

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.598 of 2014

In

Civil Writ Jurisdiction Case No. 22675 of 2013

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1. Priyanka Kumari, Daughter of Sri Ravindra Prasad, Residing At C/O- Dr. A.P. Sinha, At K/48, P.C. Colony, Hanuman Nagar, District- Patna

.... Appellant/s

Versus

1. The Director, All India Institute of Medical Sciences, Patna (Bihar)
2. The Director, All India Institute of Medical Sciences, New Delhi
3. Rishav Kumar, Son of Note Known, A Student of 1st Year, M.B.B.S. Course At Aiims Patna Through The Registrar, All India Institute of Medical Sciences, Patna
4. Rohan Hehr, Son of Not Known, A Student of 1st Year, M.B.B.S. Course At Aiims Patna Through The Registrar, All India Institute of Medical Sciences, Patna
5. The Principal, Nalanda Medical College And Hospital, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pushkar Narain Shahi, Sr. Adv.
Mr. Sanjeet Kumar Singh, Adv.
For the Respondent/s : Mr. Binay Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE I.A. ANSARI

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

8 09-01-2015 Heard Mr. Pushkar Narain Shahi, learned Senior Counsel for the appellant, and Mr. Binay Kumar Pandey, learned Counsel for the respondents.

2. Challenge in this appeal is order, dated 28.01.2014, passed in CWJC No. 22675/2013, whereby and whereunder the learned single Judge has dismissed the writ petition observing that the matter lacks merit.

3. The appellant has prayed for the following reliefs:-

“(i) For issuance of writ in the nature of mandamus commanding and directing the

respondents- All India Institute of Medical Science, Patna to permit the petitioner for taking admission in M.B.B.S course at AIIMS, Patna at present subject to make available the original certificates in near future as the originals are being kept preserved in N.M.C.H, Patna where petitioner is doing MBBS course.

(ii) And/or may pass such other order or orders as deem fit and proper in the interest of justice.

4. In order to substantiate such plea as is evident from the writ petition, the appellant/petitioner has divulged that after 3rd counseling for admission in academic year 2013-14, five seats remained vacant and on account thereof, a notice was published at the end of A.I.I.M.S. Patna for open selection to be held on 30.09.2013 and for that, it was directed that the candidates, who are interested in participating in open selection, should be physically present along with original certificates. No extension under any circumstance was to be granted further. It has further been pleaded that appellant/petitioner hails from OBC category, figured at Serial No. 75 under OBC category having overall rank in the merit list 2529. It has also been averred that at the relevant time appellant/petitioner had already been admitted to Nalanda Medical College Hospital, Patna where her all original certificates were deposited and accordingly, she appeared along with photo copy of all relevant certificates as well as a certificate granted by the Nalanda Medical College Hospital, Patna to the



effect that all the original documents are along with the institution. So many candidates have had also appeared including Respondent No.3, Rishav Kumar without having original certificate and in the aforesaid background, he was given preference over appellant/petitioner on account of his rank 1587 in the merit list. It has also been submitted that one Rohan Hehr, Respondent No.4 who stood at Serial No. 2552 in the merit list coming from OBC category standing at Serial No. 83 in merit list was admitted along with three others, Komal Priya, Farhat Jahan Khan and Nikhar Singhal. So it has been pleaded that denial of admission to the appellant/petitioner was arbitrary and on account thereof, panel should be cancelled directing the A.I.I.M.S. Patna to admit the appellant/petitioner.

5. The matter was disposed of at the admission stage itself without noticing Respondents No. 3 and 4. A.I.I.M.S. Patna appeared and filed its counter affidavit wherein it has been pleaded that four persons namely, Komal Priya, Farhat Jahan Khan, Nikhar Singhal and Rohan Hehr have turned up having original testimonials and certificates and so they were admitted while one seat remained vacant over which Rishav Kumar, standing at rank no. 1587 in the merit list and having no testimonials was given preference over appellant/petitioner. It has



also been disclosed that apart from appellant/petitioner as well as Rishav Kumar, Ghanshyam Raja, Rak Kumar Tata, Sudhanshu Kumar Aggrawal, Priyanka Kumari, Equra Nafees, Manisha Prasad and Kumari Rakhi also appeared who were below the rank of Rishav Kumar in the merit list and on account thereof, in order of preference Rishav Kumar was admitted.

6. From the order impugned it is apparent that the learned single Judge had taken into account the aforesaid event along with the fact that petitioner was below the rank in the merit list than that of Rishav Kumar.

7. Bereft of factitive submission raised on behalf of appellant/petitioner while assailing the order impugned, it has been submitted that the learned single Judge has failed to consider that the Respondent AIIMS failed to maintain uniformity as well as transparency during admission process. In order to elaborate such proposition, it has been submitted that when five seats were released for open selection, then in that event, the institute should have clarified the situation whether it was duly found under coverage of reservation policy, which they subsequently tried to grandiose by admitting Respondent No.4, though an explanation has been put forward as an eye wash, who stood lower than petitioner in OBC merit list coupled with General merit list. To

buttress such submission, it has been submitted that the seats have been released from General and no sooner than, it will be influenced by the Reservation policy.

8. It has further been submitted that the notice was indeterminable on any other aspect save and except that candidates were requested to participate having duly armed with original testimonials. Even considering the plea of AIIMS that one seat left vacant, it should have been allowed to remain vacant till the matter was duly scrutinized by the Authority concerned. Giving preference to Respondent no.3 without any proper guideline was another lapse on the part of AIIMS. On this aspect, it has also been submitted that once the candidate having no original certificates is allowed to avail the right, then in that circumstance, appellant/petitioner should have been admitted being upper in merit list than Respondent No.4.

9. Furthermore, it has been submitted that appellant/petitioner had not participated without any original certificate rather was duly equipped with a certificate granted by the N.M.C.H having a disclosure that appellant/petitioner was admitted to the institution and on that pretext, all original documents were along with institution. Respondent AIIMS did not aver that they considered the certificate issued by N.M.C.H and

found non-acceptable nor suggested that they had treated the case of appellant/petitioner having not in possession of original certificate like others.

10. In this context, it has been submitted that there happens to be no fault on the part of petitioner and had the AIIMS considered the certificate in right perspective the aforesaid anomaly would not have occurred.

11. It has further been submitted that 30 September the cut off date fixed by the Hon'ble Apex Court is not the hard and fast and at so many occasions, it has been allowed to be relaxed whenever casualty of aggrieved has been found capricious, mala fide, and for that relied upon ***ASHA V. PT. B.D. SHARMA UNIVERSITY OF HEALTH SCIENCES*** as reported in ***(2012)7 SCC 389***.

12. On the other side, the learned counsel for AIIMS submitted that the vacancy of seats accrued under General category, hence the candidates, according to their status in General merit list were given preference, but failed to explain on the score that having released from General category, how the identification of seats were to be made. In like wise manner, also failed to properly explain over conduct of AIIMS how in absence of proper exposure in notice regarding methodology for admission against

vacant seat without original certificate during open selection, such event was finalized.

13. It has also been submitted that any sort of interference will affect prospect of Respondent No.3 and 4, who were not noticed by the writ court, hence, they be also allowed to have their say. Moreover, admission had already been completed as well as the cut off date fixed by the Hon'ble Apex Court as 30 September has also been crossed over. Hence, rightly the writ petition was dismissed and, in likewise manner, instant LPA needs to be dismissed.

14. Without adverting to the merit of the case, we feel presence of Respondent No. 3 and 4 necessary to answer the points raised on behalf of appellant/petitioner which were not noticed at the initial level as well as the order impugned is found duly nodosed on this score.

15. So far identity of cut-off date 30 September for particular academic year is concerned, the Hon'ble Apex Court has taken into consideration in ***ASHA V. PT. B.D. SHARMA UNIVERSITY OF HEALTH SCIENCES*** referred above. Relevant paras as quoted below.

29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for



admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in *Medical Council of India v. Madhu Singh and Others* [(2002) 7 SCC 258], *Ms. Neelu Arora and Another v. Union of India and Others* [(2003) 3 SCC 366], *Aman Deep Jaswal v. State of Punjab and Others* [(2006) 9 SCC 597], *Medical Council of India v. Naina Verma and Others* [(2005) 12 SCC 626], *Mridul Dhar and Another v Union of India and Others* [(2005) 2 SCC 65].

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

16. As such, setting aside the order impugned, the matter is remitted back to the learned single Judge to adjudicate upon the matter afresh after noticing Respondents No. 3 and 4.

(Aditya Kumar Trivedi, J)

**I agree
(I. A. Ansari, J)**

(I. A. Ansari, J)

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