

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.708 of 2017

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Vikash Gaurav, son of Sri Deo Bansh Rai, resident of House No. K170, Hanuman Nagar, P.C. Colony, Kankarbag, P.S. - Patrakarnagar, P.O. - Lohianagar, Patna - 800020.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
2. Medical Council of India through its Chairman, Medical Council of India, New Delhi.
3. The Chairman, Medical Council of India.
4. The Consultant Medical Council of India.
5. Katihar Medical College, Katihar, through its Principal, Katihar Medical College, Katihar.
6. The Principal, Katihar Medical College, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s :Mr. Siya Ram Shahi, Adv.

For the Respondent Nos. 5-6:Mr. Y.V. Giri, Sr. Adv.

:Mr. Sanjay Kr. Srivastava, Adv.

For the MCI :Mr. Kumar Brijnandan, Adv.

Mr. Tarees Hameed, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 18-07-2017



A very short issue is involved in the present writ application in order of appreciate which, the brief facts of the case should be taken note of first.

2. The facts are not at all in dispute. Katihar Medical College, Katihar (*hereinafter referred to as the 'College'*), is a Privately Managed Minority Medical College. One Vivek Raj was admitted in 1st year MBBS course against NRI quota in the said College. 15% of seats are reserved in the said College to be filled-up against NRI quota. On 29.09.2015, said Vivek Raj withdrew his application. Against the said seat becoming vacant, the petitioner was admitted on 30.09.2015. The petitioner admittedly did not appear for the Combined Entrance Test (*hereinafter referred to as the 'CET'*), held for admission to Privately Managed Medical Colleges, whereas, the said Vivek Raj, who had withdrew his application had participated in such test. Admission of said Vivek Raj, in the College, was certainly not based on his performance in CET, rather it was purely on the basis that he was an NRI sponsored candidate.

3. The petitioner's admission, in the said College, is said to be on the basis of marks secured by him in the qualifying examination, *i.e.*, 12th Examination, for admission to the said course.



4. When this matter came to the notice of Medical Council of India (*hereinafter referred to as the 'MCI'*), through a communication, dated 01/02.12.2016, made by the MCI to the Dean/Principal, Katihar Medical College, Katihar, evidence was sought to show that the petitioner was an NRI student and he fulfilled the requirement of being considered for NRI seat. Since, the College could not provide any evidence of petitioner being an NRI or fulfilling the criteria of NRI sponsored candidate, the MCI took a decision that the petitioner should be discharged from the College. The MCI, accordingly, issued letter, dated 02.12.2016, to the Principal of the said College to discharge the petitioner and submit compliance within two weeks, in pursuance whereof, the Principal of the College has issued letter, dated 12.12.2016, cancelling the petitioner's admission.

5. There is absolutely no dispute about the fact that the petitioner is not an NRI nor an NRI sponsored candidate.

6. The said letter, dated 13.12.2016, issued by the Principal of the College, and the letter, dated 02.12.2016, issued by the MCI, have been put to challenge in the present writ application, seeking quashing of the said communications. A direction has also been sought from this Court, asking the College, in question, to allow the petitioner



to continue and complete his MBBS course.

7. Mr. Siyaram Shahi, learned Counsel, appearing on behalf of the petitioner, has submitted that it is difficult for him to justify admission of the petitioner against NRI quota, since admittedly he does not fulfill the essential conditions to claim admission against such seat. He has, however, submitted that since an NRI student had withdrawn his admission on 29.09.2015, which resulted into a stray vacancy, the petitioner fulfilled the eligibility criteria for admission, he was offered admission by the College to fill-up the said vacancy without inviting applications from other eligible candidates, 30.09.2015 being the last date prescribed under the Regulations, framed by the MCI, for admission. He submits that after his admission, the petitioner pursued his 1st year MBBS course for more than a year, before the impugned orders came to be passed and, therefore, a lenient view may be taken. He submits that it is the demand of 'equity' that the petitioner is allowed to complete his MBBS course.

8. Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the College, on the other hand, at the very outset, has drawn my attention to the statement made by the petitioner in paragraph 14 of the writ application from which, according to him, it is evident that the petitioner was allowed



admission on an assurance given by him that he would submit, in future, evidence of being ward of an NRI within one month. He has submitted that, in that background, considering the marks obtained by him, in qualifying examination, the College decided to allow him admission in 1st year MBBS course. He has also submitted that there was nothing wrong with the College in taking admission on the basis of the marks obtained in the qualifying examination, in view of Supreme Court decisions, which have been followed recently by a Division Bench of Karnataka High Court, in cases of ***Shri Basaveshwar Vidya Vardhak Sangha & Anr. Vs. The Medical Council of India (in W.P. Nos. 102850-102851/2015), KLE University & Anr. Vs. The Medical Council of India (in W.P. Nos. 102852-102853/2015)*** and ***Shri Dharmasthala Manjunatheshwara Education Society & Anr. Vs. The Medical Council of India (in W.P. Nos. 102916-102917/2015)***, delivered on **17.04.2015**.

9. Learned Counsel, appearing on behalf of the MCI, on the other hand, has submitted that the College ought not to have taken admission on the basis of marks obtained in qualifying examination and since the petitioner did not participate for CET, he could not have been allowed admission. According to him, admission, on the basis of the



marks obtained in the qualifying examination, is not contemplated under the Regulations framed by the Medical Council of India.

10. The issue to this effect is not required to be addressed in detail, since, admittedly the petitioner did not fulfill the requirement of being an NRI candidate or NRI sponsored candidate. He lacked the very qualification of being admitted against NRI quota.

11. However, Mr. Giri, learned Senior Counsel, is correct in his submission that the Supreme Court in case of ***P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors.***, reported in ***(2005) 6 SCC 537***, has said in clear terms that the Privately Managed Minority Institutions are free to admit students of their own choice against NRI quota of 15% by evolving their own methods of assessment of merit from amongst available candidates. The said decision has been considered by the Division Bench of Karnataka High Court, in the cases aforementioned, wherein, it has been specifically held in paragraph 20 as follows:-

"20. *Thus, it is clear that the issue with regard to admission of students in Unaided Private Medical Colleges having been considered by the Apex Court*



on more than one occasion, their right to admit NRI students by evolving their own method of assessing the inter se merit among the applicants has been recognized pending any legislation on the point to be brought in by the State.”

12. I am in agreement with the said Division Bench decision of the Karnataka High Court.

13. Regulations framed by MCI, in force at the relevant point of time, did not specifically prohibit admission on the basis of marks obtained in the qualifying examination, as is evident from Regulation 5(5) of Medical Council of India Regulations on Graduate Medical Education, 1997. The said Regulations provide for two modes of selection for admission to the said course. Therefore, it cannot be said that admission of a candidate in a Minority College, against NRI seat, based on marks, is impermissible. However, it was impermissible for the College to have admitted a candidate, who was neither an NRI nor NRI sponsored candidate. The petitioner had assured the College to submit documents in support of his claim of NRI status, which he failed to do. After having represented the College that he will be submitting the documents, in my opinion, the petitioner



cannot claim 'equity', once he failed to produce the evidence which he had assured to do.

14. By applying principles of '*equity*', something, which is unlawful or illegal, permitted or legitimized. I do not find any merit in this application.

15. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/07/17
Transmission Date	N/A

