

(1993) 04 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. Nos. 2447, 3862 and 3880 to 3883 of 1992 (R) and 116 of 1993 (R)

Manish Kumar and etc.

APPELLANT

Vs

State of Bihar and Others, etc.

RESPONDENT

Date of Decision : 23-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0026

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The common questions of law and facts are involved in all the above seven cases and as such they have been heard together and are being disposed of by this common judgment.

2. There are two petitioners in C.W.J.C, No. 3862 of 1992(R) and single petitioner in all other six writ applications. They have filed the present writ applications under Arts. 226 and 227 of the Constitution of India challenging the order dated 18-6-1992 issued by the Principal, Patliputra Medical College, Dhanbad who is one of the respondents in all these writ applications by which the admissions of the petitioners against 15% all India quota in Patliputra Medical College in first year M.B.B.S. course in sessions 1990-91 and 1991-92 have been cancelled on the ground that he was informed by Dr. Girish Tayal, Assistant Director General (ME), Directorate General of Health Services (Medical Examination Cell), Nirman Bhawan, New Delhi, one of the respondents in all these writ applications, vide letter dated 11th June, 1992 that the petitioners have obtained admission on the basis of forged documents and the letter "of allotment on the basis of which they took admission were not genuine and did not originate from the office of the Director General, Health Services. The said letter cancelling the admissions of the petitioners has been annexd as annexures 2, 4, 6, 6, 8, 7 and 3 in C.W.J.C. Nos. 2447, 3862. 3880, 3881, 3882, 3883 of 1992(R) and 116 of 1993(R) respectively.

3. Before advertng to the respective cases of the petitioners and the

respondents, it will be apt to state briefly the facts which are not in dispute in these cases. In accordance with the direction of the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, and its subsequent directions in other cases 15 per cent seats in all India Medical Colleges in the country except Medical Colleges in Andhra Pradesh and Jammu and Kashmir are to be filled up on the basis of All India Entrance Examination. According to the guidelines laid down by the Supreme Court, the Central Board of Secondary Education (hereinafter to be referred to as "CBSE"), New Delhi conducts all India Premedical/Pre-dental Entrance Examination and prepares the merit list consisting of number of candidates equal to the number of seats available for allotment plus a waiting list of about 1000 candidates. The said lists are published in various newspapers. It is also displayed at the various regional centres all over India and the candidates who are in the merit list and waiting list are also informed individually about their rank obtained by them in the said examination by the CBSE. Thereafter, the lists are forwarded to the Directorate General of Health Services for making allotments to the successful candidates as per guidelines of the Supreme Court of India on the basis of merit-cum-preference. The Directorate General of Health Services makes the allotment to the merit list's candidates and the same is published in newspapers all over India. If the seats are still vacant due to non-joining of the candidates of the merit list, then the allotment is made to the candidates who are in the waiting list and the same is also published in the newspapers all over India. The Directorate General of Health Services informs every candidate with regard to the allotment made and also sends the list to the concerned Medical Colleges informing them about the allotment made to the said colleges. Thereafter, the successful candidates are admitted in the different medical colleges on the basis of the allotments order.

4. So far as Patliputra Medical College, Dhanbad is concerned, the Directorate General of Health Services made allotment of the candidates to the said college on 1st of August, 1988. Some of the candidates who were allotted the said college namely, Amanjit Singh Gill and others filed a writ petition in the Supreme Court being Writ Petition No. 961 of 1988 for changing their placement from the said college to of her medical college on the ground that Patliputra Medical College, Dhanbad was not recognised by Medical Council of India and the Supreme Court on 21-11-88 (reported in Amanjit Singh Gill Vs. Directorate General of Health Services, ordered to transfer the candidates who have been allotted to Patliputra Medical College, Dhanbad to other recognized Medical College. Thereafter, no allotment order for admitting the students in Patliputra Medical College, Dhanbad has been issued by the Directorate General of Health Services.

5. The case of the petitioners, in brief, is that they being eligible for being admitted to Medical and Dental course applied in terms of the advertisement issued by the CBSE inviting applications for all India Pre-medical/ Pre-dental Entrance Examination of 1990-91. After their applications were found in order,

the admit cards were issued. Some of the petitioners have annexed the photo copy of their admit cards to their writ applications. Thereafter, they appeared in the said examination and their names were not in the merit list but later on a letter was issued by the office of the Director General, Health Services informing that they have been selected and allotted to Patliputra Medical College, Dhanbad, a copy of the said letter has been annexed only by some of the petitioners in their writ applications. On the basis of the said letter the Principal, Patliputra Medical College, Dhanbad issued letters to the petitioners asking them to come with the relevant papers. They went to the college with the relevant papers and the same were verified and they were admitted in the medical college. The petitioners were attending their classes and while they were continuing their studies, letter dated 18-6-92 as mentioned above was issued by the Principal of the college informing them that their admissions have been cancelled on the basis of the letter dated 11-6-92 issued by Dr. Girish Tayal, Assistant Director General (ME), Directorate General of Health Services (Medical Examination Cell), Nirman Bhawan, New Delhi. According to which the petitioners allotment letters were forged and they were never selected for admission in Patliputra Medical College, Dhanbad.

6. Two sets of counter-affidavit have been filed on behalf of the respondents; one on behalf of Directorate General of Health Services by Dr. Girish Tayal, Assistant Director General (Medical Examination) who is also one of the respondents in these writ applications and other on behalf of the Principal, Patliputra Medical College, Dhanbad. The stand of the respondents is that only one allotment letter was issued by the Directorate General of Health Services allotting the candidates to Patliputra Medical College, Dhanbad on 1-8-88 and thereafter the students who are allotted seats in the said medical college challenged their allotment before the Supreme Court on the ground that Patliputra Medical College, Dhanbad was not recognized by the Medical Council of India and the Supreme Court directed for re-allocation of the aforesaid candidates to other medical colleges. Thereafter, no allotment order has been issued allotting the candidates to Patliputra Medical College, Dhanbad by Directorate General of Health Services and as such there is no question of issuing allotment letters in favour of the petitioners. Their further stand is that the petitioners' names were neither in the merit list nor in the waiting list. They were never selected by the Directorate for their admission in Patliputra Medical College, Dhanbad. They have been admitted in the said college on the basis of forged and fabricated allotment order. In this connection, it is stated that for the year 1990, the last allotment order was issued on 18-6-91 and thereafter the seats were surrendered back to the States on 12-7-91. For the year 1991-92 the last allotment order was issued on 15-1-92 and thereafter no allotment was made except those which were ordered by the Supreme Court.

7. The Principal of Patliputra Medical College, Dhanbad vide his letter dated 6-2-92 requested the Director, Directorate General of Health Services, New Delhi to check the genuineness of the candidates allotted by the Directorate General of

Health Services to his college as he has received complaints about the genuineness of some of the candidates. The said letter contained the photo copies of the admit cards, the list sent to the college and the allotment letters of some of the candidates purported to have been issued by the Directorate General of Health Services. On verification of the said list, it was found that the petitioners of C.W.J.C. Nos. 3862 (only petitioner No. 1), 3882, 3883 of 1992(R) and 116 of 1993(R) had taken admission for the year 1990 and petitioners of C.W.J.C. Nos. 3862 (petitioner No. 2), 3880 (sic) vacancy of the year 1991. On perusal of the list sent by the Principal it was found that the list for the year 1990 was sent by Prof. M. P. Shrivastava who was working as Assistant Director General (Medical Examination) till April, 1991. On verification from Sri Shrivastava it was found that his signature was forged. With regard to Shakti Kumar petitioner No. 1 in 1992 C.W.J.C. 3882 and Neeraj Kumar Mangalam petitioner in 1992 C.W.J.C. 3882 it was noticed that the allotment letters in their cases were dated 23-6-91 whereas M. P. Shrivastava as stated above, has worked only up to April, 1991. The list for the year 1991 contains the signatures of Sri Girish Tayal and it was dated 27-1-92 while the last allotment for the academic session 1991-92 was made on 15-1-92. The said signature of Sri Tayal was also found to be forged. The admit cards were also sent to the CBSE for verification and it was found that some of the admit cards were forged one, some petitioners had appeared and their admit cards were genuine but they were not placed either in the merit list or in the waiting list. After verification Dr. Tayal informed the Principal, Patliputra Medical College, Dhanbad through letter dated 11-6-92 that all the allotment letters and the list enclosed for the year 1990-91 and 1991-92 which contains the names of the petitioners and some other persons were not genuine and have not originated from the Directorate General of Health Services. It was also stated in the said letter that no allotment has been made to his college under 15 per cent All India Quota. He also asked the Principal to cancel the admissions of all the candidates (petitioners) as the same are based on the forged documents and they should be handed over to the police custody for further investigation and action. On the basis of the said letter, the Principal of the College has issued the impugned orders/letters informing the petitioners about the cancellation of their admissions in the first year MDBS course.

8. It also appears from the record that after cancellation of the admissions of the petitioners, two first information reports were lodged; one by the Principal of the Patliputra Medical College, Dhanbad and other at the level of the Directorate General of Health Services, New Delhi for the Central Bureau of Investigation and investigations in both the cases are going on.

9. Learned counsel for the petitioners contended that the order cancelling admissions of the petitioners to first year MDBS course has been passed in violation of the principle of natural justice inasmuch as the petitioners were not afforded as opportunity of showing cause before cancellation of their admissions and on this ground alone the order cancelling their admissions is not sustainable

in the eye of law. It was further contended on their behalf that even if the admissions were obtained on the basis of fake allotment orders the authorities have acquiesced in the infirmities inasmuch as they admitted the petitioners on the basis of the aforesaid documents and allowed them to prosecute their studies and now they cannot be permitted to cancel the admissions on the ground that the admissions were obtained by fraud. They also contended that as the investigation is going on with regard to the case of fraud and forgery unless the guilt is proved according to law the admissions of the petitioners cannot be cancelled on the ground that the allotment letters were forged and fabricated. They also contended that Sri M. P. Shrivastava who is alleged to have issued allotment order in the cases of admissions of some of the petitioners for the year 1990-91 session has not sworn affidavit denying his signature and as such it cannot be said that the allotment letters for admissions of some of the petitioners for the year 1990-91 are forged and fabricated one.

10. Learned counsel appearing on behalf of the respondents, on the other hand, contended that as in these cases the petitioners have obtained admission on the basis of a fraud and forgery, they are not entitled to opportunity of hearing before cancelling their admissions and as such the order cancelling the admission of the petitioners cannot be held to be vitiated for non-observance of principle of natural justice. He also contended that in these cases there is no question of the authorities having acquiesced in the illegal admissions of the petitioners inasmuch as when the Principal doubted the correctness of the candidature of the petitioners he immediately took steps and Directorate General of Health Services on verification ordered for cancellation of admissions of the petitioners and in that view of the matter the petitioners' admissions were rightly cancelled in these cases. He further contended that in these cases, this court has to determine as to whether the petitioners were admitted in the medical college on the basis of any valid order of allotment and the said question has no relevancy or connection with the criminal cases which have been filed with a view to fix the criminal liability on the persons who have committed the offence of fraud and forgery or connived or abetted in its commission. He also contended that Dr. Tayal has filed a counter-affidavit wherein it has been clearly stated that Sri M. P. Shrivastava has denied his signature purported to have been signed on the allotment letter for the session of the year 1990-91 and in view of the aforesaid denial on affidavit by Dr. Tayal which has not been controverted by the petitioners, the assertion made in the counter-affidavit cannot be rejected.

11. As stated above, the stand of the respondents is that only one letter of allotment was issued for admission to Patliputra Medical College, Dhanbad on 1st of August, 1988 and thereafter in view of the order of the Supreme Court no further allotment has been sent for any subsequent years to any candidate for his admission in Patliputra Medical College. This assertion made on behalf of the respondents has not been controverted by the petitioners. The counsel appearing on behalf of the petitioners has also admitted that the names of the petitioners do not find place in the merit list or in the waiting list. In view of the aforesaid

admitted facts the claim of the petitioners that they were admitted on the basis of the order of allotment issued by the Directorate General of Health Services cannot be accepted. The statement made in the counter-affidavit that the allotment letters were forged one has also not been challenged by the petitioners by filing reply to the counter-affidavit. Thus, it is clear that the petitioners obtained admission in the aforesaid college on the basis of forged allotment orders.

12. The main attack of the petitioners is that the order of cancellation of their admissions has been passed in utter violation of the principle of natural justice. In my opinion, the rules of natural justice are not embodied rules. Its application can be excluded especially or by necessary implication in the matter of urgency or in public interest. The rules of natural justice are not ends in themselves. They are means to achieve the ends of justice. In the case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, , the Supreme Court held as follows (para 4 of AIR):

"Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have to circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules."

13. If the application of the rules of justice would cause more injustice than the justice or instead of advancing the cause of justice will create impediment in administration of justice, its applicability can be excluded in appropriate cases. In the case of fraud and forgery the application of this rule will not advance the cause of justice. In the case of U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others, some students had taken admissions in Post-Graduate MBBS course on the basis of the fake orders passed in nonexistent writ petitions. Dealing with the said matter their Lordships of the Supreme Court held that as the candidates have taken admissions on the basis of the fake orders, the rules of natural justice of being provided an opportunity of hearing has no application in such cases. In the words of Supreme Court "the circumstances in which such benefit has been taken by the candidates concerned do not justify attraction of the application of rules of natural justice of being provided an opportunity to be heard." In my view, in these, cases the admitted facts which have been extracted above clearly show that these petitioners have taken admissions on the basis of forged allotment letters and in that view of the matter, non-affording of opportunity of hearing to them in the circumstances of

these cases cannot vitiate the order of cancellation, of their admission.

14. Even assuming for the sake of argument and for the satisfaction of the learned counsel for the petitioners that the rule of natural justice will apply in the present cases, in my view, that will not make any difference in these cases for the simple reason that no allotment letter has been issued for admission of the candidates in Patliputra Medical College, Dhanbad after 1988 by the Directorate General of Health Services and the names of the petitioners were neither in the merit list nor in the waiting list and-as such affording an opportunity of hearing to the petitioners in these cases, in my view, will be futile and meaningless.

15. Other contention raised on behalf of the petitioners is that the respondents have acquiesced in the infirmities and allowed them to prosecute their studies and they cannot now cancel the admission of the petitioners on that ground of fraud especially when they were in a position to discover the truth earlier by due diligence. This submission, in my view, in the facts of this case is without substance for the reason stated hereinafter. As noticed above, soon after the admission was taken by the petitioners, the Principal of the College wrote letter to the Directorate General of Health Services on 4-2-92 as evidenced from annexure-A to the counter-affidavit filed on behalf of the respondents. However, the said letter was not received in the office of the Director General of Health Services. Thereafter, the Principal of the College sent another letter on 6th June, 1992 enclosing the allotment order, list alleged to have been sent to the college and admit cards of the petitioners to the Directorate General of Health Services through Dr. Sriram Pratap Sinha, Assistant Professor of Paediatrics of the College which was handed over personally to Dr. Tayal, Assistant Director General (ME) on 11-6-92 and on that itself after verification of the records a letter was issued as contained in annexure-A to the counter-affidavit filed on behalf of the respondents to the effect that the petitioners have obtained admission on the basis of forged and fabricated allotment letters. The Principal of the College admitted the petitioners on the basis of the letters produced by them and the list alleged to have been signed by the Assistant Director General, Directorate General of Health Services. When the Principal doubted about the genuineness of the aforesaid documents he immediately took steps in the month of February, 1992 itself but when the said letter was not received in the office of the Director General of Health Services, he again sent letter through Dr. Siaram Pratap Sinha, Assistant Professor of Paediatrics of the college as mentioned above and as such there is no laches on the part of the Principal of the College and the office of Director General of Health Services after verification of the genuineness of the documents also immediately informed the Principal to cancel the admissions of the petitioners on 11-6-92. At no point of time, respondents acquiesced in the admission taken by the petitioners on the basis of the forged and fabricated documents. The ruling relied upon by the learned counsel for the petitioners in support of his submission in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, has no application in these cases. In that case a candidate was allowed to appear in the Law Examination in spite of the shortage

of percentage in attendance. It was noticed in that case that neither Head of the Department nor the University authorities took care to scrutinise the admission form and allowed the candidate to appear in the next examination and in that context it was held that the University authorities had no jurisdiction to cancel the candidature of the candidate for the examination in question for the reason that the University authorities have acquiesced in the infirmities. The said case, in my view, has no application in the facts of the present cases. There is no question of authorities having acquiesced in the infirmities; on the other hand, the Principal of the College doubted the genuineness of the documents and he reported the matter to the Directorate General of Health Services and thereafter prompt actions were taken. The other decision relied upon by the counsel for the petitioners in the case of Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur and Another, has also no application in the present cases. From reading paragraphs 4 and 5 of that judgment it appears that no case of forgery or fraud was found in that case and this was noticed by their Lordships and it has been stated therein that if it would have been a case of forgery in obtaining certificates by the petitioner, the matter might have been different. Thus the said case has also no application in the present cases as in these cases there is allegation of fraud and forgery on the part of the petitioners.

16. The next submission raised on behalf of the petitioners that before the guilt of the persons responsible for committing fraud and forgery is determined in a criminal case, the admission of the petitioners cannot be cancelled is equally without substance. In the present cases the question for determination is as to whether the petitioners were selected for admission is as to whether the petitioners were selected for admission in MBBS course or not and allotment orders were issued in their favour for admission in Patliputra Medical College, Dhanbad or not. For decision of the said point it is not necessary to determine as to whether the petitioners themselves have committed a fraud and forgery or some one else have committed for their benefits. The said question has to be decided by the criminal court on the basis of the evidence in case charge-sheet is submitted by the police.

17. The last submission is also without substance as, in my view, it is not necessary to file an affidavit by Sri M.P. Shrivastava, the then Assistant Director General (ME) of Directorate General of Health Services as Dr. Tayal has already filed a counter-affidavit and he has stated that Sri M.P. Shrivastava has denied his signature and the said fact has not been controverted by the petitioners.

18. Admissions of some of the students in MBBS course against 15 per cent All India Quota in Darbhanga Medical College and Anugrah Narain Magadh Medical College, Gaya were cancelled by the Principals of the said Colleges in pursuant of the order of Directorate General of Health Services, New Delhi in the circumstances similar to the present cases i.e. on the ground that they obtained admission on the basis of forged and fabricated allotment letters and the students filed a batch of writ applications being C.W.J.C. Nos. 10092, 11941 and

12827 of 1992 and 41 of 1993 challenging the order of cancellation of their admissions and a Division Bench of this Court on 29th March, 1993 dismissed the said writ applications after holding that the admissions have been obtained on the ground of fraud and forgery and non-observance of rules of natural justice will not vitiate the order of cancellation.

19. Thus, after considering all the submissions raised on behalf of the petitioners I do not find any merit in all the seven writ applications and the same are dismissed. The interim orders passed by this Court permitting the petitioners to attend the classes, to appear at the professional examination and to remain in the hostel are vacated. In the facts and circumstances, parties shall bear their own costs.