

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6500 of 2016

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1. Dr. Arshad Iqbal Son of Md. Nezamuddin, Resident of Village - Peur, P.O. & P.s. - Sahar, District - Bhojpur.
 2. Dr. Raman Kumar, Son of Upendra Jha, Resident of Village & P.O. - Karian, P.S. - Rosera, District - Samastipur.
 3. Dr. Suman Saurabh Son of Kari Prasad Yadav, Resident of Village - Rampur, P.O. - Rajpur, P.S. - Pipra Bazar, District - Supaul.
 4. Dr. Lallan Singh, Son of Radhe Shyam Singh, Resident of Village- Janidih, P.O. - Ghogha, P.S. - Kahalgaon, District - Bhagalpur.
 5. Dr. Rajani Kant Raushan Son of Deo Kant Roy, Resident of House No. 546, Block - B, New Ashok Nagar, New Delhi.
 6. Dr. Rishi Kant Son of Sudhanshu Shekhar Singh, Resident of H/O E/N - 10, Road No. E, Siwaji Chowk, Ramkrishna Nagar, District - Patna.
 7. Dr. Sonu Kumar, Son of Ram Chandra Prasad, Resident of Duraga Charan Lane, Sadikpur, P.O. - Gulzarbagh, P.S. - Alamganj, District - Patna.
 8. Dr. Abhijeet Kumar, Son of Prem ranjan Maharaj, Presiding residing at Room No. 63, Hostel No. 4, S.K. Medical College, Muzaffarpur.
 9. Dr. Anshuman Son of Sudhir Kumar Yadav, Resident of Village - Bhawanipur, P.O. - Ajgaiwa, P.S. - Sour Bazar, District - Saharsa.
 10. Dr. Pawan Prakash Son of Umesh Prasad, Resident of Mohalla - Indra Nagar, Road No. 9, P.O. G.P.O., P.s. Jakkanpur, District - Patna.
 11. Dr. Raul Mayank Son of Umesh Prasad, Resident of Village - Nirpur P.O. - Ganpura, P.S. - Noorsarai, District - Nalanda.
 12. Dr. Santosh Kumar, Son of Upendra Prasad Yadav, Resident of Village - Mahpura, P.O. - Mainagram P.S. - Mahishi, District - Saharsa.
 13. Dr. Rohit Kumar, Son of Ravindra Kumar, Resident of Opposite West Gate of Harischandra Stadium, Nawada.
 14. Dr. Abjeet Kumar, Son of Vishwa Mohan Kumar, Resident of Village - Kumhra, P.O. - Karkayan, District - Patna.
 15. Dr. Ajay Ranjan Son of Rajeshwar Prasad Singh, Resident of Mohalla - Abhiyanta Nagar, West Bailey Road, P.O. - Danapur Cantt, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
4. The Chairman, Bihar Combined Entrance Competitive Examination, IAS Bhawan, Patna.
5. The Controller Examination, Bihar Combined Entrance Competitive Examination, IAS Bhawan, Patna.
6. The Medical Council of India, Police 14, Sector -8, Dwarika Phase - 1, New Delhi - 110077 through its Secretary.
7. The Secretary, The Medical Council of India, Pocket 14, Sector -8, Dwarika Phase - I, New Delhi - 110077.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Pranav Kumar
For the M.C.I.: Mr. Kumar Brijnandan
Mr. Tavees Hameed
For BCECEB: Mr. Vikash Kumar
For the State: Mr. Sushant Praveer

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 28-04-2016

Heard learned senior counsel for the petitioners, counsel for the MCI and counsel for the Bihar Combined Entrance Competitive Examination.

The writ application seeks quashing of letter no. 445 (1), dated 31.03.2016, issued by the Deputy Secretary, Department of Health, Government of Bihar, by virtue of which a direction has been issued to the Controller of Combined Competitive Examination Board not to take admission for the courses or the seats indicated in the said letter, which are said to be non-recognized by Medical Council of India (for brevity "MCI"). According to the petitioners, the number of seats, which were recommended and are deemed to be recognized seats adds up to 66 and if that letter is not interfered with and quashed, the students, who have successfully qualified in the competitive examination and are eligible for admission in the Post Graduate courses, the window of opening will shrink for no fault of theirs.

The history behind issuance of Annexure – 7, dated 31.03.2016 is a litigation started through a writ application, namely, C. W. J. C. No. 4759 of 2013 in which a grievance was raised by



the petitioners of that writ application that admissions are being granted on the basis of a competitive examination, being held by the Combined Competitive Examination Board without there being any valid recognition to the courses by the M.C.I. This has created a piquant situation, because despite successful completion of the courses, in absence of any recognition, the degree so obtained is not worthy of the paper on which it is printed.

There cannot be any dispute or quarrel with regard to the seats and the courses having prior approval and recognition by the M.C.I., both under the Act as well as the various Statutes, notified by them. Courses, which are not recognized, will not beget any benefit to a student, even if he has been given admission by any authority, based on a competitive examination, held in this regard.

The Court was amazed to learn that some of the courses had not been given recognition for more than five decades and the State authorities had not bothered to remedy the situation by taking steps for recognition from M.C.I.

Except assurance, which came from the State authorities, especially the Department of Health, nothing tangible emerged by virtue of progress towards the object of obtaining recognition to the courses.

To make it worse, even the State of Bihar stopped giving any recognition to such degrees or diplomas in matters of employment advertised by them and that itself created further

complication and heart burning.

It was in these compelling circumstances that the Court in its order, directed the State authorities, including the Combined Competitive Examination Board, not to hold examination or to grant admission to any candidate in any course, which had no recognition by Medical Council of India.

It was that order, which has compelled or forced the hands of the authorities of the Health Department, of the Government of Bihar, to issue Annexure – 7.

Learned senior counsel, representing the petitioners, submits that courses, which have been permitted to be conducted under section 10 A for the Medical Council of India Act by inherent interpretation to the provisions would mean recognition for the purposes of continuance of all studies as well as award of degrees and for most of the seats, the M.C.I. had granted permission under Section 10 A and it is these seats against which the petitioners have a claim for consideration and admission.

Section 10 A reads as under:

“10A. Permission for establishment of new medical college, new course of study -

(1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no person shall establish a medical college; or

(b) no medical college shall:-

(i). open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical

qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2 - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Govt. may after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall

be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5) the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be, under section 20 in the case of postgraduate medical education;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard

to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.”

The provision, reproduced as above, has to be read in its entirety. These permission or recognition is given for a limited period of time till the requirements are fulfilled and the M.C.I. as well as the Central Government after due consideration approves or disapproves the said sanction under Section 10 A. It is not that this recognition is in absolute terms, but is a conditional grant of permission under special circumstances, which is envisaged under the Statute. Most of these seats are required to be continued till the completion of the courses and the review is required to be done before the conduct of examination for the final year. In most of the cases, the recognition or permission was granted in the year 2011 or 2012 and the time for such review or approval has arisen. Obviously, on the basis of the previous approval or permission another batch of students cannot be permitted to take admission, because Section 10 A envisages a situation only for the batch, which are permitted to be

given admission into the courses, so approved.

If this be the position, then there will be difficulty for this Court to allow admission of another set of students on the basis of recognition, which was conditional in nature under Section 10 A. No doubt, certain reviews are contemplated and are in the pipeline, but the Court cannot predict or anticipate the outcome of that review with regard to further approval or sanction / recognition to those courses. In fact, since most of these seats and courses have been given permission and relate to Government Medical Colleges and the Court is well aware of the condition of most of these Medical Colleges, where they face a threat of de-recognition every year, this Court will not take a chance by anticipating that the review of the institutions and the courses will meet the standards and the anticipation, therefore, cannot form the basis for grant of permission for taking admission into those courses. There are some courses in which permission has been accorded by the M.C.I. The issue with regard to those courses must rest.

In totality, there are only 05 (five) seats, where there is no dispute and on which permission can be granted for admission by this Court and they are: 03 (three) seats in MD Biochemistry in Darbhanga Medical College & Hospital, Laheriasarai; and 02 (seats) in Jawahar Lal Nehru Medical College, Bhagalpur of M.D. Pediatrics.

The writ application, therefore, is allowed to the extent that the ban and bar imposed in terms of Annexure – 7 will not apply

to the 05 (five) seats: 03 (three) at Darbhanga Medical College & Hospital; and 02 (two) at Jawahar Lal Nehru Medical College, Bhagalpur with regard to MD, Biochemistry and MD, Pediatrics respectively. With regard to other seats, this Court will not make any leeway for permission of admission till there is a clear recognition accorded or granted by the M.C.I. or notified by the Central Government.

The writ application stands allowed to the extent indicated above.

The charts produced on behalf of the petitioners and the chart produced by the Medical Council of India in relation to the courses, the number of seats and their status has been placed on record and form part of the record.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.05.2016
Transmission Date	