

ASHISH RANJAN AND ORS.

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v.

UNION OF INDIA AND OTHERS

(I.A. No. 44513 of 2017)

KATI HAR MEDICAL COLLEGE

...APPLICANT

B

with

(I.A. No. 44508 of 2017)

MATA GUJRI MEMORIAL MEDICAL

COLLEGE & LIONS SEVA KENDRA HOSPITAL

KISHANGANJ

...APPLICANT

C

with

(I.A. No. 45886 of 2017)

STATE OF BIHAR

...APPLICANT

in

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(Writ Petition (Civil) No. 76 of 2015)

JUNE 09, 2017

[ASHOK BHUSHAN AND DEEPAK GUPTA, JJ.]

Education/Educational institutions:

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Medical admissions – Grant of relaxation in time schedule for admission – Applications by Private Medical College-applicants seeking direction to State of Bihar via BCECE Board to hold a fresh counselling for the seats available in the Applicants' Colleges which could not be filled up due to haphazard and arbitrary counsellings conducted by the Board and that the last date for-PG Course in Medical Colleges may be relaxed and extended – Held: Time schedule framed by the Medical Council of India as approved by this Court itself indicates that proper care was taken in fixing the time schedule giving sufficient time for filling up seats which could not be filled up by the first, second and MOP-up counselling – Said schedules have to be adhered to and normally this Court is reluctant to grant relaxation in time schedule – However, when first and second rounds of counselling were completed on 30.05.2017, after cancelling of earlier counsellings, there was no time schedule to

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State of Maharashtra & Ors. v. Dr. D.Y. Patil Vidyapeeth & Ors. 2016 (9) SCC 401 : 2016 (9) SCALE 404; *State of Haryana and another etc.etc. v. Dr. Narender Soni and others etc.etc.* C. A. Nos. 8179-8181 of 2017 dt. 25.5.2017 – referred to.

2016 (9) SCC 401 referred to **Para 11**

WITH

WITH

Under Article 32 of the Constitution of India.

S. S. Shamschery, AAG, Ajit Sinha, Salman Khurshid, Sr. Advs.,
F Ajay Sharma, Ms. Rekha Pandey, R. K. Rathore, G. S. Makker, Ravi
Kant, Ranjay Kumar Pandey, Amit Sharma, Ms. Ruchi Kohli, Advs. for
the Respondents.

G **ASHOK BHUSHAN, J.** 1. We have heard learned counsel for the applicants, Shri Gaurav Sharma, learned counsel appearing for the Medical Council of India. Shri Ajit Kumar Sinha, learned senior counsel appearing for the Union of India and learned counsel for the State of Bihar.

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2. I.A.No.44513 of 2017 has been filed by Katihar Medical College, whereas I.A.No.44508 of 2017 has been filed by another private Medical College, namely, Mata Gujri Memorial Medical College and Lions Seva Kendra Hospital Kishanganj. Both the applications have been filed on 29th May, 2017 praying for direction to State of Bihar via the BCECE Board to hold a fresh counselling for the seats available in the Applicants' Colleges which are lying vacant and could not be filled up due to haphazard and arbitrary counsellings conducted by the Board. The Applicants pray that the last date for PG Course in Medical Colleges i.e. 31.05.2017 may be relaxed and extended in respect of the vacant seats in the Applicants' Institutions.

3. The State of Bihar filed a reply in the aforesaid two Applications and has also filed I.A.No.45886 of 2017 praying for the following directions:

"A. Allow the present application for direction permitting the State Authorities an extension of 2 weeks time from the date of the order to conduct counselling or any other period that this Hon'ble Court may deem appropriate for completing the counseling and admission procedure of abovementioned vacant seats in PG Courses as well as in Diploma Courses across the State of Bihar.

B. Pass such other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

4. The State of Bihar in its reply to the Applications as well as in the Application for direction have given details of counselling and procedure adopted in paragraphs 12 to 21, the sequence of the events, counselling held and the reasons for cancelling the counselling as well as second part of the counselling. Paragraphs 12 to 21 are as follows:

12. It is submitted that 1st Counselling was done by the BCECE Board from 10.04.2017 to 15.04.2017.

13. That in the meanwhile, the Union government communicated that 143 seats of PG courses and 32 seats of Diploma courses belonging to the Central Quota have remained vacant from the All India Quota. The State of Bihar was subsequently asked to fill up these vacant seats as state quota.

- A 14. That thereafter, the 2nd counselling was conducted by the BCECE Board from 16.05.2017 to 20.05.2017 but during the course of counselling some students created nuisance over the issue of reservation policy.
- B 15. It is submitted that this led to a law and order situation and the State authorities were left with no recourse except to stop the counselling process. Upon examining the complaints of the students, the State Government decided to cancel the 1st as well as 2nd part of Counselling and rescheduled it on 28.05.2017 and 29.05.2017.
- C 16. In the meantime, the State authorities carefully reviewed this issue and came out with a new resolution issued vide Memo No. 569(1) dated 27.05.2017. This resolution introduced a new formula for counselling in PG courses.
- D 17. That a perusal of the Clause (iii) of the said resolution dated 27.05.2017 provides that for admission in PG courses in year 2017, all seats of State Quota and left over seats of All India Quota will be amalgamated and it was further that the counseling for all the seats will be conducted afresh under State Reservation Rules as described in Clause (i) and (ii).
- E 18. That in light of the abovesaid resolution, fresh re-counselling was done on 28.05.2017 and 29.05.2017 and second counseling and mop-up counseling was done on 31.05.2017 by which 349 seats were allotted in PG Degree Courses and Diploma Courses.
- F 19. That upon completion of 2nd Counselling and Mop-up Counselling, 62 seats (PG) and 20 seats (Diploma) are vacant in Government Medical Colleges. A true copy of 82 vacant seats of students in Government Medical Colleges is annexed herewith as Annexure A.1.
- G 20. That for Private Medical Colleges, the 1st Counselling was done on 14.04.2017 and 15.04.2017. The 2nd Counselling was done on 24.05.2017 and 25.05.2017. The Mop-up Counselling was conducted on 30.05.2017.
- H 21. That it is humbly submitted that 82 seats (62-PG and 20-Diploma) in Government Medical Colleges and 70

seats(62-PG and 8- Diploma) in Private Medical Colleges are lying vacant across the State of Bihar, as on date."

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5. Shri Gaurav Sharma, learned counsel appearing for the Medical Council of India has opposed the Applications filed by the private Medical Colleges as well as Application filed by the State of Bihar. He submits that in the schedule fixed for admission which has been approved by this Court by order dated 18.01.2016 in Writ Petition (C)Nos. 314 and 328 of 2015, 31st May is the last date for admission in the PG Medical Courses. He has referred to the note contained in "time Schedule for completion of Admission Process for PG (Board Specially) Medical Courses for All India Quota and State Quota". He has referred to note '3' which provides as follows:

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"3. In any circumstances, last date for admission/joining will not be extended after 31st May."

6. Shri Gaurav Sharma submits that this Court time and again has reiterated that time schedule prescribed by the Medical Council of India is to be strictly adhered to. It is submitted by Shri Sharma that large number of seats which are said to be vacant are the branches which normally are not preferred by the students, he has referred to page 11 of the Application of State of Bihar that is Vacancy Report after Counselling held on 31.05.2017. In support of his submission he further contends that high fee structure as prescribed by the private Medical Colleges who have given annual fee as Rs.40 lacs as well as Bank Guarantee for next two years fee is the reason due to which large number of students are unable to take admission and the Colleges themselves have to blame for such stringent conditions for admission and they cannot claim any extension of time schedule which has already been fixed by the Medical Council of India and approved by this Court by judgment dated 18.01.2016.

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7. Shri Ajit Kumar Sinha, learned senior counsel appearing for Union of India submits that when the time schedule has been fixed by this Court, the same cannot be allowed to be changed on the strength of IA. He submits that by the IAs, applicants cannot ask for review of the judgment and sort of review the time schedule fixed for admission cannot be allowed to be changed.

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8. Learned counsel for the private Colleges in support of their applications contend that the postponement of counselling, time and again

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A and ultimately cancelling first and second part of the counselling and
rescheduling it on 28th and 29th May was reason due to which large
number of students could not take admission. It is submitted that initially
there was no All India Publication of the counselling programme. It is
submitted that first as well as second counsellings were re-scheduled
and postponed on several occasions. It is submitted that a large number
B of seats are vacant in the Applicants' Institutions. In Katihar Medical
College, 41 PG seats in different subjects are vacant after the last date
of second counselling whereas in Mata Gujri Memorial Medical College
number of vacant seats in PG Course is 48.

C 9. Learned counsel appearing for the State of Bihar has given a
sequence of events pertaining to first and second counselling. It is
submitted that when second counselling was conducted by the Board
from 16.05.2017 to 20.05.2017, during the course of counselling some
students created nuisance over the issue of reservation policy which led
to a law and order situation and the State authorities were left with no
D recourse except to stop the counselling process. Upon examining the
complaints of the students, the State Government decided to cancel the
first as well as second part of the counselling and rescheduled it on
28.05.2017 and 29.05.2017. Further, a new resolution was passed on
27.05.2017 introducing new formula for counselling in PG Courses.
Further, wherein all seats of State Quota and left over seats of All India
E Quota will be amalgamated and it was decided that the counselling for
all the seats will be conducted afresh under State Reservation Rules.
The sequence of events as given by the State of Bihar has already been
noted and extracted above.

F 10. Learned counsel for the Applicants has also placed reliance
on various orders of this Court wherein this Court has granted relaxation
in time schedule for admission. The Applicants have placed reliance on
the following judgments of this Court in above respect:

(1) Judgment of this Court in *C.A.No.9835 of 2016 (State of
Maharashtra & Ors. vs. Dr. D.Y. Patil Vidyapeeth & Ors.)* wherein
G this Court issued direction in paragraph 12(v) where time for completion
of admission which is 30th September, 2016 was extended by 7th October,
2016. Paragraph 12(v) of the judgment is as follows:

H "12(v). Since it may not be possible to complete the process
of admission by September 30, 2016, we extend the time to
complete the admission by October 7, 2016."

(II) Learned counsel also placed reliance on judgment of this Court dated 25th May, 2017 in *C.A.Nos.8179-8181 of 2017 (State of Haryana and another etc.etc. vs. Dr. Narender Soni and others etc.etc.* In paragraph 17 of the judgment following was held:

"17. In the peculiar facts and circumstances of the case, the State of Haryana, if it wishes to give weightage for admission in postgraduate courses under the proviso to Regulation 9(IV), it must come out with a fresh notification identifying remote and/or difficult areas as discussed in the present order, within one week from today and to facilitate the same, the last date for admission is extended to 10th of June, 2017."

(III) Order of this Court dated 29.05.2017 in SLP(C) Nos.15859-15860 of 2017 with regard to State of Jammu & Kashmir, the time was extended till 15th June, 2017. The order of this Court is as follows:

"Having regard to the peculiar facts of these cases, the special leave petitions are dismissed, leaving the question of law open."

Since the petitioner will have to do fresh exercise in terms of the order passed by the High Court, time to do that exercise is extended till 15th June, 2017.

We are conscious of the fact that in other cases time is extended only till 10th June, 2017. However, in the peculiar situation in the State of Jammu & Kashmir, as an exceptional case, time is extended till 15th June, 2017.

The Special Leave Petitions are dismissed.

Pending application(s), if any, stands disposed of accordingly."

11. From the facts brought up by the State of Bihar it is apparent that in Government Medical Colleges 62 seats in PG and 20 seats in Diploma are vacant whereas in Private Medical Colleges 62 seats in PG and 8 seats in Diploma are vacant. As noted above, the Private Medical Colleges have filed these Applications on 29th May, 2017 that is well before the last date of completing the admission. In reply to the said Applications all necessary facts have been stated by the State of Bihar in giving details of first and second counselling, re-scheduling the counselling and holding the MOP-UP counselling on 31st May, 2017.

A 12. From the perusal of the time schedule of counselling as framed
by the Medical Council of India and its Regulation and approved by this
Court on 18.01.2016, it is clear that the time schedule for first round
counselling for State Quota was from 4th April to 15th April whereas
second round counselling was to be conducted between 11th May to 20th
B May. Although, the State initially held the first and second counselling
within the time schedule but decision was taken to cancel the first and
second part of the counselling on 26th May. The notification was issued
by the Government of Bihar on 26th May, 2017 informing cancellation of
first and second part of the counselling with regard to the Medical
Colleges of State. Cancellings with regard to private Medical Colleges
C for PG Courses were also re-scheduled and adjourned.

 13. Learned counsel for the Medical Council of India has also
brought on record notice issued for MOP-UP counselling for Private
Medical/Dental Colleges which was to take place on 30th May, 2017.
With regard to the admission in State of Bihar, the State itself has come
D up referring to various practical difficulties and reasons for disruption of
counselling process. The time schedule framed by the Medical Council
of India as approved by this Court itself indicates that proper care has
been taken in fixing the time schedule giving sufficient time for filling up
seats which could not be filled up by the first, second and mop-up
counselling. When first and second rounds of counselling have been
E completed on 30th May, after cancelling of earlier counsellings, there
was no time schedule to take steps for filling up vacant seats of
Government Medical Colleges and Private Medical Colleges. It is true
that the time schedules fixed by the Medical Council of India and approved
by this Court have to be adhered to and normally this Court is reluctant
F to grant relaxation in time schedule. However, learned counsel for the
Applicants have referred to various circumstances where this Court
due to compelling reasons gave limited relaxation in the time schedule
for completion of admission. With regard to the postgraduate admission
for the year 2017-18, this Court has already granted extension of time in
the State of Harayana and J & K. With regard to State of J & K extension
G has been granted till 15th June, 2017 to complete the process of admission.
Thus, stand is taken by the State of Bihar that no prejudice shall be
caused to any stakeholder in the event the State Authorities are granted
an extension for completing the counselling and admission process for
filling up vacant seats in PG Courses as well as Diploma Courses across
H the State of Bihar.

14. In view of the facts and peculiar circumstances in which State of Bihar had to cancel first and second part of counselling and had fixed fresh counselling on 29th and 30th May and looking to the substantial vacant seats both in Government Medical Colleges and private Medical Colleges, we are satisfied that the State is right in asking for giving further time to take steps to fill up the vacant seats in PG Degree Courses and Diploma Courses.

15. Thus, in the facts and circumstances of the case, we extend time for completing the admission process by 15th June, 2017 by holding an extended counselling by the Board. We further direct that only those students shall be invited to participate in extended counselling whose Roll numbers were reflected both in the Government Medical Colleges and Private Medical Colleges in the last notice for counselling and the eligibility is confined to those students only who were invited in the last counselling and could not take admission.

16. All the applications are disposed of accordingly.