

Md. Abu Nassar and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jan-09-2003

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. Nos. 659 and 5121 of 2002

Appellant : Md. Abu Nassar and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Dharnidhar Mishra, Ajay Kumar Mishra, Bhola Prasad and Prahlad Bhagat, Advs.

Advocate for Pet/Ap. : Sanjay Kumar, Pawan Kumar, Sudhir Kumar Jha, Krishna Murari and Panchanand Pandit, Advs.P.K. Shahi, Adv.

Judgement :

S.N. Jha, J.

1. The dispute in these two writ petitions relates to eligibility for admission to the Post Graduate Medical Course of candidates who have already been admitted in Post Graduate Degree/Diploma course on the basis of an earlier entrance test. The petitioners have questioned the admission of the private respondents in different subjects/disciplines of the Post Graduate Medical Courses. In CWJC No. 659/2002 they are respondents 5 to 8, in CWJC No. 5121/2002 they are

respondents 7 to 10.

2. The admission to the Post Graduate Medical Degree/Diploma courses in the Medical Colleges of the State of Bihar is taken on the basis of common entrance test called post Graduate Medical Admission Test (PGMAT). As per the scheme of admission a merit list is prepared on the basis of marks secured in the written test. Thereafter candidates securing qualifying marks in order of merit are called for counselling/interview also for verification of original documents and identity by personal appearance. The course- degree or diploma and the college is allotted to the candidates on the basis of merit cum choice. For admission to the various degree and diploma courses for the academic session 2001-2002 PGMAT 2001 was held on 20-6-2001. On 28-6-2001 the result of the successful candidates was published. It may not be out of place to mention that for admission in 2001-2002 academic session the qualifying marks was 50% for the general candidates and 40% the candidates belonging to reserved categories i.e. Schedule castes, Scheduled Tribes and other Backward Classes. Candidates securing the qualifying marks were called for counselling on 21-10-2001 and 22-10-2001. Some seats remained vacant in the reserved categories on account of non-availability of the qualified candidates. Further, certain vacancies occurred on account of non-joining or abandonment of the course by the candidates allotted particular course/college in the earlier counselling. Accordingly, advertisement was published on 1-1-2002 for another counselling to be held on 12-1-2002. The petitioners of CWJC No. 659/2002 in the meantime filed representation on 27-11-2001 pointing out that certain candidates had been admitted in violation of the condition contained in Para 8.2 (xi) of the Prospectus. On 17-1-2002 this Court in the case of Dr. Yashwant Kumar and Ors., 2001(1) PLJR 556, upheld the validity of the similar clause contained in Para 8.2 (xii) of the Prospectus of PGMAT of 2000 holding that if a candidate has been admitted in the Post Graduate Degree/Diploma course in any speciality then he will not be eligible for admission in another speciality of the Post Graduate Degree/Diploma course except that he could be admitted in the Degree course in the same speciality. However the order was made applicable from the next academic year i.e. 2001-2002. The respondents however again admitted candidates already admitted in another course on the basis of earlier admission test in violation of the bar contained in

Para 8.2 (xi) of the Prospectus of 2001 PGMAT in the academic session 2001-2002. The petitioners have come to this Court challenging the admission of such candidates in violation of Para 8.2 (xi). Some of the candidates were later added as respondents 5 to 8 in CWJC No. 659/2002 and respondents 7 to 10 in CWJC No. 5121/2002.

3. It is relevant to mention that the details of the examination, eligibility of the candidates, terms & conditions of selection, admission, training etc. are mentioned in the prospectus. It is part of a document called 'Application Form and Prospectus'. The second part of it contains the format of the application which the candidates are supposed to fill in their own hand. The binding nature of the terms and conditions etc. of the Prospectus, therefore, cannot be doubted, Para 8 deals with the method of selection and admission. While Para 8.1 deals with the merit list, Para 8.2 refers to counselling/ interview. Clause (xi) which is the focal point of dispute may be quoted as under:--

'If a candidate who has been admitted in a P.G. Degree/Diploma course in any speciality, then he will not be eligible for admission in a Post Graduate Degree or Diploma course of another speciality. However if a candidate has been admitted in Post Graduate Diploma course of any speciality, then he will be eligible for admission in a Post Graduate Degree course of the same academic session.'

4. From bare reading of the above Clause it will appear that it clearly and unambiguously bars admission of a candidate who has already been admitted in PG Degree/Diploma course in another PG Degree/Diploma course in another speciality. The case of the respondents is that in view of Para 9(iv) of the Prospectus an admitted candidate may be adjusted according to his/her higher choice of the course on his/her forfeiting the claim to continue in the previous PG course for which he/she was originally registered and refunding entire amount of stipend paid in the previous course. It was submitted on behalf of the respondents that if a candidate wants to change over to better discipline/speciality as per his choice subject to vacancy being available- it will not be proper to deny him the choice. On behalf of the petitioners it was submitted that if such change over were allowed it might result in seats in subjects of lesser eminence like Anatomy

Biochemistry etc. lying vacant which will not be in the public interest. It would also result in wastage of the time and labour spent in teaching the students up to certain stage before being allowed change over. Reliance was placed on a decision of the Supreme Court in *Mabel v. State of Haryana*, AIR 2002 SC 2773.

5. Clause (iv) of para 9 of the Prospectus which is the sheet anchor of the respondents case reads as under:--

'An admitted candidate on the basis of PGMAT 2001 who later on is adjusted to his/her higher choice of P.G. course or opts any different P.G. course, shall automatically forfeit his/her claim to continue in the previous P.G. course for which he/she was originally registered. His/her name registered for that P.G. course will be cancelled and upon his/her admission to the new P.G. course on the basis of PGMAT 2001 itself, he/she will have to get registered with the university concerned for that P.G. course only and he/she has to refund the entire amount of stipend already paid to him for the previous P.G. course to the previous Institution and a certificate to this effect is to be produced at the time of admission to the new course allowed.

6. It was submitted on behalf of the respondents that Para 8.2. (xi) of the Prospectus should be read alongwith Para 9(iv) and from combined reading thereof it will appear that an admitted candidate in P.G. Degree/Diploma course in any speciality can be allowed adjustment in another speciality of his choice on his abandoning the previous course and refunding the amount of stipend. The submission is based on an apparent fallacy. Para 8.2 (xi) refers to a candidate 'who has been admitted' in P.G. Degree/Diploma course. Para 9(iv) refers to a candidate 'admitted on the basis of PGMAT 2001'. In other words, candidates admitted on the basis of the same admission test in a speciality can be adjusted to his/her higher choice on his/her abandoning the previous course and refunding the amount of stipend but not so in the case of a candidate who has been admitted on the basis of some earlier admission test. This becomes further apparent from the words 'for the same academic session' appearing at the end of the second part of Para 8,2, (xi) which permits a candidate admitted in a Diploma course in a speciality, admission in Degree course but in the same speciality for the same

academic session. Use of the words 'an admitted candidate on the basis of PGMAT 2001' occurring in Para 9(iv) - and non-mention of 'PGMAT 2001' in Para 8.2 (xi) - in my opinion leaves no room for doubt that Para 8.2 (xi) does not refer to the same admission test, it refers to earlier admission test. Besides, Para 9 deals with Training' - a different stage of the P.G. medical course as against Para 8 which deals with 'Selection & Admission'.

7. In the instant case, in CWJC No. 659/2002 respondent No. 5 appeared at PGMAT 2000. He was offered Diploma course in T.B. & Chest Diseases (DTCD) in the first counselling, and MD (Anaesthesia) in the second counselling in which he took admission. He appeared at the PGMAT 2001. In the first counselling he was offered MD (Anaesthesia), in the second counselling he got MD (Skin and VD) and he shifted to that course. Likewise, respondent No. 6 was admitted to Diploma course in Child Hygiene (DCH) on the basis of PGMAT 1999. In 2001 he was allowed MD (General Medicine). Respondent No. 7 got DLO (ENT) on the basis of PGMAT 1999 and she was allowed Diploma in Gynecology and Obstetrics (DGO) Course in 2001. Respondent No. 8 got MD (Bio-chemistry) in 1999, he was allowed Diploma in Anesthesia course in 2001. Thus all the respondents were already admitted on the basis of previous admission tests and while prosecuting the course they appeared at the 2001 admission test and allowed admission in another speciality abandoning their previous course. In view of bar contained in Para 8.2 (xi) they were not eligible for admission in those courses/disciplines.

8. It is not necessary to refer to the petitioners' case in CWJC No. 5121/2002 as regards the private respondents of that case. On behalf of the Examination Board, Shri P.K. Shahi fairly produced before the Court a chart containing the particulars of as many as 29 such candidates who though admitted on the basis of previous admission tests, were offered different speciality on the basis of 2001 admission test. Out of them, however, it was stated four were finally not admitted while two were admitted pursuant to the direction of the Jharkhand High Court. There are thus 23 candidates whose admission can be said to be hit by Para 8.2 (xi) of the Prospectus. Shri Shahi submitted that only eight of them have been impleaded as respondents in the case and, more importantly, only one out of seven petitioners herein namely Vikas Kumar (petitioner No. 2 in CWJC No. 659/2002) had secured

the qualifying marks of 50%, and even so far he is concerned, setting aside the admission of the respondents or others will not fetch him a seat considering his position in the merit list and in that view of the matter the Court may not interfere with the admission of the candidates who are in the midst of their respective courses. However the Court may clarify the legal position which the Examination Board will welcome and follow in the subsequent years.

9. As a matter of fact, the position was clarified by this Court in the case of Dr. Yashwant Kumar and Ors., 2001(1) PLJR 556, already referred to above. Therein this Court had made it clear that non interference with the impugned admission was 'only for the present year keeping in view the submission advanced on behalf of the petitioners, and the respondent Board will be entitled to enforce such a clause next year'. The said order was passed on 17-1-2001 and in all fairness the Examination Board should not have allowed the candidates already admitted in P.G. Degree/ Diploma courses on the basis of earlier admission test to participate in the counselling. As a matter of fact, it appears that the concerned candidates had suppressed the fact in the application. There was specific item in the application form 'are you continuing in any P.G. Medical course ?' - and the candidate was supposed to indicate, 'Yes' or 'No' in the relevant column. If they suppressed such a vital fact and secured admission it could be a ground for cancelling the admission. However taking a lenient view of the matter- considering that the cancellation may not enure to the benefit of the petitioners- I refrain from taking that course.

10. Coming back to the dispute, as indicated above, Para 8.2 (xi) is unambiguously worded and admits of no doubt whatsoever that a candidate already admitted in the P.G. Degree/Diploma course in any speciality cannot be allowed admission in another Degree/ Diploma course in another speciality, he could only be admitted from Diploma to Degree course in the same speciality. No other interpretation of the clause is possible.

11. As regards the submission that a candidate should be allowed free choice to switch over to a better discipline for improving their career if vacancy is available, I would observe that this is a policy decision with which the Court would not like to

tinker. I must at the same time also observe that the bar contained in Para 8.2 (xi) would appear to be in public interest, for, if such switch over were to be freely allowed, seats in many subjects/disciplines which were not much in demand would remain vacant and that cannot be said to be in public interest. The decision of the Supreme Court in *Mabel v. State of Haryana*, (supra) appears to be relevant in this regard. In that case the candidate already admitted in the BDS course wanted to switch over to the MBBS Course in the midst of the BDS course. A question arose as to whether in view of Clause 18 of the Prospectus the request could be allowed. Clause 18 provided that 'the candidates already admitted in any Medical/Dental Colleges will not be considered eligible for admission to the course.' The Supreme Court held that the clause does not create absolute bar to admission from BDS to MBBS course (or vice versa) and after completion of one course a candidate could be admitted in another course, but not till that course is over. The Court stated,

'A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission and further such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the concerned authority in framing Clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4 years/5 years as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under Clause 18 in this case will cease after the BDS course for the academic year 2000-2001, in which the petitioner has taken admission comes to

and end after 5 years. In the light of the above observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-2001.'

Though above observations were made in the context of switch over from BDS course to MBBS course the nature of the dispute was one and the same, and therefore, the reasons for not permitting such switch over and the observations would be applicable in the instant case as well on all fours.

12. In the above premises, while declining to interfere' with the admission of the private respondents the Court would direct the State of Bihar and Controller of Examination to adhere strictly to similar ban as may be provided in the Prospectus for the future entrance tests for admission to the Post Graduate Medical courses.

13. The petitioners stand disposed of accordingly.

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