
(2013) 08 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 2051 of 2013

Ratnanjali Mishra and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 08 UK CK 0002

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Advocate : Sharad Sharma, with Mr. J.S. Bisht and Ms. Vandana Singh, for the Appellant; Paresh Tripathi, Addl. Chief Standing Counsel for State/respondent nos. 1, 2 and 3, Mr. V.B.S. Negi and Mr. Rajendra Dobhal with Mr. Shailendra Singh and Mr. G.D. Joshi, Advocates for respondent No. 4/College and Mr. Parikshit Saini, Advocate for respondent No. 5/Medical Council of India., for the Respondent

Judgement

V.K. Bist, J.—By way of instant petition, the petitioners are challenging the impugned letter dated 22.08.2013 issued by Principal, Guru Ram Rai Institute of Medical & Health Sciences/respondent no. 4 (hereinafter referred as to the College) by which he has informed the Director General/Chairman, Uttarakhand P.G. Counseling Board-2013 that admission against State quota has already been given by the College. Further prayer has been made seeking direction to the College to grant admission to the petitioners in their post graduate courses on the basis of the allotment made by the Uttarakhand Counseling Board, 2013. The Uttarakhand Counseling Board issued allotment letter to the petitioners on 23.08.2013 by provisionally allotting seat in M.S./M.D. course asking them to contact the Principal of the College and complete the admission formalities. In the said allotment letter, last date for joining the course was given as 26th August, 2013. When the petitioners contacted the College, they were not given admission and under the said compelling circumstances, they approached this court and filed writ petition on 26.08.2013. On that day, the case was adjourned for 29th August, 2013 and the counsel for the respondents were directed to seek

instructions in the matter before that day. On 29.08.2013, the matter could not be heard and the case was directed to be listed on 30.08.2013 immediately after fresh cases.

2. Counter affidavit filed on behalf of respondent no. 4 in the Court today. Same is taken on record.

3. Learned Senior Advocate by referring the judgment of Hon''ble Supreme Court in the matter of Writ Petition (Civil) No. 379 of 2013 "Nikhil Himthani vs. State of Uttarakhand and others", prayed that interim relief application should be heard today, as in the said case, Hon''ble the Supreme Court has directed to re-do admission of P.G. medical course by the end of August, 2013 and, in case the interim order is not granted before 31st August, 2013, the writ petition would render infructuous.

4. I have heard Mr. Sharad Sharma, Senior Advocate with Mr. J.S. Bisht and Ms. Vandana Singh, Advocates for the petitioners, Mr. Paresh Tripathi, Addl. Chief Standing Counsel for the State/respondent nos. 1, 2 & 3, Mr. V.B.S. Negi, Senior Advocate and Mr. Rajendra Dobhal, Senior Advocate with Mr. Shailendra Singh and Mr. G.D. Joshi, Advocates for respondent no. 4/College, Mr. Parikshit Saini, Advocate for respondent no. 5/Medical Council of India and perused the record.

5. Learned Senior Advocate appearing for the petitioners referred Clause 9(vi) of Post Graduate Medical Education Regulation-2000, as amended on 27th December, 2010, which provides that in non-Government Medical College/ Institutions 50% of the total seats shall be filled up by State Government or the authority appointed by them and the remaining 50% of the seats shall be filled by concerned Medical College/Institutions on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test.

6. Learned Senior Advocate for the petitioners submitted that Clause 1, 2 & 3 of the Eligibility Criteria in the Information Bulletin for the Session 2013 was challenged before the Supreme Court in Writ Petition (Civil) No. 379 of 2013 in which an interim order was passed by Hon''ble the Supreme Court on 26th June, 2013 staying the admission process of the Post Graduate Medical Courses and also directing that admissions already given will not be given effect to.

7. On the basis of the above submissions, learned Senior Advocate for the petitioners contended that since there was an interim order passed by the Supreme Court in the matter of Nikhil Himthani, the respondent-College should have waited for the decision in the writ petition and should not have granted admission to anybody, but the respondent-College in violation of the order passed by Hon''ble the Supreme Court in the matter of Nikhil Himthani, granted admission to the various candidates of P.G. course, even without waiting of the judgment of Hon''ble the Supreme Court.

8. They further submitted that the respondent-College has granted admission even against 50% seats fixed for State quota. He contended that such

admissions which were granted in violation of the interim order dated 26.06.2013 passed by Hon''ble Supreme Court, are not valid admission.

9. Learned Senior Advocate for the petitioners then submitted that since the petitioners were given admission to P.G. course on the basis of merit under State quota and were allocated the respondent-College, the College should be directed to grant admission to the petitioner.

10. During the course of arguments, learned Senior Advocate appearing for the College vehemently opposed the grant of interim order. Their first submission is that the petition is not maintainable, as the petitioners have not impleaded the candidates who have been given admission in P.G. course, and incase some order is passed in favour of the petitioners, such persons will adversely affected.

11. Second contention of the Senior Advocates for the respondent-College is that the Hon''ble Supreme Court in the matter of Nikhil Himthani has directed to publish fresh Information Bulletin and re-do admission to the Post Graduate medical courses in the Govt. Colleges of State of Uttarakhand in accordance with law by the end of August, 2013. It is submitted that Hon''ble the Supreme Court has simply directed to re-do the admission to the Post Graduate medical courses in the Government Colleges only and there is no such direction in respect of private medical colleges and in view of the directions issued by the Hon''ble Supreme Court, the petitioners are not entitled for admission in P.G. course.

12. Learned Senior Advocate appearing for the College further submitted that in Mrudul Dhar's case the Hon''ble Supreme Court vide order dated 28th May, 2013 passed in IA No. 27-28 in Writ Petition (c) No. 306 of 2004 the Hon''ble Supreme Court issued direction to all concerned to conclude the admission process for the session 2013-14 before 31 July, 2013 and the College, in compliance of the directions issued by Hon''ble the Supreme Court in Mrudul Dhar's case, granted admission in P.G. course against the management quota as well as State quota. It is further submitted that there is no illegality on the part of the College by filling up 100% seats in P.G. course, as same was done in compliance of the order passed by Hon''ble the Supreme Court in Mrudul Dhar's case. Learned Senior Advocates for the College lastly submitted that in any case, the date extended by Hon''ble the Supreme Court is in respect of Govt. medical colleges only. It is also submitted that interim order will be in violation of the interim order granted by Hon''ble the Supreme Court in which the Supreme Court has held that no interim order should be granted having effect of final relief.

13. Mr. Paresh Tripathi, learned Addl. Chief Standing Counsel for the State submitted that the respondent-College acted in gross violation of Medical Council of India Regulations, directions issued by the State Government to the College from time to time and also the interim order of Hon''ble the Supreme Court dated 26th June, 2013 in the matter of Nikhil Himthani. He submitted that the respondent-College was informed by Secretary, Medical Health about the order passed by Hon''ble the Supreme Court and was asked not to give any admission

in the P.G. course.

14. He also submitted that admission granted by the respondent-College against the State quota were cancelled by the Government vide order dated 22nd August, 2013 and in view of this order, there is no need to implead candidates who were given admission by the respondent-College in P.G. course. He submitted that even otherwise, the admissions were against the order of Hon''ble the Supreme Court.

15. Learned Addl. C.S.C. also referred the Regulations of Medical Council of India and submitted that as per said Regulations, the admissions given against the State quota should be filled first and only thereafter, the admissions can be made against the management quota. He further contended that order of Hon''ble the Supreme Court was in regard to the challenge of condition under the State quota in the private colleges and, therefore, the argument advanced on behalf of the respondent-College that direction was issued only in respect of Govt. Medical Colleges, is not correct.

16. Mr. Parikshit Saini, Advocate for the Medical Council of India submitted that since conditions of clause 1, 2 & 3 of the Information Bulletin were under challenged in the writ petition of Nikhil Himthani, the stay granted by Hon''ble the Supreme Court was complete and was not only in respect of Govt. Medical Colleges. He also submitted that as per the Regulation-9 of Regulations-2000, 50% of the seats are to be filled up through State quota and 50% through management quota. He submitted that these seats should be filled subject wise and not by putting all subjects together. He referred annexure-4 of the counter affidavit issued by the Principal and submitted that the respondent-College has wrongly allocated seats of all important subjects to the College.

17. I have carefully considered the arguments advanced by the respective parties. It is true that in normal course no interim order should be granted, giving final relief to the writ petitioner, but this is a special case. In this case, if I do not consider the application of the petitioners for grant of interim relief, in that event, the petition itself will render infructuous by tomorrow. Though, the learned Senior Advocate appearing for the respondent-College argued that the petition is not maintainable, as the petitioners have not impleaded the candidates who have been given admission in P.G. course, the petition should not be entertained on this ground alone, but considering the fact that interim order was passed by Hon''ble the Supreme Court on 26th June, 2013 in the matter of Nikhil Himthani and also considering the fact that the interim order does not say anything about Govt. Medical Colleges only and also considering the fact that the Clause 1, 2 & 3 of the Information Bulletin was challenged before Hon''ble the Supreme Court, further considering the fact that on 22nd August, 2013 the State Government has cancelled the admission of candidates selected in violation of the Supreme Court's order, I am entertaining the writ petition.

18. Regulation 9(vi) of the Regulations-2000 clearly provides that 50% seats

should be filled through State quota and remaining 50% from management quota. Thus it was obligatory on the part of the respondent-College not to fill 50% seats earmarked for State quota. The respondent-College acted illegally by admitting the candidates in P.G. course, during the period when interim order passed by Hon"ble the Supreme Court was in operation. Nobody knows about the fate of writ petition and it cannot be argued that the order passed by the Court should not be followed till final decision comes. The moment interim order is passed by the Court, every concerned party is bound to obey the order passed by the Court. In the present case, I have no hesitation to say that the respondent-College acted in violation of the order passed by Hon"ble the Supreme Court in the matter of Nikhil Himthani.

19. Now whether in such circumstances, interim order should be granted in favour of the petitioners or not is to be seen. It is not disputed that the petitioners are higher on merit. It is also not disputed that the State Counseling Board has granted admission to the petitioners and allotted the respondent-College. Moreover, the petitioners should not suffer due to pendency of the writ petition. They are higher in merit. They deserve admission in P.G. course. So far the judgment of Hon"ble the Supreme Court that no relief should be given which amount to final relief is concerned, with deep respect to the judgment of Hon"ble the Supreme Court which is binding, but considering the peculiar facts and circumstances of the case in hand and taking into consideration that the Chairman Uttarakhand PG Counseling Board has issued the allotment order in favour of the petitioners and also considering the fact that incase, no interim relief is granted to the petitioners at this stage their petition will be rendered infructuous, I direct the respondent-College to grant provisional admission to the petitioners before 31st August, 2013.

20. Since Shri Rajendra Dobhal, Senior Advocate has accepted brief on behalf of respondent-College, he will inform the respondent-College for providing provisional admission to the petitioners by tomorrow.

21. Let the matter be listed for final hearing on 11.09.2013.

22. Stay applications (CLMA No. 9074/13) stands disposed of. Let certified copy of this order be supplied to the counsel for the petitioners, today itself, on payment of usual charges.