

(1996) 12 OHC CK 0013

In the Orissa High Court

Case No : Original Jurn. Case No's. 6632, 6655, 8169, 9153, 10139 and 10631 of 1996 etc. etc.

Dr. Hemanta Chandra Panda and Others,

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1997 Ori 98

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : B.M. Patnaik, P.K. Choudhury, S. Mohanty, B.S. Misra-2, S.C. Kar, M.R. Mishra, A. Ch. Mohanty, S.K. Mund, D.P. Das, J.K. Panda, S. Mishra-2, S.N. Misra, R.C. Praharaj, B. Das and K.K. Mohanty, Y. Das, N.C. Mohanty, D.K. Dey, D. Bhanja and C.R. Satpathy, B.P. Mohapatra, S.K. Padhi, Miss. D. Mohapatra S. Parida and S.K. Mohapatra, C.A. Rao, S.K. Behera, P.K. Sahu, Jagabandhu Sahoo, B.K. Mishra and S.K. Mohanty, Milan Kanungo, L. Kanungo, S. Das, D. Pradhan and P.K. Rath, Susanta Kumar Das, S.B. Jena and P.K. Mishra, S.K. Ghose, C.R. Nanda, T.K. Mohapatra, B.N. Tripathy, D. Chootray, H.K. Mallik, J. Patnaik and B. Mohanty, S.S. Rao, S.A. Ali, D.K. Sahoo, D. Panda, M. Chand, D.P. Dhal-2, G.R. Mohanty, Prasanha Kumar Mishra, P. Palit, S. Palit, J. Katikia, S. Sen and L. Jena, D. Mohapatra, S. Panda, Sandeep Parida, S.K. Mishra and D.P. Nanda, P.K. Mohapatra, L. Dash and H. Swain, J.K. Mishra-2, A. Deo, D.K. Sahoo and B.S. Tripathy, N.K. Mohanty, P.K. Rout, N. Jena, B.S. Mishra-2, S.K. Kar, M.R. Mishra, K.K. Mohanty, A.C. Mohanty, A.K. Rath, Arupa Das, R.B. Mishra and Bhimasen Sahoo, for the Appellant; R.K. Mohanty, Additional Government Advocate, B.M. Patnaik and Associates and S.K. Mishra, D.P. Nanda, for the Respondent

Judgement

R.K. Patra, J.—In this batch of petitions the controversy veers round the admission to Post-graduate Courses in the three Government Medical Colleges of the State. For the sake of convenience, they were heard together and are disposed of by this judgment.

2. Applications in the prescribed forms were invited for selection of candidates

for Post-Graduate Courses leading to M.D./ M.S. Degree and Higher Specialties Courses, 1996 available in the three Government Medical Colleges of the State. The last date of receipt of application forms was 30-5-1996. (In these matters, as there is no grievance with regard to admission to Higher Specialties courses, we have not referred to any clause of the prospectus dealing with that course). As prescribed under Clause 9 of the prospectus a competitive entrance examination was held on 16-6-1996 to fill up 184 seats in the Post-Graduate Courses (91 seats for direct candidates and 93 seats for in-service candidates). The break-up of the seats as indicated in Clause 5.1 of the prospectus is extracted hereunder :

Courses General S. C. (8%) S.T. (12%) Physically handicapped. Total

M.D./M.S.P.G: Courses.

Direct 72 7 11 1 91

In-service 74 7 11 1 93

Clause 11.2 of the prospectus provided that candidates securing less than 50% marks (40% marks in case of S. C./S. T.) in the entrance examination would not be considered for admission and their names would not be included in the merit list. On 30-7-1996 the result was published containing a list of candidates to have qualified in the entrance examination. All the seats allotted to direct candidates were filled up from the merit list but all the 93 seats ear-marked for in-service candidates, however, could not be filled up because of non-availability of eligible candidates securing the minimum prescribed marks. As a result, 37 seats (20 general and 17 reserved) have remained unfilled. During the pendency of these petitions, the Government in the Health and Family Welfare Department in letter No. 34095 dated 22-8-1996 communicated its decision that the seats of in-service quota which have remained vacant due to want of qualified in-service candidates are to be filled up by direct candidates on merit basis under different categories like general, S. C. S. T. and physically handicapped. It is necessary to extract the relevant portion of the said Government decision at this stage which reads as follows :

"xx xx xx Government after careful consideration have been pleased to decide that the number of in-service seats which are likely to fall vacant due to want of qualified in-service candidates may be filled up by direct candidates on merit basis. While filling up the vacant seats, it should be ensured that the number of seats that will fall vacant under different categories like General, Sch. Caste & Sch. Tribe and Physically Handicapped are filled up by direct candidates of the same categories. In case of shortage of candidates in the category of S. C. or S. T. inter-changeability may be followed as provided in Clause 5.6 of the prospectus.

xx xx xx xx"

In accordance with the aforesaid government decision, counselling was

conducted on 28-8-1996, 29-8-1996 and 30-8-1996 and direct candidates have been selected from the merit list under different categories like general, S. T. S. C. and Physically Handicapped to fill up the unfilled seats.

3. In the factual back-drop as indicated above, these petitions have come to be filed claiming different reliefs. O. J. C. No. 8789 of 1996 has been filed challenging the cut-off date i.e. "31-3-1996" fixed for fulfilling the eligibility requirements. In some of the petitions, in-service" candidates are the petitioners. They have challenged the validity of Clause 11.2 of the prospectus which prescribed 50% (40% for S. C. and S. T.) as qualifying marks. According to them, no qualifying marks should be prescribed for them and in any case the unfilled (vacant) in-service seats should be made available to them without insisting upon the minimum qualifying marks. Income of the petitions direct candidates are the petitioners. They want that the unfilled in-service seats should be - made available to them. In some of the petitions, grievance has been raised by direct general candidates that there should not be any reservation for S. C., S. T. and Physically Handicapped persons for the unfilled in service seats. In some of the petitions/selected in-service candidates are petitioners who pray that the 17 left-over reserved seats of their category should be thrown open to general candidates instead of carrying over the same to direct candidates as per the government decision dated 22-8-1996. There are petitions filed by direct candidates belonging to the reserved category. They have prayed for a direction to utilise the left over in-service reserved seats by selecting them on the basis of merit. Their grievance, however, stands mitigated in view of the decision of the government dated 22-8-1996 which was taken during the pendency of the petitions. In some of the petitions, allegation has been made that on account of wrong, confusing or ambiguous questions and/or incorrect model answers, the result of the examination was vitiated.

4. The State Government and its officials have filed counter affidavit and additional counter affidavit denying "all the allegations made by the petitioners.

5. On careful reading of pleadings of the Parties, the following principal questions emerge for consideration :

(i) Is the cut-off date 31-3-1996 fixed for fulfilling the eligibility, requirements invalid?

(ii) Is the minimum qualifying marks fixed for in-service candidates discriminatory?

(iii) Whether the unfilled seats now available from in-service quota should be filled up without insisting upon the cut-off marks?

(iv) Whether the unfilled seats-how available from in-service quota should be thrown open to consider direct candidates from waiting list without maintaining the reservation?

(v) Whether the result of the examination was vitiated due to some questions

being either wrong, confusing or ambiguous and/or incorrect model answers?

6. Let us now proceed to examine the above questions serially.

Question No. (i) : Is the cut-off date 31-3-1996 fixed for fulfilling the eligibility requirements invalid?

In O. J. C. No. 8789 of 1996, the relevant clause of the prospectus which prescribed that candidates were required to fulfil the eligibility requirements by 31-3-1996 is challenged as arbitrary by an in-service candidate. The note mentioned in Clause 5.2 of the prospectus defined the expression "in-service doctor" as one who at the time of application was in the employment of Government of Orissa/Government of India located in Orissa/Public Sector Undertakings of Government of Orissa or Government of India located in Orissa. Under Clause 7.5 he must have worked as Medical Officer for a period of 5 years under Government of Orissa or other specified authorities. It is an admitted case that by 31-3-1996, the petitioner had not served five years under any of the authorities as mentioned in Clause 7.5 of the prospectus. The Supreme Court in Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, observed as follows :

"The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming or_ the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark."

The Supreme Court in Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, vide paragraph 3.8 of the judgment held that mere error of the Government in fixing the cut-off date is not subject to judicial review. What is best is not always discernible. It may be that the choice of date has some odour to some people. It may be that it revised many attitudes but this is wholly irrelevant. Any other date might have been chosen. Hansaria, C. J. (as he then was) speaking for the Bench of this Court in Priyambada Debi Vs. State of Orissa and Another, following the ratio laid down by the apex Court referred to above upheld the cut-off date fixed for entitlement of pension payable under the Orissa Legislative Assembly Members Salaries, Allowances and Pension Act, 1954. In Union of India and Another Vs. Sudhir Kumar Jaiswal, Hansaria, J. on the basis of the aforesaid ratio upheld the cut-off date fixed for the purpose of eligibility of persons desirous of sitting in the All India competitive examination for recruitment to I. A. S. etc. The petitioner in the present case has not been able to indicate as to how the cut-off date fixed for fulfilling the eligibility requirements is arbitrary or whimsical. It is not in dispute that some date has to be fixed in the prospectus for fulfilling the eligibility requirements for consideration of admission to the medical courses. Having regard to the fact that the prospectus was approved by the Government Order No. 12049-H dated

21-3-1996, we are of the considered opinion that the cut-off date i.e. 31-3-1996 fixed for the purpose does not suffer from any invalidity. Thus, we cannot brand the choice of date as arbitrary or whimsical merely because by 31-3-1996, the petitioner had not fulfilled the eligibility requirements.

7. Question No. (ii) : Fixing of minimum qualifying marks for in-service candidates.

Clause 11.2 of the prospectus provided that candidates securing less than 50% marks (40% for S.C./S.T.) in the competitive entrance examination would not be considered for admission and their names would not be included in the merit list. It was contended on behalf of the in-service petitioners that they are a class by themselves who joined the services and were being posted in rural areas and they cannot be equated with direct candidates. According to them, they were forced to sit in the common entrance examination with fresh M. B. B. S. candidates who are in a better position to take the examination having left the college in recent past whereas in-service candidates are out of touch with the curricula and academic developments having joined service long back. It was also contended that most of the in-service candidates have been posted in rural areas and for the service rendered by them in rural areas, they should be given incentives. In short, they claim that all the 93 seats ear-marked for in-service candidates should be filled up by them on individual merit without insisting upon the minimum qualifying marks in the examination. We have considered this contention made on behalf of the in-service petitioners and have no hesitation to reject it being devoid of merit. As noted above, 93 seats were made available to in-service candidates whereas another 91 seats were ear-marked for direct candidates. This indicates that the in-service candidates were not to compete for 91 seats allotted to direct candidates but to compete for the 93 seats allotted to them.

8. The question regarding conferment of weightage for rendering rural service so far as, admission to Post Graduate Courses is, concerned came up for consideration before the. Supreme Court in Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad AIR 1986 SC 1877. At page 1888 of the report, the Supreme Court rejected the claim for such weightage by observing as follows :

"..... We must remember that what we are regulating are admissions to Post Graduate Courses and if we want to produce doctors who are M. D. or M. S., particular Surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. Moreover, we are extremely doubtful if a candidate who has rendered three years" rural service for the purpose of getting a weightage of 15% would go back to the rural area after he has got M. D. or M. S. Degree. We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to Post-Graduate Courses are concerned. Even if an undertaking is taken from such candidate that after obtaining M. D. or M. S. Degree he will settle down in a rural area and serve the rural masses, it would in all probability

serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc. it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of service to the community."

During the session 1985-86, for admission to the Post-graduate medical courses the State Government gave weightage to the in-service doctors for the service rendered by them in rural areas by way of incentives. A Full Bench of this Court in *Salil Kumar Nayak Vs. State of Orissa and Another*, opined as follows :

"Rural service or willingness to render rural service has no connection with the merit or excellence of a candidate for admission to the post-graduate medical courses. There is no guarantee that a person who has rendered rural service would be willing to render rural service after securing the post-graduate degree. A person who has rendered rural service need not necessarily be one who has rendered service with proficiency or satisfaction. Besides posting in rural area does not depend upon the volition of the party but upon the discretion of the employer. It depends upon chance. It is an accident. Should an accident of service or chance entitle a less meritorious student to secure admission beating and outstripping the more meritorious?

"We, are, therefore, of the view that the object being the selection of the meritorious and the deserving tilting of the scale against the more meritorious by providing for weightage for rural service or for having reached the target under the family planning programme, is arbitrary and unreasonable and invalid"

Accordingly the claim for weightage has no merit.

9. The next question that arises for consideration is whether fixing of 50% marks (40% for S.C. and S.T.) as the cut-off base for being considered for selection to admission in various Post-Graduate Courses (Medical) is invalid. This question is no more *res integra*. In *Dr. Ajay Kumar Agrawal and others Vs. State of U.P. and others*, there was challenge to the validity of 50% marks as qualifying base for admission to Post-Graduate Courses. In para 11 of the judgment, the Court after examining the question concluded that 50% cut-off base should be sustained in general interest.

In *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.,* , the Supreme Court in paragraph 9 of the judgment held as follows :

".....Thus it could be seen that this Court onsistently laid down the criteria for conducting entrance examination to the Post-Graduate degree and diploma courses in Medicine and the best among the talented candidates would be eligible for admission. 50% cut-off marks was also held to be valid to achieve excellence in post-graduate speciali-tity. Accordingly we uphold the prescription of 50% cut-off marks to general candidates and 40% to SCs and STs together with 1.65%

weightage of total marks i.e. 50 marks in total in entranee examination as constitutional and valid."

This point again cropped up for consideration in *Ombir Singh v. State of U.P.* AIR 1993 SC 975. In that case, there was also challenge to the rule fixing 50% marks (40% marks for S.C./S.T.) as minimum qualifying marks for admission to Post Graduate Medical Courses, The Court in paragraph 2 of the judgment, observed that the rule fixing 50% marks for the general category candidates and 40% marks for the S.C./ S.T. category candidates to be obtained at the entrance examination as minimum qualifying marks for being eligible for admission to the Post Graduate Courses (Medical) is valid. In view of what has been stated above, we unhesitatingly reject the contention of the in service petitioners that the qualifying base marks fixed under Clause 11.2 of the prospectus is discriminatory or invalid. We state that where the number of seats for admission to various Post Graduate Courses is limited and large number of candidates apply for admission to those courses, the eligibility criterion has to be fixed. Post Graduate Course in the medical faculty is a specialised study and qualified students should have access to the courses for the ultimate special good. The attempt, therefore, must always be to select the best and most meritorious students for admission to technical institutions and medical colleges and this result can be achieved only by following the cut-off base as fixed in the prospectus.

10. Question No. (iii) :

In view of our answer to question No. (ii) above, there is no merit in the third contention which is accordingly rejected,

11. Question No. (iv):

This is with regard to the mode of filling of 37 seats (including 17 reserved seats) which have now become available due to nonavailability of eligible in-service candidates.

As mentioned above, 37 seats from, in-service quota have fallen vacant. During the pendency of these petition, the Government on 22-8-1996 (vide Annexure4) decided to throw open these left over in-service seats to direct candidates for being considered on merit basis under different categories like general, S.C./S.T. and Physically Handicapped. In view of the said decision of the Government, the grievance of the direct candidates that those seats should be made available to them no more subsists. The contention of the direct general candidates however is that there should be no further reservation of seats for reserved candidates. According to them if further seats are reserved, the number of seats for reserved candidates would go up. We have considered this submission and on examination do not find any merits in it. The seats which have now remained unfilled from the in-service quoa as per the Government order dated 22-8-1996 (Annexure 4) are now added in the quota of direct candidates and are to be filled up as per the percentage of reservation of seats provided under Clause 5 of the prospectus. Under the said clause, percentage of reservation of seats for S.C., S.T. and

Physically Handicapped candidates has been fixed respectively at 8%, 12% and 1%. The same percentage having been maintained by the Government, there is no basis to hold that it has resulted in inflating seats for reserved candidates. The following three charts will demonstrate, how reservation has been maintained after carrying over the vacant seats :

PART-I

PG course with category. No. of seats available in the P.G. Course. No. of candidates qualified

Gen. SC ST PH Total Gen. SC ST PH Total

1 2 3 4 5 6 7 8 9 10 11

MD/MS PG Courses:-

i) Direct 72 7 11 1 91 329 24 14 2 369

ii) In service 74 7 11 1 93 54 2 - - 56

Total : 146 14 22 2 184 383 26 14 2 425

(8%) (12%) (1%)

PART-II

No. of seats likely to fall vacant for want of qualified candidates. Position of seats after implementation of Govt. decision dtd. 22-8-96.

Gen. S.C. S.T PH Total Gen. S.C. ST PH Total

12 13 14 15 16 17 18 19 20 21

- - - - - 92 12 22 2 128

20 5 11 1 37 54 2 - - 56

20 5 11 1 37 146 14 22 2 184

(8%) (12%) (1%)

PART-III

Category Gen. SC ST PH Total

22 23 24 25 26

i) Direct 109 7 11 1 128

ii) In-service 54 2 - - 56

Total : 163 9 11 1 184

(5%) (6%) (0.5%)

A bare perusal of the aforesaid charts would show that the Government decision

at Annexure-4 does not contravene any clause of the prospectus inasmuch as the unfilled seats have been made available to general, S.C. and S.T. candidates on merit basis according to the percentage of reservation provided in Clause 5.1 of the prospectus. The Government decision at Annexure-4 accordingly cannot be faulted with and we uphold it as valid. In the wake of the Government decision dated 22-8-1996 (Annexure-4), applications were filed in O.J.C. No. 8223 of 1996 praying that counselling for filling up the 17 reserved seats should not be held. On the said applications, an order was passed on 27-8-1996 which reads as follows :

"27-8-96. Heard.

Let the counselling take place as per the schedule but 17 (seventeen) seats of the in-service reserved category may not be filled up a"

In the counter-affidavit filed in the aforesaid case, the opposite parties have stated that counselling took place as scheduled and certain reserved candidates have been selected on merit, but they have not been able to take their admission because of the interim stay order. We now make it clear that since we upheld the Government decision, the aforesaid interim order stands vacated and the selected candidates are at liberty to take their admission.

12. Question No. (v) : Were some ques-tions set in the examination wrong etc.

In one of the petitions (O.J.C. No. 8215 of 1996), it was alleged that 27 questions were either wrong or confusing or ambiguous and the model answers were not correct and question Nos. 28 to 31 were of higher standard. Clause 9.2(b) of the prospectus stated that the competitive entrance examination would be of the standard of M.B.B.S. examination and would cover the subjects of M.B.B.S. course. Learned counsel for the petitioner could not satisfactorily explain to us as to how question Nos. 28 to 31 were of higher standard. We, therefore, in course of hearing made it clear that the allegation of the questions being of higher standard has no merit. With regard to the other allegation, learned Additional Government Advocate submitted that six questions viz. questions 1, 2, 9, 12, 16 and 24 were found to be wrong by the Moderating Committee and accordingly all the examinees were given full marks for those six questions. On the request of Shri C.A. Rao, learned counsel for the petitioner in O.J.C. No. 8215 of 1996, hearing of the cases was adjourned to 30-9-1996 to enable him to state clearly and specifically which questions were wrong/confusing/ambiguous. On that day, additional affidavit was filed by the petitioner indicating nine specific questions to be either wrong or confusing or ambiguous. The contention that those nine questions were either wrong/confusing/ambiguous was seriously disputed by the learned Additional Government Advocate. Counsel for both parties referred to some text books in support of their respective stand. Learned Additional Government Advocate, however, suggested that the matter could be examined by concerned Professors-cum-Heads of Departments of M.K..C.G. Medical College and Hospital, Berhampur who

were not involved in the process of selection, of candidates for the session in question. All the counsel appearing for the petitioners agreed with the suggestion. It was also agreed by the counsel for the petitioner and the learned Additional Government Advocate that the opinion of the Professors-cum-Heads of the Departments would be binding on the parties and they would not question the same in any form whatsoever. This suggestion being fair and wholesome, we referred the following nine questions to the respective Professors-cum-Heads of the Department of M.K.C.G. Medical College and Hospital Berhampur who after examining the questions and the model answers rendered their views on 9-10-1996. The following are those nine questions with the views of the respective professors-cum-Heads of the Departments :

Questions Views of the Professors

Obstetrics and Gynaecology

Q. No. 48.

All the following are symptoms of premenstrual tension- EXCEPT

Correct

- (A) Bloated feeling
- (B) Fullness in the head
- (C) Swelling in the breast
- (D) Severe pain in lower abdomen.

Question No. 108 (Part- II)

Spasmodic dysmenorrhoea is due to Correct

- (A) Submucous fibroid
- (B) Subserous fibroid
- (C) Intra Mural fibroid
- (D) Myomatous polypi

S.P.M.

Question No. 96 (Part- I)

Which proportional mortality indicator when increased, the health status is better.

Correct.

- (A) Under five proportional mortality rate
- (B) Proportional mortality for specific diseases.
- (C) Proportional mortality for aged 50 years.

(D)

Proportional mortality rate of disabled aged 40-50 years.

F. M.P.

Question No. 101 (Part-I)

Colour of Postmortem lividity is intensely pink in case of

Correct.

(A) Extreme cold

(B) Starvation

(C) Potassium Chlorate poisoning

(D) Carbon Monoxide poisoning.

Microbiology

Question No. 13 (Part-I)

Which of the following forms spores?

There is nothing wrong in the question. The model answer is (B).

(A) Mycobacteria

(B) Actinomycetes

(C) Corynebacteria

(D) Clostridia

Biochemistry

Question No. 21 (Part-I)

Nuclear Magnetic Resonance Spectroscopy is Correct.

(A) Diffraction

(B) Fluorescent

(C) Emission

(D) Absorption

Anatomy

Question No. 90 (Part-I)

The part of the male urethra which is least distensible is

Both are found to be incorrect and it was suggested by the concerned Professor to give benefit of four marks for each question to the candidates. The view of the

Professor is that both answers (B) and (D) of question no. 90 are correct.

(A) Prostatic anous

(B) Membranous

(C) Spongy

(D) External Ostium

Question No. 150 (Part-I)

Mucous Cells are NOT encountered in the

The model answer is (B). With regard to question no. 150, the most appropriate answer is (C). But in the model answer it is indicated to be (A).

(A) Stomach

(B) Duodenum

(C) Gall Bladder

(D) Oesophagus

Physiology

Question No. 59 (Part-I)

Which one of the following parts of the internal capsule contains among others the cortico spinal fibres?

According to the Professor the correct answer is (A), but the model answer as indicated is (C).

(A) Genu

(B) Anterior Limb

(C) Lentiform part

(D) Retro Lentiform part.

It would be seen from the aforesaid that the allegation regarding the questions being wrong, confusing or ambiguous has to be rejected in respect of six questions and we order accordingly. With regard to question Nos. 59, 90 and 150, the views of the respective Professors are that the model answers are not absolutely correct.

13. In view of the order dated 30-9-1996 in O.J.C. No. 8215 of 1996, the opinion rendered by the concerned Professors on the nine questions referred to them is hereby accepted. As model answers in respect of question numbers 59, 90 and 150 are found to be "not absolutely correct" the examinees are entitled to benefit of 12 more marks (each question carried four marks). It was contended on behalf of the petitioners that having regard to the opinion of the concerned

Professors on the three questions (*supra*), the merit list has to be recast sifter re-evaluating the answer papers by taking into account question Nos. 59, 90 and 150. We have given our anxious consideration to this aspect of the submission and are of the considered opinion that it would not be expedient in the interest of justice at this stage to give direction to redraw the merit list by re-evaluating the answer papers. Candidates who have already taken their admission after being selected on the basis of merit list are not parties in these petitions. Any direction, as suggested by the learned counsel for the petitioners at this stage, would not only create confusion but also prejudice them who have already get themselves admitted into different courses. However, the petitioners cannot be denied the benefit flowing from the opinion of the Professors in respect of question Nos. 59, 90 and 150. This is, however, subject to the following conditions :

(i) Such of the petitioners who failed to turn up earlier at the counselling venue as required by Clause 12.2 of the prospectus are not entitled to any relief. The opposite parties will pass appropriate orders in respect of such petitioners on verification of records.

(ii) The opposite parties will revalue the answer papers of the other petitioners keeping in view the opinion of the Professors on question Nos. 59, 90 and 150. If any of the petitioners has already got requisite marks for the above three questions, there would be no further addition of marks. The opposite parties will accordingly re-draw the merit list of the petitioners and issue necessary intimation for their admission with utmost expedition. If necessary fresh re-counselling may be made.

(iii) In order to lessen the burden, we make it clear that answer scripts of the petitioners who got abnormally low marks will not be revalued because they will not get any relief at all even if 12 marks are added to their total marks. We order so because it was stated on behalf of the opposite parties that the marks obtained by the last candidates respectively of the direct (general) category, direct (reserved category), in-service (general) category and in-service (reserved) category were 659, 519, 604 and 524.

With the aforesaid directions and observations, petitions are disposed of.

14. In course of hearing of the case, it was submitted that on account of the delay, the candidates might suffer on account of shortage of attendance and may lag behind the candidates already admitted. We hope and trust that if the authorities of Universities are approached in this regard, they will duly consider the difficulties and take appropriate decision in the matter.

15. Before parting with the case, we may note that as to what should be the multiple choice objective type questions had earlier engaged the attention of this Court. R.C. Patnaik, J. (as he then was) speaking for the Bench in *Priyadarshini Acharya v. State of Orissa* represented by the Secretary, Department of Health, (1991) 1 OLR 514, in paragraph 8 of the judgment sounded a note of caution. We may profitably extract the same here :

"8. A multiple choice objective test is different from the traditional system of examination which requires the candidates to give essay type answers. In a multiple choice objective test, one of the answers indicated is the correct or most appropriately correct answer and the rest are either wholly incorrect, or incorrect though appear to be correct. The answers to questions as indicated must not carry two correct answers enabling the examiner to select one as the key answer. That would introduce an element of gamble, for, even if the candidate indicates the other correct answer which is not the key answer chosen, he does not get any credit for the same. The principle that the views of the examiner could only be assailed if the answer is clearly demonstrated to be wrong, does not apply to such a situation. The candidate was not taking part in a lottery like some crossword puzzles in newspapers and periodicals announcing prizes for the answers which tally with those selected by the organisers. There it is permissible that unless the answer indicated by the participant tallies with the answer selected by the organisers, he is not entitled to a prize though his may be the correct one because there were other correct clues and the one indicated by him did not tally with the selected one. What is permissible in a lottery is not permissible in a text where performance of candidates is judged. One of the answers indicated should be the correct one and the rest are either incorrect or though appear to be correct but not correct. We with respect cannot subscribe to the view taken in *Kumari Anjali Saxena Vs. The Chairman, Professional Examination Board, Bhopal and Others*, where it has been observed that the key answers selected by the committee has to be accepted as the correct answer for the purpose of valuation unless it is shown to be entirely incorrect. The other three answers by some process of reasoning may also be shown as the possible answers to the question and those may not be wholly incorrect. Nevertheless, under the scheme of the examination, the key answer cannot be rejected unless it is shown to be entirely incorrect. We are of the view that the examiner and the examining body should not include in the answers indicated two correct answers, for, what can explain the grievance of the candidate when there are two correct answers amongst the four answers indicated, and if despite having indicated the correct answer, he does not get any credit because the other answer, not the one indicated by him has been chosen by the examiner as the correct answer, it would be unreasonable. Such an element of gamble in selection of candidates by an examination should be held impermissible and be eschewed."

The same view was reiterated by this Court subsequently in *Raghunath Pradhan v. State of Orissa* represented by the Secretary to Government. Health and Family Welfare Department, Bhubaneswar (1992) 2 OLR 317 and *Chandan Mishra v. Convener, M.B.B.S./ B.D.S. Selection Board* 77 (1994) CLT 624.

S.C. Datta, J.

16. I agree.