

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 4893 of 2007

Durgadatta Jani

.....

Petitioner
Mr. R. Roy, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties
Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

07.12.2022

Order No.

19.

This matter is taken up through hybrid mode.

2. Heard Mr. R. Roy, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 10.04.2007 passed by the Principal, MKCG Medical College, Berhampur in pursuance of the letter dated 30.03.2007 of the Director, Medical Education and Training, Orissa, Bhubaneswar, cancelling his admission and striking off his name from the college roll, and to issue direction to the opposite parties to allow him to continue as a student in MKCG Medical College, Berhampur, as before.

4. Mr. R. Roy, learned counsel for the petitioner contended that the order impugned has been passed without following the principles of natural justice and, as such, the order impugned cannot be sustained in the eye of law. It is contended that by virtue of the interim order passed by this Court, the petitioner has already completed his course and also joined in Government service and continuing as Associate Doctor in the department of Anesthesia in

MKCG Medical College, Berhampur. Thereby, the writ petition filed by the petitioner should be allowed by quashing the order passed by the authority, as the same has been passed without following due procedure.

5. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties contended that by filing fraudulent certificate and taking advantage of the same, the petitioner has got admission and subsequently also got employment. Therefore, he is not entitled to get any relief from this Court and, as such, the writ petition should be dismissed in limine. So far as the contention raised that, no opportunity of hearing was given to the petitioner, while cancelling his admission on the basis of fake certificate produced by him, it is contended by Mr. Mishra, learned Addl. Government Advocate that the matter may be relegated back to the authority concerned to that stage, so that the authority can consider the same and pass appropriate order by affording opportunity of hearing to the petitioner. It is further contended that on the basis of fake certificate, the employment got by the petitioner is not permissible, in view of law laid down by the apex Court in the case of *The Chief Executive Officer, Bhilai Steel Plant, Bhilai v. Mahesh Kumar Gonnade and Ors.*, 2022 LiveLaw (SC) 572.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the Principal, MKCG, Medical College, Berhampur issued a letter on 10.04.2007, relying upon the letter dated 30.03.2007 of Director, Medical Education and Training, Orissa, Bhubaneswar that on 11.07.2006 the petitioner was provisionally admitted into MBBS course against the reserved S.T. seats who reported to have produced fake

residence certificate/caste certificate. Thereby, the admission of the petitioner was cancelled and his name was struck off from the college roll, as per clause-18 of the Information Broacher Prospectus, 2006 of J.E.E., Orissa. Needless to say, the petitioner was admitted into the medical course against the reserved vacancy, pursuant to the prospectus issued by the authority, wherein he himself declared him as an S.T. candidate and consequentially he was preceded with his studies. Subsequently, on enquiry being made, it was found that taking advantage of production of fake certificates, the petitioner was allowed to take admission into the medical course to prosecute his studies. Thereby, the Director, Medical Education and Training, Orissa, Bhubaneswar intimated the Principal, MKCG, Medical College, Berhampur to take action against the petitioner and as a consequence thereof cancellation of his admission was done. As it appears, the matter is of the year 2007 and by virtue of the interim order passed by this Court, in the meantime, the petitioner has completed his course and also got employment in Government and is still continuing in service. Therefore, minimum requirement of compliance of natural justice being paramount consideration, this Court on 25.07.2007 passed interim order in Misc. Case No. 4757 of 2007 to the following effect:-

“The order of suspension dated 10.04.2007 (Annexure-3) issued by the Principal, M.K.C.G. Medical College, Berhampur against the petitioner shall remain stayed, provided petitioner gives an undertaking not to claim equity for undergoing the course as a regular student during the period of operation of stay. This order shall remain in force till the end of next week.”

7. As it appears, the petitioner has taken advantage of the aforesaid interim order. Needless to say, if opportunity of hearing

was not given to the petitioner while passing the order impugned in Annexure-3, the same cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The matter is remitted back to the Director, Medical Education and Training, Orissa, Bhubaneswar to consider the case of the petitioner taking into consideration the certificates produced by the petitioner at the time of admission and pass appropriate order in accordance with law by affording opportunity of hearing to him. Needless to say, while doing so, the Director, Medical Education and Training, Orissa, Bhubaneswar shall take into consideration the judgment of the apex Court in the case of ***Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development and others***, (1994) 6 SCC 241, ***Collector, Bilaspur v. Ajit P.K. Jogi and others***, (2011) 10 SCC 357 and ***Addl. General Manager, Human Resource, Bharat Heavy Electrical Ltd. V. Suresh Ramkrishna Burde***, (2007) 5 SCC 336.

8. It is also brought to the notice of the Court that after the petitioner completed the course pursuant to the interim order passed by this Court, he has already got employment in Government as an Associate Doctor in the department of Anesthesia in MKCG, Medical College, Berhampur. But, in ***Mahesh Kumar Gonnade*** (supra), the apex Court held that when a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. Thereby, while considering the case of the petitioner for continuance in service, on the basis of fake certificate produced by him, the authority should not have lost sight of the aforesaid judgment. Needless to say, while passing the interim order, this Court already observed that the petitioner cannot claim equity for undergoing the course as a regular student during the period of

operation of stay. Therefore, if ultimately the authority found that the petitioner has produced the fake certificate, necessary follow up action shall be taken by the authority in accordance with law. The opposite parties are directed to complete the entire exercise within a period of four months from the date of production of certified copy of this order.

9. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok

