

(2011) 02 OHC CK 0038
In the Orissa High Court
Case No : Writ Petition (C) No. 18140 of 2010

Amrita Mishra

APPELLANT

Vs

Chairman, O.J.E.E., Burla and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 9(4)

Citation : (2011) 111 CLT 788 : (2011) 1 OLR 250 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner in this Writ Petition has sought for issuance of a writ of mandamus directing the Opp. Parties 1 & 2 to give admission to the Petitioner in MBA discipline in Samanta Chandrasekhar Autonomous College, Puri. The Petitioner cleared the MAT Examination. Accordingly, she was registered under the JEE, 2010, as at Annexure 3. Consequently, she deposited the requisite fees. As per the Information Brochure of OJEE, 2010, fifteen per cent of the seats in MBA Course are reserved for candidates, who have cleared CAT, XAT & MAT i.e. 5% each in the order of preference. It was nowhere stipulated that the said quota of 15% is only available in private colleges. The Petitioner has alleged that when the Counselling was completed & documents were verified, the Opp. Party No. 1 compelled the Petitioner to take admission in a private college, which was not acceptable to the Petitioner. During pendency of the Writ Petition, a second Joint Entrance Examination was conducted in which, the Petitioner secured the merit position of 445.

2. By an interim Order Dated 29.10.2010, this Court directed that if seats are vacant in MBA Course in S.C.S. College, Puri, one such seats shall not be filled up without leave of this Court.

3. A counter affidavit has been filed by Opp. Party No. 1 stating that it has

always been a practice, as a matter of policy of the Government that the 15% seats in MBA Course to be filled up by the candidates, who have cleared CAT, XAT & MAT relate to private colleges only & not Government colleges. It has been further averred in the counter affidavit that in the second JEE as per the decision of the Policy Planning Body (in short "the PPB") only seats in respect of private colleges were to be filled up by the successful candidates.

4. Mr. Mishra, Learned Counsel for the Petitioner by way of an alternative argument submitted that the MBA Course in S.C.S. College, Puri is outsourced & is a self financing course & is being conducted by a private organization. Therefore, for the purpose of MBA Course, S.C.S. College, Puri cannot be construed to be a Govt. college.

5. Mr. Palit, Learned Counsel appearing for the Opp. Parties 1 & 5 vehemently argued that the PPB in its proceedings has recommended that in order to give effect to Section 9(4) of the Orissa Professional Educational Institutions (Regulation of Admission & Fixation of Fees) Act, 2007 (hereinafter referred to as "the Act"), All India Quota Seats to the tune of 15% for MBA Course in the private professional educational institutions should be filled up from CAT, XAT & MAT in equal magnitude. The said recommendation of the PPB has been accepted by the Government in its Industries Department vide its Order Dated 02.06.2008, who in exercise of powers conferred by Section 18 of the Act, passed the order adopting the said recommendation of the PPB.

6. It appears that the said recommendation of the PPB made on 28.03.2010 was with regard to regulating the spot selection after the second round of Counselling was held in respect of first Joint Entrance Examination, 2010.

7. The Government in its Industries Department passed the order on 2.6.2008 that the candidates, who have cleared CAT, XAT & MAT can only be given admission to private colleges. The said order of the. Government is as follows:

GOVERNMENT OF ORISSA INDUSTRIES DEPARTMENT.

No. I-TTI-10/2008/ 8406/I. Bhubaneswar 2.6.2008

ORDER

Whereas, it has been provided under Sub-section (4) of Section 9 of the Orissa Professional Educational Institutions (Regulation of Admission & Fixation of Fee) Act, 2007 (hereinafter referred to as the said Act) that in a Private Professional Educational Institution, fifteen percent of the approved intake may be filled up strictly from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be conducted by the Central Board of Secondary Education.

& whereas, there is no All India Test in respect of MCA, B. Pharm & Hotel Management & Catering. Technology Programmes like that of Engineering & Medical Programme, the State Government is experiencing difficulties in giving

effect to Sub-section (4) of Section 9 of the said Act.

& whereas, there are multiple All India Tests like-CAT, XAT & MAT in respect of MBA Programme, the State Government is experiencing difficulties in giving effect to Sub-section (4) of the Section 9 of the said Act.

& whereas, the Policy Planning Body constituted under the provisions of the said Act has recommended that 15% of the approved intake in respect of MCA, B. Pharm, Hotel Management & Catering Technology Programmes meant for All India quota shall be filled up from the merit list of JEE -2008 since there is no All India Test for such courses.

& whereas, the said P.P.B. has recommended that All India quota seats to the tune of 15% of MBA Programme shall be filled up from merit list of CAT, XAT & MAT of the rate of 05% of equal magnitude since there are multiplicity of All India Tests. However, the vacancy from CAT shall be taken to the XAT & then to MAT &, thereafter, if any, vacancy shall be filled up from merit list of JEE-2008.

Now, therefore, in exercise of the powers conferred by Section 18 of the said Act, the Government by this order make the following provisions for the academic year 2008-09.

(i) 15% of the approved intake in respect of MCA, B. Pharm, Hotel Management & Catering Technology Programmes meant for All India quota shall be filled up from the merit list of JEE-2008.

(ii) All India quota seats to the tune of 15% for MBA Programme shall be filled up from the merit list of CAT, XAT & MAT at the rate of 05% of equal magnitude. The vacancy from CAT shall be taken to the XAT & then to MAT & thereafter, if any vacancy remains, shall be filled up from the merit list of JEE-2008.

By order of the Governor. Sd/- Principal Secretary to Government

A further contention was raised by Mr. Palit that though the Prospectus for the OJEE, 2010 did not specifically prescribe that the candidates, who have cleared the aforesaid All India Tests, will only be given admission in private colleges, but such a procedure was being followed every year.

8. In view of the above facts, it was submitted by Mr. decision of the Palit that the aforesaid Government on recommendation of the PPB is a Policy decision & the scope of interference of this Court is extremely limited in view of the settled position of law in various decisions of the Apex Court, such as: -

1. Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others,
2. State of U.P. and Others Vs. Chaudhari Ran Beer Singh and Another,
3. Basic Education Board, U.P. Vs. Upendra Rai and Others,
4. Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,

5. Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others,

6. (2006) 5 SCC 57 (Union of India v. Era Educational Trust)

7. Govt. of A.P. Vs. M. Srinivasa Reddy and Others,

9. In the Information Brochure for admission to various courses including MBA Course of the year 2010 published by the Orissa Joint Entrance Examination, 2010 under the heading Reservation of seats, it has been provided as follows: -

Reservation of seats: In a private professional educational institution other than minority institution not exceeding fifteen per centum of the approved intake may be filled up by NRI from the merit list prepared on the basis of JEE.

Where any shortfall in filling up of seats from NRI occurs, such vacant seats may be filled up from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be, conducted by Central Board of Secondary Education: provided that while filling such vacant seats NRI shall be preferred. In a private professional educational institution fifteen per centum of the approved intake may be filled up strictly from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be, conducted by Central Board of Secondary Education.

10. Clause 2.7.1 of the said Information Brochure is as follows:

2. 1.7. All India quota seats to the tune of 15% for MBA programmes shall be filled up from the merit list CAT, XAT & MAT at the rate of 05% of equal magnitude at the vacancy from CAT shall be taken to the XAT & then to MAT thereafter. If any vacancy remains, shall be filled up from the merit list of JEE 2010 during academic session 2010-11.

11. Clause 1.7 (vi) provides availability of courses. In the said clause, it is declared that JEE, 2010 will be conducted to draw the merit list of successful candidates for admission into MBA Course in the colleges/institutes as per the list given in Table - v. for the year 2009 as an indicator. The said Table v. enlists the Government MBA Colleges as well as private MBA Colleges. Samanta Chandra Gekhara Autonomous College mentioned under the heading Government MBA Colleges is shown to have 60 seats. The Government's decision as quoted earlier accepting the recommendation of the PPB was adopted on 02.06.2008. A composite reading of the said order of the Government may lead to the conclusion that under Sub-section (4) of Section 9 of the Act, it has been prescribed that 15% of the approved intake may be filled up strictly from the merit list of All India Engineering Entrance Examination or All India Medical Examination, as the case may be, conducted by the CBSE & that provision has been adopted in course of MBA programme where the PPB recommended that seats to the tune of 15% of MBA programme shall be filled up from the merit list of CAT, XAT & MAT " 5% of equal magnitude since there are multiplicity of All India Tests & this decision approved by the Government in the said order may be

interpreted to be only restricted to private institutions. But this decision of the Government appears to be ambiguous as, in Clause (ii) of the last paragraph of the said order, which was made by exercising power conferred on it in Section 18 of the Act that All India Quota Seats to the tune of 15% for MBA programme shall be filled up from the merit list of CAT, XAT & MAT " 5% of equal magnitude, the Government has never restricted the said 15% seats to private institutions only.

12. Even if, it is so, the said order of the Government taken in 2008 coupled with the fact that the Government decided to adopt previous practice in 2010 cannot be thrust upon the candidates like the Petitioner by restricting admission of candidates, who were successful in CAT, XAT & MAT, the MBA programme only to private institutions, when the Information Brochure of OJEE, 2010 is silent in that regard. The Petitioner, therefore, believing that he will be considered to take admission, in a Government College imparting MBA programme, is justified in claiming a seat in S.C.S. Autonomous College, Puri. The JEE Committee having not specifically mentioned in the Information Brochure that candidates like the Petitioner can only take admission in private institutions is estopped from contending that the Petitioner cannot be admitted to a Government College imparting MBA programme as enlisted in Table v. of the Information Brochure.

13. The Petitioner, having denied admission to S.C.S. Autonomous College, Puri in MBA programme, is found to be entitled to take admission in the said college for prosecuting MBA programme.

14. As by an interim order, a seat was directed to be kept vacant in the said college & it is not disputed that such a seat is available in the said college, the Writ Petition is allowed directing the Opp. Parties to admit the Petitioner to MBA programme in S.C.S. Autonomous College, Puri In the seat kept vacant. This shall be done within a period of two weeks from the date of production of certified copy of this judgment before the Opp. Party No. 2 Principal on the Petitioner fulfilling all other requirements, such as, deposit of admission fees, if the same has not yet been deposited by her. No costs.