

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7548 of 2020

1. Vaisak. K. Kanan, son of M.V. Kunhikannan, Mavupadi Karimbam, Badariya Nagar Road, P.S.- Taliparamba, District- Kannur, Kerala- 670142, presently residing in Room No 128, Chanakya New PG Hostel, Patna Medical College and Hospital, Patna, Bihar.
2. Prabhat Ranjan, son of Murlidhar Prasad Yadav, resident of village- Bhavatiya, P.O.- Suhath, P.S.- Saurbazar, District- Saharsa, presently residing in Room No 122, Chanakya, New PG Hostel, Patna Medical College, Patna, Bihar.
3. Guvvala Shruthi, daughter of Sri Guvvala Ushaiah, resident of Hose No 5/48, Manakondur Mandal Monkondur, Karim Nagar, Andhrapradesh- 505469, presently residing in Room No 19, 1st Floor Kasturba Hostel for PG Girls, Patna Medical College and Hospital, Patna.

... .. Petitioner/s

Versus

1. Union of India through its Secretary, Ministry of Health and Family Welfare, Nirmaan Bhavan, Near Udyog Bhavan, Metro Station, Maulana Azad Road, New Delhi- 110011.
2. Secretary, Ministry of Health and Family Welfare, Nirmaan Bhavan, Near Udyog Bhavan, Metro Station, Maulana Azad Road, New Delhi- 110011.
3. Board of Governors (In supersession of Medical Council of India), Pocket 14, Sector- 8, Dwarka, Phase- I, New Delhi, through its Secretary.
4. Secretary, Board of Governors (In Supersession of Medical Council of India), Pocket 14, Sector- 8, Dwarka, Phase- I, New Delhi, through its Secretary.
5. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
6. Principal Secretary, Department of Health, Government of Bihar, Patna.
7. Patna Medical College, Patna, through its Principal.
8. Principal, Patna Medical College, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binodanand Mishra, Advocate
For the Respondent/s : Mr. (Dr.) K.N. Singh, ASG
Mr. Abhay Shankar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-03-2021

The petitioners are pursuing Medical Postgraduate



Diploma Courses in Child Health/ Orthopedics/ Obstetrics and Gynecology upon their admission for the academic session 2019-21, in Patna Medical College, Patna. They are seeking a direction in the present writ application to upgrade their course to Postgraduate Degree Course by converting the Postgraduate Diploma seats against which they were admitted, into Postgraduate Degree (MD/MS) seats.

2. It has been asserted in the writ application that the Ministry of Health and Family Welfare, Government of India had issued a public notice on 18.01.2019, whereby the medical institutions were requested to send their applications for increasing PG degree seats in their colleges in terms of notification dated 12.07.2018 issued by the Medical Council of India's Amendment Notification No. MCI-18(I)/2018-Med./122294. It was made clear in the public notice dated 18.01.2019, issued by the Ministry of Health and Family Welfare, Government of India that the Ministry shall consider only those applications which were received till 25.01.2019 as the last date for issuance of letter of permission for the academic session 2019-20 i.e. 28.02.2019 was very close and approaching fast. From the public notice dated 18.01.2019, which has been brought on record by way of Annexure-2 to this application, it



transpires that the said amendment notification dated 12.07.2018, issued by the Board of Governors in supersession of Medical Council of India (hereinafter referred to as 'the BoG') enabled medical colleges to seek equal number of PG degree (MD/MS) seats by surrendering recognized diploma seats in corresponding courses, in the wake of which the Ministry was receiving applications from medical institutions for increasing PG degree seats.

3. It has also been asserted by the petitioners that the BoG allowed conversion of postgraduate diploma course seats prospectively for the academic session 2019-20 for two private medical colleges in the State of Bihar. The petitioners, however, admit in paragraph 19 of the application that no such conversion of postgraduate diploma course seats into degree seats was allowed in any of the government medical colleges including Patna Medical College. The petitioners have also brought on record a public notice issued by the Ministry of Health and Family Welfare dated 18.03.2019 wherein the Ministry took cognizance of the fact that in the light of the Amendment Notification dated 12.07.2018(supra), which restricted recognition of various diploma courses in respect of students admitted in the academic year 2018-19, thus, enabling the



medical colleges/ institutions to seek equal number of PG (MD/MS) seats in corresponding courses and accordingly a notification restricting recognition of diploma courses to the aforesaid effect was issued by the Ministry. Some of the diploma courses, which were denotified in the light of the Amendment Notification dated 12.07.2018, could not be converted into degree seats by the BoG, which had the consequence of depletion of PG seats during counselling for the academic session 2019-20. It was in that background that the Ministry of Health and Family Welfare considered it proper to re-notify certain diploma courses which were not converted into degree seats in respect of colleges/ courses mentioned in the table for their inclusion in counselling for the academic session 2019-20. Name of Patna Medical College figures at serial no. 6. It is evident from the said public notice dated 18.03.2019 that diploma courses in (i) Child Health (ii) Orthopedics and (iii) Obstetrics and Gynecology amongst others were renotified by virtue of the said public notice dated 18.03.2019 for the academic session 2019-20.

4. As has been noticed at the outset, the petitioners were admitted in diploma courses for the academic session 2019-21 in Patna Medical College, Patna, which was re-notified



by the said public notice dated 18.03.2019. It is the petitioners' case that the BoG vide letter dated 27.02.2020(Annexure-7) addressed to the Ministry of Health and Family Welfare had recommended Central Government for conversion of postgraduate diploma course seats into degree seats prospectively from the academic session 2020-21. The recommendation includes conversion of diploma courses into degree courses in Child Health/ Orthopedics/ Obstetrics and Gynecology.

5. In the aforesaid background, the petitioners claim that since diploma course seats have now been converted into degree course seats, they should be allowed to pursue degree courses instead of diploma courses against seats which have been converted in the light of the recommendation of BoG.

6. A counter affidavit has been filed on behalf of Ministry of Health and Family Welfare, Government of India wherein it has been stated that as intimated by the BoG, there is no provision to consider diploma passed out candidates/ ongoing diploma course candidates to convert their diploma courses into degree courses after submission of thesis/ dissertation.

7. A rejoinder affidavit has been filed on behalf of the petitioners and dealing with the said stand of the Ministry of



Health, as noted in paragraph 14 of the counter affidavit, it has been stated that since thesis of the students of 2019 batch have not been submitted, their claim for upgradation of their course should not be denied on the basis of the communication of BoG as mentioned in paragraph 14 of the counter affidavit.

8. Mr. Binodanand Mishra, learned counsel appearing on behalf of the petitioners has submitted that the petitioners have suffered because Patna Medical College did not take appropriate steps for upgradation of diploma courses into degree courses despite public notice issued by the Ministry of Health and Family Welfare in this regard. He has argued that because of such inaction on the part of the college the petitioners had no choice but to seek admission in diploma courses. He has further argued that since diploma courses have now been denotified in the college and equal number of degree seats have been allowed, the petitioners should be given benefit of conversion of seats. He has placed reliance on a Supreme Court's decision in case of *Chairman, Central Council of Homoeopathy vs. Varinder Singh and others* reported in (2001) 10 SCC 161 in support of his contentions.

9. *Per contra*, it has been argued on behalf of the Union of India that the petitioners cannot claim their admission



against degree seats, which if allowed, have been allowed prospectively from the academic session 2020-21. It has been contended that in the absence of any specific provision for conversion of admission of a candidate from an ongoing diploma course into a degree course, the petitioners cannot be granted such relief in the present proceeding.

10. Before I advert to rival submissions made on behalf of the parties, I must take note of the statement made in paragraph 24 of the writ application, which reads as under :-

“24. That is is respectfully submitted here that though the conversion of postgraduate diploma seats into equal number of degree seats was allowed from the academic session 2019-20, however, the benefits of the said conversion could not be provided to the petitioners without any rhyme and reason. The petitioners had to suffer for no fault on their part.”

11. The said statement is palpably false. It is evident from Annexure-7 of the writ application that BoG had recommended conversion of diploma seats into corresponding degree seats in various medical institutions including Patna Medical College prospectively from the academic session 2020-21 and not from the academic session 2019-20. The said statement, in the Court's opinion, is misleading and itself is a ground to dismiss this writ application.



12. Further, indisputably, admission into PG degree/ diploma courses in medical institutions is allowed on the basis of a combined entrance test, merit of the respective candidates in the said test and counselling held by the competent authority for the said purpose. The petitioners were apparently allowed admission in diploma courses on the basis of their ranking in the test and the counselling held for the said purpose for the academic session in question. Upgradation of their courses in the form, as sought for in the writ application, will be, in the Court's opinion, a gross violation of Article 14 of the Constitution of India, inasmuch as, candidates more meritorious than these petitioners shall stand discriminated against for having been given no opportunity to claim admission into the said degree courses. In any event, the petitioners cannot be permitted to be admitted against degree seats which came to be notified for the academic session 2020-21, they being not applicants for the said seats.

13. The Supreme Court's decision in case of *Varinder Singh* (supra), relied on by the learned counsel for the petitioners does not support the petitioners' case. In the said case, some students had filed a writ application before the High Court of Punjab and Haryana seeking relief that diploma courses



to which they have been admitted at the college should be allowed to be converted into a degree course. They had asserted that students of another Homeopathic Medical College were permitted to be awarded a degree course by conversion of a diploma course. A Full Bench of the High Court of Punjab and Haryana had allowed the writ application with certain directions after noticing various irregularities committed either by the college or by the authorities. The Full Bench of the High Court of Punjab and Haryana was of the view that if the students were asked to complete the years of study required for degree course and the number of hours of study for degree course, there should be no difficulty and that the said batch of students should be entitled to have conversion of diploma course into degree course, in the facts and circumstances of that case.

14. In the peculiar facts and circumstances of the case, the Supreme Court did not consider it proper to interfere with the Full Bench decision of the High Court of Punjab and Haryana, as can be noticed from paragraph 13 of the judgment. Only part of the order, whereby certain observations were made by the Central counsel and the State counsel or Homeopathy in relation to expenditure for the degree courses to be borne by the students, was set aside by the Supreme Court. It is significant to



note that in Paragraph 16 of *Varinder Singh's* case (supra), the Supreme Court has made following observation :-

“16. We make it clear that the above orders are passed in the peculiar facts and circumstances of the case and should not be treated as a precedent in any other case.”

15. It is, thus, totally misconceived for the learned counsel for the petitioners to have placed reliance on the Supreme Court's decision in case of *Varinder Singh* (supra) in this case.

16. For the aforesaid reasons, I do not find any merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2021
Transmission Date	NA

