

(2012) 03 OHC CK 0018
In the Orissa High Court
Case No : W.A. No. 555 of 2011

Ashok Kumar Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 19(1)(g), 21
Indian Medical Council Act, 1956 — Section 19A, 33
Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 4(1)

Citation : AIR 2012 Ori 153 : (2012) 114 CLT 537

Hon'ble Judges : V. Gopala Gowda, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : A.K. Mohapatra, Alok Ku. Mohapatra, N.C. Rout, S.K. Padhi, S.K. Mishra and S. Swain, for the Appellant; R.K. Mohapatra, Government Advocate, M/s. S. Palit, A.K. Mahana, A. Mishra and D. Biswal, M/s. R.C. Mohanty . K.C. Swain and S. Mohanty, for the Respondent

Judgement

V. Gopala Gowda, C.J.—The unsuccessful Petitioner in the Writ Petition bearing W.P.(C) No. 18599 of 2011 being aggrieved by the Order Dated 1.11.2011 passed by the Learned Single Judge declining to quash Clause 4.2 of OJEE, 2011. Brochure prescribing the upper age limit of 25 years for the entrance examination of 2011, which is the minimum eligibility criteria for admission to the first year MBBS who secured 141 rank in medical stream & 36 rank as Green Card holder has filed this writ appeal urging various facts & legal contentions & prayed to set aside the impugned order by allowing the Writ Appeal & quash the Clause 4.2 in the Prospectus of OJEE, 2011. The brief facts are stated for the purpose of appreciating the rival legal contentions urged on behalf of the parties with a view to find out as to whether the Appellant has made out a case for interference with the impugned order of the Learned Single Judge & issue a writ of certiorari to quash Clause No. 4.2 of the OJEE, 2011 Prospectus prescribing the upper age limit of 25 years for admission to the first year MBBS & as to whether refusal to quash the same amounts to failure to exercise judicial review

power as it is in violation of Articles 14, 21 & 21A of the Constitution of India. That amounts to substantial question of law that would arise for consideration of this Court? What order?

2. The date of birth of the Appellant is 10th of May, 1984. Clause 4.2 of the Brochure of OJEE, 2011 prescribes the upper age limit as 25 years for admission to MBBS Course & accordingly he was issued admission card for appearing at the entrance examination conducted by the OJEE, 2011 which he did. He secured 141st rank in the general category & 36th rank in the Green Card holder category in the merit list. Learned Single Judge did not consider the fact that in the absence of prescription of the upper age limit in the regulation framed by the Medical Council of India in exercise of its power u/s 33 of the Indian Medical Council Act, 1956 & also in the Rules or Regulation u/s 4(1) of the Orissa Professional Educational Institutions, (Regulation of Admission & Fixation of Fee) Act, 2007 prescribing the upper age limit by the OJEE in its prospectus is without authority of law & the various decisions of the Supreme Court upon which strong reliance is placed by the Learned Counsel Mr. Ashok Mohapatra, particularly the Constitution Bench decision in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , Medical Council of India Vs. State of Karnataka and Others, Sanatan Gauda Vs. Berhampur University and others, , Chowdhury Navin Hemabhai and Others Vs. The State of Gujarat and Others, State of Kerala Vs. Kumari T.P. Roshana and Another, & PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, in support of the proposition that regulation made under Statute have the force of law. Any action or order in breach of terms & conditions of Regulations is illegal & invalid. Learned Single Judge also did not consider the prospectus of various States in the country which did not prescribe the upper age limit as per the MCI guideline. There are different entrance examination for admission to MBBS course of AIIMS & other Universities & institutions conducting entrance examination for admission to MBBS course where there is no prescription of upper age limit except the minimum age limit of 17 years. In the prospectus for AIIMS MBBS Examination August, 2011 it is mentioned that candidates born on or after 2nd January, 1995 are not eligible to apply. The aforesaid relevant facts & legal contentions have not been examined in the proper perspective by the Learned Single Judge with reference to the various Judgments of the Apex Court upon which strong reliance is placed. Non-consideration of the same rendered the impugned order bad in law. The clause 4.2 in the Prospectus is in violation of the provisions of Medical Council of India Act, regulations & the decisions referred to supra & fixing the upper age limit of a candidate in the prospectus by the OJEE in the State of Orissa for admission to the First year MBBS course, violates the principles of natural justice & the fundamental rights guaranteed under Articles 14, 21, 21-A of the Constitution of India. As the Medical Council of India which is the competent authority for regulating the admission of students in the MBBS Course has not prescribed the upper age limit in the Regulation & so also in the Orissa Act of 2007 & the Rules framed thereunder by the Orissa State Government. Therefore, the action of the

OJEE is arbitrary & unreasonable, violative of fundamental rights referred to supra guaranteed to the Appellant. Placing reliance upon the decision of the Supreme Court in the case of Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others, & in the case of State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, . The case of Ambesh Kumar arose from the notification issued by the State Government laying down the qualification regarding the eligibility of a candidate to be considered for admission to Post-Graduate Medical Courses in Uttar Pradesh & the Apex Court ruled that the State Government by laying down the eligibility qualification namely, obtaining of certain minimum marks in the MBBS examination by the candidate has not in any way encroached upon the Regulations made under the Indian Medical Council Act, nor does it infringe the central power provided in Entry 66 of List I of the Seventh Schedule of the Constitution. The same principle was followed in the case of State of Tamil Nadu v. S.V. Bratheep with reference to Entry No. 25 of List III & Entry No. 66 of List I of the VII Schedule have to be read together & it cannot be read in such a manner as to form an exclusivity in the matter of admission, but if certain prescription of standards have been made pursuant to Entry 66 of List 1. Those decisions have been erroneously applied by the Learned Single Judge to the fact situation against the Appellant to deny the relief so also the decision upon which reliance is placed namely, Mahatma Gandhi University and Another Vs. Jikku Paul and Others etc.etc., is also not applicable to the fact situation. Therefore, Mr. Ashok Mohapatra, Learned Counsel for the Appellant submits that the decisions upon which he has placed reliance has not been considered by the Learned Single Judge. Therefore, the impugned order is vitiated in law & hence the substantial question of law would arise in this appeal. The Learned Single Judge has not noticed the factual aspects namely, the Medical Council of India regulations framed in exercise of its statutory power u/s 33 of the MCI Act with approval of the Central Government has not fixed the upper age limit in the Regulations, so also the State Government has not framed the Rule after Section 4(1) of Orissa Act, 2007 was enacted prescribing the further entry condition of eligibility of maximum age of a candidate in exercise of its power vested under Entry No. 25 of the Concurrent List (List III) of the Constitution for admission of candidates to the MBBS course in the State of Orissa. Therefore, the order of the Learned Single Judge is vitiated in law & is liable to be set aside by allowing the appeal & granting the relief by issuing a writ of certiorari to quash Clause 4.2 of the Information Brochure of OJEE 2011 in prescribing the upper age limit of 25 years as the minimum eligibility criteria for admission of a candidate to first year MBBS course.

3. It is the case of the Appellant that the OJEE has allowed the Appellant to take entrance examination & he has been assigned 141st rank in the general category in the medical stream & 36th rank in the Green Card Holder category. Therefore, the OJEE is estopped in applying the said clause & to deprive the right of the Appellant to get admission to the First year MBBS course. Even the juniors below the rank of the Appellant have been admitted in the MBBS course whereas

admission of the Appellant into the course has been denied for the reason that the Appellant is over aged, which action of the Respondent Nos. 2 & 4 is contrary to the decision of the Supreme Court in the case of Sanatan Gauda Vs. Berhampur University and others, .

4. Learned Counsel Mr. Palit appearing on behalf of OJEE & Learned Government Advocate Mr. Mohapatra sought to justify the order of the Learned Single Judge inter alia contending that Orissa JEE is empowered to prescribe the upper age limit of candidates for admission in to the First year MBBS Course. The same submission is reiterated by Mr. Pal it appearing for Respondent No. 2. The same is supported by Mr. Mohanty appearing on behalf of the Medical Council of India contending that the OJEE is empowered to fix the upper age limit of 25 years as on 31.12.2011. In support of the said contention, strong reliance has been placed upon the Prospectus of AIIMS-MBBS Entrance Examination in which it is stated that the candidates born on or after 2nd January, 1995 are not eligible to apply. So also in the Prospectus of Manipal University wherein it is stated that candidates born on or before 31.12.1991 are not eligible to apply. It is contended by him that even in the absence of the regulations; OJEE is competent authority to conduct entrance examination & is empowered to fix the upper age limit for admission to the MBBS course to maintain the standard of education, Therefore, they submitted that the appeal is liable to be dismissed as the impugned order passed by the Learned Single Judge is a considered order after referring to the decisions of the Supreme Court with reference to the Regulation framed under the Medical Council of India & prescription of eligibility criteria approved by the Central Government in the Regulations, In addition to the same, the State Government also may laid down additional qualification regarding the upper age limit of a candidate for admission to the course & the same cannot be found fault with by this Court on the ground of lack of power of the OJEE for prescription of eligibility criteria. Therefore, the Appellant was not entitled for seeking the relief in the Writ Petition to quash the Clause 4.2 in the Prospectus published in the academic year 2011.

5. With reference to the rival legal contentions urged by the Learned Counsel for the parties, the following points would arise for our consideration :-

(i) Whether fixing the upper age limit of 25 years in clause 4.2, of the Prospectus by the JEE for admission of students to the MBBS Course in the absence of prescription of such maximum age limit either in the Regulations framed by the MCI or the Rules framed by the Orissa State Government under the Orissa Act of 2007 is legal & valid?

(ii) Whether prescription of upper age limit of students in the prospectus by the JEE does not amount to violation of fundamental rights guaranteed to the Appellant under Articles 14, 19, 21 & 21A of the Constitution of India?

(iii) Whether non-consideration of the legal grounds & the decisions of the Hon"ble Supreme Court referred to supra in support of the claim of the Appellant

by the Learned Single Judge has vitiated the impugned order & that would constitute the substantial question of law for interference with the impugned order in this appeal by this Court?

(iv) What order?

6. The aforesaid points are inter-related with each other & therefore, they are answered together in favour of the Appellant for the following reasons, It is not in dispute that the Central Government in exercise of its statutory power u/s 33 of the Indian Medical Council Act, 1956 has approved the Regulations framed by the MCI, regulating the admission of students to the MBBS Course by prescribing the eligibility criteria of minimum age & other relevant aspects for conducting the examination for admission to the MBBS course in the country. As per the decision of the Hon"ble Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, & in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, the State Legislature of the Odisha State has been empowered to enact law & regulate admission to the MBBS Course in the State in exercise of its power from Entry No. 25; Concurrent List III of VII Schedule to the Constitution. As could be seen from the Regulations of the MCI, no upper age limit is fixed by the MCI approved by the Central Government under the Indian Medical Council Act, 1956 regarding the upper age limit for a candidate to admit in the MBBS Course. No doubt, the State Government after the decision of the T.M.A. PAI Foundation & P.A. Inamdar cases referred to supra, has enacted Orissa Act of 2007. Neither in the Act nor in the Rules framed by the Orissa State Government, upper age limit of a candidate is fixed by the State Legislature or State Government in the Rules. The minimum age limit is fixed in the MCI Regulation that a candidate must have completed the age of 17 years on or before 31st December of the year admission to the MBBS Course but no upper age limit is fixed. Undisputedly, Clause 4.2 is framed by the OJEE who is a creature of the statute. It has no competency to fix the upper age limit of a candidate who will be seeking admission in the course as it will not have the status of framing either regulation or the Rules under the Orissa Act of 2007. Apart from the said Rule, the MCI Regulations are framed by the MCI which is approved by the Central Government, in exercise of its statutory power u/s 33 of the Indian Medical Council Act, 1956, which Act is enacted by the Parliament in exercise of its legislative powers from Entry No. 66 of List I of VII Schedule regarding the qualification for admission to the MBBS Course to maintain the education standards. In the absence of Rules framed by the State Government fixing the upper age limit, the upper age limit prescribed by the OJEE authority cannot have the statutory status as it is not traceable to the provisions of the Orissa Act of 2007 or the Rules. In the absence of the same, fixing the upper age limit under Clause 4.2. In the Prospectus whereas most of the States in the country have not fixed the upper age limit for the reason that MCI Regulations do not provide for the same & therefore fixing the upper age limit in the Prospectus in the Orissa State is a clear case of discrimination under. Article 14 of the Constitution of India & it is without competency on the part of the OJEE, Denial

of admission to the Appellant for the reason that he is more than 25 years for admission in the MBBS Course in the State of Odisha for the academic year is certainly in violation of the fundamental rights guaranteed to him under Articles 14, 19(1)(g), 21 & 21A of the Constitution of India.

7. In this regard, reliance is rightly placed by the Learned Counsel for the Appellant upon the Constitution Bench decision of the Hon'ble Supreme Court in the case of Dr. Preeti Srivastava & anr v. State of M.P. & ors referred to supra, the relevant portions of paragraph-35, 53, 55 & 57 are extracted below :-

35. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List 1. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical & university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

53. Secondly, it is not the exclusive power of the State to frame rules & regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254.

55. Therefore, the universities have to be guided by the standards prescribed by the Medical Council & must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practise.

57. In the case of Medical Council of India v. State of Karnataka Bench of three judges of this Court has distinguished the observations made in Nivedita Jain. It has also disagreed with Ajay Kumar Singh v. State of Bihar and has come to the conclusion that the Medical Council regulations have a statutory force & are mandatory. The Court was concerned with admissions to the MBBS course & the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education & to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for

admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.

8. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in the case of Medical Council of India v. State of Karnataka & others, referred to supra, the relevant portions of paragraph-27, 30, & 31 are extracted below :-

27. The State Acts, namely, the Karnataka Universities Act & the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges & for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over & above that fixed by the Medical Council as per the regulations. Chapter IX, of the Karnataka Universities Act, which contains provision for affiliation of colleges & recognition of institutions, applies to all types of colleges & not necessarily, to professional colleges like medical colleges. Sub-Section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to course's for studies in a college & that number shall not exceed the Intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education & overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to medical college. We have already seen in the beginning of this Judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition & also withdraws the same. Regulations u/s 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college & its associated teaching hospitals & teaching and technical staff & equipment in various departments in the college & in the hospitals. These regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers & visiting physicians/surgeons of medical colleges & attached hospitals.

30. Having thus held that it is the Medical Council which can prescribe the number of students to be admitted in medical courses in a medical college or institution, it is the Central Government alone which can direct increase in the

number of admissions but only on the recommendation of the Medical Council. In our opinion, the Learned Single Judge was right in his view that no medical college can admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government & that Sections 10-A, 10-B and 10-C will prevail over Section 53(10) of the State Universities Act & Section 4(1)(b) of the State Capitation Fee Act. To say that the number of students as permitted by the State Government and/or the university before 1.6.1992 could continue would be allowing an illegality to perpetuate for all time to come. The Division Bench, in our opinion, in the impugned Judgment was not correct in holding that admission capacity for the purpose of increase or decrease in each of the medical colleges/institutions has got to be determined as on or before 1.6.1992 with reference to what had been fixed by the State Government or the admission capacity fixed by the medical colleges & not with reference to the minimum standard of education prescribed u/s 19-A of the Medical Council Act which the Division Bench said were only recommendatory. Nivedita Jain case does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admissions will have to be regulated on the basis of the capacity fixed or determined by the Medical Council. The plea of the State Government that power to regulate admission to medical colleges is the prerogative of the State has to be rejected.

31. What we have said about the authority of the Medical Council under the Indian Medical Council Act would equally apply to the Dental Council under the Dentists Act.

9. Reliance is placed by the Learned Counsel for the Appellant upon the decision of the Hon'ble Supreme Court in the case of *Osmania University Teacher's Association v. State of U.P.*, reported in (1987) 4 SCC 671 referred to supra, the relevant paragraphs-14, & 15 are extracted below :-

14. Entry 25 List III relating to education including technical education, medical education & universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I & Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific & technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to coordinate & determine the standards for higher education. That power includes the power to evaluate, harmonise & secure proper relationship to any project of national importance. It is needless to state that such a coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to "education" has been distributed between List I & List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matter included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative & unenforceable.

10. Reliance is placed by the Learned Counsel on behalf of the Appellant upon the decision of the Hon'ble Supreme Court in the case of State of Kerala Vs. Kumari T.P. Roshana and Another, referred to supra, the relevant paragraph-16 of which is extracted below :-

16. The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education & to regulate their observance. Obviously, this high powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.

11. Further reliance is placed by the Learned Counsel for the Appellant upon Article 256 of the Constitution which postulates that the executive power of every State shall be so exercised as to ensure compliance with the laws made by the Parliament & any existing laws which apply in that State. The said provision is aptly applicable to the fact situation as fixing of the upper age limit of a candidate for admission to the MBBS Course by the OJEE in exercise of its power is contrary to the MCI Act & Regulation which are applicable in the State of Orissa.

12. Further, he has rightly placed reliance upon the decision of the Supreme Court in the case of PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, in support of the proposition that Regulations made under the Statute have the force of law, any action or order in breach of the terms & conditions of Regulation is illegal & invalid. The said principle has been laid down after referring to various earlier decisions of the Supreme Court at paras 16, 17, 23 & 30 of the Judgment are extracted below :-

16. It is well settled law that the Regulations made under the statute laying down the terms & conditions of service of employees, including the grant of retirement benefits, has the force of law. The Regulations validly made under statutory powers are binding & effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms & conditions laid down in the Regulations as a legal compulsion. Any action or order in breach of the terms & conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions & shall render such action or order illegal & invalid.

17. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance

Corporation, this Court, while elaborately discussing the nature & effect of the Regulations made under the Statute, has observed:

23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions & terms of service of their employees. These statutory bodies are bound to apply the terms & conditions as laid down in the regulations. The statutory bodies are not free to make such terms as they think fit & proper. Regulations prescribe the terms of appointment, conditions of service & procedure for dismissing employees. These regulations in the statutes are described as "status fetters on freedom of contract". The Oil & Natural Gas Commission. Act in Section 12 specifically enacts that the terms & conditions of the employees may be such as may be provided by regulations. There is a legal compulsion on the Commission to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. In other statutes under consideration viz. the Life Insurance Corporation Act & the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms & conditions of employment & conditions of service are provided for by regulations. These regulations are not only binding on the authorities but also on the public.

30. In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants & the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules & orders should equally apply to the regulations & any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation & have the force & effect, if validly made, as the Act passed by the competent legislature.

13. The relevant underlined portion of paragraph-9 of the Judgment reported in Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, is extracted below:

9. The question whether a regulation framed under power conferred by the provisions of a statute has got statutory power & whether an order made in breach of the said regulation will be rendered illegal & invalid, came up for consideration before the Constitution Bench in the case of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi. In this case it was held that:

There is no substantial difference between a rule & a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to everyone or to all members of some group or class. The Oil & Natural Gas Commission, the Life Insurance Corporation & Oil & Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties & conduct & conditions of service of officers & other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violations of rules & regulations.

The existence of rules & regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employee a statutory status & impose restriction on the employer & the employee with no option to vary the conditions.

14. In view of the aforesaid statement of law laid down by the Hon''ble Supreme Court in the case of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi which decision has been referred to in the case of Pepsu Road Transport Corporation v. Mangal Singh at para 16 of the Judgment wherein para 33 from Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi is extracted, is rightly placed reliance by the Learned Counsel for the Appellant in support of the proposition of law that the statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules & Regulations. The Rules & Regulations framed under statute are framed regarding the eligibility for admission in the MBBS course & such terms & conditions in order to maintain good standards in the professional Medical course for its implementation. In the absence of Regulation framed by the Medical Council of India with prior approval of the Central Government fixing the upper age limit of a student for admission to the MBBS course in a college, fixing such upper age limit in the prospectus by OJEE who is not authorised in law & the same is in violation of the provisions of the MCI Regulations. Therefore, the same will not be binding upon the State Government & its authorities, who will be conducting the Entrance test examination for the eligible candidates to get seats allowed in their favour for the course. Therefore, insertion of clause 4.2 in the Prospectus by the OJEE is without any authority of law & the same is liable to be quashed. The said clause is also in violation of the fundamental rights guaranteed to the Petitioner under Articles 14, 19 (1)(g) & 21 & 21A of the Constitution of India. Hence the Clause 4.2 is liable to be struck down as the same is contrary to the MCI Act & Regulations.

15. The action of the Opp. Party Nos. 2 & 4 in not admitting the Appellant though he was permitted to appear in the entrance examination & secured 141st rank & candidates who were below his rank have been admitted in the course is not correct. Also one Jnana Ranjan Nayak & Sonali Subhadarshini who are over aged i.e. above 25 years were permitted to appear in the OJEE Entrance Examination & Sonali Subhadarshini was admitted in the first year MBBS Course for the academic year 2011-2012. Thereby the Petitioner is discriminated in not admitting in the course for the reason that he is over aged which action of the Opp. Parties is in violation of Article 14 of the Constitution of India & on this ground also the Appellant is entitled for the relief. Further the Opp. Party Nos. 2 & 4 having permitted the Appellant to appear in the entrance examination are now estopped from not admitting him to first year MBBS course for the reason that he had attained age beyond upper age limit. He has rightly placed reliance upon the decision of the Supreme Court in support of the aforesaid proposition of

law in the case of Sanatan Gauda Vs. Berhampur University and others, which decision is aptly applicable to the fact situation wherein the Apex Court has held as follows :-

10. This is apart from the fact that I find that in the present case the Appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law & Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law & Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law Course. The University is, therefore, clearly estopped from refusing to declare the results of the Appellant's examination or from preventing him from pursuing his final year course.

In view of the aforesaid legal principle laid down by the Apex Court in the above referred case refusal of admission to the Appellant in the first year MBBS course by the Respondent Nos. 2 & 4 is in violation of the aforesaid Judgment of the Supreme Court. The same is arbitrary & unreasonable & therefore the same cannot be allowed to sustain. Hence, we pass the following order:-

(i) For the reasons stated supra, the writ appeal is allowed & impugned order of the Learned Single Judge passed in W.P.(C) No. 18599 of 2011 on 1.11.2011 is hereby set aside.

(ii) Clause 4.2 prescribed by the OJEE in the Information Brochure is hereby quashed as it is, in violation of the MCI Regulations & the Orissa Act of 2007 & Rules.

(iii) Since the last date for admission to the course for this academic year has expired on 30.9.2011, we direct the aforesaid Respondent Nos. 2 & 4 to admit the Appellant for the next academic year 2012-2013 in the first year MBBS Course as we have struck down the Clause 4.2 in the Prospectus by allowing the Writ Petition holding that the same is without Authority of law & contrary to the MCI Regulation.

B.N. Mahapatra, J.

I agree.