

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2309 /2021
(@ SLP (C) NO. 1372/2021)

ANAKHA K. & ORS.

APPELLANT(S)

VERSUS

THE ADMISSION AND FEE REGULATORY COMMITTEE
FOR MEDICAL EDUCATION IN KERALA & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

P.N. Panicker Soudhruda Ayurveda Medical College Hospital and Research Centre, Kasaragod District, Kerala ('the Medical College') issued a prospectus for admission to BAMS Course for the Academic Year 2018-2019 on 26.07.2018. One of the conditions mentioned in the prospectus is that candidates should apply online for admission to BAMS course in the NRI quota. The last date for admission was extended till 20.10.2018 as all the seats could not be filled up before the scheduled date. As the State Government allotted only 41 students for 43 seats available through centralized counselling, the Management requested those two seats to be converted to NRI quota. An advertisement was issued to fill up nine vacant

seats in the NRI/Management quota. The appellants were admitted in the 1st year BAMS course on 15.11.2018 in the NRI/Management quota seats for the Academic Year 2018-2019. At this stage, it is relevant to mention that the appellants did not submit their applications on-line. The appellants started attending classes on 30.11.2018. Respondent No.1 disapproved the admission of the appellants on 09.10.2019 on the ground that they were not pursuant to the applications made on-line. The Principal of the College filed a writ petition challenging the Order dated 09.10.2019. In the meanwhile, the appellants were permitted to take the examinations for the 1st year pursuant to an order passed by the High Court on 23.10.2019.

The Respondent No.1 was requested to reconsider the decision taken on 09.10.2019. On 12.01.2020 the Respondent No.1 did not accept the request of the appellants to approve their admissions.

Challenging the order dated 13.01.2020, the Principal of the Medical College filed a writ petition in the High Court of Kerala. The writ petition was dismissed on 03.03.2020 and the order dated 13.01.2020 of Respondent No.1 was upheld. The appellants filed the special leave petition on

17.12.2020 in which notice was issued on 13.01.2021. We are informed by Mr. Nikhil Goel, learned counsel appearing for the Management that Special Leave Petition (C) No.16051/2020 has been filed by the Medical College against the judgement of the High Court. The appellants were permitted to attend on-line classes for the 2nd year which commenced on 1.4.2021. According to the appellants, they attended on-line classes even for the 3rd year, BAMS course which commenced on 08.09.2020.

The appellants contended that there is no statutory provision which makes it compulsory for admissions to be made only on the basis of on-line applications. There was a genuine difficulty on the part of the students in not being able to make on-line applications as the server was not functioning. They are NEET qualified candidates and there is no other disqualification for their admission. In addition, there is no other candidate who is more meritorious than the appellants who has not been given admission for the Academic Year 2018-2019 in BAMS course.

On behalf of the Government of Kerala and the University of Health Sciences, it was argued that the prospectus that was issued for admissions for the Academic Year 2018-2019 clearly shows that

admission to NRI quota can be only on the basis of on-line application. Applications have to be invited only by on-line mode so that all eligible candidates could apply for admission to the BAMS course. To ensure transparency in the admission process, admissions have to be made on-line. They supported the judgment of the High Court in which it was categorically held that the Management failed to prove that their server was not functioning during the process of admission for the Academic Year 2018-2019. The decision taken by the competent authority not to approve their admission is in accordance with law which does not warrant any interference by this Court.

There is no doubt that the appellants are NEET qualified candidates. There is no other candidate who is more meritorious than the appellants who has been deprived of admission to the BAMS course by the Management for the Academic Year 2018-2019. Only six students sought admission in the nine vacant seats after the completion of the admission through the centralised counselling scheme. However, the procedure that was contemplated for filling up the NRI seats through on-line counselling has not been followed by the Management. The reason given for not following the procedure of on-line admissions that the server

was not functioning was rightly not accepted by the authorities and the High Court. More importantly, the Management should not have permitted the appellants to attend classes after the judgment of the High Court, especially, when there is no order passed by this Court staying the said judgment. The judgment of the High Court is challenged in this Court only in December, 2020. In the meanwhile, the students were permitted to attend the classes by the Management without their initial admission for the 1st year not being approved by the competent authority.

The appellants should have approached this Court immediately after the judgment of the High Court, which they did not. The Appellants are at fault in not taking immediate steps to challenge the Judgment of the High Court. Moreover, the students should not have attended classes after the High Court refused to approve their admissions. However, in the facts and circumstances of this case, we deem it fit and proper to allow the students to complete the course as they have already been permitted to attend classes for third year BAMS also. This Court in *Anitta Job vs. State of Kerala* reported in 2018 (16) SCC 792 held that the admission of the students cannot be disapproved only on the

ground that there was no on-line registration provided they are otherwise qualified and eligible.

The decision to permit the students to continue their course does not absolve the Management of their wilful mis-conduct in permitting the appellants to attend classes even after the judgment of the High Court dismissing the writ petition filed by the Principal of the College. The Management of the College is responsible for permitting the Appellants to attend classes even after the dismissal of the Writ Petition and it is liable to be penalized. The Management of the College is directed to pay costs of Rs. 10 Lakhs for its wilful act in disobedience of the judgment of the High Court. Managements of Colleges acting contrary to law and later projecting students to claim equities is deplorable. The Management is warned to be careful in the future. The cost shall be deposited in the Registry of this Court within a period of four weeks from today which shall be transferred to the Supreme Court Bar Association. The amount shall be utilised by the Association to assist the needy Advocates affected by the pandemic.

The appeal is disposed off with a direction to permit the Appellants to complete the BAMS Course. Needless to say that they should be permitted to take the IInd BAMS examination scheduled to be held from 12/7/2021 onwards.

Pending application(s), if any, shall stand disposed of.

.....J
(L.NAGESWARA RAO)

.....J
(S. RAVINDRA BHAT)

NEW DELHI;
02nd JULY, 2021

ITEM NO.4

Court 6 (Video Conferencing)

SECTION XI-A

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 (C) No(s).1372/2021

(Arising out of impugned final judgment and order dated 03-03-2020 in WP(C) No.5314/2020 passed by the High Court Of Kerala At Ernakulam)

ANAKHA K. & ORS.

Petitioner(s)

VERSUS

THE ADMISSION AND FEE REGULATORY COMMITTEE
FOR MEDICAL EDUCATION IN KERALA & ORS.

Respondent(s)

(IA No. 68975/2021 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 02-07-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Mr. Zulfiker Ali P.S., AOR
Ms. Sugandha Yadav, Adv.
Mr. Faisal M. Aboobacker, Adv.
Ms. Lakshmi Sree P., Adv.
Ms. Sadiya Shakeel, Adv.

For Respondent(s) Mr. G. Prakash, AOR,
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash Adv.
Ms. Beena Praksh Adv.

Mr. Nikhil Goel, Adv.
Mr. Sayid Marzook Bafaki, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP (C) No.1372/2021

Leave granted.

Appeal is disposed of in terms of the Signed

Order. Pending application(s), if any, shall stand disposed of.

SLP (C) No.16051/2020

Taken on board.

The special leave petition is disposed of in terms of the Order passed in C.A. No.2309 of 2021 (@ SLP (Civil) No.1372/2021). Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja)
Court Master

(Beena Jolly)
Court Master

(S/o in C.A/2309/2021@SLP(C)NO.1372/2021 is placed on the file)