

(2007) 02 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3611 of 2006

Swati Jain

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : (2008) 1 GLR 345

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.Borkataki, A.Verma, D.Saikia, M.Dutta, M.K.Choudhury, N.Alam, S.R.Roy, Advocates appearing for Parties

Judgement

1. Heard Shri S.P. Roy, learned counsel for the writ petitioner and Shri D. Saikia, learned counsel appearing for the respondents.

2. The question that this writ petition poses can best be formulated as follows:

What is the precise cut off date for midstream admissions into the Post Graduate Courses offered by the 3 (three) Medical Colleges of the State ?

The above question has surfaced notwithstanding the clear and unambiguous norms in this regard laid down by the Medical Council of India in its Notification dated 28.1.2005 pursuant to the judgment of the Apex Court in the case of Medical Council of India v. Madhu Singh and Others, (2002) 7 SCC 258 and the several decisions of this court interpreting the aforesaid Notification dated 28.1.2005.

3. The facts in which the aforesaid, question has arisen in the present case may now be briefly noticed:

For the academic session 200607, the Medical Council of India (MCI), as a one time exception to the schedule formulated in its Notification dated 28.1.2005, has fixed 15.6.2006 as the date of commencement of the different sessions of the Post Graduate Courses and 30.6.2006 as the last date for all categories of

admission. While noticing the aforesaid 2 (two) dates, this court would like to put on record that the last date of admission fixed by the MCI for MBBS/MD/MS Courses has been always understood by this court to be the outer limit of midstream admissions keeping in view the requirements of a highly professional course in Medicine and/or in Surgery.

The writ petitioner by virtue of her merit could secure admission to the PG Diploma Course in Obstetrics and Gynaecology. She had, however, aspired to undergo the PG Degree Course in the said subject. On 15.9.2006 the petitioner filed an application before the concerned authority stating that one Dr. Zacchariah Choudhury, who was allotted a seat in the PG Degree Course in Obstetrics and Gynaecology, was continuously missing from the classes and, therefore, the aforesaid seat should be forfeited and, thereafter, allotted to the petitioner. It is the aforesaid initial claim made by the writ petitioner, in the circumstances noted above, that has given rise to the present writ petition containing voluminous pleadings in the form of several affidavits.

4. The sheetanchor of the petitioner's case, as evident from the pleadings advanced and the arguments made, is that Dr. Zacchariah Choudhury was eventually granted admission against a vacant seat in the PG Degree Course in Surgery and the consequential vacancy in the PG Degree Course in Obstetrics and Gynaecology is due to the petitioner on merit. In view of the time that has elapsed and the last date of admission fixed by the MCI, being long over, learned counsel, Sri Roy, has made endeavours to overcome the said facts by contending that in a writ petition filed by Dr. Zacchariah Choudhury, i.e.. WP(C) No. 6100 of 2006, this court by order dated 13.12.2006, had held that in case a student who is already admitted into the PG Course undergoes a change of subject the same will not amount to fresh admission but would be a case of switch over to another course. Relying on the aforesaid views expressed by this court in WP(C) 6100/2006, Sri Roy has argued that the said view of the court should also apply to the petitioner and hence, the stipulation of the MCI with regard to last date for admission will not apply to the present case. The aforesaid argument being the main plank of the petitioner's case, the facts in the case of Dr. Zacchariah Choudhury may be noticed at this stage.

5. Dr. Zacchariah Choudhury was initially admitted in the MD Course in Obstetrics and Gynaecology. He, however, wanted to be allotted a seat in the MS Course in Surgery. One Vivek Wadhwa, who was admitted in the MS Course in Surgery, the session of which was to start from 15.6.2006, was, however, not attending his classes. In such circumstances, though it was the duty of the authority to ensure that the aforesaid seat allotted to Dr. Vivek Wadhwa would not stand forfeited after the expiry of the last date for all categories of admission as fixed by the MCI, i.e., 30.6.2006, no steps were taken by the respondents to ensure that such an outcome does not occur. As the authority did nothing in the matter, eventually, Dr. Zacchariah Choudhury himself filed a representation on 28.6.2006 seeking allotment of the said seat in Surgery. Even at this stage, it was possible

for the authorities to allot the seat to Dr. Zacchariah Choudhury, if he was so entitled. As nothing was done in this regard, Dr. Zacchariah Choudhury approached this court by filing WP(C) No. 3348 of 2006, which was closed by this court on 22.11.2006 leaving the matter to the discretion of the Director of Medical Education. The Director of Medical Education passed an order dated 30.11.2006 holding that in view of the MCI guidelines, admission of Dr. Zacchariah Choudhury in Surgery is not possible. Aggrieved, Dr. Zacchariah Choudhury had instituted a second writ petition, i.e., WP(C) 6100/2006, wherein the order dated 13.12.2006 has been passed by this court directing admission of the petitioner in the PG Degree Course in Surgery. While doing so this court was quick to emphasize that the direction issued has been necessitated by the peculiar facts of the case. This court, while directing admission, as noted above also took the view that as the petitioner was already admitted in the PG Course in Obstetrics and Gynaecology his admission to the same course in Surgery will not amount to a case of fresh admission but would be a mere switch over. In the order dated 13.12.2006, this court, however, had specifically indicated that as the direction for admission has been issued in the peculiar facts of the case, the said direction should not be understood to be laying down any law to operate as a binding precedent for the future.

6. Sri S.P. Roy, learned counsel for the petitioner has argued, relying on the directions of this court in the order dated 13.12.2006, as noticed above, that the case of the petitioner being squarely covered by the direction dated 13.12.2006 passed in the case of Dr. Zacchariah Choudhury, similar relief should be afforded to the petitioner on the touchstone of article 14 of the Constitution. Sri Roy has submitted that if the petitioner is allowed to join the PG Course in Obstetrics and Gynaecology in the vacant seat, it will not amount to a fresh admission but would be a mere switch over. Hence, according to Sri SP Roy, the stipulation of the MCI with regard to last date for admissions will not apply to the present case.

7. The MCI, which is the acknowledged expert body in matters governing medical admissions in the country had issued a Notification dated 28.1.2005, as already noticed in the preceding paragraph. The said notification is an attempt to combat the "menace" of midstream admission that had assumed alarming proportions carrying the potential of seriously compromising the quality of medical education and training in the country. In such circumstances, the Apex Court in the case of Madhu Singh (supra) had observed that time has come that clear stipulations should be laid down by the MCI with regard to the maximum time limit upto which midstream admissions could be safely allowed without compromising the quality of education and training that all aspiring doctors must receive. The MCI, in its wisdom, by stipulating the dates of commencement of the PG Courses and the last date for all categories of admission, had clearly expressed the view that in case of PG Courses, midstream admissions can be made, at the maximum, till expiry of a period of 15 days after commencement of the course. If this is the view of the expert body pursuant to the law laid down by the Apex Court, it is difficult to see as to how departures from the said view can be directed to be

made by judicial orders passed. This is not to say that the writ court is to be understood to be denuded of its powers to order for midstream admission. There will always be rare and marginal cases. What would always be of paramount consideration is the efflux of time between the last date fixed by the MCI and the date on which the case of a candidate is being considered by the court for midstream admission.

8. In the present case the PG session had commenced on 15.6.2006 coinciding with the date fixed by the MCI for the academic session in question. The petitioner had filed the application for a seat in the PG degree Course in Obstetrics and Gynaecology on 15.9.2006 i.e. 3 months after the course had commenced. The seat actually fell vacant after admission of Dr. Zacchariah Choudhury pursuant to this court's order dated 13.12.2006, i.e., after about six months of the commencement of the course. The writ petition could be taken up for consideration only on 21.2.2007. By this time, a period of over 8 (eight) months of a highly professional PG Course, which is of 3 (three) years duration, is over. In such circumstances, the irresistible conclusion that has to be reached by the court is that any admission of the petitioner, at this stage, into the PG Course in Obstetrics and Gynaecology may affect the quality of education and training that is necessary for successful completion of the said Course. It is in keeping in mind the above facet of public interest that the judicial response has been in favour of loss of a seat, unfortunate as it may be, rather than a compromise with the quality of medical education and training.

9. Whether permitting a student to join a different course at a later date in place of the course to which such a student was earlier admitted would be a case of fresh admission or a switch over, is selfevident from the order dated 13.12.2006 passed in WP(C) No. 6100/2006. The view taken by this court in the said order that it would be a switch over, has been amply clarified by the court to have been necessitated by the peculiar facts of the case with the further clarification that the said view expressed is not to be understood as laying down a law of general application or creating a binding precedent for the future. It is difficult to see as to how if the petitioner is allowed to join the PG Course at this belated stage instead of the Diploma Course that she has been pursuing the same will not amount to a fresh admission into the PG Course. The course is now nearly 8 (eight) months old; the petitioner has not pursued the course and instead had been doing a Diploma Course, though in the same subject. The Post Graduate Diploma and the Degree Courses though in the same subject, are entirely different and a change or switch over from one course to another, has necessarily to lead to a fresh induction of the candidate in the New Course. The importance does not lie in the words used; what has to be understood is the consequence of what the litigant is seeking and what the court should offer.

10. For the aforesaid reasons, I am of the view that relief to petitioner in the form of a direction to enable her to join the PG Course in Obstetrics and Gynecology ought not to be granted in public interest. This is not to say that the

petitioner will be left without any remedy. If the petitioner perceives that some wrong has been done to her, it is open for her to seek relief, by way of compensation and damages, if so advised.

11. For the aforesaid reasons, the relief sought for in the writ petition is declined. Writ Petition shall stand closed in terms of what has been held above.