

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8206 of 2023

Ajay Kumar @ Ajay Sah Son of Mankeshwar Prasad, Resident of Gali-32, Chainpur Rayapur, Patna, G.P.O, Mainpura Primary School, Patna G.P.O. Patna, Pin- 800001, presently residing at Flat No.-202, Amit Peri Apartment, P.S.- Buddha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health and Welfare.
2. The Vice Chancellor, Aryabhatta Knowledge University, Bihar, Patna.
3. The Controller of Examination, Aryabhatta Knowledge University, Bihar, Patna.
4. The Principal, Radha Devi Jageshwari Memorial (R.D.J.M.) Medical College and Hospital, Turki, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Prakritita Sharma, Advocate Mr.Amarjeet, Advocate
For the Respondent/s	:	Mr.Braj Bhushan Mishra, AC to AAG 9

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-06-2023 Heard Mrs. Prakritita Sharma, learned counsel appearing on behalf of the petitioner and Mr. Braj Bhusha Mishra, learned AAG 9 for the State.

2. The present writ petition was filed on 7.6.2023 and today it has been mentioned for urgent hearing on the ground that the examination of 1st year Bachelor of Medicine and Bachelor of Surgery (hereinafter to be referred as the 'M.B.B.S.') is going to be held from 13.06.2023 as per the schedule annexed as Annexure '4'.

3. The petitioner is a regular medical student and is pursuing his studies from the Radha Devi Jageshwari Memorial (R.D.J.M.) Medical College and Hospital Turki, Muzaffarpur. Petitioner is a permanent resident of Patna.



4. Mrs. Prakritita Sharma, learned counsel appearing on behalf of the petitioner submits that the petitioner was restrained from filling up the examination form for taking the Professional/Supplementary Examination of 1st Year, which is scheduled to be held from 13.06.2023. The last date of filling up of the examination form was 07.06.2023.

5. Learned counsel informs that the petitioner has been made accused by one Priyanka Pandey, the informant of Agamkuan P.S.Case No.753 of 2022. The petitioner was granted regular bail vide order dated 18.05.2023 passed in Cr. Misc. No.3465 of 2023 by a Bench of this Court. The petitioner just after being released on regular bail had approached the College Authority on several occasions but he was restrained from filling up the examination form. On 06.06.2023, he was orally informed that his candidature has been rejected on the ground of shortage of attendance.

6. Learned counsel further submits that even though the petitioner had immediately approached the College authority just after his release on regular bail, being cautious of the fact that 'Examination Form' for the Professional/Supplementary Examination is being entertained by the respondent Arybhatta Knowledge University but the authorities of the Radha Devi



Jageshwari Memoraial (R.D.J.M.) Medical College & Hospital, Turki, Muzaffarpur arbitrarily and illegally did not allow the petitioner to fill up the examination form. Learned counsel further submits that the vital fundamental right to education of the petitioner has been denied by not allowing the petitioner to fill up the form to appear in the examination. The respondents had not given any information about shortage of attendance and has also not given any opportunity to place his case. No show cause notice or debarment order from taking examination or any information in written were provided to the petitioner by the Respondent College Authorities.

7. It is further submitted that the action of the College as well as the University is without any authority of law, as they have restrained the petitioner from taking examination in violation of his fundamental right and principle of natural justice.

8. Learned counsel for the petitioner further submits that she has received instruction from the petitioner that the petitioner is hopeful of being successful in the examination to be held from 13.06.2023.

9. Mr. Braj Bhushan Mishra, learned AC to AAG 9 appearing on behalf of the State submits that the matter relates



to Aryabhatta Knowledge University and Radha Devi Jageshwari Memorial (R.D.J.M.) Medical College & Hospital, Turki, Muzaffarpur. Mr. Mishra submits that the State is a formal party in this case.

10. While allowing the case to be taken up on urgent basis, this Court had directed the learned counsel for the petitioner and the State counsel to contact the panel counsel of the Aryabhatta Knowledge University. However, it has been informed that they have not been able to contact the panel advocate of the Aryabhatta Knowledge University even after diligent search.

11. Taking into considering the urgency of the matter and vital right of the petitioner and the fact that the the petitioner who is a medical student soon after his release on regular bail by this Court, vide order dated 18.05.2023 had approached the College Authorities for allowing him to fill up the examination form much before the last day of filling up the examination form i.e. 7.6.2023. The petitioner was very late orally informed on 06.06.2023 that his candidature has been rejected on the ground that he has not competed 75 % attendance, however, no notice was given to the petitioner before denying his candidature from filling up the examination form on the alleged



ground of not fulfilling 75 % attendance. The law is well settled that fundamental right of education of a citizen can not be defeated without following due process of law.

12. In the present case, considering the materials and pleadings made in the writ petition as well as the submissions of the learned counsel appearing on behalf of the petitioner, admitted position is that the petitioner had qualified NEET and is a regular student pursuing his M.B.B.S. degree from a Constituent/Affiliated unit of Aryabhatta Knowledge University. The examination is going to be conducted from 13.06.2023. On examination of pleadings, it appears that no notice was issued to the petitioner regarding his debarment from taking examination and the petitioner was not served any information as to what extent his attendance is short. The petitioner is hopeful of being successful in the said examination. I am of the considered opinion that from the facts and circumstances of the present case an interference of this Court is required in the interest of justice in exercise of power of judicial review under Article 226 of the Constitution of India.

13. It is settled law as on date that the importance of right to education and opportunity to acquire knowledge and higher education has been held to be fundamental right, however, right



to acquire professional degree is not covered by Article 21, even though the case falls within the ambit of Article 19 (1)(g) and Article 14 of the Constitution. There are number of decisions in which the right and opportunity to higher education is treated as falling within the scope and ambit of Article 19(1)(g).

The petitioner after qualifying NEET, which is a centralized and a single window examination conducted in transparent manner and is also a test of competence, calibre and aptitude was admitted in M.B.B.S. course and in order to meet the standards of the professional degree the petitioner, is required to take examination to be held from 13.06.2023 for completing his M.B.B.S. course.

14. This Court directs the Vice Chancellor of Aryabhata Knowledge University, Bihar, Patna to allow the petitioner to take examination, who is a regular student of M.B.B.S. course and pursuing his studies from Radha Devi Jageshwari Memorial (R.D.J.M.), Medical College & Hospital, Turki, Muzaffarpur today by issuing him Admit-card today (i.e. 12.06.2023) without taking any technical plea. The petitioner is directed to personally approach the Vice Chancellor of Aryabhata Knowledge University, Bihar, Patna along with a copy of this order. The Vice Chancellor must ensure that the petitioner is



allowed to take the examination scheduled to be held on 13.07.2023.

15. Taking into consideration the fact that the examination is going to start from tomorrow (i.e. 13.06.2023), the Vice Chancellor of Aryabhata Knowledge University is further directed to allow the petitioner to appear at any of the Centre located in the State as per convenience of the University

16. This order has been passed taking into consideration the peculiar facts and circumstances of the present case and this order shall not be taken as precedent in any other case.

17. The office is directed to issue certified copy of this order, just after pronouncement of the order today forthwith (i.e. 12.06.2023).

18. In the meantime, Mr. Braj Bhushan Mishra, AC to AAG 9 is directed to inform the Vice Chancellor of Aryabhata Knowledge University telephonically and by FAX message.

19. With the above observation/direction, the present writ petition is disposed of.

(Purnendu Singh, J)

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