

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1161 of 2018**

**In**

**Civil Writ Jurisdiction Case No.1928 of 2018**

Dr. Shashi Kumar, S/o Sri Rameshwar Prasad, Resident of Mohalla- Ashok Nagar, Bhatt Bigha, P.O. Rampur, P.S. Rampur, District -Gaya, presently residing at B.S. Plaza Apartment, Flat No. 303/B, South Chitra Gupta Nagar, Kankarbag, P.O. Lohiya Nagar, P.S.- Patrakar Nagar, District- Patna.

... .. Appellant/s

Versus

1. The Dental Council Of India , New Delhi through the Registrar, Opposite Mata Sundari Devi College, Kotla Road, New Delhi.
2. Registrar, Dental Council of India, Opposite Mata Sundari Devi College, Kotla Road, New Delhi.
3. Magadh University Bodh Gaya, through the Registrar.
4. Registrar, Magadh University, Bodh Gaya.
5. Dr. B.R. Ambedkar Dental College and Hospital, Hariom Nagar, New Bailey Road, West of Canal Patna through the Chairman.
6. The Canal, Patna through the Chairman, the Dr. B.R. Ambedkar Dental College and Hospital, New Bailey Road, Patna
7. The Principal, Dr. B.R. Ambedkar Dental College and Hospital, New Bailey Road, Patna.
8. Dean of Magadh University Bodh Gaya, Dental Faculty, Gaya.

... .. Respondent/s

**Appearance :**

|                              |   |                                                                                                      |
|------------------------------|---|------------------------------------------------------------------------------------------------------|
| For the Appellant            | : | Mr. Kamal Nayan Choubey, Sr. Advocate<br>Mr. Prashant Kumar, Advocate<br>Mr. Animesh Kumar, Advocate |
| For Dental Council of India: |   | Mr. S.D Sanjay, Sr. Advocate<br>Mr. M. Agarwal, Advocate                                             |
| For Magadh University        | : | Mr. Ritesh Kumar, Advocate                                                                           |

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 15-04-2019**



Heard Shri Kamal Nayan Choubey, learned Senior counsel for the appellant and Shri S.D. Sanjay, learned Senior Counsel for the Dental Council of India.

2. The appeal questions the correctness of the order of the learned single Judge, whereby the writ petition filed by the appellant has been dismissed on his failure to have complied with the directions of the learned single Judge dated 16.02.2018.

3. The facts shorn of details are that the appellant claims that he was admitted in the M.D.S. Course of Dr. B.R. Ambedkar Dental College and Hospital, Patna for the Academic Session 2013-14. However, on the eve of examinations, he was denied this benefit and this is how the dispute was raised with the filing of the writ petition before this Court.

4. Upon being entertained, the learned single Judge called upon the appellant to file an appropriate affidavit bringing on record evidence with regard to his admission in the College as an objection had been raised on behalf of the respondent-Institute that the appellant had not been admitted in the said Course. To substantiate this and in compliance of the order dated 31<sup>st</sup> of January, 2018, a supplementary affidavit dated 5<sup>th</sup> of February, 2018 was brought on record stating therein that an identity card was issued by the Principal of the Institution, the appellant was



allowed to mark his attendance in the daily attendance register, the list tendered by the Institute to the Dental Council of India mentioned the name of the appellant at serial No.5 and lastly, the inspection report dated 8<sup>th</sup> of November, 2014 indicated that the appellant had attended the classes in the Institute as per the Regulation of the Dental Council of India. After the filing of this affidavit, the learned single Judge then passed the following order on 16<sup>th</sup> of February, 2018:

“Let the petitioner file an affidavit bringing on record the evidence to support his claim that he had paid the requisite fee to the College, in question, to pursue his M.D.S. course. He will be required to state the mode and manner of such payment, giving the details of the date when such payments were made.

List this case, under the heading ‘For Admission’, on 26<sup>th</sup> February, 2018, for the said purpose.”

5. The appellant admittedly did not file any affidavit or tender any such information with regard to the mode and manner of payment of any fee to the Institute. It is in this background that the learned single Judge dismissed the writ petition on account of a complete absence of evidence of deposit of fee.

6. Learned Senior Counsel Shri Choubey submits that as a matter of fact, the truth stands unfolded with the facts clearly establishing the admission of the appellant and also the fact that



the Institute had informed the Dental Council of India about the petitioner's name being included in the list of admitted students for the said Course. This fact could not be disputed by Shri S.D. Sanjay, learned Senior Counsel for the Dental Council of India.

7. The fact, however, that fee was deposited is sought to be explained by Shri Choubey that in all probability the transaction was a cash transaction and the circumstance of the appellant being allowed to continue for almost three years to pursue his Course was itself sufficient to accept the said contention that the appellant had been continuing after having been validly admitted in the Institution. This therefore established that the Institute had accepted the appellant to be a student of the Institute and had, in fact, accepted the fee deposited in cash.

8. We have considered the submissions raised and even in this appeal, there is no evidence brought before us in order to substantiate any such tendering of fee by the appellant. The contention orally made with regard to the transaction having been made on cash receipt does not find substantiated in any form. In the absence of any such evidence, the learned single Judge therefore does not appear to be unjustified in not accepting the claim of the appellant treating him to be a validly admitted student



of the Institute. The relief having been denied cannot, in our opinion, be granted in the absence of any such material on record.

9. The appeal lacks merit. It is, accordingly, rejected.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

PNM

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