
(2014) 06 CAL CK 0029

In the Calcutta High Court

Case No : M.A.T. 162 of 2012 and F.M.A. 418 of 2012

Subhrajit Biswas

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Constitution of India, 1950 — Article 142, 226

Citation : (2014) 06 CAL CK 0029

Hon'ble Judges : Tapash Mookherjee, J;N. Patherya, J

Bench : Division Bench

Advocate : Joydeep Kar and Tanoy Chakraborty, Advocates for the Appellant

Judgement

N. Patherya, J.—In this appeal the appellant has challenged the order dated 22nd December, 2011 whereby the writ petition of the appellant was dismissed.

2. The case of the appellant is that at the time of admission in 2004 full disclosure of facts had been made by him on basis whereof admission in the BHMS Course was granted to him in Midnapore Homeopathic Medical College and Hospital. On completion of the said course internship of one year was undertaken by him which cannot be undertaken unless a provisional registration certificate is issued by the Council of Homeopathic Medicine, West Bengal. At the time of issuance of the provisional registration certificate the mark sheets of Higher Secondary and BHMS Course examination was scrutinized. Thereafter the appellant was appointed as a House Staff. During the said period the appellant was called upon to submit his original testimonials and permanent registration certificate. An application was filed to the Council for issuance of a final registration certificate which application was rejected. It is the refusal to grant final registration certificate, so, also the letter by which the appellant was called to submit his testimonials and final registration certificate which were challenged in the writ petition.

3. On consideration of the writ petition by order dated 22nd December, 2011 the

writ petition was dismissed. The Trial Court did not appreciate that the registration certificate was issued by the Calcutta University, therefore, the appellant was found eligible for admission. Reliance is placed on *Sanatan Gauda Vs. Berhampur University and others*, and 2009 (1) SCC 610. The University permitted entry on scrutiny and the Council rejected grant of registration certificate without considering the admission granted by the University. The issuance of the registration certificate is on completion of course, therefore, the Council could not have refused the issuance of the final registration certificate.

4. *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, and 2011 (6) SCC 145 cited by the Council in *Rooj's* case are distinguishable as in *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, the University had registered the appellant as a student and the college was affiliated to the University.

5. In 2009 (1) SCC 611 the Controller rejected the candidature in the first semester while in *Abhyudya Sanstha Vs. Union of India (UOI) and Others*, the institute was not registered and a false representation was made. All the cases cited above are distinguishable on facts from the instant case and will not apply to the facts of this case.

6. Regulation 4(a) of the 1983 Regulation has been considered in *Rooj's* case bereft of the *B. Premanand and Others Vs. Mohan Koikal and Others*, has provided for interpretation of statute, therefore, Regulation 4(a) be read in terms and "with" be not read as "in". The Council cannot take the plea as taken in the letter under challenge, as it will be a travesty of justice. Therefore, the order under appeal be set aside.

7. Counsel on behalf of the Calcutta University submits that the admission was as per its Regulations. The notification of July 31, 1985 laid down the eligibility criteria for the BHMS Course. The examination regulations have been framed by the Higher Secondary Council and the University is the examining body. It is not the Council who is the examining body. The Council functions under the department of Health and Family welfare. Therefore, the Council must abide by the decision taken by the said department. It is the directorate of Homeopathy which appointed the appellant as a House Staff. As the admission by the University is justified and the Council has no role to play at the time of admission the Council cannot act as an examining body.

8. The Homeopathic Council submits that it is empowered to issue or refuse issuance of a Registration Certificate. As per Section 21 of the 1963 Act on the Council being satisfied that a person is qualified for registration, he is granted a Registration Certificate. The satisfaction is based on compliance of statutory regulations. Regulation 4(a) of the 1983 Regulation requires three subjects namely Chemistry, Physics and Biology. The 1983 Regulations have been framed in keeping with the Homeopathy Central Council Act, 1973.

9. Section 20(1) of the 1973 Act postulates that the minimum standards of

education required for Homeopathy be prescribed.

10. The admission is to be as per the Regulations framed which has been violated. Therefore, in case of breach of statute or regulations, registration cannot be allowed. Any certificate issued under the 1963 Act will be no degree, diploma or certificate in the eye of law. The requirement of the Council is that at the time of registration it must be satisfied with the qualification of the candidate seeking registration. This satisfaction is dependant on compliance of Regulation 4(a). The application was in breach of statute and, therefore, under Section 21 of the 1963 Act, no registration certificate can be issued.

11. C. Balachandran and Others Vs. State of Kerala and Others, is distinguishable as the principle laid down, differs from the relief granted. The relief was granted in the peculiar facts of the case which the Supreme Court was empowered to grant under Section 142 of the Constitution which power is not vested in the High Court.

12. M.S. Mudhol and Another Vs. S.D. Halegkar and Others, is distinguishable in view of Paragraph 8 of the cited decision.

13. Sanatan Gauda Vs. Berhampur University and others, is not applicable to the facts of the case.

14. It has been the consistent view of the Supreme Court that breach of statute ought not to be allowed or condoned. Sympathy has no role to play in the matter. The word "With" used in Regulation 4(a) of the 1983 Regulation would mean that the candidate had to pass the three subjects namely Physics, Chemistry and Biology. If this criteria is not satisfied to assess the knowledge of the candidate would be difficult. A man of ordinary prudence would not understand that failure in any subject would entitle the candidate for admission in the BHMS Course and to interpret that even on failure the candidate would be eligible for admission would not only be preposterous but would be subversive to the academic discipline in the country. The provisional registration certificate was issued incorrectly and, therefore, cancelled. Section 29 of the 1963 Act accepts cancellation. The University has stated that the candidate passed in the Higher Secondary examination and so he was admitted but, in fact, he had failed in one of the required subjects. The University Regulation cannot be equated with Regulation 4(a). Admission even on failure in the required subjects if accepted would create anarchy and would allow a person without the required qualification to practice. Therefore, this appeal warrants no order and be dismissed.

15. In reply Counsel for the appellant submits that as there was compliance of Section 24 of the 1963 Act, the appellant was qualified to be registered under Section 21 of the 1963 Act. Issuance of provisional registration certificate is proof of satisfaction of requirement under Section 21. The rejection of the final registration certificate was not for non-compliance of Section 21 at the entrance stage. It is the University Rules which are to be considered at the time of admission.

16. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, the candidate was allowed to complete the examination. In *Mahatma Gandhi University and Another Vs. Gis Jose and Others*, the objection was taken at the threshold stage, when no examination was taken. In *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, , and 2011 (6) SCC 145 the institutes were not recognized. Rooj's case was delivered on 19th December, 2008 but the provisional certificate in the instant case was issued on 6th April, 2010. At the time of admission Regulation 4(a) is not in issue. For all the said reasons, therefore, the appeal be allowed and the order of the Trial Court be set aside.

17. Having considered the submissions of the parties it is true that the appellant was allowed to complete the course so also internship and thereafter was admitted as House Staff. A provisional registration certificate was also issued but, during his tenure as a House Staff the appellant was asked for the original testimonials and the permanent registration certificate by the Calcutta Homeopathy Medical College and Hospital the authority under whom it was serving as a House Staff and who had issued the release order in favour of the appellant. It was at this juncture, that the appellant applied for issuance of a final registration certificate to the Homeopathic Council which on assessment of documents passed the rejection order.

18. Regulation 4 of the 1983 Regulation provides for the minimum qualifications needed by a candidate for admission to the DHMS (Diploma) Course and is mandatory in nature by the very words used therein. Regulation 4 is set-out below:--

"4. Minimum qualifications: No candidate shall be admitted to D.H.M.S. (Diploma) Course unless he has,

(a) Passed in the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;

19. Therefore no candidate who has passed the Intermediate Science examination or its equivalent without Physics, Chemistry and Biology as his subjects is eligible for entrance to the said course. In fact, by failing in any one subject the combination is not available and requirement of Regulation 4(a) of the 1983 Regulation not satisfied. On failure the subject gets eclipsed as the marks of such subject is not even counted and to say that the combination exists even on failure will be a fraud on the Regulation and contrary to the legislative intent.

20. The appellant passed the H.S. Examination with English, Vernacular, Biology, Chemistry and Mathematics as compulsory subjects and Physics as the optional elective subject.

21. In reaching the total marks, the marks obtained in the compulsory subject by appellant was added. The marks obtained in Physics was excluded and the treatment of "with" as "in" in Rooj's case cannot be faulted.

22. At the admission stage the Council has no role to play but the college granting admission is affiliated to the West Bengal University of Health Sciences and is aware of the criteria which is statutory in nature to be satisfied by a candidate. If the colleges ignore the Statutory Regulations can the Council be bound to recognize the candidate, whose admission is in breach of the Regulations, on principles of equity. This proposition of law has been answered in *K.S. Bhoir Vs. State of Maharashtra and Others*, as follows:--

11. "...It is no doubt true that a large number of students who were already admitted in the colleges and incurred a lot of expenditure in taking admissions were to be dislodged by issue of the revised merit list. In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, compassion and sympathy have no role to play where a rule of law is required to be enforced.

...Adjusting equities in exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council under Section 10-A of the Act is a different thing. The Court cannot direct to waive the mandatory requirement of law in exercise of its extraordinary power under Article 226. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law.

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23. In *Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another*, it has been categorically stated that in case of conflict between law and equity, the former shall prevail.

24. Courts are bound to apply the cardinal principles of justice, equity and good conscience but without violating the law. In the instant case any application of equity will be in violation of law laid down by statute.

25. In the instant case there is no doubt that the appellant did not fulfil the eligibility criteria set-out in Regulation 4 of the 1983 Regulations and starting from *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, wherein it was held as follows:--

"...Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the

University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the law....."

through *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, and *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, and as rightly observed in *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*,

"Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards."

26. Plea of sympathy and concessions in the light of Rules staring us in the face and against legal provisions has been deprecated and any direction to the Council to issue the Registration Certificate will be in transgression of the Act and the 1983 Regulations and the Court cannot be a party to direct the Council to disobey the statute as that would be destructive of the Rule of law and subversive of academic discipline leading to serious impasse in academic life.

27. To direct issuance of a Registration Certificate to the appellant will make a mockery of the Rule of Law as observed in *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, and promote the "Rule of Man".

28. *Sanatan Gauda Vs. Berhampur University and others*, is distinguishable on facts as the appointing authority and the result declaring authority in the reported decision was one. In the instant case the admitting authority and the registering authority are different and it is the registering authority (Council) which is to register as per its Regulation.

29. *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, will not apply to the instant case as on the ground of delay the Supreme Court did not disturb his post and also as the Selection Committee had acquiesced in the candidate's appointment for committing an illegality. Such is not so in the instant case where the Council has rejected the final registration.

30. In *C. Balachandran and Others Vs. State of Kerala and Others*, the Supreme Court allowed the appeal and set-aside the order of the High Court but exercised powers under Article 142 of the Constitution of India and granted relief to the writ petitioner therein, in the peculiar facts of the case. This power is not vested in the High Court and, therefore, the cited decision will not come to the aid of the petitioner.

31. *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, was a case where the Court while holding that even though the victims were innocent children but that was no ground for grant of relief.

32. In the instant case the appellant applied for the course knowing fully well

that he did not satisfy the eligibility criteria laid down in Regulation 4(a) of the 1983 Regulations. This in itself was a misrepresentation made by the petitioner. The college or university without proper scrutiny accepted such misrepresentation which is in breach of the aforesaid Regulations and in view of the aforesaid this appeal fails and is dismissed.

I agree.