
(2009) 03 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16573 of 2008

Prity Ranjan

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Citation : (2009) 3 PLJR 242

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Pushkar Narain Shahi, Ritesh Kumar No. 1 and Nishant Choudhary, for the Appellant; Sudhir Singh, Asstt. Solicitor General of India, Sarvadeo Singh, SCCG and Vinay Krishna Tripathy, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Pushkar Narain Shahi for the petitioner, Mr. Sarvadeo Singh, learned Counsel for the Central Government for respondent Nos. 1 to 3, and Mr. Binay Krishna Tripathi for respondent No. 4. This writ petition has been preferred for a direction to respondent Nos. 1 to 3 to admit her to the MBBS Course against the 15% quota of the Central Government in All India Pre-Medical/ Pre-Dental Entrance Examination 2008. Respondent Nos. 1 to 3 have placed on record their counter affidavit as well as additional counter affidavit.

2. The basic facts essential for the disposal of this writ petition are not in dispute and may be indicated. Respondent No. 4 issued advertisement for conducting the selection process for admission to Medical Colleges of different States on centralized basis. 15% of the total number of seats is reserved for allotment by the Central Government. A photocopy of the prospectus is marked Annexure 1 to the writ petition. The selection process was for admission to the Degree Course for MBBS, and Degree Course for Bachelor of Dental Surgery (BDS) Examination, and the last date for submission of application forms was 28.11.2007. The preliminary examination was scheduled to be held on 6.4.2008, and the final examination on 11.5.2008. The admission was for the academic year 2008-2009.

The petitioner is an applicant and belongs to the unreserved category, and stood at sl. No. 2841 of the merit list. The petitioner's first choice was MBBS Course, and did not get the same upto the second stage of counselling prescribed under the prospectus. She was, however, given a seat in the BDS Course in the Patna Dental College which she is currently pursuing. It appears that all the seats of the 15% quota of the Central Government were not filled up even after holding the second round of counselling which gave rise to Writ Petition (Civil) No. 375 of 2008 in the Supreme Court. The apex court noted in its order dated 28.8.2008 (Annexure V), that a few of the Government Medical Colleges of different States had not provided the particulars to respondent No. 3 as a result of which some of the seats of the Central Government quota could not be filled up. The Supreme Court, therefore, directed the Director of Health Services to ensure receipt of informations from different colleges and admission within the time frame indicated therein. In order to expedite all the admissions at once, the Supreme Court directed to relay the information of the extended counselling over the website. The petitioner was not aware of the extended counselling and, therefore, could not be admitted. The net result is that a number of candidates of the Unreserved/General category, who stood lower in the merit list than the petitioner, have been admitted. One such list of the students admitted as per the extended counselling is set out at page 48 of the paper book, and is reproduced hereinbelow for the facility of quick reference:

DAILY COMPOSITE ALLOTMENT LIST OF COLLEGES FOR MBBS/BDS COURSES

DATE : 14/9/2008

SR. No.

RANK

NAME

SEX

STATUS

FROM

To

TIME OF ALLOTMENT

COURSE CODE

COURSE COLLEGE CODE/NAME

1

UR-3304

GAYATRI GANESH

F

C

BDS DMA4/NAIR DC, MUMBAI

10:49:14 PM

2

UR-3306

ERIKA PAHUJA

F

C

BDS DP01

MBBS TN11/THOOTHUKUDI GMC, THOOTHUK

10:54:19 AM

3

UR-3307

NEHA BHARTI

F

C

BDS DP01

MBBS TN11/THOOTHUKUDI GMC

10:56:20 AM

4

UR-3311

DILIP KUMAR PADHI

M

C

MBBS TN11/THOOTHUKUDI GMC

10:58:14 AM

5

UR-3314

MAYANK KOHLI

M

R

REJECTED BY THE CANDIDATE

10:59:37 AM

6

UR-3326

RADHE SHYAM

M

C

MBBS TN15/GDMC, DHARMAPURI

11:01:34 AM

7

UR-3335

CHITRA SHAMBHAVI

F

C

BDS DKA2

MBBS TN15/GDMC, DHARMAPURI

11:24:13 AM

8

UR-3340

PRANAV MOHAN SINGHAL

M

C

BDS DAS1

MBBS UK02/UT FHTMC, HALDWANI

11:34:30 AM

9

UR-3348

KAVITA GUPTA

F

L

MBBS NNO1/RIMS, IMPHAL

12:17:00 PM

10

UR-3353

RIDHIMA SAKHUJA

F

A

ABSENT

11:44:05 AM

11

UR-3354

DIPTI GAUTAM

F

C

BDS DRA1/GDC & HOSPITA, JAIPUR

11:47:08 AM

12

UR-3363

AKRITI

F

A

ABSENT

11:49:58 AM

13

UR-3364

RAVI KUMAR

M

C

BDS DRA1/GDC & HOSPITAL, JAIPUR

01:40:45 PM

14

UR-3367

ASHU KHATKAR

F

C

MBBS TR01/AGMC, AGARTALLA

11:51:54 AM

15

UR-3368

OLIVIA ELIZ BABU

F

C

MBBS TN15/GDMC, DHARMAPURI

11:56:16 AM

16

UR-3369

VIJAY KUMAR

M

C

BDS DAS1

MBBS TN15/GDMC, DHARMAPURI

11:58:27 AM

17

UR-3376

RAVINDER

M

C

BDS DAS1

MBBS TR01/AGMC, AGARTALLA

11:59:08 AM

18

UR-3379

JITENDRA TAMOLI

M

L

BDS DRA1/GDC & HOSPITAL, JAIPUR

12:19:31 PM

19

UR-3382

HARI MOHAN GARG

M

C

MBBS TN15/GDMC, DHARMAPURI

12:01:13 PM

20

UR-3384

DEEPIKA VYAS

F

C

BDS DAS1

MBBS TN15/GDMC, DHARMAPURI

12:04:31 PM

Column No. 2 indicates the position in the merit list all of whom are below the petitioner who stands at sl. No. 2841.

3. Learned Counsel for respondent Nos. 1 to 3 submits that there may be difficulty in admitting the petitioner to the academic year 2008-09 at this belated stage. Learned Counsel for the petitioner submits that she is prepared to take the risk of admission in the current academic session and submits, in the alternative, that she may be admitted to the MBBS Course for the academic year 2009-10.

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The most important aspect of the matter with its over-arching presence is that the petitioner lost the opportunity of admission to the MBBS Course for reasons entirely attributable to the respondent authorities. It is evident from a plain reading of the order of the Supreme Court that a number of seats of the Central Government quota could not be filled up upto the stage of second counselling because the Principals of various Government Colleges had failed to provide the requisite particulars as a result of which the Central Government could not determine the number of seats available to it for allotment. Had these particulars been furnished in time, the petitioner would have been admitted upto the second stage of counselling which she had pursued vigorously. She could not be admitted because of absence of information regarding the available seats. It is in that background that the Supreme Court had set down a schedule for respondent Nos. 1 to 3 for admission to the unfilled seats. It is indeed correct to state that the Supreme Court, in order to expedite the process put emphasis on relaying the informations over the website. However, we cannot lose sight of the following clause occurring in the prospectus:

CBSE will continue to send results to the meritorious/wait listed candidates through Speed post/Registered mail/courier depending on the circumstances.

It is thus evident that it was incumbent on the respondent authorities to inform the petitioner that she can take her turn for admission to the MBBS Course by information to her through speed post/registered mail/courier service. It was all the more essential at this stage because the candidates must have thought that admissions have closed. The admitted position is that the respondent authorities did not resort to these methods of personal service and remained content by relaying the information of the extended counselling over the website, which was obviously over and above the enumerated methods. We cannot lose sight of the fact that the petitioner is the daughter of a class III employee of the Patna University and may not, therefore, be in possession of a computer. It further appears from the counter affidavit that quite a few seats are still available in the Patna Medical College Hospital. It is relevant to mention that by order dated 24.11.2008, passed in the present writ petition, the respondents were directed to keep one seat of the MBBS Course vacant for the petitioner. The petitioner is otherwise entitled for admission. It is not possible to countenance the injustice meted out to the petitioner.

5. Learned Counsel for the petitioner has rightly relied on a Division Bench judgment of this Court in *Khushboo Sharivastava Vs. The Union of India (UOI) and Others* of which are relevant and are reproduced hereinbelow:

16. Mr. Singh, submits that the petitioners did what was possible for her to do. According to him, the result was published on 5th of June, 2007 and petitioner without waiting presented the writ petition before this Court on 13 of June, 2007 and after it was processed, filed on 3rd of July, 2007 and therefore learned Single Judge on its own finding ought to have directed for admission. Mr. Tripathi,

however, submits that at such a distance of time it would be inexpedient to direct for her admission.

17. We have given our anxious consideration to this aspect of the matter. In case, we show door to the petitioner and decline her relief, the very system will be put to ridicule. The petitioner has approached this Court within 8 days of the publication of the result. It was not possible for her or for that matter any litigant to force the Court to hear the matter immediately. Systematic delay occurs and for that blame cannot be put on the petitioner. It is well settled that no citizen can be allowed to suffer for act of other. Had the writ petition heard within the reasonable time from the date it was filed, perhaps this argument would not have been available to the respondents.

18. Taking into consideration the aforesaid facts, we are not inclined to decline the relief to the petitioner only on the ground that much time has elapsed in the face of finding that she is otherwise entitled. A Division Bench of this Court when confronted with such a situation in the case of *The Bihar Combined Entrance Co. Vs. Vishakha Gupta*, directed as follows:

In the circumstances, in our opinion, it will be just and proper to direct the respondents-appellants to grant admission of the writ petitioner-respondent, to the MBBS for the Session 2007-08, if necessary, by raising an additional seat for her. This is necessary because the respondents have admitted next candidate in order of merit to MBBS course, but since she has not been impleaded and has already gone some length in course, it will be unjust to dislodge her without hearing her. Moreover, it is not a case in which any irregularity of general Rules has taken place affecting a large number of candidates but is in the nature of one isolated case.

19. Such a direction has been given by the Supreme Court in the case of *Aman Deep Jaswal v. State of Punjab and Ors.* reported in (2006) SCC 597 which would be evident from paragraph 4 of the judgment:

On these peculiar facts, we are of the view that the appellant Aman Deep Jaswal is entitled to be admitted in MD Anaesthesia in Government Medical College, Patiala in the next academic year 2006-07 within the sanctioned intake of the college. Ordered accordingly.

20. In the facts of the present case, we are of the opinion that the petitioner deserves to be admitted in MBBS course in the next academic session 2009-10. We direct accordingly.

In the present case, therefore, we direct respondent Nos. 1 to 3 to admit the petitioner in the MBBS Course in the Patna Medical College.

6. The next question which arises for consideration is whether the petitioner should be permitted admission to the MBBS Course in the academic session 2008-09, or 2009-10. Quite a few factors persuade me to direct that the petitioner should be admitted to the academic session 2008-09. The petitioner is

already pursuing the degree course for BDS. The curriculum of the first year of the two courses are a good deal in common. I, therefore, see no difficulty for the petitioner in switching over to the MBBS course. Secondly, the petitioner is prepared to take the risk, coupled with her hard work and confidence, of seeking admission midstream in the current academic year. Thirdly, she has been deprived of the admission for reasons entirely attributable to the respondent authorities. Fourthly, both the colleges are situate in Patna. Fifthly, the petitioner is the daughter of an indigent class III employee of the Patna University. Therefore, every effort has to be made so that the family is not required to bear the extra burden of one year more of education, and clearly avoidable wastage of money. I am, therefore, clearly of the view that the petitioner should be admitted to the MBBS Course of the Patna Medical College under the Central Government quota of 15% for the academic year 2008-09. It is made clear that extra classes shall not be held for her, she shall join the course forthwith, and shall be allowed remission of the proportionate percentage of attendance. The petitioner agrees to pay the admission charges, tuition fees since commencement of the session, and other incidental charges leviable as per the established procedure. She shall be allowed to join the course within a period of two weeks from today.

7. The writ petition is accordingly allowed. Let copies of this judgment be handed over to the learned Counsel for the parties forthwith.