

(2017) 01 PAT CK 0102

In the Patna High Court

Case No : Letters Patent Appeal No.1762 of 2016 Arising out of Civil Writ Jurisdiction Case No. 6120 of 2016

Medical Council of India

APPELLANT

Vs

Dr. Sanand Prem

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2017 Pat 41 : (2019) 3 PLJR 548

Hon'ble Judges : Hemant Gupta, ACJ. and Mr. Dinesh Kumar Singh, J.

Bench : Division Bench

Advocate : Mr. Kumar Brijnandan, Advocate, for the Appellants In LPA No.1762 of 2016; Mr. Gajendra Pd. Yadav, SC-17. Mrs. Alka Verma, Advocates, for the Respondents In LPA No.1762 of 2016; Mr. Kumar Brijnandan, Advocate, for the Appellants In LPA No.1764 of 2016; Mr. Sunil Kumar Mandal, SC-3. Smt. Neelam Kumari, AC to SC-3. Mr. Bipin Kumar, AC to SC-3, for the Respondents In LPA No.1764 of 2016; Mr. Kumar Brijnandan, Advocate, for the Appellants In LPA No.1765 of 2016; Mr. Vikash Kumar, SC-11, for the Respondents In LPA No.1765 of 2016; Mr. Kumar Brijnandan, Advocate, for the Appellants In LPA No.1763 of 2016; Namrata Mishra, GA-6. Mr. Alok Ranjan, AC to GA-6, for the Respondents In LPA No.1763 of 2016; Mr. Tuhin Shankar, Advocate, for the Private Respondent In LPA No.1763 of 2016; Mr. Vikash Kumar, Advocate, for the B.C.C.E.B In LPA No.1763 of 2016

Final Decision : Dismissed

Judgement

Re.: I.A. No. 7190 of 2016 in L.P.A. No.1762 of 2016

I.A. No. 7195 of 2016 in L.P.A. No. 1764 of 2016

I.A. No. 7197 of 2016 in L.P.A. No. 1765 of 2016

I.A. No. 7192 of 2016 in L.P.A. No. 1763 of 2016

These applications are for condonation of delay in filing the Letters Patent Appeals.

For the reasons mentioned in the Interlocutory applications, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay in filing the present Letters Patent Appeals.

Consequently, Interlocutory Applications are allowed and delay in filing the Letters Patent Appeals is condoned.

Re.: L.P.A. Nos. 1762 of 2016, 1764 of 2016, 1765 of 2016 and 1763 of 2016.

This order shall dispose of L.P.A. Nos. 1762 of 2016, 1764 of 2016, 1765 of 2016 and 1763 of 2016 arising out of a common order passed by the learned Single Bench on 18.07.2016, whereby the writ applications were allowed and the order of the cancellation of admission to the Post Graduate courses in different medical colleges of Bihar by the Medical Council of India was set aside.

2. The writ applicants were all successful candidates in the examination, which was held by Bihar Combined Entrance Competitive Examination Board for admission in Post Graduate courses in different Medical Colleges of Bihar. The examination in question was held in the year 2014. The writ applicants were initially admitted to the Post Graduate courses before 10th of July, 2014, the cut-off date fixed for admission. But on account of third counselling, some of the writ applicants upgraded their admission to other Medical Colleges or in different disciplines. The writ applicants were admitted before 08th of August, 2014 in different courses. It is, thereafter, the Medical Council of India on 21.01.2016 cancelled the admission of all the writ applicants for the reason that they have been admitted after the cut-off date 10.07.2014 fixed by the Hon'ble Supreme Court.

3. The learned Single Bench allowed the writ applications relying upon the Hon'ble Supreme Court Judgment in the case of *Asha v. PT. B.D. Sharma University of Health Sciences*, reported as (2012) 7 SCC 389 as it found that there is no fault on the part of the candidates and that present is a case where the Board had taken the responsibility of not completing the third counselling before the cut-off date. The learned Single Bench, inter alia, concluded as under:

"12. if the stand of the Board is understood in its entirety then there was certain compelling reasons as to why the exercise of counselling could not be completed before 10.07.2014, but to the credit of the Board they have taken the onus upon themselves and have very fairly placed the factual position before the Court and also taken a plea that under the above circumstances, the decision of Medical Council of India should not be acted upon. It is also evident that many of these petitioners had taken admission on the basis of the 1st and 2nd counselling well before cut-off date. But because of options and openings coming their way due to fresh counselling in courses which in their opinion was a better opening that they are in this difficulty. It is contended, therefore, on behalf of the petitioners that it will not be fair to make these petitioners suffer, merely because they took admission a second time over when the initial opening or admission was allowed much before the cut-off date i.e. 10.07.2014.

17. If the above principle laid down by the Hon"ble Apex Court is taken into consideration, then the Court does feel that there is no hanky panky in granting admissions to these petitioners after the cut-off date. The reason for delay has been well explained by the authorities, who are saddled with the responsibility of not only holding of examination, but also the counselling and that these petitioners have had no role in delaying the admission after the cut-off date. In fact many of them had already taken admission well before the cut-off date but for sake of argument if it can be said that it is the indiscretion on their part to take admission afresh because of opening which was provided to them then it is not a case of any mischief or an effort made to over-reach the guidelines or the cut-off date fixed by the Hon"ble Apex Court."

4. Aggrieved against the order passed by the learned Single Bench, the Medical Council of India has filed the present appeals under Clause X of the Letters Patent. Learned Counsel for the appellant argued that the Hon"ble Supreme Court in the case of Dr. Fraz Naseem & Ors. v. the Union of India & Ors. (Writ petition (Civil) No. 433 of 2013) fixed the time schedule as 14.03.2014 for admission to the Post Graduate courses. It is thus, contended that once the time schedule has been fixed by the Hon"ble Supreme Court, the Board was bound to complete the process of admission before the cut-off date and having failed to do so, the admission of the candidates is contrary to the time schedule fixed by the Hon"ble Supreme Court and thus illegal.

5. On behalf of the respondents, apart from the Asha"s case (supra), reference has been made to Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, and also the judgment of the Hon"ble Supreme Court in the case of Medical Council of India v. Kalinga Institute of Medical Sciences (Civil Appeal No. 4914 of 2016 decided on 6th May 2016, and also the case of Medical Council of India v. JSS Medical College & Anr., AIR 2016 SC 588 wherein the Supreme Court has granted admission after the cut-off dates.

6. We have heard learned counsel for the parties and find that no case of interference in the order passed by the learned Single Bench is made out. The admission process is controlled and regulated by a Board established by the State. The delay in admission has taken place on account of non-completion of the third counselling before the Cut-off date. The Board has given reasons as to why the third counselling could not be completed before the cutoff date 10.07.2014, particularly in respect of lack of clarity in the admission process in respect of the candidates who have worked in the remote and difficult areas.

7. Thus, we find that the candidates were not to be blamed for delayed action of completion of the admission process by the Board. The candidates cannot be made to suffer. In terms of the judgment in Asha"s case (supra), the Court can mould the relief in rarest of the rare cases or in exceptional circumstances and when the court finds that no fault is attributable to the candidate; the candidates

pursued their rights and remedies as expeditiously as possible without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission.

8. In the present case, the writ applicants were granted admission by the Board, though after the cut-off date. It was an action on the part of the Board for which the candidates ought not to be blamed. Thus, the present is a case of exceptional circumstances in granting admission after the cut-off date. The candidates were admitted to the course in the year 2014. Their admission was cancelled when they have completed more than half of the course in respect of the candidates admitted to degree course, whereas the candidates admitted in the Diploma Courses have completed the entire course. The right of any other candidate is not adversely affected by the admission of the writ applicants as well.

9. In view of the said fact, mere fact that the admission was not granted within the cut-off date, when the right of no other person is affected, we do not find that any case is made out for interference in the present Letters Patent Appeal. Accordingly, the same is dismissed.