

(2012) 03 JH CK 0178
In the Jharkhand High Court
Case No : L.P.A. No. 352 of 2011

Pragya Manini

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 2 JCR 656 : (2012) 3 JLJR 394

Hon'ble Judges : Prakash Tatia, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Sumeet Gadodia and Mr. J.J. Sanga, for the Appellant; Ajit Kumar, AAG and Mr. A.K. Mehta, for the Respondent

Judgement

1. The petitioner initially sought interpretation in the writ petition by which he could have got the benefit in the Clause-5.5(II) of Medical Council of India Regulations, 1997. The learned Single Judge hits relied upon a judgment of Hon"ble Supreme Court delivered in the case of Chowdhury Navin Hemabhai and Others Vs. The State of Gujarat and Others, and a portion of which has been quoted by the teamed Single Judge, which is reproduced here again:

It will be clear from a careful reading of this clause of the Medical Council of India Regulations that candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must have secured 40% marks in Physics, Chemistry and Biology taken together in both the qualifying examinations and must also secure 40% marks in the competitive examination on the basis of which admission to the MBBS course is being made in a State.

Learned counsel for the petitioner submitted that subsequent to the decision of this Court, which is impugned, the State Government itself has requested to Medical Council of India to interpret the said Regulation in a manner that the merit be declared by clubbing the marks of the qualifying examination and competitive examination and therefore, the appellant after the impugned judgment, wants to amend the writ petition so as to challenge even the validity

of the Clause 5.5(II) of the Medical Council of India Regulation, 1997.

2. It is not in dispute that it was the case of admission in the Medical Colleges and the admission was related to the year 2011 -2012. The last date of admission was 30.09.2011 which is already over six months ago. Not only this, the petitioner initially wanted to take benefit of Regulation 5.5.(II) of the said Regulation and when judgment went against him, petitioner prefers this L.P.A. and now seeking amendment in the writ petitioner to challenge the validity of Clause 5.5.(II) of the said Regulation. The parties can take alternate plea. However, it depends upon the facts of each case. The petitioner in writ petition could have taken the plea but he did not choose to do so. Here, in this case, it was an issue of admission to the Medical Colleges wherein time schedule is important Therefore, at this belated stage, after ending the battle of first round, we do not find any just reason to permit the petitioner to challenge the validity of said Regulation in this L.P.A. Therefore, the amendment application is dismissed.

3. So far as the issue which was under consideration before the learned Single Judge is concerned, that has already been answered by Hon"ble Supreme Court in the case of Choudhury Navin Hemabhai and others(supra) and therefore, we do riot find any illegality in the impugned judgment of the learned Single Judge.

4. Learned counsel for the appellant submitted that since the question of validity of Clause 5.5.(II) of the Regulation of 1997 has not been the subject matter in the case of Choudhury Navin Hemabhai and others(supra) or before the learned Single Judge and in view of the rejection of the petition for amendment in the writ petition, it is not the issue before the Division Bench also, therefore, the petitioner may be given liberty to challenge the validity of the Clause 5.5.(II) of the Medical Council of India Regulation, 1997.

6. If law permits the petitioner will be free to challenge the said Regulation of 1997. With these observations, as made in the last paragraph, this L.P.A. is disposed of.