



(6)

Case No. WP(c) NO. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
04.	11.06.10 (Ghosh,CJ)	<p style="text-align: center;"><b><u>BEFORE</u></b></p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE MR. JUSTICE BARIN GHOSH HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present : Mr. A. Moulik, Sr. Advocate with Mr. Sudesh Joshi and Ms. Manita Pradhan, Advocates for the petitioner.</p> <p>Mr. A. K. Upadhyaya, Sr. Advocate with Mr. Dhurba Tewari, Advocate and Mr. Thupden G. Bhutia, Advocates for the respondent nos. 1 to 3.</p> <p>Mr. Bhaskar Raj Pradhan, Sr. Advocate with Ms. Yangchen D. Gyatso, Advocate for the Respondent no.4.</p> <p style="text-align: center;">***</p> <p>Since facts and law applicable are identical to all these writ petitions and since same set of lawyers are appearing in these writ petitions, we have, with consent of parties, heard the writ petitions together.</p> <p>2. Brief facts of the case are that writ petitioners were admitted by respondent Medical College to pursue medical course. The admission, which was taken by the petitioners, was open up to 31<sup>st</sup> October, 2008. Petitioners, however, took admission on different dates before 31<sup>st</sup> October, 2008. On 8<sup>th</sup> December, 2008, Medical Council of India, hereinafter referred to as MCI informed respondent college that, in as much as each of the petitioners has received less than 50% marks in the entrance examination, they were not entitled to be admitted to pursue medical course, and, accordingly,</p>





Case No. WP(c) No. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>their admissions should be cancelled. The fact that each of the petitioners obtained less than 50% marks in the entrance examination could not be denied by respondent college, in as much as respondent college itself conducted the entrance examination. Respondent college, however, instead of acting on the basis of directions of MCI contained in its letter dated 8<sup>th</sup> December, 2008 purported to indulge itself in correspondence with MCI, and thereby sought to justify admissions of petitioners. Respondent college contended in such correspondence that each of the petitioners, in fact, obtained more than 50% marks in the entrance examination, but in view of negative marking, their ultimate score stood below 50% in the entrance examination. On that purported contention, the matter was kept pending by respondent college. In such correspondence, respondent college made it absolutely clear that in the prospectus issued the terms, conditions and other parameters of the entrance examination were mentioned, where it had been indicated that there shall be negative marking for the purpose of ascertaining the ultimate marks obtained. When respondent college failed to persuade MCI to take a different view, than taken by it, as contained in its letter dated 8<sup>th</sup> December, 2008, respondent college on 23<sup>rd</sup> September, 2008 cancelled admissions of petitioners. In the meantime, respondent</p>



Case No. WP(c) NO. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>college accepted from petitioners admission fees and fees for the first year, as well as fees for the second year. Cancellation of admissions of petitioners by respondent college is the subject matter of challenge in these writ petitions.</p> <p>3. Learned counsel appearing in support of writ petitions drew our attention to Regulation 5(i) of the Regulations on Graduate Medical Education, 1997, and submitted that, in terms thereof, in as much as there is one medical college in the State, admissions in the medical college concerned are to be given on the basis of marks obtained at the qualifying examination, i.e. at the Higher Secondary Examination. We do not accept such contention. Clause 1 of Regulation 5 of the said Regulations has no application in so far as this State is concerned, in as much as, in this State though there is only one medical college, but not one University or Board or Examining Body conducting qualifying examination. Therefore, admission on the basis of marks obtained in qualifying examination, as is the mandate of the said clause, is not available in the State.</p> <p>4. We think clause 2 of Regulation (5) of the said Regulations is applicable in this State, where it has been mandated that a competitive examination should be held, when in the State there are more than one University or Board or Examining Body conducting the</p>



Case No. WP(e) No. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>qualifying examination. However, clause 2 does not mandate that admission in medical colleges would be on the basis of marks obtained in such competitive examination, although Regulation 5 makes it clear that admission in medical college shall be based solely on merit of the candidate. This is, however, subject to Clause 5 of Regulation 5 of the said Regulations, which mandates that merit shall be considered only when a candidate has obtained at least 50% marks in the qualifying examination in Physics, Chemistry and Biology taken together. Petitioners, having not obtained 50% marks in Physics, Chemistry and Biology taken together in the qualifying examination, could not be admitted by respondent college. Such admission is contrary to law governing the field.</p> <p>5. Learned Counsel for petitioners submitted that petitioners were not informed by respondent college what marks they obtained in the qualifying examination. Learned Counsel submitted that at the invitation of respondent college, after the competitive examination was held, petitioners took admission after paying appropriate fees. It was submitted that in such circumstances petitioners cannot be made victims of circumstances. It does not appear from records that petitioners were informed as to what marks they obtained at the entrance examination. It is also true that</p>





Case No. NP (e) No. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>respondent college held out to petitioners that they are entitled to be admitted and offered admission upon payment of fees, and, such offer of admission was accepted by petitioners by tendering and depositing appropriate fees. However, an action contrary to law cannot be upheld because beneficiaries of such action were not aware that the action is contrary to law. Circumstances narrated above, however, exposes respondent college to the obligation of not only refunding whatever fees it has received from petitioners, but also gives right in equity to petitioners to take such recourse to law for recovery of such compensation as they may seem fit and proper.</p> <p>6. Respondent college has, after taking several adjournments, filed a counter and thereby sought to bring on record what marks petitioners obtained for giving positive answers and how much of them were lost for giving negative answers. The fact however remains that negative marking was not held out in the prospectus to be the yardstick to be used to assess merit only. In terms of the Regulations referred to above, it is mandatory for the person to be admitted to secure 50% marks in Physics, Chemistry and Biology taken together. It was held out in the prospectus that marks obtained will be adjudged after adjudging negative markings.</p>





(11)

Case No. WP(c) No. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>7. Learned counsel for petitioners lastly submitted that one of the petitioners, namely, Takhelmayum Sayon Singh, who is the petitioner in writ petition no. 6 of 2010, is, in fact, a member of OBC community and that he has an OBC certificate issued by the appropriate authority of Manipur State. It was contended that this certificate was issued much before selection process for admissions in question started. It is, however, not disputed that the said petitioner at the time of applying or even at the time of seeking admission did not hold out to respondent college that he belongs to a reserved category. It is now too late, according to us, to rely upon the said categorisation. Further more, it is a question of fact whether the said petitioner, who is a declared member of OBC category in the State of Manipur, can also be treated as a declared member of OBC category in the State of Sikkim. In the circumstances, in respect of the said petitioner too, we cannot do anything in as much as the said petitioner all throughout represented that he belongs to open category, and, as such, 50% bench mark was applicable to him and not 40%, as was sought to be argued before us.</p> <p>8. Admissions of petitioners, which ought not to have had been given in the facts and circumstances of the case and which ought to have had been cancelled on 8<sup>th</sup> December, 2008 or immediately thereafter, remained in</p>







Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>tact until 23<sup>rd</sup> November, 2009 at the instance of the respondent college. Subsequent thereto, the same is continuing in view of various interim orders passed by this Court on these writ petitions and on the earlier joint writ petition. Therefore, it seems there is no equity in favour of petitioners.</p> <p><b>9.</b> It was not urged before us and on our enquiry we found from the learned Counsel for MCI that even MCI has no power to condone non-receipt of the bench mark for admission.</p> <p><b>10.</b> In the circumstances, we have nothing further to do in the writ petitions. They are dismissed without any order as to costs, with liberty to petitioners to seek refund of fees paid by them to respondent College with 8% interest thereon from the date of payments until refund thereof, with a direction upon respondent College to refund the same together with such interest no sooner demand for refund is made. We also grant liberty to petitioners to take such recourse to law as they may be advised for recovery of compensation, if any, from respondent college.</p> <p><b>11.</b> Having regard to the fact that petitioners have completed almost two years of study in the medical college, we grant certificate to petitioners under Article 134A of the Constitution of India as many courts have allowed persons similarly circumscribed as that of</p>



(13)

Case No. WP(c) No. 06/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>petitioners to complete the course and for that matter stay operation of this judgment and order for a period of three months from today.</p> <div><div> <b>Judge</b> <u>11.06.2010</u></div><div> <b>Chief Justice</b> <u>11.06.2010</u></div></div>

rsrawat/atsh.