hereby directed to admit the petitioner to the M.B.B.S. Degree Course commencing August 2005-06 on payment of the prescribed fee.

9. I am informed at the bar that classes have already commenced in August 2005 and perhaps the examination for the first semester has already taken place. By order dated 8.3.2006 of this Court the Registrar of the respondent institution was directed to file an affidavit, inter alia, stating that "...the counter affidavit shall explain as to the mode and manner to compensate the petitioner in the event of success in the writ petition, particularly his late joining of the course..." The counter affidavit of respondent No. 2 has refused to answer this question. This Court therefore, sought the assistance of the learned Advocate General appearing for respondent No. 1 so that no injury is done to the petitioner on account of his late admission. We are inclined to agree with his submission and order accordingly. The petitioner shall be allowed to attend the classes and appear at the examination for the session commencing 2006-07 to the extent he has missed out in the present session. The Principal of the respondent college shall ensure that the petitioner does not suffer at all on account of such belated admission. In the result, the writ petition is allowed.