

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5526 of 2021

Md. Shahbaz Ahmad son of Md. Sabbir Ahmad resident of - Mazida Palace,
Muraliganj, Ward no. 03, PS - Murliganj, District - Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Government of Bihar, Patna.
2. The Chancellor, Universities of Bihar, Governors Secretariat, Governor House, Patna through Principal Secretary to Governor, Raj Bhawan Patna.
3. The Chancellor, Universities of Bihar, Governors Secretariat Governor House Raj Bhawan Patna.
4. The Vice - Chancellor Lalit Narayan Mithila University Darbhanga.
5. The Lalit Narayan Mithila University Darbhanga through its Registrar cum State Nodal University.
6. The Vice - Chancellor B.N. Mandal University Madhepura.
7. The Registrar B.N. Mandal University Madhepura.
8. Sanjeev Kumar S/o Surendra Das at Post- Maliya, Dist and P.S.- Madhepura, Mob- 7903320163.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Khurshid Alam, Adv.
For the Respondent/s	:	Mr. Ram Vinay Prasad Singh, AC to GA-12
for LNMU	:	Mr. Nadim Seraj, Adv.
For B.N.M.U.	:	Mr. Ritesh Kumar, Adv.
For Pvt. Respondent	:	Mr. Sanjay Singh, Sr. Adv.
For Respondent No.8	:	Mr. Onkar Nath, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT

Date : 02-12-2022

1. The petitioner has prayed for issuance of a writ in the nature of Mandamus directing the respondent University (Dept. of Education) to take admission and allow the petitioner to attend the class of B.Ed. Session 2021 and further for issuance of a writ in the nature of mandamus commanding the



Nodal University to conduct high level inquiry with regard to manipulation made in the above admission process and further for issuance of any other writ/writs, command/commands, directions/orders as the Court may deem it and proper in the facts and circumstances of the case.

2. Counsel for the petitioner submits that he has participated in the exam for admission to B.Ed. course and the final result was published by the Nodal agency namely L.N. Mithila University, Darbhanga. Candidates having much lesser marks were given admission in the same category as that of the petitioner, while he was deprived of the admission. On the said submission, this Court directed B.N.Mandal University to produce the marks obtained by all the candidates under E.B.C. category in a sealed cover. The case was not taken up during the Covid period, and thereafter, it came up before the Court and it was revealed that some candidates have been given admission on spot admission basis, having lesser marks than the petitioner. It was pointed out that the petitioner did not appear for on spot admission, and therefore, he could not be given admission.

3. In order to examine the entire controversies, it would be appropriate to state the facts as alleged by the petitioner in brief.



4. The Bihar B.Ed. Combined Entrance Test 2020 was conducted on 22.09.2020. Maximum 150 marks were laid down. The petitioner obtained 71 marks and was declared qualified. It is an admitted position that the petitioner did not get admission in the regular counselling conducted as per the schedule laid down for counselling. Three counselling rounds were conducted. The last counselling round was spot round counselling. Subsequently in terms of the order passed, the litigation taken up by some B.ed colleges, a notification was issued by the Nodal University on 24.12.2020, allowing the B.Ed. Colleges to conduct spot counselling for admission from 26.12.2020 to 30.12.2020 for the unfilled vacancies. List of colleges with number of vacant seats was published on the website category-wise. In B.N. Mandal University, total vacancies were shown as 30 out of which 13 was for UR categories posts, 1 for ST, 10 for SC, 7 for EBC, 2 for BC and 4 for EWS were shown. The petitioner appeared for spot counselling on 26.12.2020 at B.N. Mandal University, Madhepura and he was directed to deposit admission fee which was deposited by him on 26.12.2020 itself. One Sanjeev Kumar was selected on spot admission having marks only 46%, while the petitioner was left out although he scored 71% marks. While



there was no vacancy shown in spot admission, 18 candidates were admitted in the WBC category were admitted. The petitioner alleges that persons, who were admitted had not paid their fee also. It was also alleged that there was violation of roster as as many as 18 candidates of women category (BC) had been admitted. The petitioner further submits that the action suffered from malice in law as well as on facts and was in violation of the roster point. The complete remand relating to admission was therefore called in sealed cover by this Court. This Court was not inclined to interfere at the initial stage as no one was impleaded as a party, whereafter, the petitioner impleaded respondent no.8 as party. Other persons admitted by spot admission were also issued notice to appear and all of them have filed a joint reply.

5. The register was also called along with complete record including register containing the candidates' photographs and signatures.

6. Counsel appears for the University had pointed out that the examinations of the B.Ed. have already been concluded and their result was to be declared.

7. Considering, the seriousness of the allegations levelled, the result of B.Ed. examination was



directed to be withheld by this Court.

8. Learned counsel for the petitioner pointed out that the last date fixed for the admission was 30.12.2020 and it was to be completed by 5.00 P.M., however the Professor-in-charge and Head of the Department, Education B.N. Mandal University mentioned a hand written note that counselling is up to only 3.00 P.M. and thereafter admission shall be given in seriatum from the candidates who are present on the remaining seats. Learned counsel for the petitioner submits that the action of the Head of the Department resulted in giving admission arbitrarily to students who were having much lesser merit than the petitioner. The Registrar of the University was called and stated before the Court that there were several admissions made on 30.12.2020, who were having lesser marks than the petitioner. He admitted that the petitioner along with other six students had already deposited the fee online on 26.12.2020 and only four candidates out of them have been admitted. A hand written list was prepared of those candidates who were admitted between 3.00 P.M. to 5.30 P.M. has been placed along with his counter affidavit. The list does not reflect the marks of the candidates.

9. Learned counsel for the respondents submits



that the petitioner did not present himself on the last date of counselling and therefore all the noticed respondents who had been admitted on the said date have filed their counter affidavit stating that their admission was never challenged by any person and they have already appeared in the examination held on 28.06.2022 and 07.07.2022. The petitioner was not selected for admission as he was not present on the date of spot counselling and verification of his original documents or for taking admission while they were physically present on 30.12.2020. It is also stated that there is no relief sought for by the writ petitioner against noticed respondents.

10. The University has taken a stand the person responsible for committing illegality in taking on spot admissions would be dealt with departmentally. The committee was also formed for examining the admissions conducted on spot and it was found that there has been illegality committed during on spot admission and persons with lesser merit were given admission. The counsel has taken to the notice sent by the University Nodal Officer to the Principal/Professor-in-charge/Head of the Department of all B.Ed. Colleges to receive admission applications of all qualified candidates by 29.12.2020 and finalize the complete admission process by 30.12.2020.



11. However, it was mentioned in a notice signed by the concerned In-charge of the B.Ed. College that the registration of the selected students from the select list shall only be taken up to 3.00 P.M. on 30.12.2020, whereafter, the seats shall be allotted to the students who are available by verifying their *inter se* merit. The notice dated 30.12.2020 as mentioned in hand written note by the Officer deserves to be quoted:-

सूचना

चयनित सूची के छात्र/छात्राओं का नामांकन दिनांक- 30/12/2020 को सायं 3:00 बजे तक ही लिया जाएगा तत्पश्चात उपलब्ध उपस्थित छात्रों का क्रमबद्ध verification में उपरान्त बचे सीटों पर नामांकन लिया जाएगा।

12. The counsel for the petitioner has handed over in the Court the documents to show that Sanjeev Kumar had already deposited his fee on 26.12.2020 and he was shown to be admitted. In the admission register also the students has been shown to have been admitted on 26.12.2020 and his fee was also deposited online. Pushpa Rani and Priyanka Kumari have been shown in the admission register to have been admitted on 31.12.2020 and 30.12.2020 and similarly one Amit Kumar has also been shown to be admitted on 31.12.2020 and



in a list for a registration of students, the said Sanjeev Kumar has been shown to have been admitted on 26.12.2020, whereas he has been shown on the spot admission conducted on 30.12.2020 at 3.30 P.M. Some students have also admitted on 31.12.2020. This Court is satisfied that the admissions were conducted by pick and choose manner and therefore is vitiated.

13. The University has filed an affidavit and it has been stated that the process of spot counselling was started by department of education B.N. Mandal University on 26.12.2020 and the name of some candidates were placed on the admission portal but on 27.12.2020 certain students organizations met with the Vice Chancellor and requested for taking spot round admission by following merit and reservation roster. The Vice chancellor in a meeting held along with the concerned officials including the Head of the Department of Principal of the constituent B.Ed. Colleges took a decision to cancel the earlier letter dated 26.12.2020 and Nodal Officer was authorized to take necessary steps, who directed the concerned Principal/Professor-in-charge/Head of the Department of all the B.Ed. Colleges to receive admission applications till 29.12.2020 and finalize and complete the admission process by 30.12.2020. In all 331 candidates applied and in EBC category candidates



having 74 marks were selected. Some of the students in the list did not take admission till 3.00 P.M. and candidates who were present after 3.00 P.M. and one in the list of 331 applicants were therefore given admission after 3.00 P.M. The petitioner was not present for physical verification and he was therefore not given admission. It is further stated that the course is a self finance course, and therefore, admissions were required to be taken against all vacant seats.

14. The Registrar further states in this affidavit that he did not see the original documents before it was being produced before this court prior to 15.09.2022.

15. Counsel for the Nodal University had not supported the documents rather submits that there was no direction by the Nodal Officer to limit the counselling up to 3.00 PM and take admission from the students present in the college from 3.00 P.M. to 5.00 P.M. The admissions were to be done solely on merit.

16. Admitting less meritorious and leaving higher meritorious students cannot be accepted. This Court finds that several of the students were not even admitted on 30.12.2020 and their fee was also deposited on 31.12.2020. This was contrary to the direction of the nodal officer.. Such



admissions are clearly illegal and contrary to the procedure prescribed. In the matter relating to admission to medical colleges issues arose whether in self financing college seats would be allowed to remain vacant. The Supreme Court in the case of **Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh & Others as reported in 2016 (7) SCC 353**

“34. In the modern age, therefore, particularly after the policy of liberalisation adopted by the State, educational institutions by private bodies are allowed to be established. There is a paradigm shift over from the era of complete government control over education (like other economic and commercial activities) to a situation where private players are allowed to mushroom. But at the same time, regulatory mechanism is provided thereby ensuring that such private institutions work within such regulatory regime. When it comes to education, it is expected that unaided private institutions provide quality education and at the same time they are given “freedom in joints” with minimal Government interference, except what comes under regulatory regime. Though education is now treated as an “occupation” and, thus, has become a fundamental right guaranteed under Article 19(1)(g) of the Constitution, at the same time shackles are put insofar as this particular occupation is concerned which is termed as “noble”. Therefore, profiteering and commercialisation are not permitted and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions. Merit



can be tested by adopting some methodology and few such methods are suggested in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , which includes holding of CET. It is to be ensured that this admission process meets the triple test of transparency, fairness and non-exploitativeness.”

57. It is well settled that the right under Article 19(1) (g) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.

67. Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed “occupation”, which is one of the freedoms guaranteed under Article 19(1)(g). It was so recognised for the first time in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . Even while doing so, this right came with certain clutches and shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on “no profit no loss basis”. While explaining the scope of



this right, right to admit students and right to fix fee was accepted as facets of this right, the Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was so recognised in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] itself, as a measure of “reasonable restriction on the said right”. Islamic Academy of Education [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] further clarified the contour of such function of the State while interpreting T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] itself wherein it was held that there can be committees constituted to supervise conducting of such CET. This process of interpretative balancing and constitutional balancing was remarkably achieved in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] by not only giving its premature to deholding (sic imprimatur to the holding) of CET but it went further to hold that agency conducting the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfilment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit-based admissions and preventing maladministration.

169. *By holding common entrance test and*



identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact.

190. For the foregoing discussion, I hold that the State has the legislative competence to enact the impugned legislation—the 2007 Act to hold common entrance test for admission to professional educational institutions and to determine the fee and the High Court has rightly upheld the validity of the impugned legislation. Regulations sought to be imposed by the impugned legislation on admission by common entrance test conducted by the State and determination of fee are in compliance of the directions and observations in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , Islamic Academy of Education [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] . Regulations on admission process are necessary in the larger public interest and welfare of the student community to ensure fairness and transparency in the admission and to promote merit and excellence. Regulation on fixation of fee is to protect the rights of the students in having access to higher education without being subjected



to exploitation in the form of profiteering. With the above reasonings, I concur with the majority view in upholding the validity of the impugned legislation and affirm the well-merited decision of the High Court.

17. The Apex Court in **Gurdeep Singh Vs. State of J&K & Ors reported in 1995 Supp (1) SCC 188** has held as under:-

“12. what remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of



his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his academic process, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.”

18. The Apex Court also held in recent judgment in **Board of Governors in Suppression of Medical Council of India Vs. Dr. Priyambada Sharma & Ors**, as reported in **2022 SCC online SC 1442** as under:-

“27. In our considered view, no sympathy can be shown to such students who have not only entered/admitted after 31st May of the year but their admissions were completely in contravention to the Regulations, 2000 and provisional admissions were granted by the High Court ignoring the principle of merit which is the sole touchstone for admission to the postgraduate courses based on the NEET examination, 2019 where admissions are made strictly in the order of merit-cum-preference and despite the stay order passed by this Court, if they are allowed to continue in postgraduate medical courses, the same would be completely illegal and such contemptuous action on the part of the authorities, cannot be approved by this Court.

19. Keeping in view thereto, the admission of all



the students, who have been admitted by the college after 3.00 P.M. on basis of being present and whose names are mentioned in the hand written list shall be treated to have been attained admission wrongfully and their admission shall stand cancelled. They would not be entitled to obtain the degree of B.Ed. on the basis of studies which they have undertaken as they cannot be given benefit of wrongful admission taken by them. The management of the college shall have to compensate the petitioner for denial of his rightful admission and a sum of Rs. 5 lac shall be paid by the management of the B.N. Mandal University.

20. In view of above, it is declared that the action of the respondents in denying admission to the petitioner is illegal and unjustified. Admission of the noticed respondents is also found to be illegal and unjustified. Accordingly, the admission of the respondent no.8, Sanjeev Kumar, and noticed respondent, Avnit Kumar, is quashed and set aside. They shall be not entitled for any advantage of the course, which they have attended. Their fee shall be returned by the college.

21. The petitioner cannot be granted any other relief except of granting him compensation of a sum of Rs. 5 lac. The same shall be paid by the management of the



University, recoverable from the concerned officials who were responsible in making admission from 3.00 P.M. to 5.30 P.M. on 30.12.2020 as well as on 31.12.2020.

22. The writ petition is allowed as above. No cost.

(Sanjeev Prakash Sharma, J)

amit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

