

(1998) 03 GAU CK 0051

In the Gauhati High Court

Case No : Writ Appeal No. 159 of 1997 in Civil Rule No. 719 of 1997

Anima Devi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:

Medical College of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules, 1996 — Rule 4(3)(a)

Citation : (1998) 1 GLT 467

Hon'ble Judges : M. Ramakrishna, C.J.; P.C. Phukan, J

Bench : Division Bench

Advocate : D.C. Mahanta and T.J. Mahanta, for the Appellant; M. Bhuyan and H. Das, for the Respondent

Judgement

M. Ramakrishna, C.J.—The Appellant was the Petitioner in Civil Rule No. 719 of 1997 presented before this Court who had challenged the correctness and the legality of the allotment of a seat to 5th Respondent in the BDS Course in the Regional Dental College, Guwahati, for the reasons set out in the writ petition. The petition was opposed by the 5th Respondent by filing a counter. The learned Single Judge, by an order made on 19th February, 1997, after hearing the learned Counsel of both sides, dismissed the writ petition holding that there is no case made out for the Petitioner to consider his case, nor was he able to convince the Court that the selection of 5th Respondent to the course in question was illegal. Hence the writ petition is dismissed.

2. In the writ appeal presented by her, two specific questions have been raised. Mr. D.C. Mahanta, learned Counsel appearing for the Appellant, who having taken us through the grounds of appeal, the averments of the writ petition and also the judgment and order of the learned Single Judge, under appeal, urged the following two points:

(1) Regard being had to the intendment of Clause (a) of Sub-rule (3) of Rule 4 of the "Medical Colleges of Assam and Regional Dental College (Regulation of

Admission of Under-graduate Students) Rules, 1996 and the choice given by the writ Petitioner, her offer should have been accepted to provide a seat in the BDS course and not the 5th Respondent.

(2) Since the Government failed to comply with the requirement of Clause (a) of Rule 4(3) of the Rules referred to above, in not preparing two separate lists - one for the MBBS course and the other for the BDS course in the order of merits, it affected the right of the writ Petitioner. The learned Single Judge ought to have seen this important legal aspect, which he failed to consider.

Therefore, Shri Mahanta, learned Counsel for the Appellant submits that the finding recorded by the learned Single Judge be modified.

3. Contrary to this argument of Shri Mahanta, Shri M. Bhuyan, learned Counsel for the 5th Respondent however, maintains that in the facts, circumstances and regard being had to the questions of law raised in the writ petition, the conclusion reached by the writ Court is perfectly justified and this Court need not interfere with the said order.

4. In order to examine and appreciate the points raised by Shri Mahanta, learned Counsel for the Appellant, let us extract the provision of Rule 4(3)(a) of the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under-graduate Students) Rules, 1996 (hereinafter referred to as the Rules), which reads as follows:

On receipt of the aforesaid merit list the Director of Medical Education, Assam along with the Controller of Examination shall prepare for each course separate select lists for the general seats available in each course and thereafter shall prepare separate select list for the reserved seats as per Rule 6 from the remaining candidates in order of merit as per the merit list.

(Emphasis supplied)

5. The legal argument advanced to drive home this point by Mr. Mahanta is that, in the event of the competent authority in the Government has in tune with the above law prepared two separate merit lists - one for the purpose of filling the seats in MBBS Course and the other for the purpose of filling the seats available in the BDS Course, regard being had to the choices given by the candidates, the writ Petitioner having given the first choice seeking a seat in the BDS Course, the authority ought to have considered this choice of the writ Petitioner and to have offered a seat to her in the BDS course:

6. This argument of Mr. Mahanta does not persuade this Court to accept his submission, inasmuch as, it is true that the intendment of Rule 4(3)(a) of the Rules, referred to above, is to prepare two separate merit lists - (i) the general merit list for dealing with the vacancies available in the MBBS course in the order of merit, and (ii) another list for filling of the available seats in the BDS course in the order of merit. Similarly, regard being had to the reservation of seats as per Rule 6 of the Rules, the same pattern of having two separate lists for the purpose

of making reservation both for the MBBS course and the BDS course, should have been followed. There is no doubt about that. But the fact remains that regard being had to the language employed in the above Rule 4(3)(a), it is abundantly made clear that even these two lists required to be drawn - one for the MBBS course and another for the BDS course, regard being had to the marks scored by each candidates and taking into consideration the choice given by each one of them, but these lists will have to be drawn in the order of merits. Therefore, when the Respondent No. 5 has offered the BDS course as his second choice while his first choice was for the MBBS course, his desire was that in the event of his becoming eligible for offering a seat in the MBBS course, he will accept the same as his first choice, and in the event of his not becoming eligible for the first choice, he would accept the seat in the BDS course as his second choice.

7. Now, we will consider the merits of the two contesting candidates, namely, the Petitioner on the one hand and the 5th Respondent on the other. There is no dispute about the factum that the 5th Respondent scored 104 marks, whereas the Petitioner has secured 98 marks. Taking into consideration the fact that at the relevant point of time, referring to the reservation clause, both these candidates claiming reservation in the quota meant for "Sons and daughters, dependent brother and sister of Ex-serviceman and serving defence personnel from Assam only", both of them not becoming eligible to secure a seat in the MBBS course, regard being had to the merits of the candidates, the competent authority did consider the case of these two candidates for offering a seat in BDS course. It is also not in dispute that there was only one vacancy available in the BDS course. Therefore, the competent authority has no option but to select one among these two candidates. Mr. Mahanta's argument is that regard being had to the first choice given by the writ Petitioner, the competent authority should have accepted the first choice of the Petitioner and allotted the seat in the BDS course to her ignoring the merit of the 5th Respondent. Now this argument is contrary to the scheme of the Rules.

8. There is one more argument of Mr. Mahanta. As suggested by him, dealing with the second point, that Clause (f) of Sub-rule (4) of Rule 4 of the Rules provides as follows:

No change of the choice, as given in the application by the candidate in respect of the college or the course, shall be permitted at the time of their appearing before the Board under any circumstances.

Indeed, the learned Single Judge has interpreted the provision of that law and recorded a finding against the Petitioner. We are of the view that the interpretation of this provision of law is uncalled for in the facts and circumstances of this case, inasmuch as, it is nobody's case that either of the two persons involved in the writ petition wanted to seek for a change either in respect of the college or the course, applied for. Therefore, it is unnecessary for us to deal with this question.

9. The last submission of Mr. Mahanta is based on the proviso as found under Clause (d) of Sub-rule (4) of Rule 4 of the Rules, which says:

Provided that in case of non-availability of seat in the college of his first choice a candidate shall be allotted Seat in the college of his next order of preference and so on.

Again, we are of the view that interpretation of this provision of the law is unnecessary, because this proviso deals with a situation of non-availability of seat in a particular college, regard being had to the selection made by the competent authority. Therefore, we are not concerned with this clause in the instant case.

10. Considering all these circumstances, we must hold that between the two contesting candidates seeking for one seat in the BDS course, regard being had to the scheme of the law, the candidate who is more meritorious cannot be ignored for a lesser meritorious candidate merely because the latter has given the first choice as BDS course. The law concerning selection is therefore cautious in providing several riders that in any event the option given by a candidate regarding the course or the college cannot be altered subsequently; nonetheless, the authority concerned must take into consideration the marks scored by the two candidates competing for one and the same seat in a particular course, as we found in the instant case. The learned Single Judge was right when he observed that since the Respondent No. 5 has got a better preference, regard being had to the marks scored by him, he cannot be ignored by offering the seat to the writ Petitioner, who had scored lesser marks than the marks scored by the Respondent No. 5.

11. Considering all these circumstances, we are of the view that the Appellant has not been able to make out a case calling for our interference in the order made by the learned Single Judge.

12. In the result, the appeal fails and is dismissed. Parties to bear their own costs.