

Arunabh Prabhakar and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-30-1999

Judge : Nagendra Rai, J.

Appeal No. : C.W.J.C. No. 2713 of 1999

Appellant : Arunabh Prabhakar and ors.

Respondent : State of Bihar and ors.

Prior history : Nagendra Rai, J. 1. Petitioners five in number have filed the present writ application for a direction to the respondent No. 3, the controller of Examination, Health Services, Department of Health, Medical Education and Family Welfare, Govt. of Bihar, Patna to fill up sixty-two vacant seats in pos-graduate courses from the successful candidates of the Post-Graduate Medication Admission Test, 1998. (hereinafter referred to as the P.G.M.A.T.). 2. Admitted facts are that admission to the post-gra

Judgement :

Nagendra Rai, J.

1. Petitioners five in number have filed the present writ application for a direction to the respondent No. 3, the controller of Examination, Health Services, Department of Health, Medical Education and Family Welfare, Govt. of Bihar, Patna to fill up sixty-two vacant seats in pos-graduate courses from the successful candidates of

the Post-Graduate Medication Admission Test, 1998. (hereinafter referred to as the P.G.M.A.T.).

2. Admitted facts are that admission to the post-graduate course including diploma is held on the basis of the competitive test known as P.G.M.A.T. An advertisement was issued in terms of the prospectus for admission in the P.G.M.A.T. for the year, 1998 in which the petitioners and others applied. The examination was held on 29th March, 1998 and the result was published on 21.4.98. In terms of the prospectus, the qualifying marks for general category candidate, BC, BCE, MBC, is 50% and for Scheduled Caste and Scheduled Caste is 40% for admission in the post-graduate course. The Merit List of the candidates appeared in the test is prepared on the basis of the marks obtained in the competitive test. The selected candidates are called for verification of original documents by personal appearance. For the purpose of selection, first Counselling was held from 25th to 25th May, 1998 in terms of the prospectus and there were 226 vacant seats under the general category for admission under different courses. Two hundred twenty-seven candidates were called for Counselling and out of them one hundred and fifty-five candidates were finalised. On 28th August, 1998 was fixed as the date of second Counselling but due to disturbances created by the candidates the same was postponed. The Director General of Medical Science, Government of India by telegram dated 8.9.98 surrendered the remaining seats of the Central Quota to the State and thereafter, the date of second Counselling was again fixed on 16.11.98 at India Medical Association Building. Again the disturbance was created as a result of which the second Counselling was cancelled. Then petitioners 2 & 3, namely, Kumar Sumeet and Niranjana Pd. filed a writ application in this Court being C.W.J.C. No. 8722/98 which was disposed of by this Court on 8.12.98 and this Court directed that the second Counselling be held on 19th & 20th December, 1998 in presence of Sri P.K. Sinha, Registrar Vigilance of Patna High Court and accordingly second Counselling was held on the aforesaid date fixed. At the time of second Counselling, the total number of vacant seats under General quota was 104. Out of which the State quota in the degree course was 26, Central quota was 13, the State quota in the diploma was 45 and Central quota was 20. One hundred and thirteen candidates were called for second Counselling. Out of them 42 candidates were only admitted. Forty-one being the fresh candidate and one

candidate who was not admitted in first Counselling as there was no vacancy of his choice. After second Counselling, 62 seats remained vacant under General category wherein 20 were in the degree course and 42 were in diploma course.

3. The writ applications being C.W.J.C. Nos. 6134, 10218, 7057 & 8646 of 1996 and C.W.J.C. Nos. 3196 & 11682 of 1996 were filed by the candidates for their admission in the PGMAT course for different years ranging from 1994 to 96. The same were heard together and disposed of by a common order on 7.12.98. The writ applications were dismissed and while dismissing the writ application this Court after having noticed the bungling and manipulation in the matter of admission to the Post-graduate course issued certain direction for taking admission strictly in accordance with the result of the competitive test, having regard to the provision of reservation etc. This Court emphatically stated that vacant seats in a particular year shall not be filled up in subsequent years, and all seats which are not filled up within the period prescribed under the prospectus shall lapse. The direction issued by this Court in paragraph-11 of the aforesaid batch cases runs as follows:

It is made clear to the respondents that no admission to the medical courses both in postgraduate and undergraduate courses shall be granted by the Govt., and the admissions shall be granted strictly in accordance with the result of the competitive test, having regard to the provisions of reservation, etc. It is also clarified that seats which remain vacant in earlier years shall not be filled up in subsequent years, and all seats which are not filled up within the period prescribed under the prospectus shall lapse. It is also clarified that those candidates who get the subject and college of their first choice at the first Counselling shall not be invited for the second Counselling. For this purpose, the admitting authority must get the choice of every candidate registered in writing, so that only those candidates are called for second and subsequent Counselling who are not given the subject of their first choice on account of non-availability of seats at the time of first Counselling, and which becomes available subsequently. In the past also, I have passed orders giving clear guidelines to the authorities, and it is expected that those guidelines will be followed in future. The authorities will also keep in mind the guidelines issued by the Supreme Court of India with regard to the filling up of the vacant

seats of the reserved category candidates belonging to unreserved category in order of merit if candidates belonging to reserved category are not available. I want to make it clear that seats not filled up within the time stipulated in a particular year, shall in no event be filled up in subsequent years. The respondents are also directed to adhere to the time schedule fixed by the Supreme Court, and all post-graduate medical courses must commence from the 2nd May of each year. Since there should be transparency in the matter of admission to these courses, the respondents are directed to place on the notice board the merit list of eligible candidates with marks obtained by them in the P.G.M.A.T. held every year, so that each candidate may be aware of his position in the merit list, and there is no scope for manipulation. This does not require the sanction of any rule, but is a mere requirement of fairness in action.

Thus, in terms of the aforesaid direction if the seats are not filled up within the period prescribed under the prospectus has to lapse.

4. According to the petitioners, vacant seats were allowed max to remain vacant due to inaction and laches on the part of the respondent No. 3 with a view to take admission through the backdoor. As seats were not filled up within the prescribed time deliberately they pray that a direction may be issued to the authorities to fill up 62 vacant seats after holding third Counselling.

5. This matter was placed before the same Hon'ble Judge who has disposed of the aforesaid batch cases and the same Hon'ble Judge passed an interim order on 6.4.99 to the effect that if the seats are still vacant after second Counselling and if the Central quota has been released then there is no reason why admission should not be granted to the eligible candidates against those vacant seats strictly in order of merit, as clarified by the Supreme Court and this Court from time to time. His Lordship has further observed that it is, therefore, advisable for the authorities concerned to take prompt steps so that they may not be guilty of the charge of dereliction of duty by permitting the seats to pass in terms of the prospectus as interpreted by the Supreme Court.

6. The respondent-State has filed counter-affidavit wherein it has admitted that 62 seats are still vacant in post-graduate degree courses and diploma courses after

the second Counselling but in view of the order passed by this Court in batch cases where admissions have been stopped they are not filling up the vacant seats. It is further stated that in terms of the prospectus, the period of taking admission is over and as such no further admission shall be taken in the post graduate course. In the supplementary counter-affidavit, it is stated that the last date of admission of the students of the first Counselling was 6th June, 1998 and last date of admission of the candidates for the second Counselling was 30th December, 1998. It is further stated that in the second counselling 113 candidates were only called for the reason that in the past when large number of candidates were called for interview they created disturbances and demanded T.A. and D.A. This apart calling of large number of candidates for Counselling will result in incurring heavy expenditure by the Board.

7. The only question that falls for consideration is as to whether a direction is to be issued for filling up of the aforesaid 62 vacant seats or not.

8. The prospectus issued every year for admission to the post-graduate degree courses contains all details including process of selection, closure of admission and other details. The prospectus in question provides under Para-11(c) that no fresh admission on readjustment will be done three months after the 1st date of admission or one month after the closure of admission by the Director-General, Health Services which ever is later. Thereafter, the seats remaining vacant if any, shall be treated to have lapsed. No transfer/migration will be permissible after admission.

9. Unfortunately, in this State all is not well with the education system. Every year large number of cases are coming before this Court for issuance of direction for admission into different institutions alleging nepotism, favouritism, inaction and other grounds. The same is the case with regard to the admission in the post-graduate courses.

10. According to the aforesaid provisions of the prospectus, admissions are not closed within the time-frame mentioned in the prospectus as a result of which the admission continued as on going process for an indefinite period. Even in some cases admissions have been taken at the fag end of the Sessions in question.

According to para-11(c) of the prospectus no fresh admission on readjustment will be done three months after the 1st date of admission or one month after the closure of admission by the Director-General, Health Services whichever is later. The said time-frame has not been admittedly followed for the year, 1998. Till today there is no closure of admission by the Director-General, Health Services. As such provision of prospectus has not been followed. Even after 30th April, 1998 which is the last date of admission according to the terms of prospectus the admission has been taken upto December, 1998. Thus, the authorities have not followed the time schedule given in the prospectus for the year, 1998. If the authorities would have followed the prospectus then admission should have been treated to have been closed in terms of the direction issued by this Court in batch cases and the seats remaining vacant had lapsed. But as stated above, this is not a case here and as such the stand taken by the respondents State that this Court has stopped the admission is not correct. It is again reiterated that this Court only stated that once the admissions are taken within the time-frame as mentioned in the prospectus thereafter no admission should be taken and vacancies shall lapse.

11. The materials on the record show that the Board is responsible for making the delay in closing the admission of the post-graduate courses. As at the time of Counselling, the sufficient number of the candidates were not called for as a result of which large number of seats remained vacant, which is evident from the fact that though 226 seats were available under General category but only 227 candidates were invited for selection and 155 candidates were only selected. Again at the time of second Counseling though vacancies were 104 but only 114 candidates were called for and 62 seats remained vacant under general category.

12. In my view, if the Board would have called for the sufficient number of candidates that is to say the candidates double in number to the seats to be relied up then this problem would not have arisen. Calling of candidates for Counselling to the extent of vacancies and 10% more has resulted in creating the aforesaid confusion and problems.

13. Thus, it is clear that the authorities have not adhered the time schedule and because of dereliction or inaction on their parts 62 seats remained vacant. As

such this is a fit Case where a direction has to be issued to fill up the aforesaid 62 seats under General category candidates and also to fill up any seat vacant under reserved category candidate. All the seats either under general category or under reserved category should be filled up by third Counselling within one month from today. The number of candidates to be called for Counselling should be double in number to the seats to be filled up and the admission should be closed within one week after the last date of third Counselling and thereafter, if any seat remained vacant for the year, 1998 it shall lapse.

14. Before parting with this order, it is hereby ordered that all the directions issued by this Court in batch cases should be strictly followed and the respondent No. 1, the Board is further directed that at the time of holding first as well as second Counselling in future the number of candidates to be called for Counselling should be doubled to the number of the seats to be filled up. The second Counselling should be held within one month after release of the Central quota by the Director-General of the Health Services, Government of India and thereafter, a firm date should be fixed which shall not be beyond two weeks from the last date of the second Counselling and thereafter, the admission shall be closed and any seat remained vacant shall lapse.

15. With the aforesaid direction/observation this writ application stands disposed of.