
(2001) 06 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 41 of 2000

Binita Senapati

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Assam and Regional Dental College (Regulation of Admission of Under Graduate Student) Rules, 1996 — Rule 6, 6(1)
Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(1), 33, 39

Citation : (2001) 3 GLT 195

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N. Saikia, A. Bora, R. Goswami and B. Das, for the Appellant; B.J. Talukdar, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for a direction on the Respondent Nos. 1 and 2 to allot a seat in the MBBS Course for the Session 1999-2000 in any one of the Medical Colleges of Assam.

2. The facts briefly are that "the state Government by notification dated 16.8.96 framed a set of rules for admission of students to MBBS/BDS Course in Medical Colleges of Assam and the Regional Dental College, Guwahati, called "The Medical College of Assam and Regional Dental College (Regulation of Admission of under Graduate Students) Rules, 1996 (for short "1996 Rules"). Rule 6 of 1996 Rules provides for reservation of seats for various categories of candidates. Initially as the said rules stood, no reservation was provided for the candidates with physical disability. By notification dated 27.5.99, Clause -(K) in Sub-rule (1) of Rule 6 was inserted which was to the following effect:

(K) Reservation of maximum 3% of the seats of MBBS for the people with disability, subject to the fulfilment of provisions and terms and conditions as laid

down in the Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act of 1996).

By the said notification, therefore, a reservation of maximum 3% seats of MBBS for the people with disability was provided subject to fulfilment of provisions and terms and conditions as laid down in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short "1995 Act"). The Petitioner was a physically handicapped person as her right lower limb was short as has been certified by the Department of Orthopaedics, Gauhati Medical College, Guwahati. She applied for admission to one of the seats in Medical Colleges of Assam as physically disabled candidate. She then took the selection test and on the basis of the said selection test, an Educational notice was published in which the name of the Petitioner was shown as one of the candidates in the list of physically handicapped candidates called for interview. Pursuant to the said Educational Notice, the Petitioner attended the interview with all her certificates. Thereafter, an Admission Notice was published by the Director of Medical Education, Assam, but her name did not find place in the list of physically handicapped persons selected for admission and instead, the name of three other candidates with 72 marks, 33 marks and 30 marks were shown in the list of physically handicapped person selected for admission for the seats in the MBBS course reserved for the physically handicapped persons. In the circumstances, the Petitioner has filed this writ petition for appropriate reliefs under Article 226 of the Constitution.

3. In course of hearing records were produced before this Court to show that Mahananda Baishya had secured 72 percents and, therefore, he was placed above the Petitioner in the merit list. Records were also produced to show that the Respondent Nos. 3 and 4, Shri Bikash Jyoti Nath and Rashmi Ranjan Rajkhowa, had secured 30 and 33 marks respectively and were above the Petitioner who had secured only 27 marks. It also appears from the copy of the certificate annexed to the Application for vacating the interim, order filed by the Respondent No. 3 Shri Bikash Jyoti Nath that he suffers from Poliomyelitis and was a candidate with disability and entitled to a seat reserved under rule 6(1)(k) of 1996 Rules. Records also have been produced before the Court by Mr. Talukdar and the Director of Medical Education, Assam, Prof. A.C. Bora, that the Respondent No. 4, Rashmi Ranjan Rajkhowa was examined by the Medical Board and it was found that he was suffering from shortening of right lower limb and was orthopaedically handicapped. It has been further explained by Mr. Talukdar, G.A., Assam that the name of Mahananda Baishya who has secured 72 has been published in the Education Notice in the first position above the Petitioner in the list of physically handicapped candidates. But the name of Rashmi Ranjan Rajkhowa who had secured 33 marks had not been published in the Education Notice as she had not furnished the certificate issued by the Orthopaedic Surgeon and she subsequently claimed a seat reserved for physically disabled candidates and she was examined by the Medical Board and on such examination she was found to be Orthopaedically handicapped entitled to a seat reserved for

the physically handicapped persons and that her name found place in the second position of Admission Notice for the physically handicapped candidates. Mr. Talukdar further explained that the name of the Respondent No. 3 Bikash Jyoti Nath had not been published in the Education Notice due to inadvertence although he had secured 30 which was more than 27 marks obtained by the Petitioner and it is for this reason that a corrigendum was subsequently issued on 23.12.99 including the Respondent No. 3 in the list of physically handicapped persons selected for admission into the MBBS course. It is clear from the aforesaid narration that the Respondent Nos. 3 and 4 and Mahananda Baishya had secured more marks than the Petitioner and were also persons with disability and entitled to admission to the seats reserved for persons with disability under Rule 6(1)(k) of the 1996 Rules. Thus, the admission of Mahananda Baishya, Shri Bikash Jyoti Nath (Respondent No. 3) and Rashmi Ranjan Rajkhowa (Respondent No. 4) cannot be set aside or quashed for giving admission to the Petitioner.

4. Ms. N. Saikia, learned Counsel for the Petitioner, however, submitted that u/s 39 of the 1995 Act all government Educational institutions are obliged to reserve not less than 3% seats for persons with disability. Since the total number of seats for MBBS Course were 310, 3% of the said seats would be more than three seats and that the Petitioner who is the only candidate in the waiting list of physically handicapped persons was entitled to such admission u/s 39 of the 1995 Act. She further submitted that it has been clarified in the letter dated 6.4.2000 of the office of the Commissioner for Disabilities to the Secretary, Government of Punjab, Department of Social Security and Women & Child Development, Chandigarh, a copy of which has been annexed as Annexure-B to the Additional Affidavit filed by the Petitioner, that where seats in Medical Colleges reserved upto 3% for disabled are given to the students only with locomotor disabilities, candidates with locomotor disabilities are entitled to the entire 3% of such seats reserved for disabled persons. She also relied on the judgment of a learned Single Judge of the High Court of Andhra Pradesh in W.P. No. 10234 of 1999, a copy of which has been annexed as Annexure-C to the Additional Affidavit filed by the Petitioner, in which the State Respondents have been directed to make provision of 3% reserved for physically handicapped persons in accordance with Section 39 of the 1995 Act.

Mr. Talukdar, G.A., Assam, on the other hand, referred to the provisions of Section 33 of 1995 Act to show that the Government is obliged to reserve only 1 % of the seats for the persons suffering from locomotor disabilities or cerebral palsy. He contended that because of this provision in Section 33 the 1995 Act the Government has decided reserve only 1 % of the total 310 seats in BS Course in the Medical Colleges of (sic) Assam for the persons with locomotor disabilities. According to Mr. Talukdar since (sic) of the total 310 seats amounts to 3 seats, only 3 seats in MBBS Course in three Medical Colleges of Assam were allotted to physically handicapped persons. He argued since the Petitioner's position in the merit (sic) amongst the physically handicapped persons is 4th, she was not entitled to any one of the three seats reserved for the physically handicapped

persons. He (sic)emently contended that the notification serving a maximum of 3% of the seats of MBBS for the people with disability under Rule 6(1)(k) was issued as far back as on 7.5.99 and the said notification dated 7.5.99 has not been challenged by the Petitioner in this writ petition. He further submitted that by an order dated 5.11.99 ;sued by the Deputy Secretary to the Government of Assam, Health and Family Welfare (B) Department, the distribution of eats in MBBS Course to various categories in the three Medical Colleges of Assam was made and in the said distribution only three seats were reserved for the Orthopaedically handicapped persons but the Petitioner did lot challenge the said distribution list of seats issued as far back as on 5.11.99. According to Mr. Talukdar, therefore, this is not a fit case in which relief can be granted to the Petitioner by this Court.

5. Sections 33 and 39 of the 1995 Act on which reliance has been placed by the learned Counsel for the Petitioner and the State Respondents are quoted hereinbelow:

33. Reservation of posts - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent, for persons or class of persons with disability of which one percent, each shall be reserved for persons suffering.

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral pulsy;

in the posts identified for each disability.

provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification exempt any establishment from the provisions of this section.

39. All educational institutions to reserve seats for persons with disabilities - All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three percent seats for persons with disabilities.

A plain reading of Section 33 of the 1995 Act" would show that the said Section 33 applies to appointments in every establishment and does not apply to admission to educational institutions. Section 39 of the 1995 Act quoted above, on the other hand, provides that all Government educational institutions and other educational institutions receiving aid from the Government "shall reserve not less than three percent seats for persons with disabilities". Section 39, therefore, applies to admission to seats in educational institutions and clearly stipulates that a minimum 3% of seats in Government educational institutions will have to be reserved for the persons with disabilities. Rule 6(1)(k) of the 1996

rules made by the State Government quoted above provides that there shall be reservation of maximum 3% of the seats in MBBS Course for the people with disability subject to fulfilment of the requirements of the provisions and terms and conditions as laid down in the 1995 Act. The aforesaid rule is consistent with section 39 of the 1995 Act inasmuch as at least 3% of the seats in MBBS Course of the Government Medical Colleges of Assam have been reserved for the people with disabilities subject to fulfilment of the provisions and terms and conditions as laid down in the 1995 Act. It may be noted that the said rule 6(1)(k) of the 1996 Rules nowhere stated that 1 % of the seats in MBBS Course in the Government Medical Colleges of Assam only will be reserved for the candidates who are orthopaedically handicapped. There was absolutely no need for the Petitioner to challenge the notification dated 27.5.99 introducing Clause (k) in Rule 6(1) of the 1996 Rules.

6. It is only by an administrative order dated 5.11.99 of the Deputy Secretary to the Government of Assam, Health and Family Welfare Department that 1% of the seats in the Medical Colleges of Assam were reserved for the orthopaedically handicapped persons. The aforesaid administrative order dated 5.11.99, a copy of which has been produced before the Court is contrary to the bare provisions of Section 39 of the 1995 Act which clearly provided that all Government educational institutions shall reserve not less than 3% seats for the persons with disabilities. The said Section 39 confers a statutory right on the persons with disabilities to claim seats in Government educational institutions subject to the provisions of the 1995 Act and an administrative order issued by the appropriate authority of the Government cannot deprive a person with physical disability of the said right u/s 39 of the 1995 Act. In my considered opinion, in case the Government was of the view that only persons with locomotor disabilities or Orthopaedically handicapped persons can be allowed admission to MBBS Course and other persons with disabilities included in the expression "disabilities" in Section 2(1) of the 1995 Act are not suitable to perform the duties of a Doctor after the MBBS Course, the Government was obliged u/s 39 of the 1995 Act to reserve the entire 3% seats for physically disabled persons as incorporated in Rule 6(1)(k) of the 1996 rules for such persons with locomotor disabilities or orthopaedically handicapped persons. This view also appears to have been taken by the Chief Commissioner for disabilities in his letter dated 6.4.2000 to the Secretary, Government of Punjab, Department of Social security and Women and Child Development, Chandigarh, a copy of which has been annexed to the Additional Affidavit as Annexure-B. The relevant paragraph of the said letter dated 6.4.2000 is quoted hereinbelow:

With regard to proposal of modifying Section 39 and providing only 1% reservation for candidates falling under sub-category (iii). This matter has been carefully considered and we are of the view that modification to Section 39 can be brought only by amending the Act in the Parliament in other words the scope for modification does not exist therefore the extent of reservation u/s 39 under all circumstances would remain 3%. However, in case where less than the three

identified categories of disabled cannot access the benefit of reservation, the total of 3% would be equally divided amongst those categories which are found suitable for seeking admission. To illustrate, seats in Medical Colleges reserved upto 3% for the disabled given to students with locomotor disabilities rather than reducing the 3% reserved seats to 1%. You may like to see the Gazette notification issued by Govt. of Assam to this effect (copy enclosed).

It is clear from the views taken by the office of the Chief Commissioner for Disabilities who is a statutory authority under the 1995 Act that seats in Medical Colleges reserved upto 3% for the disabled be given to students with locomotor disabilities rather than reducing the 3% reserved seats to 1 %. Thus so long as Section 39 of the 1995 Act is not amended and so long as the State Government has taken a stand that only candidates with locomotor disabilities are suitable for admission to 3% seats reserved in MBBS Course in Medical Colleges of Assam reserved for disabled persons under rule 6(1)(k) of the 1996 Rules, candidates with locomotor disabilities would be entitled to the entire reserved seats for the candidates with physical disabilities. Since 3% of the total 310 seats in MBBS Course in Government Medical Colleges of Assam would be more than 4 and the petitioner is the 4th candidate in order of merit in the list of physically handicapped persons, she is entitled to such admission.

7. In the result, I dispose of this writ petition with the direction to the respondent Nos. 1 and 2 to admit the petitioner in one seat in MBBS Course in any one of the three Medical Colleges of Assam meant for physically disabled persons u/s 39 of the 1995 Act and rule 6(1)(k) of the 1996 Rules. It is made clear that the petitioner will not be given admission to a seat reserved for other categories - rather one seat will be added in MBBS Course for the Session 1999-2000 in one of the Medical Colleges of Assam with formal approval/permission from the Medical Council of India and the Central Government or any other appropriate authority. This is because of the principle laid down by this Court in *State of Assam and Others Vs. Rajeev Dey and Others*, etc. etc., that in case the Court comes to the conclusion that some candidates have been deprived admission in violation of the Act or Rules, suitable direction can be issued by the Court to the authorities to admit such candidates, if necessary, by creating additional seats and it would be no defence for the authorities who are in such cases guilty of the breach of such rules or the Act to say that they do not have the resources for such additional seats or that the Medical Council of India will not sanction such additional seats. This principle was laid down consistent with the decisions of the Apex Court in the case of *Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others*,

8. The writ petition stands disposed of with the aforesaid direction. Since it will take some time for the authorities to obtain permission/ sanction from the Medical Council of India or the Central Government or the appropriate authority, the petitioner will be allowed to attend classes in any one of the three Medical Colleges of Assam within one month from today. The interim order passed by this

Court on 5.1.2000 as modified on 5.2.2000 is vacated and the three candidates who are above the Petitioner in the list of physically handicapped candidates for admission to MBBS Course will be forthwith given admission.