
(2003) 11 GAU CK 0039
In the Gauhati High Court
Case No : WP (C) No. 8674 of 2003

Piyush Madhukar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 658 : (2005) GLT 556 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B.K. Mahajan, A.M. Bazarbarua Rafique, R.K. Pradhan, A. Choudhury and D. Bagchi, for the Appellant; P.K. Mushahary, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The petitioner appeared in the Joint Admission Test for admission to the first year MBBS course in the Medical Colleges of the state. The result of the aforesaid test which was held sometime in the month of May, 2003 was declared in the newspapers on 12.7.2003 and name of the writ petitioner (Piyush Madhukar) appeared in the select list of candidates called for interview. The interview which was scheduled to be held on 19.7.2003 was deferred to 13.8.2003. On the said date, the petitioner could not appear in the interview on account of illness and his attempts to be interviewed on a subsequent date not being successful he approached this court by filing WP(C) 6765/03. This court by order dated 8.9.2003 accepted the contentions of the petitioner and directed that the interview of the petitioner be held on 10.9.2003. On the aforesaid date, i.e., 10.9.2003, the petitioner appeared before the Interview Board and in the process that followed, an anomaly was detected in the Permanent Resident Certificate (PRC) of the petitioner in so far as column pertaining to the name of the father of the petitioner is concerned. The petitioner, according to the Respondents, gave a statement in writing before the Interview Board to the effect that his father did not reside in Assam and except for his uncle, one Mohan

Singh, who was working in Chandrapur from 1967, all his family members reside in Bihar. In the aforesaid statement, the petitioner had further stated that he had passed his Matriculation and Intermediate Examinations from Katihar in Bihar. Thereafter, by an order dated 30.9.2003, the authority acting on the basis of the discrepancies in the PRC submitted by the petitioner as well as statement of the petitioner recorded in writing on 10.9.2003, refused admission to the petitioner. On the next date, i.e., 1.10.2003, the petitioner submitted a representation to the Director, Medical Education enclosing a fresh PRC showing the name of the petitioner's father correctly. In the said representation dated 1.10.2003, the petitioner prayed for an appropriate order from the Director of Medical Education for his admission in the first year MBBS course. As the aforesaid representation of the petitioner was not disposed of by the authority, the present writ application has been filed on 15.10.2003 seeking intervention of this court so as to facilitate the admission of the petitioner, as aforesaid.

2. Mr. A.M. Buzorbaruah, learned counsel appearing for the petitioner, in support of the challenge made in the present Writ Application, has argued, by referring to the statements made in the writ petition, that the discrepancies in the PRC, which was filed by the petitioner along with his admission form was on account of a clerical mistake committed by the issuing authority and that the petitioner was born in Chandrapur in the year 1980 and had lived there continuously except for the period 1993-1997 during which period the petitioner was in Bihar in connection with his studies. Learned counsel has further argued that the statement made by the petitioner on 10.9.2003, which has been relied upon in refusing admission to the petitioner, was obtained under coercion and the said statement was not voluntarily made. That apart, learned counsel has argued that though the petitioner was interviewed on 10.9.2003, the result of the said interview, i.e., whether the petitioner is eligible for admission or not should have been announced within a reasonable time before the deadline fixed by the Medical Council of India for medical admission, i.e., 30.9.2003. Instead, the respondents waited till the last date, leaving the petitioner with no alternative but to approach the authority after the cut off date for admission. In such a situation, learned Counsel submits, the cut off date fixed by the Medical Council of India ought not to operate as bar for the admission of the petitioner. It is the further submission of the learned counsel for the petitioner that in view of the fresh PRC submitted by the petitioner on 1.10.2003, he would be entitled to admission and therefore, this court should issue appropriate directions to that effect.

3. Mr. P.K. Mushahary, learned senior Govt. Advocate, Assam, while controverting the submissions advanced on behalf of the petitioner, has submitted that the documents on record particularly the averments made in para 10 of the writ petition, would clearly go to show that the petitioner is not a permanent resident of Assam ; neither is his father a permanent resident of the State. Except for the uncle of the petitioner who has been residing in Chandrapur since the year 1967, the entire family of the petitioner, on the admitted facts of the case, reside in the

State of Bihar and the petitioner having received his education in Bihar would not be entitled to be recognized as a permanent resident of the State of Assam. Learned Senior Govt. Advocate, Assam has further contended that the PRC issued in the present case in favour of the petitioner would not stop the authorities of the Directorate of Medical Education, to be independently satisfied as regards the residential status of the writ petitioner and the totality of the facts of the case having indicated that the petitioner is not a permanent resident of Assam, no fault can be found in the impugned order dated 30.9.2003. That apart, it is submitted by the learned senior Govt. Advocate that Medical Council of India having fixed 30.9.2003 as the ultimate date for all admissions to the First year MBBS course for the session 2003-2004, no admission beyond that date would be permissible.

4. Elaborate arguments have been advanced by the learned Counsel for the parties on the power of the writ Court to direct mid stream admissions. Mid stream admissions, to a highly professional course like MBBS, has received the repeated attention of the Apex Court in a number of cases. Grant of belated mid stream admissions, while being consistently deprecated, directions to implement a definite time schedule for admission, have come in the case of Medical Council of India Vs. Madhu Singh and Others, The direction of the Apex Court in the aforesaid case may be set out here under.

"Para 23. There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

In conclusion

- (i) There is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education ;
- (ii) Even if seats are unfilled that cannot be a ground for making mid-session admissions ;
- (iii) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year ;
- (iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission ;
- (v) Different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time ;
- (vi) No variation of the schedule so far as admissions are concerned shall be allowed ;
- (vii) In case of any deviation by the institution concerned, action as prescribed

shall be taken by MCI."

5. Pursuant to the said directions of the Apex Court, a time schedule has been fixed by the MCI by issuing an office memorandum on 11.2.2003. It would also be appropriate to set out the aforesaid time schedule as framed by the MCI :

"After deliberations and considering the aspects relevant thereunder, the General Body decided to lay down the following schedule for admission to 1st year MBBS course.

1. The results of the qualifying examinations and/or undergraduate entrance tests conducted by all the examining authorities concerned shall be declared on or before 15th June of the concerned year.

2. The admission including counseling thereof be completed by all the admitting authorities and agencies on or before 31st of July of the concerned year.

3. The academic session for the admitted students to commence in all the teaching institutions on 1st of August of the concerned year.

4. The resultant/consequential admissions for any or all the arising reason shall be completed by 30th of September of the concerned year.

5. No admission shall be made by the admitting agency beyond 30th of September of the concerned year."

6. In the time schedule framed by MCI pursuant to the Apex Court order, 30.9.2003 has been stipulated as the ultimate date for all MBBS admission though the date fixed for commencement of the course is 1.8.2003. The ultimate date, i.e., 30.9.2003, fixed by the MCI, therefore, permits limited midstream admissions, a course, possibly adopted by the MCI due to the compulsion and necessities inherent in the admission process and the limited flexibility of the directions of the Apex Court in Madhu Singh (supra), as perceived by the MCI.

The rigidity/sanctity of the ultimate date fixed by the MCI, therefore will depend on whether grant of midstream admission will violate the basis of (he decision of the Apex Court judgment in Madhu Singh (supra) and the provisions of the Regulations framed by the MCI as noted in the judgment of the Apex Court. The aforesaid question can only be answered, inter alia, on consideration of the date of commencement of the course and the stage to which it has advanced. As there can be no hypothetical assumption that the MBBS course, all over the country, has commenced with effect from 1.8.2003 as fixed by the MCI, the question, as noted above, will have to be answered in the facts of each case that may come up for adjudication before the writ court. However, the aforesaid question will arise only if the concerned candidate, before the court, had been arbitrarily denied/refused admission, a question to which this court would now be required to turn to.

7. The mistake in the PRC of the petitioner submitted along with the admission form is an admitted fact. No admission to the petitioner could have been granted

on the basis of the defective PRC. The petitioner contends that the statements allegedly made by him which have recorded in writing on 10.9.2003, were obtained under duress. The mistake in the PRC filed by the petitioner which was detected at the time of scrutiny of his certificates and testimonials at the time of the interview held on 10.9.2003 as well as circumstances under which the statement dated 10.9.2003 was recorded, as has now been alleged, could have been pointed by the petitioner on any day after 10.9.2003. After all the mistake in PRC of the petitioner detected in the course of the interview must have been known to him at the time of the interview itself. Yet the petitioner did not take any steps in this regard and waited until the impugned order dated 30.9.2003 was issued. While the action of the authority in issuing the order refusing admission to the petitioner on the last date, i.e., 30.9.2003 can certainly not be appreciated, the conduct of the petitioner in not taking prompt steps to cure the defects in the PRC and to disown the statements attributed to him, also cannot be appreciated. As a prudent person seeking admission to a highly competitive professional course much more positive action would be expected of the petitioner, and his inaction in the matter would throw serious doubt on the correctness of the stand now sought to be advanced before the court.

8. Ordinarily, a PRC issued by the authorized functionary must be accepted by the authority responsible for Medical Admission, unless there are overwhelmingly strong and compelling reasons for having a second look in the matter. Thus, though the authority responsible for admission cannot sit in judgment on the correctness of a PRC issued by a Competent Authority, a limited liberty must be conceded to the authority to test the veracity of the PRC in the light of the weight of the materials on record. The authority having done that and having passed the impugned order dated 30.9.2003 and further having indicated its stand with regard to the subsequent PRC dated 1.10.2003 before this court, I am of the considered view that having regard to the weight of the materials on record, the balance tilts in favour of the respondents and the facts of the present case does not justify grant of admission to the petitioner to the first year MBBS course. The writ petition therefore is found to be without merit. It is accordingly dismissed. However, having regard to the facts and circumstances of the case there shall be no order as to costs.