
(2013) 09 OHC CK 0037
In the Orissa High Court
Case No : Writ Petition (C) No. 19825 of 2013

Dr. Manoj Kumar

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 117 CLT 560 : (2014) 1 OLR 137

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : G.A.R. Dora, G.R. Dora, J.K. Lenka and P.K. Behera, for the Appellant; R.C. Mohanty for O.Ps. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ application has been filed with a prayer to quash Clause-F of the Guidelines for allotment of candidates for Post-Graduate (Medical) Courses in the Government Medical Colleges of Odisha (for short, "State Guidelines") under Annexure-1 being ultra vires Article 14 of the Constitution of India. Further prayer of the petitioner is to declare the admission made on the basis of Clause-F of the State Guidelines as void and direct the opposite parties to publish a fresh guideline deleting Clause-F and to re-do the admission to the P.G. (Medical) Course in the Government Colleges of the State of Odisha. Alternatively, it is prayed that the petitioner may be given first preference in the 2nd counseling. Petitioner's case in a nut-shell is as follows:

The petitioner is a permanent resident of State of Bihar. He qualified in the All India Pre-Medical Test (PMT) conducted by the Central Board of Secondary Education (for short, "CBSE") for the 15% seats reserved for the All India quota and was admitted in the MBBS Course in the year 2000 in SCB Medical College, Cuttack. He completed the said course in the year 2005. Thereafter, he completed one year internship in December, 2006. Then he appeared in National Eligibility-cum-Entrance Test, 2013 (for short, "NEET-2013") conducted by the Medical Council of India (MCI) for admission to P.G. (Medical) Course in India; he

qualified in the said examination and has secured 243 rank of the State of Odisha. The counseling for Odisha State quota seats in P.G. Courses in the Medical Colleges of Odisha State for the academic session 2013-14 was held from 1st to 15th August, 2013 which included verification of documents. Consequent upon participation of the State in the selection of P.G. Medical students through Common Entrance Test (NEET) P.G. conducted by National Board of Examination (NBE), the State of Odisha framed guidelines for allotment of candidates for P.G. (Medical) Courses in the Government Medical Colleges. Clause F of the State Guidelines speaks that a candidate in order to be eligible for prosecuting P.G. (Medical) Courses must be a permanent resident of Odisha. In view of Clause-F of the State Guidelines, the petitioner is debarred from taking admission in P.G. (Medical) Courses in Govt. Medical Colleges. Hence, the present writ petition.

2. Mr. G.A.R. Dora, learned Senior Counsel appearing for the petitioner submitted that merit is the basis for admission to the P.G. (Medical) Courses. Therefore, to exclude the petitioner from consideration on the basis of his merit, the ground that he is not a permanent resident of Odisha would amount to denying him the equal opportunity in the matter of admission to the P.G. (Medical) Courses which is violative of his right to equality under Article 14 of the Constitution. The second counseling for balance seats was scheduled to be held on 29th and 30th August, 2013 as per information published in the website under Annexure-2. Though the petitioner belongs to Bihar domicile yet he will not be eligible to take admission in State of Bihar as he has not done MBBS course from any of the Medical Colleges in Bihar as provided under Clause 5.1 of the prospectus of the P.G. (Medical) Admission Counseling Prospectus, 2013 of Bihar. In view of the judgments of the Hon"ble Supreme Court in the cases of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , and Nikhil Himthani vrs. State of Uttarakhand and others in Writ Petition (Civil) No. 379 of 2013, Clause-F of the State Guidelines which provides that the candidate who is not a domicile of Odisha State is not eligible for admission into P.G. Course is violative of Article 14 of the Constitution. It is further submitted that in a case of exactly similar nature, admission to P.G. Courses was denied to a candidate on the ground that he was not a domicile of the State of Uttarakhand even though he has completed his MBBS Course from a Medical College in Uttarakhand and he was selected against 15% all India quota like the present petitioner. The Hon"ble Supreme Court quashed the domicile clause of the eligibility criteria vide its judgment dated 06.08.2013 passed in Nikhil Himthani (supra) and directed the authority to publish a fresh information bulletin and to re-do the admission to the P.G. (Medical) Course.

Mr. Dora vehemently argued that the case of the petitioner is directly covered by the case of Nikhil Himthani (supra) which is binding on every body.

3. Mr. Dora further submitted that the judgment of the Hon"ble Supreme Court in the case of Nikhil Himthani (supra) is dated 06.08.2013. A doctor friend of the

petitioner knew that petitioner was debarred from taking admission in State of Odisha on the ground that he is not a native of Odisha. When his friend, who belongs to Uttarakhand, found the judgment of the Hon''ble Supreme Court in Nikhil Himthani (supra) relating to Uttarakhand he took 2 to 3 days to contact the petitioner over phone to say about the case. On request he sent the copy of the judgment through email, which the petitioner received on 22.08.2013 and came to Cuttack immediately and the writ petition was filed on 26th August, 2013 which is before the cut-off date, i.e., before commencement of second round counseling which was scheduled to be held on 29.08.2013 and 30.08.2013. The assigned Bench did not function on 25th and 29th August, 2013. As directed in the Notice, mention was made before the Court No. XV stating urgency but his Lordship refused to take up the matter. Under compulsion mention was made before the Hon''ble Chief Justice on 29.08.2013. His Lordship directed to move before Court No. XII on the same day. Though it was mentioned before Court No. XII on 29.08.2013 that 30.08.2013 was fixed for counseling of direct candidates and 31.08.2013 was the cut off date, His Lordship passed the interim order on 29.08.2013 directing that the admission of all direct candidates made on 30.08.2013 shall be subject to result of the Writ Petition. After NEET result was published, All India and State-wise rank (merit) lists were prepared and sent to respective States. Ranking list of Odisha was a combined one both for in-service and direct candidates. Petitioner is a direct candidate and his rank in the combined list is 243. The revised list was prepared segregating direct and in-service candidates. It is reliably learnt that Sl. No. 209 in the combined list becomes 126 in the revised list after segregation, so 243 will be within 140 to 150. The candidates up to rank No. 190 have got clinical subjects. Thus, students of less meritorious than the petitioner have got clinical subjects in P.G. (Medical) Courses. In view of Clause F of the State Guidelines, the petitioner did not make any application to opp. parties for consideration of his case for e-counseling though he secured rank in Odisha State Merit List.

4. Mr. Dora referring to a Notification of Government of Bihar dated 10.09.2013, a copy of which has been filed along with memo dated 16.09.2013, submitted that the Government of Bihar has fixed 23.09.2013 for second round of counseling in respect of 2013 NEET, which is after 31.8.2013.

Concluding his argument, Mr. Dora prayed for grant of similar relief in the case of the present petitioner, since the cut-off date to give admission to P.G. (Medical) Courses has been over by 31st August, 2013, i.e., two weeks before.

5. Mr. R.C. Mohanty, learned counsel appearing for opposite party Nos. 1 to 4 submitted that the P.G. (Medical) Selection Committee, 2013 has the primary responsibility for making admission to the P.G. (Medical) Course in accordance with the regulations and guidelines of Medical Council of India as well as of the State Government and as per the Bulletin prescribed by the National Board of Examination. It was submitted that for the current year, a common entrance test i.e. NEET-P.G. was conducted by National Board of Examinations and no separate

entrance test has been conducted by the State of Odisha for selection and admission to P.G. (Medical) Courses for the State quota seats. The petitioner belongs to the State of Bihar and he has not done MBBS Course from any of the Medical Colleges of the Bihar. Therefore, he is not eligible to get admission to P.G. (Medical) Courses in the State of Odisha. The petitioner in his NEET application has filled up the form stating therein that he is a domicile of Bihar for which he has been given rank in the merit list of Bihar State. Instead of challenging the prospectus of Bihar, the petitioner has challenged the State Guidelines. As per the information bulletin of NEET-P.G., 2013, Sl. No. 8 of the bulletin is very much clear as it deals with domicile. It is further submitted that out of the total seats of P.G. (Medical) Courses, 50% of seats is for All India seats or All India Quota and other 50% is for the State Quota. The State Guideline was issued on 27.05.2013 by the State Government for allotment of candidates for P.G. (Medical) Courses in the Government Medical Colleges of the State of Odisha. Those Guidelines were not challenged by the petitioner when it was available for all candidates for getting admission to P.G. (Medical) Courses. The petitioner has neither challenged the said State Guidelines nor has made any application for consideration of his case for e-counseling though he was given rank in the Odisha State Merit List. The petitioner has filed the present writ petition on 26.08.2013 when already the admission to the P.G. (Medical) Courses on 1st round counseling was over since 31.07.2013.

6. Mr. R.C. Mohanty further submitted that the Hon'ble Supreme Court on hearing a petition after 4th round counseling was over in respect of All India Seats vide its order dated 21.08.2013 passed in W.P. (C) No. 433 of 2013, has extended the cut-off date for all the seats with a direction to complete the process of counseling and admission before 31st August, 2013 for remaining vacant seats of the State quota as well as the seats returned to the State from All India Quota. Mr. R.C. Mohanty submitted that pursuant to the interim order of this Court dated 29.08.2013 passed in Misc. Case No. 18216 of 2013 directing that admission of all direct candidates shall be subject to the result of this writ petition, it has been mentioned by PG Selection Committee 2013 that counseling of all the direct candidates held on 30.08.2013 shall be subject to the outcome of this writ petition. In support of this contention he referred to Annexure-A/3 dated 31.08.2013 written by the Member Convenor to the DMET. Through the said letter, the DMET was further informed that 27 seats are lying vacant after admission to PG (Medical) Course was over. In the affidavit dated 17.09.2013 filed on behalf of opposite party Nos. 2 and 3, it is stated that the convenor has calculated the expected rank of the petitioner-Dr. Manoj Kumar and found that if he would have been taken into consideration with State merit list prepared for Odisha without insisting his resident certificate of Odisha his rank would have been 149 and some candidates below rank 149 have been given admission to non-clinical subject. No clinical subjects were available to any candidate below Sl. No. 148 of the merit list of 30.08.2013 for direct category candidates. It was further submitted that no admission can be allowed after the cut-off date in view

of the judgment of the Hon''ble Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and Medical Council of India Vs. Manas Ranjan Behera and Others, . Mr. Mohanty also relied upon the judgment of the Hon''ble Supreme Court in the case of Faiza Choudhary Vs. State of Jammu and Kashmir and Another, Concluding his argument, Mr. Mohanty prayed for dismissal of the writ petition.

7. Though copy of the writ petition has been served on learned Additional Standing Counsel for opposite party No. 1-State on 26.08.2013, no separate counter has been filed by opposite party No. 1 but Mr. R.C. Mohanty has filed counter affidavit on behalf of opposite party Nos. 1 to 3. At the time of hearing also no submission as regard validity or otherwise of the State Guidelines/Policy has been made by Government Counsel except Mr. R.C. Mohanty.

8. On the rival contentions of the parties, the following questions fall for consideration by this Court:

(i) Whether Clause F of the State Guidelines (Annexure-1) is ultra vires Article 14 of the Constitution?

(ii) Whether the petitioner is entitled to get the relief in the light of the judgment of the Hon''ble Supreme Court in the case of Nikhil Himthani (supra) after 31st August, 2013 for the purpose of taking admission to P.G. (Medical) Course?

(iii) What order?

9. To deal with the above questions, it may be relevant to note certain facts which are not disputed. The petitioner is a permanent resident of Bihar. The Pre-Medical Test (PMT) was conducted by the CBSE and through PMT the petitioner was admitted in MBBS Course in the year 2000 in SCB Medical College, Cuttack. He completed the said course in the year 2005. Thereafter, he has also completed his internship in December, 2006. The petitioner appeared in NEET-2013 which was conducted by the NBE for admission to P.G. (Medical) Courses for the session 2013. He came out successful and his Rank is 243 for Odisha State. He could not participate in the e-counseling in view of the Clause F of the State Guidelines (Annexure-1), which reads as under:

F. CATEGORY OF CANDIDATES:

A candidate in order to be eligible for prosecuting P.G. Course must be a permanent resident of Odisha.

The petitioner filed this writ petition on 26.08.2013 i.e. before commencement of second round of counseling which was scheduled to be held on 29.8.2013 and 30.8.2013. This Court vide order dated 29.08.2013 passed the interim order directing that the admission of all the direct candidates made on 30.08.2013 shall be subject to the result of this writ petition.

10. On the above backdrop, I have to deal with the questions referred to supra.

So far as question No. (i) is concerned, the case of the petitioner is directly covered by the judgment of the Hon''ble Supreme Court in the case of Nikhil Himthani (supra). The facts of the case in Nikhil Himthani (supra) as stated in paragraph-2 of the said judgment are as follows:

2. The facts very briefly are that the petitioner is a permanent resident of Delhi and had qualified in the All India Pre-Medical Test conducted by the Central Board of Secondary Education (for short "the CBSE") for the 15% seats reserved for the All India quota. He was admitted in the MBBS course in the year 2007 in the Medical College at Haldwani in the State of Uttarakhand. He completed his MBBS course in March, 2012 and thereafter completed one year of internship in March, 2013. The petitioner then appeared in the NEET Examination, 2013 conducted by the Medical Council of India (for short "the MCI") for admission to post-graduate medical courses in India and qualified in the examination and claims to have secured 60th rank of the State of Uttarakhand.

On the above facts and taking into consideration of rival contentions of the parties, the Hon''ble Supreme Court has held as under:

14. We now come to clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin. Under clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% All India quota or through the pre-medical test conducted by the concerned State Government has been made eligible for admission to a post-graduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to post-graduate course under clauses 2 and 3 of the Eligibility Criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under clauses 2 and 3 of the Eligibility Criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in the case of Dr. Pradeep Jain and Others vs. Union of India and Others (supra) and Magan Mehrotra and Others vs. Union of India and Others (supra).

15.....Thus, it will be clear from what has been held by the three-Judge Bench of this Court in Magan Mehrotra and Others vs. Union of India and Others (supra) that no preference can be given to candidates on the basis of domicile to compete for the institutional quota of the State if such candidates have done their MBBS course in colleges outside the State in view of the decisions of this Court in Dr. Pradeep Jain and Others vs. Union of India and Others (supra). Hence, clauses 2 and 3 of the Eligibility Criteria in the Information Bulletin are also violative of Article 14 of the Constitution.

(underlined for emphasis)

11. The Hon''ble Supreme Court in the case of Dr. Pradeep Jain

and others (supra), has held as under:

.....Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J., in *Jagdish Saran v. Union of India* "this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties". What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, specialty or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for

regulating admissions to the medical colleges must be to secure the best and most meritorious students.

12. The Hon''ble Supreme Court in the case of Magan Mehrotra and Others Vs. Union of India (UOI) and Others, held as under:

...In view of the judgment of the three-Judge Bench in Pradeep Jain case it must be held that the aforesaid decision of the States of Assam, Tamil Nadu, Goa and Karnataka conferring preference on the basis of residence was not warranted under law inasmuch as to have a uniformity throughout the country and in the larger interest of all concerned taking into account the pattern of admission to undergraduate course, and also the excellence that is required for admission to postgraduate course the only preference that should be adopted by all States is the institutional preference, as was indicated in Pradeep Jain case....

13. In the present case as stated above, the petitioner has been graduated from SCB Medical College, Cuttack and he could not take admission into P.G. (Medical) Course as he is not a resident of Odisha State as required under Clause F of the State Guidelines.

14. In view of the above, I am of the considered opinion that Clause "F" of the State Guidelines under Annexure-1 is violative of Article 14 of the Constitution.

15. To deal with question No. (ii), it is also necessary to refer to the judgment of the Hon''ble Supreme Court in the case of Nikhil Himthani (supra). The relevant portion of said judgment reads as follows:

16. In the result, we allow the writ petition, quash clauses 1, 2 and 3 of the Eligibility Criteria in the Information Bulletin and declare the admissions made on the basis of clauses 1, 2 and 3 of the Information Bulletin as void. The respondents will now publish a fresh Information Bulletin and re-do the admissions to the post-graduate medical courses in the Government colleges of State of Uttarakhand in accordance with law by the end of August, 2013 and also ensure that the colleges in which the students are admitted in post-graduate medical courses hold the required number of classes as prescribed by the MCI.

16. At this juncture, it is also relevant to refer to the judgment of the Hon''ble Supreme Court in the case of Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, Hon''ble Supreme Court in the case of Asha (supra) after taking note of its earlier judgment in the case of Mriduldhara (minor and another) (supra) and large number of other cases held as under:

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her

rights and remedies as expeditiously as possible. We are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.

36. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment. ANSWERS

(a) The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly and without demur.

(b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year (in terms of the decision of this Court in *Priya Gupta* (supra)). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of *Priya Gupta* (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

(c) & (d) Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The

court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment.

Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

(underlined for emphasis)

17. In the present case, the petitioner filed the present writ petition on 26.08.2013, i.e., before commencement of second round counseling which was scheduled to be held on 29.08.2013 and 30.08.2013. On 29.8.2013 in Misc. Case No. 18216 of 2013, this Court passed the interim order that "the counseling shall be subject to the result of this writ petition". On the request of the opp. parties, the case was adjourned to 3.9.2013. Mr. Mohanty submitted that pursuant to the interim order dated 29.08.2013 it has been mentioned by the PG Selection Committee 2013 that counseling of all direct candidates held on 30.08.2013 is subject to the outcome of this writ petition. In this regard, Mr. Mohanty also drew attention of this Court to Annexure-A/3 dated 31.08.2013 issued by the Member Convenor to DMET. The matter was again listed in this Court on 4.9.2013. On that date, submission was made on behalf of Mr. R.C. Mohanty, learned counsel appearing for opposite parties 1 to 4 that Mr. Mohanty has undergone eye operation and therefore, he would be unable to appear before the Court till 10.9.2013. Therefore, this Court adjourned the matter to 11.9.2013. On 11.9.2013 this Court heard Mr. Dora and Mr. Mohanty. However, Mr. Mohanty after arguing for some time submitted that he was getting pain in his eye after operation and requested to adjourn the matter till Monday (16.9.2013) to enable him to argue further; the matter was adjourned to 16.09.2013. On 16.09.2013 hearing was concluded and judgment was reserved. Thus, so far as petitioner is concerned, he is not at fault. He is diligent in pursuing his rights and legal remedy. The fault is with the opp. party-authorities who have framed the State Regulation incorporating Clause "F" which reads that a candidate in order to be eligible for prosecuting P.G. (Medical) course must be a permanent resident of Odisha and such eligibility criteria is contrary to the decision of the Hon'ble Supreme Court in the cases of Pradeep Jain (supra), Magan Mehrotra (supra) and Nikhil Himthani (supra). The action of opp. parties is violative of Article 14 of the Constitution. The petitioner is a candidate placed at higher rank in the merit list. According to the petitioner, the Ranking List of Odisha was a combined one both for in-service and direct candidates. Petitioner is a direct candidate and his rank is 243. A revised list was prepared segregating the direct and in-service candidates. In the revised list of direct candidates in Sl. No. 209 in the combined list became 126 in the revised list after segregation. Therefore, it is claimed by the petitioner that his ranking being 243 it would have become 140-150. The

candidates up to rank No. 190 of the revised list have got clinical subjects. The opposite parties in their affidavit dated 17.09.2013 sworn by Dr. Jayant Kumar Das stated that the expected rank of the petitioner would have been 149 and some candidates below rank 149 have been given admission to P.G. (Medical) Courses. Thus, candidates below petitioner's rank have been given admission in the P.G. (Medical) Courses. This is certainly not fair and the petitioner has been denied admission for no fault of him but for the illegal action of the opposite parties. Opposite parties, in their counter affidavit, stated that after completion of the final round of counseling 27 seats are lying vacant in P.G. (Medical) Courses.

18. For the reasons stated above, I am of the view that the petitioner is entitled to get relief in the light of the judgment of the Hon'ble Supreme Court in the case of Nikhil Himthani (supra) after 31.08.2013 for the purpose of getting admission to PG (Medical) Courses-2013. Clause "F" of the State Guidelines, under Annexure-1, is quashed. Therefore, the State Government is directed to issue guidelines on domicile aspect keeping in mind the decisions of the Hon'ble Supreme Court in the cases of Nikhil Himthani (supra), Dr. Pradeep Jain and others (supra) and Magan Mehrotra and others (supra).

In the fact situation, since the petitioner is the only candidate before this Court and could not get admission in P.G. (Medical) Courses because of Clause "F" of the State Guidelines and that the students, who rank below the petitioner, have taken admission in the said course, opposite party Nos. 2 and 3 are directed to redo the admission to the P.G. (Medical) Courses in the Government Colleges of Odisha restricting it to the petitioner and those direct candidates who secured ranks below the petitioner but got admission in the P.G. (Medical) Courses 2013, as soon as possible but not later than 10 days from today. Opposite party Nos. 2 and 3 are further directed to ensure holding of additional classes of student(s) to meet the required number of classes as prescribed by the Medical Council of India.

With the aforesaid observations and directions, the writ petition is allowed to the extend indicated supra, but without any order as to costs.

In view of the urgency and paucity of time, urgent certified copy of this judgment be granted on proper application in course of the day and free copy of this judgment be handed over to learned counsel for opposite parties for compliance.