

(1993) 04 PAT CK 0006

In the Patna High Court

Case No : C.W.J.C. Nos. 6741/92, 7123/92, 7677/92, 7681/92, 9133/92,
10567/92, 7348/93 and M.J.C. No. 1247/92

Neelam Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0006

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In these writ applications, the petitioners have sought for issuance of a writ of mandamus directing the Superintendent Sri Krishna Medical College Hospital, Muzaffarpur, to forebear from giving effect to the letter bearing No. 1006 dated 14-7-1992 whereby and whereunder the admission of the petitioners to the General Nursing and Mid-wifery course, 1987 had been cancelled.

2. The fact of the matter lies in a very narrow compass. The Department of Health of the State of Bihar with a view to obtain the service of trained nurses and mid-wives conducts courses of training in nursing and midwifery in different Medical College. The duration of such training is 3 1/2 years. Thus training for nurses is 3 years and training of mid-wifery is six months thereafter,

3. An advertisement had been issued in a Local daily newspaper Aryabarta dated 9-9-87 inviting applications from eligible candidates. The requisite qualification for the admission was a certificate of 10+2 or Intermediate from any University or an institution recognised by the State Government or the Central Government. The said advertisement is contained in Annexure-1 to the writ application. According to the petitioners, they are holders of certificate of "Vidushi" from Prayag Mahila Vidyalaya Allahabad and "Madh-yama" from Hindi Vishwa Vidyalaya, Allahabad in the year 1987.

4. That the State of Bihar recognised the aforementioned degree of "Madhyama"

from Hindi Vishwa Vidyalaya and the degree of "Vidushi" from the Prayag Mahila Vidyapith as equivalent to Intermediate. The petitioners in this connection have relied upon memo No. 184 dated 7-1-87 as contained in Annexure-3 to the writ applications whereby and whereunder the recognition of those degrees by the State was extended up to 31-12-1967.

5. The petitioners admittedly were admitted in the aforementioned Nursery Midwifery courses.

They, however, received a notice from the respondent No. 3 calling upon them to show cause as to why their admissions should not be cancelled. The said notices were allegedly issued in terms of this Court's order dated 11-12-91 in CWJC No.8417/90. The said order dated 11-12-91 appears to have been clarified by this Court by another order dated 7-7-92.

The said orders dated 11-12-1991 and 7-7-1992 are contained in Annexure-4 and 4/1 in CWJC No.7123/92.

6. The petitioners filed their show causes but by reason of the impugned orders their admissions had been cancelled on the ground that they did not have the minimum qualification.

7. A counter affidavit has been filed on behalf of the respondents which has been sworn by one Laliteswar Prasad Singh, an Administrative Officer posted in the office of respondent No. 3.

In the said counter affidavit, it has been accepted that the petitioners were admitted on 1-7-1989 for the Sessions 1987-91. It has, however, been contended that although the petitioners were admitted on the basis of their qualifications as holders of degree of "Vidushi" or "Madhyama" but as no equivalent qualification of 10+2 (Intermediate) had been mentioned in the advertisement, the petitioner were not eligible to be admitted.

8. Allegedly a complaint was lodged with the District Magistrate Muzaffarpur who authorised the Principal of Srikrishna Medical College, Muzaffarpur to enquire into the matter and a report was submitted to the District Magistrate on 15-2-90.

9. It has further been stated that order dated 11-12-91 passed by this court in CWJC No. 8417 / 90 directed that notice be served on the persons concerned to show cause as to why their admissions should not be cancelled and pursuant thereto the impugned notices had been issued. It has been stated that in relation to the aforementioned orders a contempt application has also been filed by One Mrs. Lella Kumari.

It is the contention of the respondents that as per press communique issued by the Government of India "Madhyama" is equivalent to B.A. only for Hindi purpose, but it is not equivalent to B.A. degree for all purposes. It has further been contended that nothing has been mentioned therein about "Vidushi". It is contended that as the medium of teaching is English they may fail to follow the

directions of the doctors which may cause harm to the patients.

10. The only question, therefore, which arises for consideration in this application is as to whether the degrees of "Vidushi" and Madhyama" are equivalent to 10+2 (Intermediate) or not.

11. Clause 3 of the advertisement provides that the minimum educational qualification for admission is passing of examination of 10+2 (Intermediate) held by any University/ Board recognised by the State Government or the Central Government.

12. From a perusal of Annexure-3 to the writ application, it appears that the State of Bihar had issued an order dated 7th January, 1987 in terms whereof the Degrees mentioned in the Schedule thereof had been extended up to 31-12-1987.

13. The exact wordings of the said notification are as follows :-

"Jisma Matra Hindi Vidyapith Deoghar Awam Mandar Vidyapith, Mandar Dwara Sanchliat Parikshwao awom unke dwara pradap uppadiyoo ki manyata 1985 ke bad dinak 31-12-86 tak Bistariat ke gayi thi."

14. From Annexure-1 to the said notification, it appears that Madhyama examination conducted by Hindi Viswavidyalaya, Allahabad has been held to be equivalent to B.A. Part I or Intermediate. Similarly examination of "Vdushi" by Prayag Mahila Vidya-pith Allahabad has also been held to be equivalent to B.A. Part I or 1. A. Thus the said degrees have been recognised by the State of Bihar.

15. From the Mark sheets annexed with the writ application which are contained in Annexure-2 series it appears that the petitioners have also appeared in English as one of their subject in which also they had passed.

16. Mr. P. K. Sahi, learned counsel appearing for the respondent however, submitted that the recognition of only the degrees granted by Hindi Vidyapith, Deoghar had been extended up to 31-12-1987. It has submitted that the said order dated 7th January, 1987 had been issued for the purpose of recognition of the said degree in the State services only and not for any other purpose. Mr. Sahi does not appear to be correct in his submission.

17. All the degrees mentioned in Annex-ures 1 and 2 thereof were recognised up to 1985 subject to certain conditions and restrictions mentioned therein.

So far as the degrees of Hindi Vidyapith Deoghar and Mandar Vidyapith, Mandar are concerned, the same were earlier extended up to 31-12-1986 and thus the same have been mentioned within brackets. Thus, the notification clearly goes to show that all the degrees had been extended up to 31-12-1987 and not only the degrees granted by Hindi Vidyapith Deoghar or Mandar Vidyapith Mandar. It is evident that the said degrees were earlier recognised up to 1985 except those of Hindi Vidyapith and Mandar Vidyapith which were recognised up to 31-12-1986 and thus all such recognition were extended up to 31-12-1987 by the said

notification (Annexure-3).

18. From a perusal of the order dated 11-12-1991 passed in CWJC No. 8417 of 1990 (Annexure-4) it appears that in that case the learned counsel on instructions had stated before the court that the State Government has not recognised the certificate of Vidushi as a qualification equivalent to Intermediate or 10+2 examination. In that situation, certain directions had been given by the Court.

19. However, the aforementioned order dated 7-7-84 was clarified by this Court:-

"We have been informed by the learned counsel that pursuant to the order aforesaid the Superintendent has already issued notice to show cause to the petitioner and others. Counsel submitted that the stand of the State Government in the connected writ petition that "Bidushi" is not a recognised qualification equivalent to Intermediate or ten plus two course is contrary to the Government orders. In the circumstances, it will be open to the petitioner to file her show cause and take such plea as may be available in the enquiry aforesaid."

20. From the facts stated hereinbefore, it is, therefore, evident that the impugned order had been passed on wholly wrong premises. In any event, there cannot be any justification for cancellation of the admission of the petitioners at a point of time when they had almost completed their courses of studies. It is the case of the petitioners that their testimonial had duly been checked up and only thereafter they had been admitted. It is also not the case of the respondents that the petitioners had not been able to follow the instructions given to them in English.

21. In this view of the matter the respondents are estopped from passing the impugned order.

22. In *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, the question which inter alia arose for consideration was as to whether the decision of the Karnataka University not to recognise the first year B.Sc. examination of the Rajasthan and Udaipur Universities as equivalent to the pre-University Examination of the pre-University Education Board, Bangalore could be regarded as arbitrary or fanciful. It is for the University to decide the question of equivalence and it would not be right for the court to sit in judgment over the decision of the University because it is not a matter on which the court possesses any expertise."The university is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State, the Supreme Court held it page 1454:-

"But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges

and, their admissions should not now be disturbed because for if they are now thrown out after a period of almost four years since their admission their whole future will be brighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges, which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc, examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the pre-university examination of the pre-university Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principles of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore notwithstanding the view taken by us in this judgment allow the appellants] to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University, should take appropriate action because the management of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course."

23. The case of the petitioner stands on a far better footing than the case of the petitioners before the Supreme Court in Rajendra Prasad's case (supra).

24. For the reasons aforementioned, these writ applications are allowed and the impugned orders are quashed.

25. However in the facts and circumstances of the case, there will be no order as to costs.