

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16780 of 2019

Adarsh Bhardwaj Son of Arjun Kumar Resident of Mohalla-Shivpuram, Road No. 1, P.O.-B.V. College, Police Station-Rupaspur, Ward No. 2, District-Patna, presently residing in Flat No. 01, Block No. 17, High Court Colony, Adalatganj, Budh Marg, Post Office-G.P.O., Police Station-Kotwali, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Health Department, Government of Bihar, Patna
3. The Director in Chief Health Department, Government of Bihar, Patna
4. The Examination Controller Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-800014
5. The Principal Anugrah Narayan Magadh Medical College, Gaya
6. The Medical Council of India through its Secretary, General, Pocket No. 14, Sector-8, Dwarka Phase-1, New Delhi-110077

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jai Shanker Prasad, Advocate
For the Respondent State:	:	Mr. Mujtabaul Haque, G.P. 12
For B.C.E.C.E.B.	:	Mr. Prasoon Sinha, Advocate
For M.C.I.	:	Mr. Kumar Brijnandan, Advocate
		Mr. Tarees Hameed, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 21-08-2019 Heard learned counsel for the petitioner, learned counsel for the respondent State, learned counsel appearing for the Bihar Combined Entrance Competitive Examination Board as well as learned counsel appearing for the Medical Council of India.

The petitioner has filed the present application for a direction to the respondent to allow the petitioner to attend his regular classes on the basis of his admission, taken on



15.07.2019 and subsequently allowed to continue as per counseling dated 07.08.2019.

Learned counsel for the petitioner submit that the Respondent No. 4, in the process of Admission, took into consideration the physical disability of 50% to 70% and now the Respondent No. 4 has issued Annexure 10 changing the criteria of disability percentage from 50% - 70% to 40% - 80%.

Learned counsel for the petitioner would submit that once the respondent allowed the petitioner admission on the basis of eligibility of disability of 50% - 70%, the action of the respondent to modify the criteria and changing the percentage of disability in the category of physically challenged category is illegal and arbitrary exercise of power.

Learned counsel appearing for the Medical Council of India would submit that the criteria followed by the Respondent No. 4 is on the line of directives issued by the Medical Council of India. Mr. Prasoon Sinha, learned counsel appearing for the Respondent No. 4, would submit that the Medical Council of India guidelines are binding Referring to the facts of this case. Mr. Prasoon Sinha would further submit that the admission on the basis of counseling dated 15.07.2019 was cancelled as a whole. Thereafter, the Respondent No. 4 realized in the second round of counseling that in the matter of deciding admission of



physically challenged category, MCI guideline was not strictly adhered and as such realizing the mistake in counseling, decision was taken to rectify mistake and strictly follow the MCI guideline for admission in Medical Colleges as the disability of 40% - 80% is considered as eligibility for consideration in the matter of admission.

Counsel appearing on behalf of the petitioner submits that the respondents cannot adhere to the guideline of MCI and direct re-counseling after cancelling the admission of petitioner who was twice admitted on the basis of counseling in Anugrah Narayan Magadh Medical College, Gaya. He placed reliance on the judgement of the Apex Court in the case of Rajendra Prasad Mathur Vs. Karnataka University & Anr., reported in AIR 1986 SC 1448, paragraph 8 is quoted below to contend that for the lapse of the institution been admitted student contrary to law, petitioner cannot be made to suffer.

“8. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if



they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. Examination of the Rajasthan and Udaipur Universities was recognized as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. Examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this judgement allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from



getting admission to the Engineering Degree Course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his judgement with a view to preventing admission of ineligible students.”

The aforesaid judgement was rendered in the peculiar facts that the private engineering colleges with clear understanding of the fact that the admitted students were ineligible for admission, but for the capitation fee, they were taken in the college. The aforesaid judgement is not applicable in the facts of present case where the Respondent No. 4 has adopted the guidelines of the MCI for providing equal opportunity to the physically challenged. The guidelines of the MCI was issued in February, much before the commencement of the counseling.

Learned counsel for the petitioner next relied upon the judgement of the Apex Court in the case of Surender Reddy Vs. State of Andhra Pradesh, reported in 2015 (8) SCC 410. The judgement rendered by the Apex Court in the matter of appointment. The Apex Court held out that the Government order cannot operate with retrospective effect.

The aforesaid judgement is also not applicable in the present facts. The process of counseling started on 15.07.2019 and much before the commencement of the process of counseling the guideline of MCI was available and as such there



is no question of retrospective operation, moreover, the idea of rectifying mistake as per Annexure 10 is to provide equal opportunity to physically challenged and whosoever falling in the category of physically challenged. They are entitled to consideration for admission in Medical/Engineering/other colleges on the basis of merit position.

In the present facts and circumstances, the Court is of the view that correction in the matter of allotment of seat in Medical Colleges, Dental Colleges etc. in the light of the guidelines of the MCI does not deject any right of the candidate, as rectification of the mistake is always permissible. The Court does not find any indefeasible right is in favour as the petitioner as the process of admission was cancelled and after cancellation of the entire counseling, second round of counseling has started. To err is human and to rectify mistake is bliss. The Respondent No. 4 decided to consider the case of other physically challenged to provide equal opportunity and as such the Court is of the considered view that there is no case of promissory estoppel which operates against the respondent.

The petitioner although fail to avail the opportunity to participate in the counseling but for the ends of justice, the Court direct the respondent to allow the petitioner to participate in the counseling and if on the basis of his merit position, if he



is entitled to allotment of admission in medical college/dental college, the Respondent No. 4 shall consider his case for allotment in appropriate course and/college as per his merit position. It goes without saying that in the event petitioner is allowed other than medical college he shall be entitled to refund of amount deposited by the petitioner in connection with the admission in Anugrah Narayan Magadh Medical College, Gaya. The petitioner shall also be entitled to return of original documents from the college in question where he has taken admission but later on cancelled. The Anugrah Narayan Magadh Medical College, Gaya is under obligation to return the original documents on production of a copy of this order within a week from the date of receipt/production of a copy of this order. Petitioner may be allowed to participate in the counseling and as per the merit position if he is found eligible for admission then he may be allowed ten days time to produce the original documents.

With the aforesaid, the present writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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