
(2015) 10 MP CK 0004
In the Madhya Pradesh High Court
Case No : W.P. No. 6637 of 2015

Shraddha and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 J LJ 204 : (2015) 4 MPLJ 670

Hon'ble Judges : Sheel Nagu and Rohit Arya, JJ.

Bench : Division Bench

Advocate : Shashank Shekhar, for the Appellant; Vivek Khedkar, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—The present petition under Article 226 of Constitution of India assails the Annexure P-1 dated 21-9-2015, by which the Dental Council of India in its executive meeting held on 5-8-2015 in Delhi decided to discharge all 100 students (which includes 67 petitioners herein) admitted in the BDS Course in the academic Session 2014-2015. The reason assigned for passing the said impugned order is that admissions of these petitioner students was made solely on the basis of the marks obtained by them in the Class 12th Examination under the 10+2 pattern, without the students appearing and qualifying in the competitive exam which is mandatory as per the selection procedure prescribed in the revised BDS course Regulations amended w.e.f. 1-6-2012 [date of publication in the Gazette of India (Extraordinary)] and made applicable from academic session 2013-14.

2. The learned counsel for the petitioner primarily contends thus:

"i. No opportunity of any kind was afforded to the petitioner students before cancelling their admissions.

ii. Despite the admissions of petitioner students having been made in accordance

with law, the same are being termed as unlawful.

iii. At the fag end of the 1st year of BDS Five year course, when petitioner students are due to appear in the 1st year examination scheduled for 30th September, 2015, the present impugned order has been passed.

iv. Reliance is placed on the interim order passed on 7-9-2015 in W.P. No. 6140/15 by a Co-ordinate Bench of this Court at Indore, in a petition involving similar facts and circumstances."

3. The learned counsel for the respondent on the other hand supporting the impugned order contends that admissions to the BDS course could not have been made solely on the Class 12th Examination. Drawing attention of this Court to the Dental Council of India's revised BDS Course Regulations 2007, it is submitted that appearing and passing in the competitive exam is mandatory for being eligible for admission to the BDS 5 years course. For not having done so, the petitioners are back door entrants and therefore are not entitled to any relief.

4. The learned counsel for the petitioner students does not dispute that the admission of the petitioners to 5 year BDS Course was made by way of allotment of seats by Association of Private Dental and Medical Colleges of M. P. solely based on marks awarded to petitioner students in Class 12th Examination, without the petitioners appearing or qualifying in the competitive examination.

5. The above said fact which is not disputed by the petitioners which gets reinforced by mention of the term "Exam Type: 10+2" mentioned at the top left corner of the allotment slips issued to all the petitioners by the said Association which are cumulatively marked as Annexure P-2 from pg. 28 to pg 94 of this petition.

6. Thus, the only controversy involved herein is as to whether the admission to 5 year BDS Course could be made solely on the marks awarded in examination of Class 12th without appearing and qualifying in the prescribed competitive examination.

7. The Dental Council of India is the supreme authority which inter alia lays down the standard and yardsticks for admission to the courses recognized by it including the Five years course of Bachelor in Dental Surgery (BDS). The Council has been created by "The Dentist Act 1948" and has framed the Dental Council of India's revised BDS Course Regulation 2007 (Regulation for brevity).

8. The Regulations underwent wide spread amendment vide notification dated 31-5-2012 published in the official gazette of India whereby securing minimum of 50 per cent marks by unreserved candidate, 40 percent marks for reserved category candidate and 45 percent marks by physically challenged candidate in the "National Eligibility Entrance Test" became mandatory. These amendments were brought into effect from the academic session 2013-2014. The relevant sub-regulation (2) of regulation I and sub-regulation (5) of regulation-H of the Regulations pertaining to procedure for selection to BDS Course after the

amendment read as under:--

"ADMISSION, SELECTION AND MIGRATION:

Regulation -I Admission to the Dental Course - Eligibility Criteria : No candidate shall be allowed to be admitted to the Dental Curriculum of 1st Bachelor's of Dental Surgery (BDS Course) until:

1. xxx xxx xxx
2. He/she has obtained a minimum of marks in National Eligibility-cum-Entrance Test as prescribed in sub-regulation (5) of Regulation II under the heading "Selection of Students ".
3. In order to be eligible to take National Eligibility-cum-Entrance Test, he/she has passed qualifying exam as under...

Regulation - II Selection of Students

(1)--Deleted--

(2)-Deleted--

(3)--Deleted-

(4)-Deleted-

(5) Procedure for selection to BDS course shall be as follows:

i. There shall be a single eligibility-cum-entrance examination namely "National Eligibility-cum- Entrance Test for admission to BDS course in each academic year".

ii. In order to be eligible for admission to BDS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in "National Eligibility-cum-Entrance Test to BDS course" held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower limbs, terms of sub-regulation 4 above, after the commencement of these amendments, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India-Common merit list in "National Eligibility-cum-Entrance Test for admission to BDS course". Provided when sufficient number of candidates in the respect categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to BDS Course, the Central Government in constitution with Dental Council of India may at the discretion lower the minimum marks required for admission to BDS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.

iii. The reservation of seats in dental colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to BDS Course for the said lists only.

iv. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Clause (ii) above shall be admitted to BDS course in the said academic year.

v. All admissions to BDS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test.

vi. To be eligible for admission to BDS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examination as mentioned in sub-regulation (2) of Regulation I and in addition must have come in the merit list of "National Eligibility-cum-Entrance Test" for admission to BDS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Biotechnology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of sub-regulation (4), after the commencement of these amendments, of Regulation I above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Biotechnology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the BDS course, he/she shall not be admitted to that course until he fulfils the eligibility criteria under Regulation I.

vii. The Central Board of Secondary Education shall be the organization to conduct the National Eligibility-cum-Entrance Test for admission to BDS course."

9. The amendment to sub-regulations (1) and (3) of Regulation I and to sub-regulation (5) of Regulation II of Regulations of 2007 prescribes appearing and passing in the National Eligibility-cum-Entrance Test as a pre-requisite for admission to BDS course. This amendment became effective from Academic Session 2013-14.

10. Undisputedly, the said Regulations squarely apply to the petitioners-students who were admitted to the 5 year BDS course from the Academic Session 2014-15.

11. None of the petitioners have passed the National Eligibility-cum-Entrance Test and yet have been admitted solely on the basis of marks obtained by them

in 10+2 Examination.

12. All the petitioners have thus been granted admission without following the mandatory procedure prescribed by the amended 2007 Regulations.

13. This Court, thus, has no hesitation to hold that admission of petitioners is unlawful. Consequently, no right accrues to the petitioners by virtue of this admission. Once, it is found that the admissions were illegal bestowing no lawful right upon the petitioners, the respondent council was not obliged to follow the principal of audi alteram partem while cancelling the admissions.

14. This view finds support by the decision of Apex Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, - which inter alia held thus:

"21. As pointed recently in M.C. Mehta Vs. Union of India (UOI) and Others, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In M.C. Mehta (supra) it was pointed out that at one time, it was held in Ridge v. Baldwin, 1964 AC 40 : (1963) 2 All ER 66 (HL) that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In Juwarsingh and Others Vs. State of Madhya Pradesh, Chinnappa Reddy, J. followed Ridge v. Baldwin (supra) and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in S.L. Kapoor case (supra) laid down two exceptions namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India and Others, Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other

than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows:

"[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent.... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala and others Vs. S.K. Sharma*, . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of Madhya Pradesh and others*, ."

The aforesaid principle expounded by the Apex Court are further followed in the case of *Priya Gupta Vs. State of Chhatisgarh and Others*, ,

"66. Another challenge which has been raised on behalf of the appellants before us is that the order of cancellation dated 10-9-2010 was passed without affording any opportunity of hearing to these two appellants and, therefore, the order is liable to be set aside, being violative of principles of natural justice. It is, in fact, not in dispute before us that no specific notice had been given to the appellants before the impugned order was passed. We are of the considered view that it is not necessary for this Court to examine this submission in any greater detail because the appellants have now had two occasions to put forward their claim before the Court. The High Court has considered various aspects of the case and has given a complete hearing to the appellants. We have also heard the appellants at great length and have examined their challenge to the order dated 10-9-2010. No prejudice has been caused to them, inasmuch as they have pursued their studies despite cancellation of admission and have now been duly heard by the High Court, as well as this Court. Hence, this ground of challenge does not, in any case, survive, particularly in view of the fact that we have also held that the admission to these appellants was given in a completely arbitrary and unfair manner.

In the recent decision, *Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise and Others* , while relying upon the decisions in the cases of *Malloch v. Aberdeen Corporation*, (1971) 1 WLR 1578 and *Cinnamond v. British Airports Authority*, (1980) 1 WLR 582 has held as under:

31) We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are Civil Appeal Nos. 4458-4459 of 2015 Page 28 of 38

(arising out of SLP (C) Nos. 37108-37109 of 2012) Page 29 given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason - perhaps because the evidence against the individual is thought to be utterly compelling - it is felt that a fair hearing "would make no difference" - meaning that a hearing would not change the ultimate conclusion reached by the decision-maker - then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corporation* (supra), who said that a "breach of procedure...cannot give (rise to) a remedy in the Courts, unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain". Relying on these comments. Brandon LJ opined in *Cinamond v. British Airports Authority* (supra) that "no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing". In such situations, fair procedures appear to serve no purpose since "right" result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing."

15. The other ground taken by the petitioners for grant of interim relief by a co-ordinate Bench of this Court at Indore on 7-9-2015 in W.P. No. 6140/15, it is seen from the reading of the order that the same is interlocutory in nature. The provisions of the amended Regulations of 2007 do not appear to have been considered in the said interim order which to the contrary have been duly taken care of herein. Moreover, interim orders have no precedential value. Thus, the said interim order is of no avail to the petitioners.

16. Learned counsel for the petitioners has further placed reliance on Rule 8 of the Admission Rules 2008 framed under The Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 to contend that sub-rule (2) of Rule 8 permits the college authorities to fill those seats on the basis of qualifying examination (Class XII Examination), which remain vacant even after conduction of two rounds of centralized counselling. For convenience and ready reference, Rule 8(2) of the said Admission Rules of 2008 is reproduced below:

"Rule 8 The sequence of admission shall be as under:

(1) ----

(1-a) ----

(1-b) ----

(2) After the counselling of this phase, there shall be one or two rounds of centralized counselling on the basis of merit of common entrance test or on the basis of qualifying examination depending upon the type of course, as the case may be. If seats remain vacant even after this round, then remaining seats shall be filled by the respective college authorities, according to the procedure notified by the competent authority. The provisions of admission on the basis of marks in qualifying examination are not applicable for MBBS and BDS courses.

(3) --Deleted--

(4) --Deleted-

(5) ----."

17. A bare perusal of the above said Rule 8(2) makes it clear that if contingency arises where seats are left unfilled even after two rounds of centralized counselling based on the merit list prepared pursuant to Common Entrance Test (NE and ET) then the college authorities are extended liberty to fill these seats based on the marks obtained in qualifying examination (Class XII Examination). However, this liberty is circumscribed by limiting its application to certain type of courses. However this very provision in express terms excludes the course of MBBS and BDS from its application.

18. Thus, in regard to the course of MBBS and BDS, the college authorities have no jurisdiction to fill up the unfilled seats on the basis of Class XII qualifying examination. Thus the said contention of the petitioners in regard to Rule 8(2) is also of no avail.

19. Lastly, the ground of petitioners not being able to appear in the exam at the end of 1st year of the 5 year BDS course is also of no avail to the petitioners. The admission of the petitioners being in contravention of the mandatory statutory provisions, the same do not give them any right to continue or to appear in examination and therefore the said ground is untenable.

20. In view of the above, none of the grounds raised by the petitioners are tenable in law.

21. Grant of relief in this case shall lead to premium to default and shall encourage unscrupulous and undeserving elements becoming doctors thereby tarnishing the pristine profession in medicine and endangering the lives of many, therefore no case for allowing of this petition is made out.

22. After the matter was reserved for order on admission, the Registry has

informed that I.A. No. 6720/15, an application seeking rehearing of the writ petition has been filed. Perusal of the said application indicates that the petitioners are trying to stress on the 2012 amendment of the Regulations of 2007 and the provisions of Rule 8(2) of the Admission Rules 2008, which have already been taken into account (*supra*). Thus, the said I.A. seeking rehearing of the writ petition is considered and rejected. Consequently, the petition stands dismissed at the admission stage with no cost.