

(2014) 05 AHC CK 0084

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20477 of 2014

Niraj Kumar Rai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 6 ADJ 391 : (2015) 3 ALJ 397 : (2014) 105 ALR 535 : (2014) 4 UPLBEC 2781

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : Ashok Khare and Siddharth Khare, Advocate for the Appellant; Ajit Kumar Singh, K.R.S. Jadaun, Bhoopendra Nath Singh and Devendra Pratap Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. The four petitioners before the Court have completed the Bachelor of Dental Surgery (BDS) Course from the Institute of Medical Sciences, Banaras Hindu University. All of them were admitted to the four year course in the batch commencing from 2008-09. The final examination was conducted in September 2012 and it is not in dispute that the petitioners have cleared the examination. The internship was conducted between 16 January 2013 and 15 January 2014. The dispute before the Court relates to admissions for the Master of Dental Surgery (MDS) Course from the Institute of Medical Sciences, Banaras Hindu University. The University is the second respondent, while the third and fourth respondents are its Vice-Chancellor and the Director of the Institute.

2. On 5 February 2014, results of the All India Postgraduate Dental Entrance Examination conducted by the All India Institute of Medical Sciences were declared. All the petitioners had appeared at this examination. The first petitioner has secured less than 50% marks and is, therefore, not eligible for registration to the MDS Course. On 26 March 2014, the Banaras Hindu University (BHU) issued

its admissions" notification. The Information Booklet and Application Form for (MDS) Courses-2014 specified in paragraph 1.2 that admissions will not take place through a separate entrance examination conducted by Banaras Hindu University but would be based on the rank of the candidates in the All India Postgraduate Dental Entrance Examination (AIPGDEE-2014) conducted by the All India Institute of Medical Sciences (AIIMS). Paragraph 1.2 reads as under:

"1.2 There is no separate entrance examination. Candidates who have appeared and qualified AIPGDEE-2014 are eligible for admission based on their rank in the above examination."

3. All the petitioners had appeared at the AIPGDEE. However, their grievance before the Court is two fold. First, it has been submitted that the AIPGDEE was conducted by AIIMS on 25 January 2014. The list of colleges published by AIIMS did not include the Institute of Dental Sciences of BHU. BHU issued its admissions" notification on 26 March 2014. Hence, it has been submitted that BHU ought to have notified that admissions to the MDS course would be held on the basis of the AIPGDEE before the entrance test was conducted by AIIMS on 25 January 2014. The submission is that the admission rules cannot be changed after the process has commenced.

4. The Second submission is that under the Statutes of BHU, the Academic Council is vested with the authority to lay down guidelines for admission but the Academic Council has not taken a decision that admissions to the MDS course would be conducted on the basis of the AIPGDEE.

5. Each of these submissions now fall for consideration.

6. Now at the outset, it would be necessary to advert to the basic factual situation. On 5 March 2012, a meeting was held of the Academic Council of BHU. Item 57 on the agenda dealt with the constitution and powers of the Postgraduate Medical Board of Medical Sciences regarding the admission procedure for the postgraduate courses including MD, MS, MDS, DM and MCh of the Faculty of Medicine, Dental Sciences and Ayurveda. The relevant part of the resolution reads as follows:

"Res. No. 57 The Director, IMS informed the Academic Council that General Ordinance No. 11 contained in the BHU Calendar Part-I Vol.11 indicates that "where admission is to be made through a competitive test, the Academic Council shall lay down the procedure for admission". While the Special ordinance contained in the BHU calendar Part-I Vol.11 for registration of students to MD/MS/MDS/DM/MCh and MD(Ay.) in the Institute of Medical Sciences makes reference of PG Medical Board in the matter of PG admissions, however, the constitution of the said PG medical Board of IMS and/or its terms of reference/powers have not been clearly spelt out in the available set of Ordinances. Owing to above, it becomes essential that the constitution of the PG Medical Board of the Faculties under the Institute of Medical Sciences and its powers are approved by the Academic Council of BHU.

2. Accordingly, the Director, IMS proposed the constitution of the PG Medical Boards for the three Faculties of the Institute of Medical Sciences as also its powers and duties for consideration of the Academic Council.

RESOLVED THAT, under the provisions of Statute 18 (xxiii), it be recommended to the Executive Council that Post Graduate Medical Boards for the Faculties of Medicine, Dental Sciences and Ayurveda of the Institute of Medical Sciences for considering the matters of admissions to the MD/MS/MDS/DM/MCh and MD(Ay.) as per constitution given below, be approved:

RESOLVED FURTHER THAT the Post Graduate Medical Boards, so constituted, shall have following powers and duties:

(i) Incorporating minor changes (other than the ordinances) in the admission guidelines regarding PG courses.

(ii) Decisions on PG thesis, academic affairs related to P.G. Courses, registration and service conditions of PG Students.

(iii) Time to time revision of admission guidelines of P.G. Courses, if required."

7. The resolution of the Academic Council was approved by the Executive Council on 15 March 2012. On 1 May 2012, a letter was addressed from the office of the Registrar of the University to the Director of the Institute of Medical Sciences apprising him of resolution 57 which considered the constitution and powers of the Postgraduate Medical Board of the Institute of Medical Sciences regarding admission procedure to the postgraduate courses.

8. On 7 November 2013, a meeting was held of the Policy and Planning Committee of the Institute of Medical Sciences chaired by the Director and which was inter alia attended by the Deans of the Faculty of Medicine and of the Faculty of Dental Sciences, besides representatives of the concerned Departments. Item 7 on the agenda related to grant of admission for various Postgraduate Courses in 2013 on the basis of the All India Entrance Examination conducted by the Central Agency. A decision was, accordingly, taken to the effect that admissions for 2014 to the postgraduate courses would be granted on the basis of the All India Examination. The relevant part of the resolution reads as under:

"Item 7 To consider the matter related to admission of MD/MS/Post graduate Diploma Courses-2014 through AIPGMEE 2014 of National Board of Examinations, New Delhi.

After thorough discussion it was unanimously agreed and resolved that the Institute will also take the MD/MS/PG Diploma Courses through AIPGMEE during 2014. The Dean, Faculty of Dental Sciences, IMS, BHU be requested to consider MDS admissions also through AIPGMEE. It was also decided to take admission for MBBS/BDS through All India Entrance Examination conducted by Central Agency."

9. On 26 November 2013, the minutes of the meeting of the Policy and Planning Committee were confirmed.

10. All the sixteen BDS final year students of BHU, including the four petitioners, appeared in the All India Entrance Examination conducted by AIIMS for postgraduate admissions in Medicine and Dental Sciences. The examination was held on 25 January 2014 and results were declared on 5 February 2014. Ten students out of the sixteen were declared successful but the first petitioner failed to obtain the qualifying marks of 50%.

11. On 26 March 2014, a notification governing admissions to the MDS courses for 2014 was issued by BHU stating that the admissions would be granted in order of merit as determined by the marks obtained by the students at the AIPGDEE-2014. Initially, there were nine seats for the MDS in BHU of which five were reserved for the internal candidates of the University and four for other Universities. Subsequently, one more seat has been added and six seats are set apart for internal candidates. The decision which has been taken by the Policy and Planning Committee on 7 November 2013 to grant MDS admissions to the AIPGDEE, has been approved and accepted by the Postgraduate Medical Board of the Faculty of Medical Sciences on 28 April 2014. Counselling is scheduled on 29 May 2014.

12. The first submission is based on the hypothesis that the rules of admission have been changed after the process has begun. The facts which have been recorded in the earlier part of the judgement would indicate that as a matter of fact, this is not the case. The results of the All India Entrance Examination conducted by AIMS were notified on 5 February 2014. On 26 March 2014, BHU issued its admission notification stating that admissions would be granted on the basis of the marks obtained in AIPGDEE. The grievance at the highest could be that this decision of the University should have been notified for the benefit of students before the entrance examination was conducted by AIIMS and not after the examination had been conducted and the results were declared. However, such a grievance cannot be entertained at the behest of the petitioners all of whom have appeared at the All India Entrance Examination in Dental Sciences. As we have noted earlier, the decision to base admissions for the MDS courses for 2014 on the basis of marks obtained in the All India Entrance Examination conducted by AIIMS was taken on 7 November 2013 by the Policy and Planning Committee. Evidently, the students of the BDS course were aware of this decision because all sixteen of them who appeared for the BDS final examination appeared for the All India Entrance Examination as well. The petitioners have appeared at the examination. They cannot complain that they have been deprived of an opportunity to appear in the examination by virtue of the notification which was issued by BHU on 26 March 2014. Hence, we do not find any merit in the first submission.

13. Undoubtedly, the rules of admissions cannot be changed after the process has commenced. The process for admission for BHU commenced on 26 March 2014. Therefore, even as a matter of first principle, we cannot entertain the grievance of the petitioners which is lacking in merit. No change has been made

after 26 March 2014.

14. The second submission would require consideration of the Statutes and Ordinances which hold the field. The Statutes of the Banaras Hindu University inter alia stipulate the functions of the Academic Council. Statute 18(xxiii) confers powers on the Academic Council to appoint committees for admissions to the University. The General Ordinances of the University inter alia contain Ordinance 11 which stipulates that where admission is to be made through a Competitive Test, the Academic Council shall lay down the procedure for admission. The Ordinances of the University governing the MD, MS, MDS, DM and MCh Courses inter alia confer powers on the Postgraduate Medical Board of the Institute to admit candidates on merits. The criterion of determining merit is to be framed by the Postgraduate Medical Board whose decision in all matters of registration is to be final.

15. In the present case, as the narration of the facts would indicate, the Academic Council on 5 March 2012 passed a resolution by which it spelt out the constitution of the Postgraduate Medical Board for the three Faculties under statute 18(xxiii). The Academic Council further resolved that the powers and duties of the Postgraduate Medical Board would extend to incorporating minor changes in the admission guidelines regarding postgraduate courses and to revise from time to time the admission guidelines of postgraduate courses, if required.

16. Undoubtedly, no power has been conferred to amend the Ordinances. The resolution of the Academic Council was confirmed by the Executive Council on 15 March 2012. On 7 November 2013, the Policy Planning Committee resolved that admissions to the MDS courses would be granted for 2014 on the basis of the AIPGDEE. This resolution of the Policy and Planning Committee has been duly confirmed by the Postgraduate Medical Board of the Faculty of Dental Sciences on 28 April 2014.

17. In the circumstances, the decision to grant admissions to the MDS courses on the basis of the All India Entrance Examination for Postgraduate Courses in Dental Sciences conducted by the All India Institute of Medical Sciences cannot be faulted. The decision is not ultra vires the powers of the Authorities of the University. The decision which has been taken by the Policy and Planning Committee has been duly approved by the Postgraduate Medical Board. The Postgraduate Medical Board was sufficiently authorized by the resolution of the Academic Council.

18. Above all, the Court must be guided by the fact that grant of admission to the MDS Course will be on the basis of the merit obtained in a nationally recognized entrance examination conducted by the All India Institute of Medical Sciences. All the petitioners had an even chance of applying for admission and have appeared in the examination. Counselling is to take place on 29 May 2014.

19. In the circumstances, no case for interference under Article 226 of the

Constitution is made out. The petition is, accordingly, dismissed. There shall be no order as to costs.