

Dr. Rupam Rana And Others vs Union Of India And Others on 23 March, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (M/S) No. 2111 of 2018
Dr. Rupam Rana and Others Petitioners
Vs.
Union of India and Others Respondents
With
Writ Petition (M/S) No. 2836 of 2018
Indian Society for Human Welfare & Anr. Petitioners
Vs.
Union of India and Others Respondents
Mr. Vipul Sharma, Advocate for the petitioners
Mr. Suyash Pant, Advocate for respondent no. 3
Mr. Pankaj Kumar, Advocate holding brief of Mr. Neeraj Garg, Advocate for respondent
no. 5
Mr. Ramji Shrivastava, Advocate for respondent no. 6

JUDGMENT

Hon'ble Sharad Kumar Sharma, J. (Oral) The brief facts of the case are that the petitioners who are 9 in number had preferred this writ petition. Thereby, they have prayed for quashing of the impugned order dated 5th July, 2018, as passed by respondent no. 3 and simultaneously, had also prayed for quashing of the orders dated 9th April, 2018, 25th August, 2017 and 15th February 2017, passed by respondent no. 1 and, a Writ of Mandamus too to the respondents, to permit them to pursue their M.D. Courses in Ayurvedic Discipline of Medical Sciences, for which they have been admitted by the institution of respondent no. 5.

2. The petitioner has submitted, that the Government of India, by virtue of its notification dated 9th May 2017, had waived off the condition of procurement of minimum 50% of qualifying marks for the purposes of being admitted in the MD Courses and thus, inference drawn was that, even those candidates who had minimal marks had been permitted to be admitted. But, still the admission has had to be continued to be made as per the stipulations provided by the Medical Council.

3. The petitioner submits that on an extension of proposal by the institution for granting admission in the MD Ayurvedic, as it was then published in the Dainik Jagran on 25th October, 2017.

4. The petitioners participated in the counselling, through the mechanism which was adopted by respondent no. 5 and had appeared for counselling, which was held on 28th November 2017, at

Uttaranchal Hospital, Rajpur Road, Dehradun, which was conducted, on the basis of the merit of the BAMS, which was prepared by the Association of Combined Entrance Examination for the Post Graduate Courses in the MD Ayurvedic, the petitioners were allotted admissions for the Academic Session 2017-18.

5. The letters which had been issued by the respondent no.1 i.e. dated 25th August, 2017 and 15th February 2017. In fact, those were the correspondences, which were issued prior to the letter of 9th April 2018 and as per the letter of 9th April 2018.

6. In fact, the respondent no. 3 in furtherance thereto by the correspondence dated 5th July 2018, which is impugned in the writ petition, had refused to enroll the petitioners for their respective MD, Ayurveda Courses for the academic session 2017-18, on the ground that the petitioners have been admitted by respondent no. 5 directly without the candidates' having qualified their AIAPGET examination.

7. The petitioners submitted that the refusal made by the respondent no. 3 by the order of 5th July 2018, in fact, it ought not to have created any impairment in recognising the petitioner's admission made by respondent no. 5, because, in view of the government order/notification which had been issued by respondent no. 1 on 9th May 2017, the requirement of obtaining of minimal marks since was given away, the petitioner's admission made by respondent no. 5, ought to have been reckoned, though, it was de-hors to the process of grant of admission and the committee itself would not have exclusively catered to it, to grant admission to the petitioners.

8. When the writ petition was initially instituted and was argued at an admission stage, the Coordinate Bench of this Court, while initially directing the respondent to file their counter affidavit had passed an order of 8th October, 2018 by way of an interim arrangement which reads as under:

3. " Learned counsel for the petitioners has apprised this Court that many students who have obtained "zero" mark or even "negative" marks have been given admission. In other words, what he is trying to show before this Court is that appearance in the examination is merely a formality. This fact has also been admitted by the Union of India as well as by the University, however, they have said that since this examination was introduced for the first time in the year 2017, qualification in the examination was dispensed with only for 2017-18. We are also presently concerned with the examination of 2017-18.

4. As an interim relief, however, considering that the examination for P.G. Course is scheduled for 18.10.2018, it is provided that the petitioners shall be permitted to appear in the examination, which should not give them any right and shall be purely provisional in nature and shall be subject to final outcome of the writ petition. CLMA No. 15445 of 2018 stands disposed of accordingly".

9. Under the strength of the interim directions given by the interim order dated 08.10.2018, the Court has observed that since the examination of the PG Courses, was scheduled on 18th October,

2018, the petitioner were permitted to take up their examination which was exclusively made provisional and was made subject to the final outcome of the Writ Petition No. 2111 of 2018.

10. It is under the strength of the interim order, that the petitioners pursued their MD Courses in Ayurvedic and have taken their examinations. But, due to the absence of reckoning of the admission by respondent no. 3 i.e. the Uttarakhand Ayurvedic University, on the ground that they were admitted de-hors to the procedure by the Committee, which was not competent to grant the admissions, as the petitioners, were said to have not qualified their AIA-PGET examinations.

11. The effect of non-recognising of the admission of the petitioner by the University would be that though, they have now successfully completed their MD Courses. But since, their admission itself has not been reckoned the entire career even after, acquiring the qualification would be ruined.

12. An identical issue though in relation to the Under Graduate courses, with regards to the admissions having been granted to the candidates, therein who are numbered as 474 candidates, came up for consideration before the Coordinate Bench of this Court, in a Writ Petition No. 2911 of 2018, Association of Combined Entrance Examination V/s Union of India and Ors. The Coordinate Bench of this Court, after considering the elaborate arguments which were extended by the respective counsels to the writ petition, had passed the judgment to the following, effect on 26.02.2020:

25. "In such view of the matter, the writ petition is disposed of with a direction to the petitioner to deposit a sum of Rs.50,00,000/- as penalty with the Uttarakhand Ayurvedic University on or before 05.03.2020. The University shall consider grant of enrolment to these 474 students who were admitted directly without reference to the State counselling in accordance with law. It is made clear that the burden of penalty shall be borne by management of the concerned Ayurvedic colleges, which shall not be shifted to any of the students. The University shall be at liberty to move an appropriate application before this Court, in case petitioner fails to deposit the amount of penalty."

13. After holding, that the grant of admission by the institution itself, which is a private un-aided institution was contrary to the Rules of Admission. But, taking a considerate view because it was the future of the students, which would be at stake and rather who have been misguided by the institution itself has observed, that the university may be directed to consider the case of the petitioners therein for reckoning their admissions granted by the committee of respondent No. 5, allegedly constituted by the institution and also by treating them to be enrolled for the purposes of recognising of their MD qualification, which they have already procured after the grant of the admission by the private unaided institutions.

14. The Coordinate Bench of this Court in its Para 22 and 23, has recorded a finding after drawing its extract of rational from the Judgment of Civil Appeal No. 603 of 2020, Union of India Vs. Federation of Self-Financed Ayurvedic Colleges Punjab & others, wherein, while making reference to Para 12 of the judgment of the Hon'ble Apex Court had ultimately disposed of the writ petition with

the following observations:

22."However, in view of admission of a large number of students to the AYUSH Under Graduate courses for the year 2019-2020 on the strength of interim orders passed by the High Courts, we direct that the students may be permitted to continue provided that they were admitted prior to the last date of admission i.e. 15th October, 2019. The said direction is also applicable to students admitted to Post Graduate courses before 31st October, 2019. This is a one-time exercise which is permitted in view of the peculiar circumstances. Therefore, this order shall not be treated as a precedent.

23. Having regard to the peculiar facts and circumstances of the case and particularly with a view to protect the interest of the students who are pursuing their study for the last more than one year in the concerned colleges, this Court thinks that ends of justice would be met if the University is directed to consider the case of these 474 students for enrolment, if they are otherwise found eligible.

24. Since the members of the petitioner association have flouted the order of this Court by directly admitting such students without State counselling, therefore, the petitioner association will have pay Rs. 50,00,000/- as penalty to the University. The University shall consider the case of such students who were admitted without State counselling, for enrolment.

25. In such view of the matter, the writ petition is disposed of with a direction to the petitioner to deposit a sum of Rs.

50,00,000/- as penalty with the Uttarakhand Ayurvedic University on or before 05.03.2020. The University shall consider grant of enrolment to these 474 students who were admitted directly without reference to the State Counselling in accordance with law. It is made clear that the burden of penalty shall be borne by management of the concerned Ayurvedic colleges, which shall not be shifted to any of the students. The University shall be at liberty to move an appropriate application before this Court, in case petitioner fails to deposit the amount of penalty."

15. But, factually, if the principles which has been taken into consideration by the Coordinate Bench of this Court in its judgement of 26.02.2020, it was rendered exclusively only an equitable jurisdiction which was exercised by the High Court under Article 226 of the Constitution of India.

16. By issuing a writ at large, considering the interests of the students, who had been persuaded and misguided to be admitted by the institution, because of their wrongful act of resorting to the process of admission. And, that is why, while taking the lenient view, the court while directing the University to reckon the admission of such students and had imposed a cost of Rs. 50 lakhs on the Institution, which was directed to be deposited by way of penalty to the Uttarakhand Ayurvedic University therein.

17. Learned Counsel for the petitioners, apart from harping upon the other judgements, which he had made reference to, in his compilation submitted on 13th January, 2022. Hence, more or less foundation of his arguments is rather based on the judgment of 26th February 2020. But, this Court before making reference or relying the said judgment had called upon the counsel for the parties to ensure as to whether the Judgment of 26th Feb 2020 still subsists and has not been disturbed or modified by any superior Appellate Court.

18. Matter was posted to be considered in the post lunch session.

19. A very candid statement has been made jointly by the counsels appearing for the parties, that this judgment of 26th Feb 2020, had attained finality, as it has not been put to challenge before any superior court and has not been disturbed as such, in that eventuality.

20. In order to create a deterrent exemplar for the institution, who had apparently resort to malpractices in granting admission to students contrary to the procedure prescribed under law.

21. It cannot be persisted to continue as it would lead to increase of corruption, and that is why, a deterrent of imposing a cost of Rs. 50 lakhs was directed to be imposed upon the institution.

22. The counsel for the party submits, that since, that was a case which was being considered by the Coordinate Bench of this Court was pertaining to the admissions granted to the Under Graduates and the present writ petition relates to the admissions, which has been granted by respondent no. 5 to the MD Courses, which is obviously superior qualification, but factual allegation of adopting a malicious procedure for admission by respondent no. 5, institutions are identical.

23. The proportionate imposition of penalty has had to be enhanced in order to tied away the malpractices of admission which has been adopted by the institution of respondent no. 5. But, since in that case, it was an issue related to 474 students, where cost/penalty of Rs. 50 lakhs was imposed and if that is proportionate to read in relation to the present writ petition, where, the issue pertains to the 9 petitioners, who had been wrongfully admitted in their M.D. Courses, by respondent no. 5, de-hors to the procedure, the students are not to be made to suffer who got themselves bonafidely admitted. .

24. If, a logical determination is made, in fact, the penalty would be concluded to be @ of Rs. 10,548/- per student, as per the observations made in Para 25 of the Judgment of 26.02.2020.

25. But, since it cannot be ruled out that the respondent no. 5, is rather consistently playing with the destiny of the students for their ulterior financial gains. Being a private institution, they cannot be permitted to take the advantage of their dominant position of granting illegal admissions and that to those admissions, which has not been reckoned by or recognised by the Universities. A serious action is called for to be taken against the institution of respondent no. 5.

26. This Court is of the view that in fact; the educational institutions like that of respondent no. 5, have now more or less become a business like institution, where profit orientation is the main

motive.

27. In that eventuality, the penalty is directed to be imposed on the respondent no. 5, to be paid to the University @ Rs. 15,000/- per student i.e. $15,000 \times 9 = \text{Rs. } 1,35,000/-$. The same is directed to be paid to the university and the university in turn, is directed by way of Writ of Mandamus to reckon the admission already granted to the petitioners by the institution of respondent no. 5, so that their degree obtained in and the M.D. Ayurveda, may be recognised for the purposes enabling the for pursuing their future professional career.

28. In view of the aforesaid, the writ petition is disposed of in the light of the Judgment of 26.02.2020, except for the penalty which has been determined above, is directed to be deposited by respondent no. 5, before University of respondent no. 3.

(Sharad Kumar Sharma, J.) 23.03.2022 PN/-