

22 to 27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ***W.P.(C) 6500/2011***

% ***Judgment dated 26th September, 2013***

KARNAM VNP KUMAR Petitioner
Through : Mr.Harshad V. Hameed and
Mr.Dileep Poolakkot, Advocates
versus

THE DEPUTY DIRECTOR NATIONAL BOARD
OF EXAMINATIONS AND ANR Respondent
Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1

+ ***W.P.(C) 6503/2011***

SAYED MUJAHID HUSSAIN Petitioner
Through : Mr.Harshad V. Hameed and
Mr.Dileep Poolakkot, Advocates
versus

THE DEPUTY DIRECTOR NATIONAL BOARD
OF EXAMINATIONS AND ANR Respondents
Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1

+ ***W.P.(C) 6683/2011 & CM APPL. 13517/2011 & 13221/2013***

P.LAXMI PRATHYUSA Petitioner
Through : Mr.Sanjeev Sahay and Mr.Harish Malik,
Advocates
versus

NATIONAL BOARD OF EXAMINATION AND ANR Respondents
Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1

+ ***W.P.(C) 344/2012 & CM APPL. 737/2012***

PATEL BHAVINKUMAR RAMESH CHANDRA Petitioner
Through: Dr.K.S. Chauhan, Mr.Ajit Kumar Ekka,
Mr.Ravi Prakash & Mr.K.C. Lamba, Advs.

versus

NATIONAL BOARD OF EXAMINATION AND ORS..... Respondent

Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1
Mr.Abhinav Mukerji and Mr.Purnima
Kashna, Adv. for respondent no.2

+ ***W.P.(C) 3232/2012***

ASHISH POPATRAO JHADAV

..... Petitioner

Through : Mr.K.Harshavardhan Reddy, Adv

versus

NATIONAL BOARD OF EXAMINATIONS AND ORS.... Respondents

Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1
Mr.Himanshu Bajaj and Ms.Sakshi
Aggarwal, Adv. for R-2.
Ms.U.Pallavi for Mr.Sumeet Pushkarna,
Adv. for UOI

+ ***W.P.(C) 114/2013 & CM APPL. 230/2013***

PULAK NIGAM

..... Petitioner

Through: Mr.Anuj Kumar Garg, Advocate.

versus

NATIONAL BOARD OF EXAMINATION AND ORS Respondent

Through : Mr.Mukul Gupta, Sr. Advocate with
Mr.Rakesh Gosain and Mr.S. Kashyap,
Advocate for respondent no.1
Mr.Abhinav Mukerji and Mr.Purnima
Kashna, Adv. for respondent no.2
Mr.Ravinder Agarwal, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, the present writ petitions are taken up for hearing and disposal.
2. The petitioner in Writ Petition No.6500/2011 was awarded MBBS degree
WP(C)6500-2011 & Ors.

by Dr.NTR University of Health Sciences Vijaywada, Andhra Pradesh in the year 2007. According to the petitioner the respondent no.1 granted professional accreditation to the paediatrics specialty of respondent no.2 for a period of three years with effect from July, 2009 to June, 2012. The hospital was granted permission to enroll equal number of trainees holding recognized post graduate diploma for a period of two years. It is also the case of the petitioner that if a selected candidate leaves the accredited hospital, the hospital can complete the procedure of selecting candidates up to 15th September for July session. In June, 2010 the respondent no.1 published information bulletin for the post graduate courses (CET – NBE) June, 2010. As per the petitioner, for the year 2009 the candidates were eligible on the basis of the CET examination and aptitude test for primary candidates by the concerned institutions. It is also the case of the petitioner that for a secondary candidate like the petitioner, clearing CET examination is not a pre requisite for admission as a DNB candidate.

3. On 1.7.2010 the petitioner was awarded DCH (Paediatrics) degree by Rajiv Gandhi University of Health Science, Karnataka in the examination held in May, 2010. In the meanwhile, on 6.7.2010 the respondent no.2 published an advertisement in the Deccan Herald inviting applications for DNB Paediatrics course 2010. The petitioner got his name enrolled with the respondent no.2 on 12.7.2010 and the petitioner was asked to report on 27.7.2010.
4. On 27.7.2010 the petitioner applied for DNB paediatrics course 2010 with the respondent no.2 on the basis of DCH (Paediatrics)degree. Since there were more than one candidate for the only seat available, respondent no.2 conducted an aptitude test of DCH paediatrics degree candidates on 5.8.2010. The petitioner secured highest marks in the aptitude test and was accordingly selected.

5. According to the result published, one Dr.Anand Kumar Singh, who secured the highest marks in DNB CET was selected as the primary candidate whereas the petitioner was selected as a trainee for a period of two years. On 16.8.2010, the primary candidate, Dr.Anand Kumar Singh had resigned and refused to continue with the respondent no.2 and accordingly in his place one Dr.Sayed Mujahid Hussain was selected as primary DNB candidate. The college informed the respondent no.1 on 13.9.2010 of selection of Dr.Sayed Mujahid Hussain.
6. By a letter dated 20.12.2010 addressed to respondent no.2 by respondent no.1, the respondent no.2 was informed that they have violated the guidelines as prescribed in the information bulletin CET - 2010. The respondent no.2 informed that the aptitude test was conducted only for the DCH candidates, as more than one candidate had applied for. Respondent no.2 further clarified that since Dr.Arvind Kumar Singh, the primary candidate, had resigned, they selected Dr.Sayed Mujahid Hussain, as a primary DNB candidate.
7. On 9.3.2011 respondent no.1 issued a reminder to the respondent no.2, informing them that they had not received any reply to their letter of 20.12.2012. The respondent no.2 while replying to this communication enclosed a photocopy of their reply dated 7.1.2011 to the respondent no.1. The petitioner was shocked to receive a communication from respondent no.1 on 11.7.2011 informing that the registration cannot be granted to the petitioner.
8. Counsel for the petitioner submits that petitioner was granted admission as far back as on 27.7.2010 and the communication informing the petitioner that registration cannot be granted was issued after a period of almost one year. It is submitted that the reasons for declining the registration above mentioned are there in the communication dated 11.7.2011, which is reproduced below:

“No.REGN/KA/LSI/2010-4276

Dated: July 11, 2011

To,

The Medical Director,
Lakeside Institute of Child Health,
33/4, Meanee Lake, Bangalore-560042.

Sub: Registration as DNB Trainee – July, 2010 Session

Sir,

Kindly refer your email dated 23.5.2011, 01.7.2011 and 5.7.2011 on the subject cited above.

On perusing the information furnished by you, it is observed that:

1. No applicants applied against advertisement for the session July, 2010.
2. No candidate has appeared for CET-June 2010 examination.
3. Aptitude test conducted by the hospital which is against admission guidelines for the session July, 2010.
4. Candidate not in merit selected by the institute and no satisfactory explanation given by the institute.

In view of the above, Dr.Sayed Mujahid Husain and Dr.Karanam V N P Kumar as primary and secondary candidate respectively in the specialty of Paediatrics for the session July, 2010 cannot be considered by the board. No further correspondence in the matter will be entertained.

This issues with prior approval of the competent.

Yours faithfully

(R.C. Khatri)
Asstt. Director (Director)”

9. Counsel also submits that the petitioner had made an application pursuant to an advertisement released by the respondent no.2 on 6.7.2010. Since the petitioner was asked to appear in the aptitude test, the petitioner had no choice and thus the petitioner cannot be faulted for any lapse on the part of the respondent no.2. It is submitted that the petitioner secured the highest marks in the aptitude test above the two other candidates, who had also participated in the test and thus her admission is on the basis of merits.
10. Counsel for the respondent no.1 has opposed this petition on the ground that the petitioner had made an application even prior to the declaration of the CET June, 2010 examination and even prior to the advertisement released by the respondent no.2. It is also submitted that as per admission bulletin there was no procedure for conducting of aptitude test by the respondent no.2.
11. Mr.Gupta and Dr. Gosai, counsel for respondent no.1 also submit that the collusion on the part of the petitioner, candidates and the college is writ large on the face of the record and is evident from the fact that the petitioner applied even prior to the advertisement and there was no competition, as no candidate, who had appeared in the CET June, 2010 examination, participated in the admission process.
12. Counsel further submits that there has been no satisfactory explanation on the part of the college and further it is submitted that petitioner was well aware of the admission bulletin and thus the petitioner can neither claim ignorance nor the petitioner is innocent and in fact the petitioner was hand in glove with the acts of the college.
13. Reliance is placed on a certificate issued by the respondent no.2, according to which the petitioner has made an application on 12.4.2010, however, there is no explanation on the part of the petitioner as to how the application was made and on what basis.

14. Dr.Gosai, also submits that the details which have been filed along with the counter affidavit duly bears the signatures of the director of the respondent no.2 along with the rubber stamp and thus it cannot be said that the petitioner is not aware of such application form on 12.4.2010. Reliance is also placed on the medical information bulletin, which has also been placed on record, to show that there is no provision for conducting eligibility test for students.
15. Dr.Gosai, submits that the selection process, timeframe and the schedule for enrolment has been detailed in the information bulletin. It is further submitted that there is no delay in informing the respondent no.2 that the process of selection is irregular, as the communication was issued soon after relevant documents were submitted by the college to respondent no.1, which also finds mention in the impugned order dated 11.7.2011.
16. The above writ petitions have been heard together and with the consent of counsel for the parties are being disposed of by a common order. In all these matters the petitioners have completed their M.B.B.S. course and thereafter applied to their respective colleges for DNB 2/3/6 year(s) course. All the petitioners were granted admissions and have completed their course except petitioners in WP(C)No.344/2012 and WP(C)No.114/2013. The admissions granted in favour of all these petitioners were revoked and cancelled by communications issued by the National Board of Examinations. The impugned communications in each case, are as under:

<u>Petition No. & Party Name</u>	<u>Impugned order</u>
	<u>dated</u>
WP(C)No.344/2012 Patel Bhavinkumar Ramesh Chandra	21.11.2011
<i>W.P.(C) 114/2013</i>	21.11.2011

Pulak Nigam	
W.P.(C) 6683/2011 P.Laxmi Prathyusa	30.07.2011
W.P.(C) 6500/2011 Karnam Vnp Kumar	11.07.2011
W.P.(C) 6503/2011 Sayed Mujahid Hussain	11.07.2011
W.P.(C) 3232/2012 Ashish Popatrao Jhadav	24.02.2011

17. After communication of cancellation was received by the petitioners, the present writ petitions were filed. An interim order was granted in WP(C)No.3232/2012, WP(C)No.6500/2011 & WP(C)No.6503/2011, however, petitioners in the WP(C)No.6683/2011 were also permitted to complete the course by the college and also appear in the examination. It may be noticed that the petitioners in WP(C)No.344/2012 and WP(C)No.114/2013 were not permitted to complete the course.
18. The common case of the petitioners is that they are the bona fide students, they had made applications to their respective colleges; after the candidates had cleared the CET examinations conducted by the Board and also cleared the aptitude test which was conducted by the respective colleges.
19. Counsel for the petitioners also submit that some of the petitioners more particularly petitioners in WP(C)No.344/2012 and WP(C)No.114/2013 belong to the lower strata of the society and are the first in their family and village to have become doctors and have attained this distinction. It is also a common argument that the parents of the petitioners have spent their hard earned savings on their education and in case their admissions

are not regularized, their hopes would be dashed into pieces.

20. Counsel for the petitioners have strongly urged before this court that the petitioners had nothing to gain in appearing for the aptitude test and they simply appeared in the same as it was the requirement of the college. A strong argument has also been put-forth by the respective counsel for the petitioners that holding of aptitude test was the norm up till 2010 and in addition to clearing the CET examination, the college was to conduct an aptitude test, and thus, the candidates did not consider it unusual when they were asked to appear in the aptitude test.
21. As far as the stand of respondent no.1, National Board of Examinations is concerned, Mr.Mukul Gupta, learned senior counsel ably assisted by Mr.Gosain, advocate have submitted before this court that after the year 2010 the rules were amended and the procedure of conducting aptitude test was done away with and conducting aptitude test and granting admissions to the petitioners, is thus irregular.
22. Counsel for the petitioners appearing in WP(C)No.344/2012 and WP(C)No.114/2013 submit that the college was also misled by the fact that earlier an aptitude test was prescribed and it was not that the college intentionally flouted the admission procedure. Similar stand has been taken by the college in the petition, WP(C)No.6683/2011. Counsel for the college has also urged before this court that the explanation rendered by them to respondent no.1 has been accepted by them, which fact is disputed by counsel for respondent no.1.
23. Counsel for the colleges further submit that barring this discrepancy/irregularity committed, they have neither in past nor in future flouted any guidelines, rules or regulation of respondent no.1 and the court should take a lenient view in the matter.
24. Counsel for the petitioners have also drawn attention of the court to another decision rendered by a Single Judge of this court where the

admission of the student was regularized by imposing a penalty of Rs.1.0 lac on the college which was to be paid to the Board to regularize the admission of the candidates.

25. At this stage, counsel for the petitioners submit that petitioners are willing to deposit a sum of Rs.1.0 lac to respondent no.1, to enable them to regularize their admission. Counsel appearing in the writ petitions [WP(C)No.344/2012 and WP(C)No.114/2013] submit that financial status of the petitioners is such that the penalty amount should be decreased or the college should be asked to share the same, as they are still in debt of paying for their tuition fee, etc.
26. Counsel for the college in WP(C)No.344/2012 and WP(C)No.114/2013 have also agreed to this suggestion. Counsel for respondent no.1 submits that mere penalizing the students and the college cannot regularize the admissions of the petitioners herein.
27. Admittedly all the petitioners were granted admissions in the year 2010 and thereafter out of six (6) petitioners, four (4) petitioners have completed their course. Petitioners in WP(C)No.344/2012 and WP(C)No.114/2013 have mostly attended training, but not completed the course. It may be noticed that despite irregularities committed by the college(s), no action has been taken by respondent no.1 against them till date, although an explanation has been rendered by counsel for respondent no.1 that since the matter was subjudice, respondent no.1 did not take any action in the matter. The court cannot lose track of the fact that four (4) petitioners out of six (6) petitioners have already completed the course. The seats which have been granted to these petitioners can be of no use either to the college or to the Board and also the fact that at one stage the aptitude test was the part of regulations. I am also inclined to accept the argument of counsel for the petitioners and the college that barring this one incident, the colleges have not flouted the regulations of

respondent no.1. The statement so made has not been rebutted. The colleges also undertake not to conduct any aptitude test in future unless so provided under the rules and regulations.

28. Having regard to the future of the petitioners herein and for the reasons aforestated and subject to payment of penalty in the sum of Rs.1.0 lac to be deposited by the petitioners in each writ petition for the default committed by the college, the present writ petitions are allowed in the peculiar facts of these cases.
29. The petitioners and the colleges in two matters [WP(C)No.344/2012 and WP(C)No.114/2013] have brought to the court, bank draft(s) in the sum of Rs.1.0 lac each, which have been accepted by counsel appearing for respondent no.1, National Board of Examination. The details of the bank drafts are given below:

<u>Petition No. & Party Name</u>	<u>Name of the Bank, Demand Draft No. and amount.</u>
WP(C)No.344/2012 Patel Bhavinkumar Ramesh Chandra	Bank of Baroda D.D.No.373748 For Rs.50,000/-
By the Hospital	Indian Overseas Bank DD No.495000 Rs.50,000/-
W.P.(C) 114/2013 Pulak Nigam	ICICI Bank D.D.No.308185 For Rs.50,000/-
By the Hospital	Indian Overseas Bank DD No.495000 Rs.50,000/-
W.P.(C) 6683/2011 P.Laxmi Prathyusa	Axis Bank DD No.010753

	Rs.1,00,000/-
<i>W.P.(C) 6500/2011</i> Karnam Vnp Kumar	ICICI Bank DD No.032034 Rs.1,00,000/-
<i>W.P.(C) 6503/2011</i> Sayed Mujahid Hussain	ICICI Bank DD No.032034 Rs.1,00,000/-
<i>W.P.(C) 3232/2012</i> Ashish Popatrao Jhadav	Punjab National Bank DD No.091417 Rs.1,00,000/-

30. The impugned orders as detailed in para (1) above, are set aside. Petitioners in WP(C)No.344/2012 and WP(C)No.114/2013 shall be permitted to complete their course from the stage from where they were directed to leave.
31. Leave, as prayed is granted to the petitioners to recover the amount paid from the hospital concerned, in accordance with law.
32. Accordingly, the above said writ petitions and the applications stand disposed of.

G.S.SISTANI, J

SEPTEMBER 26, 2013

ssn