

ITEM NO.5-PH

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9299/2009

(From the judgement and order dated 06/03/2009 in LPA No.
344/2006 of The HIGH COURT OF PATNA)

KATIHAR MEDICAL COLLEGE, KATIHAR

Petitioner(s)

VERSUS

KUNDAN KISHORE & ANR.

Respondent(s)

(With prayer for interim relief and office report)
(FOR FINAL DISPOSAL)
WITH SLP(C) NO. 21846 of 2009
(With prayer for interim relief and office report)

Date: 19/10/2010 These Petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. Mohit Kumar Shah, Adv.
Mr. Ravi Bhushan, Adv.
Mr. Kunal Chatterjee, Adv.

For Respondent(s) Mr. Gopal Singh, Adv.
Mr. Manish Kumar, Adv.
Mr. Chandan Kumar, Adv.

Mr. Vishwajit Singh, Adv

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

In terms of the signed order, these
appeals are allowed and set aside the levy of
compensation of One lakh against the College
and Rs. Twenty Five Thousand against the Board.

C.A.No.8977/10 @ SLP(C)No.9299/09 with
C.A.No.8978.10 @ SLP(C)No.21846/09

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(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

(Signed order is placed on the file)

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C.A.No.8978.10 @ SLP(C)No.21846/09

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8977 OF 2010

(Arising out of SLP(C) NO.9299/2009)

KATIHAR MEDICAL COLLEGE, KATIHAR

...APPELLANT

VERSUS

KUNDAN KISHORE & ANR.

...RESPONDENTS

with

CIVIL APPEAL NO.8978 OF 2010
(Arising out of SLP(C)No.21846/2009)

BIHAR COMBINED ENTRANCE COMPETITIVE
EXAMINATION BOARD

...APPELLANT

VERSUS

KUNDAN KISHORE & ANR.

...RESPONDENTS

O R D E R

Leave granted. Heard.

2. The appellant in the first matter is an unaided minority medical college (for short the 'College'). The appellant in the second appeal is the Bihar Combined Entrance Competitive Examination Board (for short the 'Board'). For the year 2005-06, all the Medical seats in C.A.No.8977/10 @ SLP(C)No.9299/09 with C.A.No.8978.10 @ SLP(C)No.21846/09

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the college were to be filled by the State quota, in view of the fact that during earlier years the College had made admissions in excess of their quota. The Board held first counselling between 25th to 28th July, 2005. The second counselling was held by the Board between 13th to 16th September, 2005 and in that counselling, the first respondent was allotted to the college on 23.9.2005.

3. The first respondent filed a writ petition alleging that he was refused admission when he sought admission to the college, in pursuance of the allotment on 23.9.2005.

A learned Single Judge on 26.3.2006 allowed the writ

petition and directed the college to permit the first respondent to attend classes and appear in the examination for the academic session 2005-06. The College filed an appeal against the said order. The appeal was dismissed by the imugned order dated 6.3.2009. The Appellate Bench noted that the first respondent was no longer interested in getting admitted to the medical course in the college, as he had joined some other college. The Appellate Bench held that the first respondent had suffered loss and hardship on account of the college not admitting him and college not returning his documents in time. Consequently

it directed the college to pay Rupees one lakh by way of
C.A.No.8977/10 @ SLP(C)No.9299/09 with
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compensation. The High court also directed that the Board to pay a compensation of Rupees Twenty Five Thousand to the first respondent, as it did not adhere to the time schedule prescribed by this Court in Mridul Dhar Vs. Union of India 2005 (2) SCC 65, and thereby prevented the first respondent from securing admission before 31st August, 2005. Feeling aggrieved by the said directions, the College and Board have filed these appeals by special leave.

4. Assuming that the first respondent had appeared and sought admission in pursuance of allotment by the Board on 23.9.2005 and the college had refused admission (which is the finding of the High Court), the question is whether the College could be subjected to levy of compensation.

5. The decision in Mridul Dhar (supra) was rendered by this Court on 12.1.2005, laying down the time schedule for admission to the MBBS Course. This Court directed that the first round of counselling should be completed by 25th July and second round of counselling for allotment of

seats from waiting list should be completed by 28th August.

This Court further directed that last date for joining for

candidates allotted seats in the second round of
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counselling or from the waiting list will be 31st August.

Though this Court prescribed the last date up to which

candidates could be admitted to stray vacancies as 30th

September, it was made clear that the said date (30th

September) was not for normal admissions but only to give

an opportunity to grant admissions against stray vacancies

arise due to any other reason.

This Court also emphasised

the need for adherence to the time schedule by everyone

for the timely grant of admissions and commencement of

academic sessions.

6. It is not in dispute that the first respondent was

not allotted admission against any stray vacancies but was

allotted a regular seat in the second round of

counselling. As per Mridul Dhar judgment, the second

round of counselling should have been completed by 28th

August and the students should be admitted by 31st August.

If for whatever reason, the second round was not completed

up to 31st August and if allotment was made on 23.9.2005 in

pursuance of belated second round of counselling, refusal

by the college to admit such candidate may not invite levy

of compensation or penalty.

To do so would be to punish a

college for adhering to the directions in Mridul Dhar.

When the candidates were not allotted by the Board till

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31.8.2005, the College would have legitimately presumed

that the seats became available for filling by other means

and it is possible that the seats were filled by the

college accordingly.

Be that as it may.

7. Therefore, even assuming that there was any refusal by the College to admit the first respondent allotted on 23.9.2005, we are of the view that the High Court ought not to have directed payment of compensation by the College. As far as the Board is concerned, we are of the view that merely because there was delay in counselling it could not be subjected to payment of compensation to a student, in the absence of any deliberate intent on its part to delay the process.

8. We, therefore, allow these appeals and set aside the levy of compensation of Rupees One lakh against the College and Rs. Twenty Five Thousand against the Board.

.....J.
[R.V. RAVEENDRAN]

.....J.
[H.L. GOKHALE]

NEW DELHI
OCTOBER 19, 2010
C.A.No.8977/10 @ SLP(C)No.9299/09 with
C.A.No.8978.10 @ SLP(C)No.21846/09