

Dr. Sanjay Kumar Sinha and ors. Vs. State of Bihar and ors.

Dr. Sanjay Kumar Sinha and ors. Vs. State of Bihar and ors.

Overruled by : [State of Bihar v. Dr. Sanjay Kumar Sinha](#)

SooperKanoon Citation : sooperkanoon.com/925490

Court : Patna

Decided On : Apr-07-1989

Reported in : AIR1989Pat241; 1989(37)BLJR331

Judge : Satyeshwar Roy and Bisheshwar Prasad Singh, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Jurn. Case No. 334 of 1989 (R)

Appellant : Dr. Sanjay Kumar Sinha and ors.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : M.M. Panerjee, Prabir Chatterjee and Mahesh Tiwary, Adv.

Judgement :

1. This is one more instance where in spite of directions given by the Supreme Court in 1987, the State Government, for reason which it termed as "larger interest", have issued prospectus for Post-Graduate Medical Admission Test, 1989, informing that for the purpose of admission, inter alia, the candidate must complete twelve months of house job latest by_31st_May,_1989. This is in regard to admission to post-graduate courses which in terms of the orders of the

Supreme Court must commence on 2nd May, 1989. It was also stated that the candidates who are not expected to complete twelve months of house job by 31st May, 1989 are not eligible to appear at the test.

2. The petitioners have filed this writ petition in which they have prayed for issuance of an appropriate writ/order commanding the State of Bihar to start Post-Graduate courses in medical science from 2nd May, 1989 and not to extend the eligibility date for completion of twelve months house job/housemanship up to 31st May, 1989 in view of the directions of the Supreme Court given in CMP No. 7667 of 1987 on 25th Sept. 1987 : Dr. Dinesh Kumar v. Moti Lal Nehru : Medical College : (Writ Petn. No. 348-52 of 1985): (1987) 4 SCC 459:

3. A number of writ petitions were filed in the Supreme Court raising the question whether the admission in a medical college or any other institution of higher learning situate in a State can be confined to those who have their domicile within that State for specified number of years. The Supreme Court disapproved such wholesale reservation of all seats for M.B.B.S. and Post-Graduate specialities and observed :

"that the very mandate of the equality Clause viewed in the perspective of social justice would justify some extent of reservation based upon residence requirement within the State or on institutional preferences for students passing the qualifying examination."

This was stated in the case of Dr. Pradeep Jain v. Union of India, AIR 1984 SC 1420. Thereafter the Supreme Court gave directions from time to time prescribing the syllabus for M.B.B.S., B.D.S. and Post-Graduate course, holding of all India examinations for filling up certain percentage of seats by all India competition, the schedule of holding examinations, publication of results, date of commencement of session etc. In this case, we are concerned with the Post-Graduate Medical course and the order of the Supreme Court which is relevant to this case was passed in CMP No. 7667 of 1987 (reported in 1987 (4) SCC 459). The Supreme Court by the order aforesaid finalised the scheme in regard to the Post-Graduate course for filling up 25 per cent seats in each medical college or institution on the basis of All India Entrance examination to be conducted by the All India Institute of

Medical Sciences. The Supreme Court observed that there must be uniformity in the pattern of Post-Graduate course. It noticed that there were different patterns, in some States it is for a term of two years with housemanship of one year, while in some States it is a full term of three years. The Supreme Court ordered that that shall continue up to 1992. For admission beginning from 1993, there will be only one pattern, namely, a three years course without any housemanship. It further ordered that the courses of study shall commence in every institution providing Post-Graduate study throughout the country from May 2nd. The Supreme Court further directed that the scheme for Post-Graduate course shall be operative in 1988.

4. in Bihar, the Post-Graduate course is for a term of two years with housemanship of one year. For this reason, for admission in Post-Graduate course, a candidate must have completed twelve months of house job or housemanship on the date of admission. In view of the order of the Supreme Court, as noticed above, this may continue up to 1992 inclusive. Again, in view of the order of the Supreme Court, the course must start on May 2. It is thus clear that under the present system, a candidate must complete twelve months housemanship by May 1 and if he does not do so, he cannot be admitted to a course which must commence from May 2nd.

5. Under the signature of the Controller of Examination prospectus for Post-Graduate Medical Admission Test Bihar, 1989 has been issued, a copy of which is Annexure A/1 to the intervention application filed by the private respondents. According to the prospectus, candidate who completes housemanship by 31st May, 1988 shall also be eligible for admission. The question is whether in view of the order of the Supreme Court dt. 25th Sept. 1987, the date of eligibility of housemanship could have been extended beyond May 1st, 1989. It appears that previously a candidate who had completed six months housemanship was eligible for appearing at the test examination. For 1987 the test examination was to be held from 20th Dec. 1987. Although these petitioners then had not completed six months housemanship they filed C.W.J.C. No. 1991 of 1987(R) in which, inter alia, they prayed that the date of test examination be extended up to 3rd Jan. 1988 as by that date they would be eligible for appearing at the 1987 examination. A

counter- affidavit was filed in that case by the respondent-State in which, inter alia, it was stated that in view of the order of the Supreme Court Post-Graduate classes for 1988 shall have to be started from 2nd May, 1988, the test examination of 1987 must be held prior to that so that the classes might start at least from 2nd May, 1988. It was stated in that case on behalf of the State that the contention of the petitioners that the students of Patna Medical College and other Medical Colleges would be given any advantage had no basis. In view of the stand taken by the State, the writ petition was dismissed with the following observation : --

"It was submitted by learned standing counsel on behalf of the respondents with reference to the statements made in the counter-affidavit that only such students shall be allowed to appear at the examination who have acquired the requisite qualifications before 2nd May, 1988 as prescribed in Clause 5 of the printed prospectus for the postgraduate medical admission test, 1987. Therefore, the contention of the petitioners , that the students of Patna Medical College and some other Medical Colleges may get the advantage has no basis. With this observation, the writ petition is disposed of. In view of the disposal of the writ petition, the interim order passed on 6-1-1988 stands vacated."

The result was that the petitioners could not appear in the test examination 1987 in view of the firm stand taken by the State in its counter-affidavit filed in C.W.J.C No. 1991 of 1987(R).

6. But as subsequent events discussed, the apprehension of the petitioners that the students of Patna Medical College and other Medical Colleges (we may mention that the petitioners are the students of the Rajendra Medical College, Ranchi) would get an undue advantage, came out true. Despite the dismissal of the writ petition on the firm and unambiguous stand taken by the State that no person who did not have the requisite qualification as on May 1 shall be allowed to appear at the entrance test, large number of candidates from the Patna Medical College and, perhaps, from some other Medical Colleges also who did not have the requisite qualification on the relevant date were issued admit cards for the examination, and they were permitted to take the examination. When objection was raised as on their eligibility on the relevant date, those candidates filed a writ

petition before the High Court of Patna being C.W.J.C. No. 3036 of 1988. That writ petition was allowed by judgment and order dt. 11-5-1988 principally on the ground that the authorities had not followed the schedule fixed by the Supreme Court, and since the admission had been delayed, the benefit of such delay may be given to the writ petitioners. The Court felt that the writ petitioners who had been issued admit cards and who had taken the examination should not be deprived of the benefit of their good performance at the examination. That judgment must be understood in the special facts and circumstances of that case. It was understood by all including the authorities themselves that in terms of Clause III (5) of the prospectus published for the said examination, the candidates had to complete first six months term of housemanship and start second six months term of housemanship for being permitted to appear at the test, but, were to be considered for admission only if they completed one year housemanship on the first day of admission. There was no confusion in the mind of the authorities as to what was meant by 'first day of admission' since the orders admitting the successful candidates in terms mentioned as follows : --

"Though the interview-cum-admission will be finalised on 7-5-1988 but the session will be deemed to have commenced from 1st of May, 1988 in the light of the Supreme Court judgment directing 1988 session to begin from 2nd May, 1988."

Thus by illegally issuing admit cards to even ineligible candidates, the concerned authorities enabled them to take the admission test even though they were not qualified in terms of the prospectus, and whose admission to the test was clearly contrary to the firm assurance given to this Court in the counter-affidavit filed on behalf of the respondents in C.W.J.C. No. 1991 of 1987(R). From the judgment of the High Court in C.W.J.C. No. 3036 of 1988 it is not clear whether the order of the Ranchi Bench of the High Court in C.W.J.C. No. 1991 of 1987 (R) was placed before the Bench hearing that writ petition, nor does it appear that the counter-affidavit filed on behalf of the respondents in C.W.J.C. No. 1991 of 1987(R) was placed before the Division Bench hearing the writ petition at Patna. In our view, the entire bungling that took place was pursuant to a clear design to show undue favour to some ineligible candidates, and this apprehension had been expressed by the petitioners in C.W.J.C. No. 1991 of 1987(R).

7. In the counter-affidavit filed by the State, it has been stated that the date of eligibility has been extended up to 31st May, 1989 keeping in view the 'larger interest' of the students who were completing one year of housemanship by that date. The date was extended also in view of the order passed in C.W.J.C No. 3036 of 1988.

8. If the extended date of eligibility, that is 31st May, 1989, is given effect to, the result will be that for admission to the same course for which All India Entrance Examination as well as State Entrance Examination is held, some of the candidates who were not qualified for taking the All India Entrance Examination may be found qualified for taking the State entrance examination. This is one reason why the last date for acquiring the requisite qualification must be the same for the All India Entrance Examination as well as the State Entrance Examination.

9. We may also observe that in view of the Supreme Court's firm directive, the academic session must commence on May 2 of each year. That being so candidates seeking admission to the course must acquire the necessary qualification latest by the 1st day of May. This must be the cut off date. It may be that some candidates may acquire the requisite qualification a few days later. That cannot be helped. They may be considered unlucky, but that is implicit in any scheme where an eligibility date has to be fixed. If such a date were to be extended keeping in mind the cases of particular candidates, there can be no end to process of extensions, and the entire scheme will be defeated. Moreover, such action would be clearly arbitrary and verge on mala fide exercise of power.

10. It was contended on behalf of the private respondents, who passed M.B.B.S. examination from Patna and Darbhanga Medical Colleges, that in view of the order passed by a Bench of this Court in C.W.J.C. No. 3036 of 1988 on 11-5-1988, the extension of the date of eligibility regarding housemanship up to 31st May, 1989 was justified. From the order passed in C.W.J.C. No. 3036 of 1988 it appears that the petitioners in that case were allowed to appear at the examination by the Controller of Examination and they had obtained higher marks. It further appears that although the petitioners in that case did not complete twelve months housemanship by 1st May, 1988, the Bench held that since the admission could

be taken up to 22nd May, 1988 by which date they complete twelve months housemanship, the petitioners must be admitted to Post-Graduate course. In our opinion, the facts of this case and of that case being not similar, the order passed in that case must be confined to the special facts and equities of that case. In special circumstances relief was granted to the petitioners in that writ petition. There may have been many more who were similarly placed as the petitioners in that case, but who did not apply having regard to the terms of the prospectus. The private respondents in this writ petition cannot be allowed to take any advantage of that order. Further if we accept the contention of the private respondents, it will amount to flouting the order of the Supreme Court dt. 25th Sept. 1987 (reported in 1987 (4) SCC 459). The Supreme Court in that order made it clear that no application for modification of matters already covered by the order shall ordinarily be entertained. In Writ Petition No. 108 of 1988, application filed by some students from Bihar for extending the date of eligibility beyond 1st May, 1988 was refused by the Supreme Court. What was refused by the Supreme Court to one set of students has been allowed by the State Government to another set of students. We find nothing in the judgment which has the effect of modifying the order of the Supreme Court settling the schedule for holding the test, nor is there anything in the judgment which has the effect of recognising any power in the State Government to disregard the order of the Supreme Court in fixing the date of commencement of the post-graduate courses. The lame excuse of following the High Court's order in C.W.I.C. No. 3036 of 1988 is nothing but a device to side-track the Supreme Court's judgment and orders, and we cannot countenance this. The State of Bihar is as much bound by the judgment and orders of the Supreme Court as any other person. We cannot help if the laws are obeyed in their breach, but if such a breach is brought to our notice, we cannot afford to be idle spectators and raise our hands in despair.

11. In our view the justification for extension of the date of eligibility from 1st May, 1989 to the 31st May, 1989 cannot be pleaded by reference to the judgment of this Court in C.W.J.C. No. 3036 of 1988, This Court did not approve of the delay in holding the examination and the deviation from the schedule fixed by the Supreme Court. It only accepted the factum of delay as a reality and granted relief to some of the candidates who had appeared at the examination and had secured high

marks, in the special facts and circumstances of that case. We find nothing in the judgment which authorises the authorities to deviate from the time schedule fixed by the Supreme Court. It is indeed surprising that the authorities understand the judgment of this Court in C.W.J.C. No. 3036 of 1988 as conferring upon them power to fix any date of eligibility contrary to the directions of the Supreme Court. The fact that the Court noticed the delay and did not quash the action of the authorities in the special facts and circumstances of that case, is now being pleaded as a justification for further breach of the directives of the Supreme Court. If such be the attitude of the authorities, and their actions are countenanced by this Court, in due course, the entire scheme formulated by the Supreme Court will be frustrated.

12. It was urged that whether one year housemanship can be said to be a reasonable condition for appearing at the entrance examination for Post-Graduate course, is required to be gone into. There is no scope for raising this issue as the Supreme Court by order aforesaid dt. 25th Sept. 1987 has allowed that system to continue up to 1992 inclusive. It did not think fit to strike down this condition.

13. We must note that the students in Bihar suffer because of the callousness of the State Government and the Universities. There are as many as nine Universities in Bihar. The examinations of different subjects in different faculties do not commence on the same date in all the Universities. It, therefore, happens that although the students are admitted in different medical colleges under different Universities in the same session, the students of some Universities pass M.B.B.S. examination earlier; consequently, they also complete their housemanship earlier than those whose examination was held late. No effort is made to see that the examinations are held according to the schedule so that students admitted in a particular session throughout Bihar pass their M.B.B.S. final examination in the same year and they complete their housemanship at the same time. This has resulted in proliferation of cases before this Court, both at Patna and at Ranchi.

14. On the numerous casualties suffered by the State, the education system is the foremost. There is a complete breakdown of the educational system in this State. There is hardly any teaching work in the Universities and the colleges, which in

any case remain closed most of the time for whatever reasons. The postponement of examinations on the slightest pretext, the non-declaration of results for months, if not years, has created a sense of frustration amongst the youth of the State and their parents. The aspirations of an entire generation of youth has been frustrated. There is an exodus of serious minded students from this State, but yet there are many such who cannot afford the luxury of education elsewhere. They have, therefore, to resign themselves to their fate and wait for the mercy of the authorities that be. In the process they invariably lose their valuable 3-4 years and consequently their opportunities to appear at the various competitive examinations which they could have availed but for the delayed examinations and/or delayed results. It is unfortunate but true, that the entire educational system that exists in the State is meant only to pay salaries and wages, to the teaching and non-teaching staff of the large number of Universities, Colleges and Schools. Neither the academic session nor examinations nor results are time bound. The only thing that is time bound is promotion to the staff; the allocation made each year to the Department of Education is a heavy burden on the financial resources of the State. There are numerous universities, colleges and schools but no education. Having regard to the law and other problems of the Universities and other educational institutions, it appears that the end product of the educational system of this State is uneducation.

15. Referring to the instant case, we fail to understand why the order of the Supreme Court cannot be obeyed by the State and its authorities. There is no reason why the academic sessions should not begin on May 2 when, that is the directive of the Supreme Court to all Medical Institutions. There is no reason why the schedule fixed by the Supreme Court was not followed this year as well. No explanation has been furnished in the counter-affidavit nor was any justification pleaded before us. Delaying the academic session is only the starting point of the process, the thin end of the wedge, and if not sternly checked at its initial stages, the day may not be far when despite the judgment and orders of the Supreme Court, even the post-graduate courses in Medicine may be delayed by months or even years. We fail to understand how the larger interest of the students is served by delaying the academic session, unless the excess of larger interest is only meant to favour those who were otherwise ineligible to take the examination. It

was submitted that in any event the State Government has not followed the schedule fixed by the Supreme Court and, therefore, the academic session can never begin on May 2, 1989 as directed. In the absence of any explanation as to why the aforesaid schedule has not been followed by the State Government, we are constrained to observe that this only discloses the impunity with which the orders even of the Supreme Court are disregarded.

16. We may notice that the All India Entrance Examination for filling up 25 per cent of the seats of Post-Graduate course has already been held by the All India Institute of Medical Sciences so that selection of candidates may be finalised in terms of the schedule fixed by the Supreme Court, because classes must start on May 2, 1989.

17. We, therefore, hold that in terms of the Supreme Court orders, the academic sessions for the post-graduate medical courses must commence from the 2nd May each year. The State of Bihar and its authorities are bound by the orders of the Supreme Court and no deviation from the schedule is permissible, unless for good reasons shown appropriate orders are obtained from the Supreme Court itself. The justification pleaded in the instant case, namely, that in the larger interest of the students the date of eligibility has been extended to 31st May, 1989 is entirely baseless. The larger interest of the students should be served by holding the examinations in time and commencing the academic session according to schedule. Delaying the examination and the commencement of academic session, in fact, is destructive of the larger interest of the students. In the instant case, it has virtually been admitted that the date was extended so as to make eligible certain candidates who otherwise were ineligible for taking the examination for admission to the postgraduate courses which were scheduled to begin on May 2, 1989. According to us, this is an arbitrary exercise of power verging or mala fide exercise of power. Such action was also in defiance of the order of the Supreme Court. The other justification pleaded namely that the date was extended in view of the judgment of this Court in C.W.J.C. No. 3036 of 1988 is also untenable. As we do not find anything in that judgment which authorises the State Government and its authorities to deviate from the schedule fixed by the Supreme Court. The mere fact that their laches were not taken serious note of in

that ; judgment is no ground for contending that they are entitled to commit such laches in future as well as a matter of right.

18. These are the reasons why we allowed the writ petition by order dt. 30th Mar. 1989 and directed the respondent-State not to permit any candidate to appear at the Post-Graduate Medical Admission Test 1989 who does not complete twelve months houseman-ship by 1st May, 1989.

19. Before parting with the case, we must take notice of a disturbing feature.

This writ petition was filed on 14-2-1989 and was listed for admission on 20-2-1989. On that date notice to respondents 2 and 3 was ordered to be issued. It was also ordered that candidates who do not acquire the requisite qualification up to 2nd May, 1989 shall not be issued admit cards for appearing in 1989 admission test. On 25-3-1989, this was listed for admission. It was then found that this case had been put up at Patna before U. Sinha and B. K. Roy, JJ. on 16-3-1989 who ordered for placing this case before another Bench. This case was listed on 17-3-1989 before N. P. Singh and N. Pandey, JJ. who ordered for placing the case before the Hon'ble the Chief Justice to consider the desirability of sending the records to Ranchi. The records were sent back to Ranchi and it was put up before this Bench on 25-3-1989. In pursuance of order of that date, supplementary affidavit was filed on behalf of the private respondents sworn by respondent Dr. Manoj Kumar Singh. He has stated that on an application filed by them in C.W.J.C. No. 2808 of 1989 a Bench presided over by Hon'ble Acting Chief Justice and Hon'ble S. Hoda by order dt. 13-3-1989 called for the records of this case for hearing along with C.W.J.C. No. 2808 of 1989 and as noticed above it was listed at Patna on 16-3-1989 and 17-3-1989.

20. This writ petition had not been admitted for hearing when order was passed by a Bench at Patna on 13-3-1989 for listing this case at Patna for hearing. Ranchi Bench was established by Central Act No. 57 of 1976. Section 2 of the Act reads as follows : --

"2. Establishment of a permanent bench of High Court at Patna at Ranchi.

There shall be established a permanent bench of the High Court at Patna at Ranchi, and such Judges of the High Court at Patna, being not less than three in number, as the Chief Justice of that High Court may, from time to time, nominate, shall sit at Ranchi in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Hazaribagh, Giridih, Dhanbad, Ranchi, Palamau and Singhbhum :

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in any such district shall be heard at Patna."

21. It will be noticed that power has been given to Chief Justice to order any case arising within the jurisdiction of this Bench for hearing at Patna. Hearing of a case can be only after it is admitted for hearing. This case was admitted for hearing on 29-3-1989. Further, no Bench at Patna could pass judicial order as done on 13-3-1989 calling for the records of this case for hearing at Patna. The order could have been passed by the Hon'ble Acting Chief Justice on the administrative side and that only after an order admitting the case for hearing was passed at Ranchi.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com