
(1986) 05 OHC CK 0019

In the Orissa High Court

Case No : Original Journ. Case No's. 2726, 2770 and etc. etc. of 1985

Dr. Leena Das and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-05-1986

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1986 Ori 277 : (1986) 2 OLR 103

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : S.K. Dash, S.B. Jena, D. Panda, K.B. Panda, R. Mohanty, I. Mohanty, P. Mohanty, G.A.R. Dora, B.K. Patnaik, S.C. Dash, D.P. Sarangi, D.P. Parija, J. Das, B. Das, B.S. Tripathy, B. Pal and G. Misra, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Behera, J.—The ten petitioners in O. J. C. No. 2726 of 1985 claim to have passed the annual M. B. B. S. Examination from the Berhampur University in October, 1984 and completed their compulsory rotating internship by the end of October, 1985. O. J. C. No. 2770 of 1985 has been filed by twenty-one petitioners who claim to have passed the annual M. B. B. S. Examination from the Utkal University and completed compulsory rotating internship by December 16, 1985. O. J. C. No. 2802 of 1985 has been filed by five petitioners who claim to have passed the annual M. B. B. S. Examination from the Berhampur University and completed their compulsory rotating internship by November 4, 1985. The sole petitioner in O. J. C. No. 2831 of 1985 claims to have passed the M. B. B. S. examination from the Utkal University and completed compulsory rotating internship by the end of October, 1985. Eight petitioners have claimed to have passed the M. B. B. S. Examination from the Utkal University and completed their compulsory rotating internship by December 14, 1985, in O. J. C. No. 2891 of 1985. In O. J. C. No. 2893 of 1985, the four petitioners claim to have passed the final M. B. B. S. Examination from the Utkal University and completed

compulsory rotating internship by December 14/18, 1985. O. J. C. No. 2903 of 1985 has been filed by three petitioners who claim to have passed the M. B. B. S. Examination from the Utkal University and completed compulsory rotating internship by December 14, 1985. O. J. C. No. 2904 of 1985 has been filed by the sole petitioner who claims to have passed M. B. B. S. Examination from the Berhampur University in June, 1983. His application has been rejected for his failure to produce a certificate to the effect that his father had been in continuous service in Orissa for a period of not less than seven years under the Railways. In all the cases, the petitioners challenge the choice of the cut-off date, viz., the 30th June, 1985, fixed in the Prospectus, requiring the candidates to fulfil the eligibility requirements for admission into the R. H. S. assignment/Post-Graduate course and higher specialities in the three medical colleges of Orissa for the year 1985-86. The petitioners allege that the choice of the date is arbitrary and capricious and without any rational basis.

2. It has been contended on behalf of the opposite parties that the petitioners were ineligible to be considered on account of the conditions in the Prospectus and therefore, their cases were not considered and in order to bring harmony and keeping in view the fact that examinations are conducted by the three Universities of the State at different times, the cut-off date has been fixed reasonably and it cannot be characterised as illegal, unreasonable, irrational or arbitrary.

3. We have heard the learned counsel for the petitioners, Mr. R. K. Patra, the learned Additional Government Advocate, on behalf of the opposite parties and the learned counsel for the intervenors in O.J.C. No. 2891 of 1985 who would be affected in the event of the success of the writ-petitioners.

4. It may be pointed out at the outset that apart from other considerations, the petitioners' candidature in O.J.C. No. 2904 of 1985 was not accepted as he was considered to be disqualified under Clause 8.1,2 of the Prospectus. Though the son of a Central Government Employee posted in Orissa, he did not qualify as his father did not belong to "All India Services belonging to Orissa cadre". The petitioner was ineligible to be considered in view of Clause 8.1.2 of the Prospectus and on this ground alone, the writ application must fail.

5. The sole common question which has arisen in the writ applications and canvassed before us on behalf of the petitioners is with regard to the legality of the cut-off date, viz., the 30th June, 1985, for the candidates to have acquired the necessary qualifications for admission to the Post-Graduate Courses in the medical colleges of the State.

6. While it is true, as has been observed by the Supreme Court in AIR 1968 SC 1012, *Minor P. Rajendran v. State of Madras*, that academic excellence should be the primary consideration while admitting candidates into the higher courses in the medical colleges so that the best available talents would get preference over the less talented persons, we do not see justifiable reasons, for the reasons to

follow, to hold that the authorities have acted illegally and arbitrarily in fixing the cut-off date to be 30th June, 1985.

7. As has been stated in the counter-affidavits put in by the opposite parties and submitted on their behalf at the hearing, every year, Prospectus for selection for admission into the Post-Graduate Courses in the three medical colleges of the State is published by the Convenor of the Post-Graduate Selection Committee. The cut-off date is a continuing provision in the Prospectus for each year and has not been introduced for the first time for the year 1985-86. There are three medical colleges in the State, namely, the S. C. B. Medical College, Cuttack under the Utkal University, the M. K. C. G. Medical College, Berhampur, under the Berhampur University and the V. S. S. Medical College, Burla, under the Sambalpur University. The admission to the R. H. S. Course is done by the State Government through a competitive examination as per the Prospectus and the candidates are required to have the qualification by the 30th of June of the year prior to the entrance examination. The cutoff date has been fixed in order to give equal opportunity to all the persons similarly placed. The admission is made but once in a year and therefore, the cut-off date is essential and purposeful and would give equal opportunity to the candidates coming from different Universities. It has been brought to our notice that this practice is being followed by the All India Institute of Medical Sciences. A competitive Examination for selection is being held in this State in accordance with the instructions issued by the Indian Medical Council. Taking into consideration the variations in the dates of holding examinations in the different medical colleges, the cut-off date has been fixed.

8. Inviting our attention to the observations of the Supreme Court in *Union of India (UOI) and Another Vs. Parameswaran Match Works and Others*, *D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another*, and *Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another*, *The Principal, King George's Medical College, Lucknow v. Dr. Vishan Kumar Agarwal*, it has been submitted on behalf of the opposite parties and the intervenors that a cut-off date can legally be fixed and the High Court is not to interfere when a reasonable date has been fixed by which time, the candidates are required to have the qualifications for admission.

9. The same question was raised and considered by a Bench of this Court with one of us (B. K. Behera, J.) in the case of *Dr. Sanjukta Panda and Others Vs. State of Orissa and Others*, and it was held :-

"There is also no force behind the contention that 30-6-1981 should not have been fixed as the date by which Rotating Internship should have been completed. As it appears, in the normal course those who passed the regular M.B.B.S. examination of 1980 should have completed the compulsory Rotating Internship by 30-6-1981. This feature is admitted by two of the petitioners. The petitioners have come forward with an explanation as to why they could not complete the internship before 30-6-1981. We see no objection to the authorities fixing

30-6-1981 as the appointed date."

The learned counsel for the petitioners have invited our attention to the decision of this Court in O.J.C. No. 1902 of 1984 (reported in AIR 1985 NOC 242) B. B. Misra v. State, wherein a Bench of this Court with one of us R. C. Patnaik, J.) has held keeping in view the clauses of the Prospectus which were not exactly similar to those for the year 1985-86. that there was no rationale for the cut-off date. In O.J.C. No. 1945 of 1984 Dr. Purna Chandra Das v. State of Orissa. decided on November 28. 1984, this Bench has held :

"Eligibility as to age. experience etc, is determined with reference to a cut off date. A cut-off date cannot satisfy all. In some cases it may cause hardship and may also appear to be arbitrary. But the date so fixed, if it is not shown to have been fixed with oblique motive, cannot be invalidated. Usually admission to the course commences from July. Hence the cut-off date in this case was fixed as June 30, which is also the last date of the first half of the year. No doubt, having regard to the facts of this case, a later date could have been beneficial to some candidates especially when the last date for submission of application form was August 25. 1984. But that by itself would not render the date capricious."

10. To fix a date by which the minimum qualifications are to be acquired by the candidates for admission into the Post-Graduate Course is a matter within the jurisdiction of the authorities and such action can be interfered with only if this Court comes to the definite conclusion that it is arbitrary or that it has no rational basis. In view of the averments made in the counter-affidavits put in by the opposite parties and upon hearing the learned counsel for both the sides, it would not be reasonable and proper to hold that the cut-off date for the year of admission has been fixed arbitrarily without any rational basis. We find, on the other hand, that the cut-off date has been fixed taking into consideration the academic year and the commencement of the academic session. Merely because of the fact that in some year, the courses begin late or for some unforeseen circumstances, there is delay in the commencement of a particular course, it cannot be said that the cut-off date is irrational or arbitrary. Fixing of the cut-off date is justified taking into consideration all the relevant factors.

11. For the foregoing reasons, we would reject the contention raised at the Bar on behalf of the petitioners that the cut-off date is arbitrary, irrational, illegal and capricious.

12. In the result, the writ applications fail and are dismissed, leaving the parties to the proceedings to bear their own costs. Interim directions have been made allowing the petitioners in some of the writ applications to sit at the examinations and if selected, to get themselves admitted to the Post-Graduate Course provisionally, subject to the petitioners' furnishing undertakings that in the event of the dismissals of the writ applications, they would unconditionally withdraw from the institutions irrespective of the stages in the Post-Graduate Course. In view of the dismissals of the writ applications, no equity can be claimed by any of

the writ-petitioners.

R.C. Patnaik, J.

13. Fettered as I am by precedent I agree but unwillingly. Why?

14. There are four universities in this State. The Government maintains three Medical Colleges. Each year an annual exercise is done to select the most meritorious candidates for admission to the M.B. B. S., P. G. and R. H. S. Courses. Certain guidelines are prescribed to adjudge excellence and eligibility.

For admission to P. G. Courses a cut off date is prescribed by and with reference to which the candidate should have acquired eligibility, i.e., by completion of a prescribed period of service or of R. H. S. Course. It is beyond cavil that the cut off date has to be reasonably and not arbitrarily fixed. In other words, the decision fixing the cut off date should be just and fair. To whom? The candidates of course. Not theoretically just and fair but realistically. Then what should be the attitude and approach? A pragmatic approach and an empathic attitude.

15. How is 30-6-85 as the cut off date being justified in this case? Firstly, the date is in vogue since last 5 years. Secondly, under the University Statutes the academic session commences from 1st June, of the year. Hence. 30th of June has rational connexion. Thirdly, it is a policy decision of Government. The last in my humble view is no answer because that is begging the question, the reasonableness of which we are called upon to decide.

The first argument does not appear to me sound. Solely and merely because a cut off date, i.e., 30th June, is in vogue for half a decade cannot be valid ground for clinging to it howsoever inappropriate the date may be to the changed situation. A rigid adherence by shutting our eyes to the altered circumstances might be productive of injustice. It is common knowledge that prescription as to time of commencement of session gets homage on the Statute Book. It is not in accord with reality. The real situation is wholly different. Admissions to the classes take place months after the commencement of the session. Results of the qualifying examination are not sometimes published until months after the commencement of the academic session. The classes begin around the middle of the session. Should not the problems of the students or candidates for admission to the universities and colleges and the circumstances be taken into account?

Let me give an illustration :

Results of the High School Certificate examination conducted by the Board are published before 30th of June every year. Against that background applications are invited from candidates for admission to colleges in July. Suppose in a particular year for some reason or the other, the results are not published till end of August. Can the authorities still follow the old practice of inviting applications in June or July? What would be the consequence? There would be no admission to the colleges that year. Can it be justified pleading that since the practice of inviting applications in June or July is in vogue for years and the session

commences from 1st June of the year, that should be adhered to irrespective of consequences? The decision has to fit in with realities so that as far as possible injustice is not done. I do not say thereby that it should be a universal principle, absolute in its terms. Suppose there are scores of universities without any uniformity as to the date of publication of results, it may not be possible to accommodate all. The same cut off date may be rigidly adhered to year after year. For example, in cases of admission to courses on all India basis, students from scores of universities are applicants. It may not be practicable in such a situation to adjust and accommodate all.

But where the universities which offer candidates are only three and it is possible to accommodate by a slight adjustment, a rigid adherence to a cut off date which was fixed in a different situation, on different facts, and against a different background would, in my humble opinion, be unfair. Again I give an illustration : This year admission to the P. G. Courses of the Medical Colleges was even continuing in April, 1986, i.e., till the fag end of the statutory academic session. The first batch was admitted well after 9 months of the commencement of the session. Then what is the logic behind the rigid adherence to a cut off date which, as urged by the opposite parties, was fixed with reference to the date of commencement of the session, which is 1st June, of the year. If the object of rule of law is just and fair treatment. I fail to see how exclusion of students, some of whom have brilliant career, by adhering to a cut off date which had been fixed years before, is dispensation of justice. When the last date of the application was 15-11-85, how is it just and fair to exclude those who were eligible at least by the date of application. It is unnecessary to dilate any further.

16. Therefore, if, I were free to take an independent view, I would have held that the cut off date 30th June is not reasonable on the facts and in the circumstances. But as I have said. I am bound by precedent : Dr. Sanjukta Panda and Others Vs. State of Orissa and Others, and O. J. C. No. 1945/84 (supra). The justification for the articulation aforesaid is a hopeful wish that perhaps some day in future an administrator might take a pragmatic approach and decide the cut-off date realistically and with empathy.