

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16582 of 2015

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Aditi Tiwary D/o Ashok Kumar, resident of Mohalla- Azad Nagar, Kankarbagh,
P.S.- Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Chairman, Bihar Combined Entrance Competitive Examination Board, IAS Bhawan, Patna.
4. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, IAS Bhawan, Patna.
5. The Medical Council of India, New Delhi-110077, through its Secretary.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Sharvan Kumar, Advocate
For the State	:	Mr. S. Raza Ahmad, AAG9
For B.C.E.C.E.B.	:	Mr. Vikas Kumar, Advocate
For M.C.I.	:	Mr. Kumar Brijnandan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 05-11-2015

Petitioner was one of the candidates who sat for M.B.B.S. Examination conducted by Bihar Combined Entrance Competitive Examination Board, Patna. The results were declared. The petitioner participated in the counselling held on 27th of September, 2015 but her merit position and rank did not beget her any nomination in an institution. She decided to file the present writ application under a circumstance that the respondent-Board suddenly decided to hold yet another counselling on 30th September, 2015 on a very-very short notice to fill up some more seats which became available for general category candidates since adequate number of

SC/ST category candidates were not available with minimum 40% marks. Since the petitioner could not make it for counselling and people with lesser merit and rank got an opening, she wants a direction or mandamus upon the respondents to give her a suitable opening.

2. The facts are that the seats reserved for SC/ST candidates also mandated that such candidates in terms of the M.C.I. Regulation must have minimum 40% marks to be eligible. Since many seats remained vacant in absence of eligible candidates in the said category, certain litigations were initiated. Since a large number of seats remained vacant due to lack of eligibility of different category of candidates, writ applications were filed before the High Court to reduce the eligibility to 32% and there was some appeals regarding such decision in the previous year of the State Government which was considered by a Division Bench.

3. The Division Bench gave a detailed order refusing to lower the standards and, therefore, in terms of the available vacancies, it was decided that in-stead of loosing out on the seats which will be a loss for the State and the students, it would be required to be filled up even by general category candidates. Since the decision of the Division Bench was rendered on 28th September, 2015 and with a dead line of 30th September, 2015 having been fixed by Hon'ble Apex

Court for granting admission, the respondent-Board sent messages to all the candidates through means available such as e-mail, Sms etc. for holding counselling for the left over seats on 30th September, 2015.

4. The respondents have taken a stand that the counselling went on till very late hours on 30th September, 2015 and each and every candidate who presented himself or herself in person were accommodated according to their rank and first come first served basis. Those candidates who did not turn up obviously could not be given an opening and petitioner is one of those candidates.

5. The circumstances under which the counselling came to be held on 30th September, 2015 was under compelling circumstance. If counselling was not held on 30th September, 2015, the seats would have remained vacant for the year in question. Since it is always prudent not to allow such seats to go vacant even in the interest of the State, looking at the shortage of hands of doctors and since there was a judicial order of a Division Bench to fill up those vacancies, the time in the hands of the respondents was very short.

6. Learned counsel for the Board also informs the Court that large number of people did turn up for counselling and people have travelled from different cities as well even on the short notice which was provided to the candidates. Therefore, it is not a unique case where nobody has been able to respond and react to the

short notices with regard to the date of counselling on 30.09.2015.

7. In totality, therefore, since the petitioner did not participate in the counselling, the admissions which had already been granted to the candidates who had appeared in counselling cannot be disturbed and the petitioner cannot be accommodated after the cut-off date, i.e., 30th September, 2015.

8. There is no element of rationality or arbitrariness in the conduct of the respondents, therefore, the writ application has no merit and it is dismissed.

(Ajay Kumar Tripathi, J.)

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