

(2009) 11 OHC CK 0011

In the Orissa High Court

Case No : Writ Petition (C) No. 8464 of 2008

Dr. Ipsita Mishra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 1 ILR (Ori) 339 : (2010) 1 OLR 154 Supp

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

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—In all the aforesaid three writ petitions, the Petitioners have sought for a direction for quashing Clause-20 of the prospectus published for selection of candidates for Post Graduate (Medical) Course in the three Government Medical Colleges of the State for the year 2007.

In W.P. (C) No. 18001 of 2008, along with the prospectus for the year 2007, Clause-20 of the prospectus for the year 2008 is also sought to be quashed.

The Petitioners in all the writ petitions after successfully completing their M.B.B.S. Course being selected to take admission as direct candidates to the P.G. (Medical) Course, are continuing in the said course as direct candidates and have already completed more than one and half years in the said course. They have challenged Clause - 20 of the prospectus, as stated above, for the years 2007 as well as 2008 on the ground that the conditions imposed therein with regard to grant of P.G. Degree pass certificate is arbitrary, unreasonable and discriminatory being violative of Article 14 of the Constitution. Clause - 20 of the prospectus of the years 2007 and 2008, which are identical, is quoted hereunder: -

20. POST P.G. MANDATORY POSTING OF CANDIDATES:

20.1. After successful completion of three year course and passing the

examination in the concern subject the in-service candidates shall have to work for a period of two years in KBK/Tribal areas. Candidates who are not in the service (Direct candidate) will be posted on contractual basis depending on the vacancy available for a period of two years in KBK/Tribal areas. In case the required numbers of vacancies are not available in KBK/Tribal district, in-service candidates will be posted to KBK/Tribal areas on priority. The remaining candidates, i.e. surplus in-service as well as direct candidates if any will be posted to the rural areas of Non-KBK/Tribal districts. (Vide Resolution No. ME-II-IXM-155/2005-869 dated 12.1.2006). This will be considered as Post PG Mandatory Service or PPMS.

20.2. They will be allotted their place of posting with the concerned C.D.M. Os in accordance of the principles laid down by authorities. The candidates are to report to the concerned C.D.M. Os within 10 days after the publication of their result.

20.3. The candidates admitted to the non-clinical (Anatomy, Physiology and Biochemistry) and Para-clinical (Pharmacology) and FMT) disciplines must work for two year in the concerned disciplines in the Medical Colleges with consolidated salaries/regular pay at par with other clinical disciplines and the period will be treated equivalent to the two year post PG mandatory peripheral service or as decided by the Govt. from time to time.

20.4. The Direct candidates not in service will be appointed on contractual basis for two years and will be paid consolidated pay as will be decided by the Government. The period of their service shall not in any way count towards seniority and other service benefits later. For Direct Candidates already in Government service as well as in-service candidates, the two-year mandatory service in identified areas will be counted as part of their regular service.

20.5. The candidate who has not joined the Two-years PPMS or discontinued before completion of two years PPMS shall not be eligible for getting PG Degree pass certificate either Provisional or Original or CLC/Conduct Certificates from the concern College or University. In addition to that the direct candidate who has not joined or discontinued after joining PPMS is liable to refund the entire pay/ consolidated pay received by him/her during the PG course.

20.6 Provision of Post PG mandatory service will not apply to the candidates who are admitted under the All India quota.

20.7. On completion of two-years PPMS, the candidates will obtain certificate from the C.D.M. Os/Head of Department of Medical Colleges indicating that they have rendered uninterrupted service for the period indicating that they have not availed any kind of leave other than CL (15 days at the maximum) and Earned Leave (30 days at the maximum). In case the period of earned leave exceed 60 days during two years of PPMS, the term of mandatory service shall be extended co-terminus with the leave availed for the period beyond 60 days.

20.8. The Principals of Medical Colleges will not issue CLC, conduct Certificate and will also write to the concerned University to withhold his/her result until candidates complete the two year PPMS

2. Mr. Dora, learned Counsel appearing for the Petitioners in W.P. (C) No. 18001 of 2008 as well as Mr. R.K. Mohanty, learned Counsel appearing for the Petitioners in W.P. (C) No. 8464 of 2008 contended that the conditions imposed in the prospectus with regard to rendering of two years Post P.G. Mandatory Service as a condition precedent for grant of P.G. Degree Pass Certificate suffers from the vice of discrimination and arbitrariness for violating of the constitutional mandate enshrined in Article 14 of the Constitution, inasmuch as, the said action of the State Government is a surrogate method of imposing forced labour which is otherwise not permissible in a democratic constitutional set up. It was further contended on behalf of the Petitioners that the stipulations with regard to Post P.G. Mandatory Service have no nexus with the aims and objectives sought to be achieved and if such a rider is imposed by the State Government in ensuring two years Post P.G. Mandatory service in either backward districts or rural areas in return of imparting P.G. Education, such restriction will act as a deterrent to the object sought to be achieved, i.e., to produce Specialists doctor in the State by imparting P.G. (Medical) Course, as the candidates may avoid to take admission to P.G. (Medical) Course on that ground. It was further contended that a condition cannot be imposed in a prospectus laying down the principles to be adopted for giving admission to a particular course that if an act is not performed by the successful candidates, who are given admission to such course after completion of such course, their degree will be withheld.

3. Mr. Dora, learned Counsel further contended that since degrees are awarded by the University, any candidate successfully completing any course cannot be deprived from getting such degree from the University at the behest of the State.

4. Though no counter affidavit has been filed by the State, to the writ petitions, traversing the grounds set forth by the Petitioners, nevertheless, learned Counsel for the State, during hearing, contended that since there are dearth of Specialists Doctors, whose services are necessary in the "backward districts of the State and the rural areas", such a condition has been imposed for ensuring that Special medical services are made available to the residents/inhabitants of such backward districts and rural areas. Therefore, learned Counsel for the State submits that the objective being to provide such medical service to the people of the State, who are being deprived from the service of Specialists Doctor, no fault can be found with the condition imposed in Clause -20 of the prospectus for the years 2007 and 2008. According to him, no discrimination whatsoever can be attributed to the action of the State for imposing the condition as has been done in Clause - 20 of the prospectus.

5. It would be appropriate to quote the eligibility criteria fixed in the prospectus for the All India Entrance Test to take admission to P.G. (Medical) Course and such criteria given in the impugned prospectus meant for the State candidates. It

would be further appropriate to state here that 50% of the seats for the P.G. (Medical) Course in the three Government Medical Colleges of the State are meant for State quota candidates and the rest 50% of the seats are meant for All India Quota. The relevant clause - 4 of the eligibility criteria in the prospectus for All India Entrance Examination for MD/M.S/PG Diploma and MDS Courses, 2007 is as follows:

4. ELIGIBILITY CRITERIA.

(a) The candidate must be an Indian National.

(b) A candidate, who holds M.B.B.S. degree from a recognized medical college (Appendix-III) or a foreign medical degree included in the Schedules to the Indian Medical Council Act, 1956 and who has obtained full registration either from the Medical Council of India or any of the State Medical Councils after completing compulsory rotating internship shall be eligible to take this examination.

(c) The candidates who have obtained their MBBS degree from the Medical Colleges which are not recognized by Medical Council of India shall not be eligible.

(d) However, a candidate who, after passing the final qualifying examination (MBBS or the foreign medical degree recognized by MCI), is undergoing 12-month compulsory rotating internship/practical training and is likely to complete the same by 31st March, 2007 can take up this examination, but he/she shall not be eligible for admission unless he/she has completed the compulsory rotating internship and obtained full registration on or before 31st March, 2007 or the candidate produces a certificate from the head of Institution that he/she will be completing internship by 31st March, 2007.

(e) No condonation of Compulsory Rotating Internship shall be accepted unless approved by the Medical Council of India along with necessary proof of the approval of the Medical Council of India. The condonation of compulsory rotating internship shall be restricted to the period up to 31st March, 2007 and not beyond that date.

(f) Those candidates who are undergoing 12-month Compulsory Rotating Internship and whose Internship is likely to be completed on or before 31st March, 2007, shall have to submit a certificate from the Principal/Dean of the college regarding the likely date of completion of internship in the proforma provided in the Non-Scannable Application Form, failing which their applications will be summarily rejected.

(g) The cut off dates for the recognition of the Medical Colleges and Dental Colleges, for the year 2007 will be 31st October, 2006. The colleges recognized after this date will not be considered.

(h) Registration with M.C.I./D.C.I./State Medical Council/State Dental Council is necessary and its documentary proof should be furnished at the time of

counseling.

(i) Some of the Universities are having regulations that candidates who are already pursuing the PG Course in their University or in another University are not eligible for admission till they complete the course. The candidates who are already pursuing PG Courses either through all India Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility conditions of that University in this regard. DGHS shall not be responsible if such candidates are refused admission. Such candidates may opt for the subject and the college at their own risk and cost.

Similarly, the relevant clause prescribing the eligibility criteria for State quota candidates is given at Clause - 5 of the prospectus for selection of candidates for Post Graduate (Medical) Courses in the Government Medical Colleges of the State for the year 2007, which is as follows:

5. ELIGIBILITY CRITERIA OF CANDIDATES:

The candidate must be:

5.1. A permanent resident of Orissa

Or

5.2. Is the Son/Daughter/Spouse of any one of the following category:

5.2.1. Employees of Government of Orissa.

5.2.2. All India Services belonging to Orissa Cadre serving within or outside Orissa.

5.2.3. Public Sector undertaking of either State of Orissa or Government of India located in Orissa.

5.2.4: Defence Services personnel stationed in Orissa.

5.2.5. Employees of Government of India serving in Orissa at the time of application provided the candidate has passed the qualifying examination from any one of the three Government Medical College of Orissa

Or

5.3. Who is permanent resident of Orissa but graduated from any recognized medical College outside the State. He/She is required to furnish a certificate of permanent residence of Orissa from a Revenue Officer not below the rank of Tehsildar of the area concerned (in Form No. III, in Appendix III-B).

OR

5.4. Belonging to other State who has completed their M.B.B.S. studies in any one of the three Government Medical Colleges of the State of Orissa;

5.5. At the time of application, the candidate:

5.5.1 Must have passed M.B.B.S. Degree Examination from an institution recognized by Medical council of India.

5.5.2 Must have completed one year of compulsory rotating internship/housemanship by 31st December, 2006.

5.5.3 Must have permanently registered himself/herself with State/Central Council of Medical Registration.

5.6. Candidates who have completed P.G. (Medical) Course or undergoing P.G. (Medical) course in a particular subject in any of the Medical College/Institution of Orissa shall not be eligible to apply for the P.G. (Medical) Course in subsequent years.

5.7. Applicants who have taken admission in P.G. Medical Course in any of the three Medical Colleges of Orissa but have not joined or have discontinued after joining, shall not be eligible to apply for P.G. (Medical) Course in subsequent three years.

6. From the above, it is seen that there is no material distinction between the eligibility criteria for the All India quota and the State quota. Upon being found suitable and selected in either of the tests, such selected candidates are given admission to the seats for P.G. (Medical) Course in the three Government Medical Colleges of the State. Thus, after being admitted to such seats on similar eligibility criteria, there cannot be any distinction between the students holding a State seat and the students holding All India Quota seats. Imposing the condition for candidates admitted under the State quota with regard to Post P.G. (Medical) Service in Clause-20 of the prospectus, more specifically, with regard to non-grant of P.G. Degree Certificates to such candidates, unless they complete the Post P.G. Mandatory Service is a restriction imposed by the State on the candidates who took admission under the State Quota. The question, therefore, arises as to whether such restriction amounts to an arbitrary and unfair action on the part of the State and violates the mandate of Article 14 of the Constitution of India.

7. In a series of decisions, the Supreme Court has repeatedly dealt with the question as to whether the action of the State amounts to discrimination and violates Article 14 of the Constitution on various set of facts.

8. It is trite law that every action of the State must be informed by reasons and should be free from arbitrariness which is the very essence of rule of law and its bare minimum requirement. Any decision taken in an arbitrary manner contradicts the principle of legitimate expectation relating to procedural fairness in decision making. Such action also amounts to denial of administrative fairness, which is the constitutional anathema (See *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another*,)

Every action of the State or its instrumentalities should not only be fair, legitimate and above-board, but should be without any affection or aversion, impression of bias and favouritism. In *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, a Constitution Bench of the Supreme Court observed as follows:

In the context, it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

9. Applying the law as stated above to the facts of the present case, it would be found that by drawing a distinction between the candidates admitted to P.G. (Medical) Course under the State Quota and the candidates who were admitted to the said course in the All India Quota, though after admission, they constituted a homogenous class of students prosecuting their studies in the P.G. Medical Course and withholding issuance of certificates of P.G. Degree Certificates in case of the candidates who are admitted under the State Quota, whereas awarding such certificates to the candidates, who are admitted under the All India Quota amounts to treating equals as unequals. It definitely results in a situation where the candidates under the All India Quota after obtaining such certificate get the opportunity to prosecute Post P.G. Speciality Courses, immediately, but the candidates admitted under the State Quota have to wait for two years more for obtaining such certificates and prosecuting higher studies till they complete the Post P.G., Mandatory service as contemplated under Clause-20 of the prospectus.

10. It is, therefore, clear that such action on the part of the State is arbitrary and unfair and does not stand the test of administrative fairness. Such action is clearly violative of Article 14 of the Constitution of India, which calls to be quashed. Coupled with the above, it is also found in the instant case that such a procedure was not adopted prior to the year 2007 by the State Government, where only in respect of in-service candidates Pre-P.G. service in KBK/Tribal Districts were insisted upon. Action of the State Government does not also disclose any reason for adopting Clause-20, as it stands in the prospectus of the years 2007 and 2008 which clause has been challenged by the Petitioners. The discrimination is further evident on a conjoint reading of Clauses - 20.1 and 20.3, which results in a situation where candidates prosecuting P.G. (Medical) Classes in non-clinical subjects are not required to render their service in KBK/Tribal areas. The said clause-20 of the prospectus of P.G. (Medical) Selection, 2007 as well as 2008 is accordingly quashed.

11. The writ petitions are allowed, but, in the circumstances, without any cost.