

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.464 of 2023

In
Civil Writ Jurisdiction Case No.2077 of 2023

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1. Preeti Kumari Wife of Abdhesh Kumar, Daughter of Bijay Yadav Resident of village - Pirnagra, ward no. 4, P.S. Beldaur, Dist. - Khagaria.
 2. Priyanka Kumari, Daughter of Laxman Yadav, Wife of Prakash Raj Resident of Village - Lalmanpatti, via Basantpur, P.S. - Birpur, Dist. - Supaul.
 3. Abhishek Kumar Son of Ramvilash Maharaj Resident of Village - Bhaddi, Jamhra, ward no. 16, P.S. - Baijnathpur, Dist. - Saharsa.
 4. Sonu Kumar Singh Son of Sunil Kumar Singh Resident of village- Rampatti, Ward No. 08, P.O. - Singheshwar, P.S. - Singheshwar, Dist. - Madhepura.
 5. Poonam Kumar, Wife of Abhay Kumar Raj, Daughter of Suresh Prasad Sah Resident of village - Kishunganj, P.O. and P.S. - Udakishunganj, Dist. - Madhepura.
 6. Juhi Kumari, Daughter of Anuj Kumar Yadav Resident of Village - Jiwachhpur, P.O. - Bharrahi Bazar, P.S. and Dist.- Madhepura.
 7. Mahima Kumari Daughter of Gajendra Kumar Resident of Maszid Chowk, ward no. 13, P.S. and Dist. - Madhepura.
 8. Pooja Kumari, Daughter of Anupam Choudhary Resident of Village - Jhitkiya, P.O. and P.S. - Singheshwar, Dist. - Madhepura.
 9. Sujit Kumar, Son of Shiv Kumar Yadav Resident of Village - Duhabi Suhabi, P.O. - Nayatola, P.S. - Puraini, Dist. - Madhepura.
 10. Raju Kumar Rana, Son of Rampukar Yadav Resident of Village - Manhara, P.O. - Haripurkala, P.S. - Murliganj, Dist. - Madhepura.
 11. Pushpa Rani Daughter of Pradeep Yadav, Resident of Village - Barahi, P.S. - Nauhata, Dist. - Saharsa.
 12. Premranjan Kumar Son of Surendra Paswan Resident of Village - Belsara Goth, Ward no. 9, P.S. - Bausi, Dist. - Araria.

... .. Appellant/s

Versus

1. The B.N. Mandal University Madhepura through Vice Chancellor.
2. The Vice Chancellor, B.N Mandal University, Madhepura.
3. The Registrar, B.N Mandal University, Madhepura.
4. The Controller of Examination, B.N. Mandal University, Madhepura.
5. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.
6. The Registrar, Lalit Narayan Mithila University, Darbhanga.
7. The State Nodel Officer, Nodal University, Lalit Narayan Mithila University, Darbhanga.
8. The Head of Deptt. Bachelor of Education, B.N Mandal University, Madhepura.



... .. Respondent/s

with
Letters Patent Appeal No. 784 of 2022
In
Civil Writ Jurisdiction Case No.5526 of 2021

1. The Vice Chancellor, B.N. Mandal University Madhepura.
2. The Registrar, B.N. Mandal University, Madhepura.

... .. Appellant/s

Versus

1. Md. Shahbaz Ahmad Son of Md. Sabbir Ahmad, Resident of Mazida Palace, Murliganj, Ward No. 03, P.S.- Murliganj, District- Madhepura.
2. The State of Bihar through the Principal Secretary, Human Resources, Government of Bihar, Patna.
3. The LChancellor, Universities of Bihar, Governors Secretariat, Governor House, Patna through Secretary to Governor, Raj Bhawan, Patna.
4. The Chancellor, Universities of Bihar, Governors Secretariat, Governor House, Raj Bhawan, Patna.
5. The Vice Chancellor, Lalit Naryan Mithila University, Darbhanga.
6. The Lalit Naryan Mithila University, Darbhanga through its Registrar-cum-State nodal University.
7. Mr. Sanjeev Kumar S/o Surendra Das, at Post- Maliya, Dist and P.S.- Madhepura, Mob- 7903320163

... .. Respondent/s

with
Letters Patent Appeal No. 3 of 2023
In
Civil Writ Jurisdiction Case No.5526 of 2021

1. Sanjeev Kumar S/o-Surendra Das, R/o at and Post Office-Maliya, P.S. and District-Madhepura.
2. Avnit Kumar Son of Chandrabhushan Kumar Resident of At and P.O.- Bhatrandha, Police Station-Ghailarh, District-Madhepura

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secreary, Human Resources, Government of Bihar, Patna.
2. The Vice Chancellor, B.N. Mandal University, Madhepura.
3. The Registrar, B.N. Mandal University, Madhepura.
4. The Chamcellor, Universities of Bihar, Governors Secretariat, Governor



- House, Patna through Principal Secretary to Governor, Raj Bhawan, Patna.
5. The Chancellor, Universities of Bihar, Governors Secretariat, Governor House, Raj Bhawan, Patna.
 6. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.
 7. The Lalit Narayan Mithila University, Darbhanga through its Registrar-Cum-State Nodal University.
 8. Md. Shahbaz Ahmad Son of Md. Sabbir Ahmad Resident of Mazida Palace, Murliganj, Ward No. 03, P.S.-Murliganj, District-Madhepura.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 464 of 2023)

For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
Mr. Binod Kumar Sinha, Advocate

For the B.N.M.

University : Mr. Ritesh Kumar, Advocate

For the L.N.M.U : Mr. Md. Nadim Seraj, Advocate

(In Letters Patent Appeal No. 784 of 2022)

For the Appellant/s : Mr. Ritesh Kumar, Advocate
Mr. Anil Singh, Advocate

For the State : Ms. Shilpa Singh, GA-12
Ms. Namita Singh, AC to GA-12
Mr. Apurva Kumar, Advocate

For the Chancellor : Mr. Rajendra Kumar Giri, Advocate

For the L.N.M.U : Mr. Md. Nadim Seraj, Advocate

(In Letters Patent Appeal No. 3 of 2023)

For the Appellant/s : Mr. Anil Singh, Advocate

For the State : Ms. Namita Singh, AC to GA-12
Mr. Apurva Kumar, Advocate

For the L.N.M.U. : Mr. Shailesh Kumar, Advocate

For the Chancellor : Mr. Rajendra Kumar Giri, Advocate

For the B.N.M.

University : Mr. Ritesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

The Letters Patent Appeal 784 of 2022 is filed by the University, whose action was challenged in the writ petition and the two other L.P.As are filed by candidates, who were admitted to a B.Ed course; which action was under challenge,



who were all the same, not made parties in the writ petition. The admission of the individual appellants in the appeals were found to be wrong and their result liable to be cancelled. By the time the writ petitions were heard, they had completed the course and sat for the final examinations. The University challenged the order, which imposed a cost of Rs.5 Lakhs to the writ petitioner, which was to be paid by the management of the University; also directed to be recovered by the concerned officials, who were responsible in making admissions between 3:00 p.m to 5:00 p.m on 30.12.2020 and 31.12.2020. The University asserts that the entire case set up by the writ petitioner was false, misplaced and the writ petition itself misconceived.

2. None appeared for the writ petitioner in L.P.A. 3 of 2023 on 09.01.2022 despite notice having been served through the counsel, who is impleaded as the first respondent. In the other two L.P.As, notices have not been served on the writ petitioner; which we do not deem necessary, especially, since their prayers if allowed does not prejudice the writ petitioner nor was it the contention of the writ petitioner that their admissions should be cancelled. Further, they were neither impleaded nor heard before adverse orders were passed. We, hence, proceeded to hear the matter and heard Shri Ritesh Kumar, for the



University and Shri Anil Singh and Shri Binod Kumar Sinha, for the individual appellants in the other two appeals.

3. The writ petitioner challenged the admissions made by the University to its B.Ed course in session 2020-2022. There was also a direction sought to the Nodal University, the 5th respondent, to conduct a high level enquiry into the manipulation alleged to have been carried out in the admission process.

4. The writ petitioner had participated in the entrance exam for admissions to the B.Ed course, the final result of which was published by the 5th respondent, the nodal agency. It was the assertion of the writ petitioner that persons, who had lesser marks than the writ petitioner were given admission in the same category of the petitioner; who belonged to the Extremely Backward Community (for brevity 'EBC category'). The learned single judge directed the marks obtained by the candidates under the EBC category be produced in a sealed cover. Since it was pandemic-time, the matter was not heard resulting in many of the students having completed the course. The Learned Single Judge on verifying the mark-sheets found that some candidates, who had lesser marks were given admission at the spot admissions carried out by the University



itself, without the junction of the Nodal University.

5. The learned Single Judge detailed the facts, which need not be elaborately noticed. Suffice it to observe that a Combined Entrance Test of 2020 was conducted wherein the maximum marks was 150 and the petitioner obtained 71 marks, which did not enable him to be admitted at the regular counselling for reason of the cut-off marks being above that obtained by him. The nodal agency issued a publication on 24.12.2020, permitting spot counselling for admissions between 26.12.2020 to 30.12.2020, to fill up those unfilled vacancies. The list of colleges with vacancies was published on the website, category-wise and among others the appellant University had seven vacancies for EBC, to which category the writ petitioner belonged. The writ petitioner is said to have appeared for counselling on 26.12.2022, when he was directed to deposit admission fee, which was also deposited. It was alleged that one Sanjeev Kumar, the 8th respondent having 46% marks was selected, while denying admission to the writ petitioner, who had far higher marks. There were also allegations raised of women backward community category students (WBC) having been admitted, without payment of fees in violation of the roster; none of whom were impleaded in the



case.

6. As specifically recorded by the learned Single Judge, the Court was not inclined to interfere at the initial stage, especially, since none of the affected persons who were allegedly admitted irregularly, were impleaded as party respondents. It was only later, that the 8th respondent was impleaded as a party. The other appellants, who have come before this Court on leave obtained to file an appeal, were also not impleaded earlier. They were directed to be informed of the writ petition, by the Writ Court, by order dated 19.09.2022; which direction was to the Registrar of the respondent University. By that time the course (B.Ed) for which admissions were carried out in 2020, was over. The learned Single Judge called for the Register along with the complete records including the candidates photographs and signatures. Noticing the statement of the Standing Counsel for the University that final examinations of the B.Ed course have been concluded, the results were withheld. It was noticed that though the last date fixed for admissions was 30.12.2020, that too before 5:00 p.m, the Professor in-Charge and Head of Department (for brevity, 'HOD') of the appellant University had issued a handwritten note that counselling is only till 3:00 p.m. and thereafter



admissions would be given, in seriatim from the candidates, who were present for the remaining seats. It is on the directions of the HOD, the arbitrary admissions were made, of the appellants, was the contention. It was admitted by the Registrar of the University, who was summoned in person before Court that there were a number of persons having lesser marks than the petitioner admitted on 30.12.2020. He also admitted the payment of the petitioner through online on 26.12.2020.

7. While admitting the online remittance of fees by the writ petitioner, the University also asserted that he did not present himself on the last date of spot counselling, for verification of his original documents or for taking admission. The learned Single Judge found that some persons were admitted on 30.12.2020 after 3:00 p.m.. The Court held that admissions were carried out by cherry picking and were liable to be cancelled.

8. The University contended that the process of spot counselling was commenced on 26.12.2020, and the names of some candidates were placed on the admission portal. On 27.12.2020. there was a protest made by certain students' organization, who requested for taking spot admissions by following merit and reservation roster. Hence, there was a



decision taken to cancel the earlier list dated 26.12.2020, and all the Principals, Professors, In-Charge and HOD's of the B.Ed colleges were directed to receive applications and finalize and complete admissions by 30.12.2020. Three hundred and thirty one candidates applied and in EBC categories persons having 74 marks were selected. Since some of the students, who figured in the list did not take admission till 3:00 p.m., hence the admissions were given to those candidates, who were present. The petitioner was not present for verification and he was not given admission was the specific contention raised by the University. Though students with lesser marks were admitted; they were persons who were present at the venue of the spot counselling whose certificates were verified physically and clear directions issued for remittance of fees. The fee remittance was to be done only after the directions issued by the HOD's, after verification of certificates. Further the delay if at all, was only in remittance of fees and the entire admissions were completed as on 30.12.2020.

9. The nodal agency, the 5th respondent-University specifically contended that there was no direction to limit the counselling after 3:00 p.m.. It was found by the learned Single Judge that persons who were admitted on 30.12.2020, had



remitted their fees only on 31.12.2020. Relying on **Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh & Others** as reported in **2016 (7) SCC 353**, **Gurdeep Singh Vs. State of J&K & Ors** reported in **1995 Supp (1) SCC 188** and **Board of Governors in Suppression of Medical Council of India Vs. Dr. Priyambada Sharma & Ors.** as reported in **2022 SCC online SC 1442**, the learned Single Judge found that those admitted by the college after 3:00 p.m. shall be treated as having been given admission wrongfully and their admissions shall stand cancelled. Their results hence were permanently withheld and a sum of Rs. 5 Lakhs was directed to be paid to the petitioner as compensation; by the University.

10. Two questions arise in the appeals:-

(i) Whether the compensation was proper?

(ii) Whether the cancellation of admissions of persons, who were not in the party array was proper?

11. It has to be noticed that the writ petitioner merely raised a bland contention that he was present in the University and had remitted the fees as per the specific directions of the University. The University asserts that he had remitted the fees online, without authority and he had not



appeared personally for verification of his documents and for securing admission at the spot admission conducted. The writ petitioner admits in paragraph no. 5 of the writ petition that he was not initially selected under the EBC category since he had secured only 71 marks while the last candidate admitted obtained 74 marks. In paragraph no. 6 of the counter affidavit, he further states that after paying an initial fee of Rs.3000/- to the nodal agency on the direction of the HOD of the College, the petitioner remitted an amount of Rs. 56,000/-, which is seriously assailed by the University, as having been deposited without any directions issued from the HOD.

12. The counter affidavit of the University specifically notices the procedure for spot counseling, which starts with the initial part payment of fees coming to Rs. 3,000/- to the nodal agency, upon which the merit list is prepared and only on the directions and orders of the HOD, after scrutiny of certificates, the balance fee of Rs. 56,000/- is deposited. Annexure-A, produced along with the counter affidavit filed in the writ petition, is the select list published wherein the 7th candidate under the EBC category had secured 74 marks. A model of the certificate issued by the HOD of the appellant University for the purpose of making the balance fee payment is



also produced. This has not been issued to the petitioner; since it was not produced along with the writ petition.

13. The very submissions made in the writ petition creates suspicion insofar as the case set up by the writ petitioner, that he was present for counselling between 26.12.2020 and 30.12.2020. The notification for the spot admission was brought out as per Annexure-2. The first paragraph speaks of the final round of counselling, which is obviously based on merit, which also is concluded by 23.12.2020. It is stated in the second paragraph of Annexure-2, that after the merit list, pursuant to the final round of the counselling displayed by the Nodal University on 24.12.2020, “the scene will shift to the respective college(s), which are required to display their vacancy(ies) on 25.12.2020” (sic).

14. Thereafter physical counselling has to be done by the concerned colleges and part fee payment by demand draft between 26.12.2020 to 30.12.2020. It is also clarified that only minority students shall be admitted in the vacancies on the basis of the result of CET, by following the *inter se* merit among them. The prescription to follow *inter se* merit prompted the college to withdraw the earlier select list published and allegedly by reason of objections raised by students unions, a



list was published for spot admission based on the merit list. Annexure-A produced by the University in its counter affidavit indicates that the last of the meritorious candidate in the EBC, to which category the writ petitioner belongs, had 74 marks.

15. Now we come to the submission of the writ petitioner that he had remitted the fees on the directions of the college. The fees was not remitted by demand draft as has been stipulated in Annexure-2, notification. Even according to the writ petitioner, the fees was remitted online as per Annexure-5 by transfer of Rs. 56,000/- to the account number of the University. The writ petitioner asserts that it was done after getting orders from the University; which is not supported by even a scrap of paper or any print out of the directions issued online, if it was in the digital mode. Further, we have to notice that there was no warrant for an online remittance of fees, since the admissions were to be carried out on the spot, after counselling and verification of the documents. Hence, necessarily a physical written order would have been issued by the HOD as is produced at Annexure-B to the counter affidavit.

16. It is also pertinent that the University in its supplementary counter affidavit dated 19.09.2022, categorically stated that the online remittance was made from a distance of 23



kilometers from the Department of the University. More importantly, while the writ petitioner asserts that he made the remittance online, he also produces Annexure-8, as a challan of deposit. Obviously, an online transaction would not generate a challan in the nature produced as Annexure-8. Annexure-8 also does have have the seal of the Bank, which alone would evidence the remittance made physically. It cannot but be stated that the writ petitioner has approached this Court with unclean hands. The writ petitioner also insists that the payment was made online on 27.12.2020, when there was absolutely no cause for the writ petitioner to make such payment; especially since the list in which the petitioner's name figured had been altered by the University.

17. We find absolutely no reason to find that the writ petitioner was wrongly denied admission.

18. Now, we come to the contention with respect to the admissions made irregularly between 3:00 p.m and 5:00 p.m on 30.12.2020, some of whom remitted their fees on the next day. Before we proceed to examine the facts, we have to specifically notice that the decisions cited, with respect to admissions to medical colleges does not apply; though the principles stated therein of none being given admission after the



cut-off date, cannot be ignored. In the present case, the cut-off date as prescribed by the nodal agency, was between 26.12.2020 and 30.12.2020. The HOD of the college only made a modification insofar as the spot counselling being carried out in accordance with merit up to 3:00 p.m, and then the available candidates being called. Hence, those who were in the select list were first admitted and then the candidates available in person in the college was given admission, which resulted in some of them having lesser merit than the petitioner getting admission. When a spot counselling is contemplated, going by the very nomenclature, the candidates who were desirous of getting admission should be present at the spot and only then there could be admissions made after verification of the certificates and remittance of fees.

19. We find absolutely no irregularity in the admissions carried out by the University. It has come out on record that certain people, who were admitted on 30.12.2020, could only remit their fees on the next day.; which was presumably due to the remittance being stipulated after written orders are issued by the HOD and possibly because of the bank timings. This alone would not make the admissions irregular.

20. We are unable to uphold the judgment of the



learned Single Judge, on an appreciation of the facts regarding the admissions, as also the credentials, or the lack of it, of the writ petitioner as coming out in the discussion above. We set aside the order of the learned Single Judge and allow the appeals. The results of the individual appellants, which are withheld, will be published and they would be considered as persons validly admitted to the B.Ed course. The compensation awarded to the writ petitioner would stand annulled, since the writ petitioner has no valid ground to claim admission and especially in the context of the deliberate false statements made by the writ petitioner, which dis-entitles him from any equitable consideration.

21. The appeals are allowed.

22. The parties shall be left to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	
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