

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.387 of 2015

IN

Civil Writ Jurisdiction Case No. 22179 of 2014

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Dr. Sohail Ahmad, aged about 37 years, S/o Md. Quddus, R/o 302, Third Floor, Royal Residency Apartment, Indrapuri, Raja Bazar, Patna

.... Petitioner/Appellant

Versus

1. The State of Bihar through, Health Secretary , Govt. of Bihar.
2. B.N. Mandal University, Madhepura through its Registrar, at, P.S. District-Madhepura.
3. The Vice chancellor, B.N University , Madhepura.
4. The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building Near Patna Air Port, Through controller of examination.
5. The Principal, Katihar Medical College, Katihar in the district of Katihar.
6. Seema Kumari, D/o Sri Rajeshwar Prasad Sinha, advocate Royal Place, Patna Makhania Kuan, P.S. Pirbahore in the district of Patna.
7. Medical Council of India pocket-15, sector-8, Dwarika, New Delhi through its Chairman.

.... Respondents/Respondents

with

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Letters Patent Appeal No. 399 of 2015

IN

Civil Writ Jurisdiction Case No. 8656 of 2013

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1. Dr. Sohail Ahmad, S/o Md. Quddus R/o 302 , Third Floor, Royal Residency Apartment Indrapuri, Raja Bazar, Patna.

.... Respondent/Appellant

Versus

1. The State of Bihar through, Health Secretary, Govt. of Bihar.
2. B.N. Mandal University, Madhepura through its Registrar, at, P.S. District - Madhepura.
3. The Vice Chancellor, B.N. University, Madhepura.
4. The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building Near Patna Air Port, through Controller of Examination.
5. The Principal, Katihar Medical College, Katihar in the district of Katihar.
6. MD. Intekhab Alam Chand, S/o Md. Manzar Alam, MD (Com. Med.), C/o Principal, Katihar Medical College, Katihar.
7. Mukesh Nandan, S/o Sri Binod Prasad Sharma, MD (Com. Med.), C/o Principal, Katihar Medical College, Katihar.
8. Medical Council of India through its Chairman, Pocket-15, Sector-8, Dwarika, Delhi

.... Respondents/Respondents

9. Seema Kumari, D/o- Sri Rajeshwar Prasad Sinha, advocate Royal Place, Patna Makhania Kuan, P.S. Pirbahore in the district of Patna

.... Petitioner/Respondent

Appearance :

(Both in LPA No. 387 of 2015 and LPA No. 399 of 2015)

For the Appellant : Mr. Y.V. Giri, Sr. Advocate
Mr. Sanjeev Kumar, Adv.
For Respondent No.5: Mr. Dharmeshwar Mishra, Adv.
Mr. Sanjay Kumar Shrivastava, Adv.
For Respondent No.5: Mr. Rajiv Giri, Adv.
For Respondent M.C.I.: Mr. Kumar Brijnandan, Adv.
For Respondent No.6 Mr. Rajendra Pd. Singh, Sr. Adv.
Mr. Mukesh Kumar Singh, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-07-2015

Both the Appeals are preferred by the same person. L.P.A. No.387 of 2015 is filed against the order dated 6.2.2015 passed in C.W.J.C. No.22179 of 2014 and L.P.A. No.399 of 2015 is filed against the order dated 25.10.2013, passed in C.W.J.C. No.8656 of 2013.

For the sake of convenience, the parties are referred to as arrayed in L.P.A. No.387 of 2015.

The admissions in the Post Graduate Medical Courses in the year 2010-2011 in the various medical colleges in the State of Bihar were made on the basis of performance of candidates in the entrance examination. In the Katihar Medical College, i.e. 5th respondent, there existed specialization, by name M.D., Community Medicine.

Three seats in that course are permitted to be filled by the Management. The appellant was admitted against one of the management seats and not on the basis of allotment by the convener. The 6th respondent was in the government service and she too appeared in entrance examination.

She approached this Court by filing C.W.J.C. No.8656/13 stating that though she was entitled to be admitted against one of the three seats in the 5th respondent college in the said course, she was denied admission and that the appellant herein was admitted, notwithstanding his inferior rank in the entrance examination. The said writ petition was contested by the appellant and ultimately through judgment dated 25.10.2013, learned Single Judge took the view that the admission of the appellant was illegal and the 5th respondent was entitled to pursue the course. It was also mentioned that the admission of the appellant becomes in excess of the available seats and, at the most, it is for the Medical Council of India (for short M.C.I.) to take note of the situation. The Court further took note of the fact that M.C.I. i.e. the 7th respondent, issued notice to the institution proposing to de-recognize it, because of the admission of the appellant herein. L.P.A. No.399 of 2015

arises out of it.

Based upon the judgment in C.W.J.C. No.8656/13, the college cancelled the admission of the appellant herein. The same was challenged in C.W.J.C. No.22179/14. Learned Single Judge who heard the writ petition held that once the order passed in C.W.J.C. No.8656/13 is in force, the petitioner cannot claim any right to be admitted in the course and dismissed the writ petition. L.P.A. No.387 of 2015 is filed against it.

Sri Y.V. Giri, learned Senior Counsel for the appellants advanced extensive arguments on behalf of the appellant. He contends that the very admission of the 6th respondent, on the basis of sponsoring by the Government, is totally illegal and there was no basis for unsettling the admission of the appellant. Alternatively, he contends that even if the admission of the appellant is found to be not lawful, he can be permitted to complete the course, in view of the fact that he has attended classes for the entire three years and complied with all other requirements.

Shri Kumar Brijnandan, learned counsel for the M.C.I. and Shri Dharmeshwar Mishra, learned counsel for the 5th respondent submit that the admission of the appellant was found to be in contravention of the Rules and



that the learned single Judge has assigned cogent reasons for holding that the admission of the appellant was illegal. They submit that the admission of the 6th respondent has taken place in the year 2010 itself and till the expiry of the duration of the course, the appellant did not move in the matter at all, though he was informed that his admission is in excess of the allotted seats.

It is not in dispute that only three seats were available in the 5th respondent institution under the management quota. The appellant, no doubt, was admitted against one of the three seats. It was, however, found that the 6th respondent, who was otherwise entitled to be admitted, was denied admission. In C.W.J.C. No.8656/13, filed by the 6th respondent, this Court passed an interim order directing that she shall be admitted. The appellant did raise an objection at that stage when his admission was treated to be in excess of sanctioned strength.

The brochure that was printed for the Post Graduate Medical Entrance Test, 2010, contained a provision that 30% of the 3 seats in the subject of Community Medicine in the college were reserved for State Quota. The admission of the 6th respondent was against that quota. The appellant did not challenge the provision



contained in the brochure. Though at one stage the college supported its action in admitting the appellant, has taken the view that the appellant cannot be admitted in the institution. At one stage, the feasibility of the admission of the appellant being regularized with the consent of the M.C.I. was also considered. However, the Council took the definite stand that the infrastructure that is available in the 5th respondent is not sufficient for additional candidate. In fact, the court issued a show cause notice to the institution requiring it to explain as to why the recognition be not cancelled on account of the illegality. Learned Single Judge has assigned cogent reasons for allowing C.W.J.C. No.8656/13. We are not inclined to interfere with the same.

The other writ petition was just a fall out of the first one.

The alternative submission made by the learned Senior Counsel that whatever may have been the circumstances under which some illegality has crept in the selection process, the appellant can be permitted to take the examination since he completed the course, is equally untenable. It is, no doubt, true that in the two judgments i.e. in Choudhury Navin Hema Bhai & Ors. Vs. State of

Gujarat & Ors.¹ and Ranjan Purohit & Ors. Vs. Rajasthan University of Health Sciences & Ors.² the Hon'ble Supreme Court granted some relief to the candidates whose admission into Medical Colleges were found to be illegal. That, however, was solely by invoking its power under Article-142 of the Constitution of India. We cannot venture such an exercise.

Appeals are dismissed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
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1. 1.(2011) 3 SCC 617

2. (2012) 10 SCC 770