

(2010) 06 OHC CK 0003
In the Orissa High Court
Case No : Writ Petition (C) No. 3315 of 2010

Dr. (Miss) Ritupurna Dash	Vs	APPELLANT
State of Orissa and Another		RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Constitution of India, 1950 — Article 15(4)

Citation : AIR 2010 Ori 177 : (2010) 2 OLR 614

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

Bench : Single Bench

Judgement

M.M. Das, J.—Heard learned Counsel for the petitioner and Mr. R.C. Mohanty, learned Counsel appearing for the opp. parties.

2. The petitioner in this writ petition has made a prayer for a direction to the opp. Party No. 2 to consider her case under the reserved category of 5% seats of the total number of seats for P.G. Medical Course in the selection process on the basis that the parents of the petitioner hold a green card. The petitioner appeared in the P.G. Entrance Examination, 2010. In the information brochure, there was no reservation provided for the children of green card holders.

3. Learned counsel for the petitioner draws the attention of the Court to the assurance given to a person, who undergoes Tubectomy operation, in the green card issued to such person, to the effect that reservation of 5% seats in Engineering, Medical, Polytechnic and I.T.I. institutions will be made for admission of children of these families. It is, therefore, submitted that non-inclusion of clause in the information brochure reserving 5% seats in the P.G. Medical Course for candidates, whose parents hold a green card, is contrary to the promise given by the State under the Green Card itself and even though a condition was not included in the information brochure, the petitioner is entitled to be considered for admission to P.G. Medical Course within the said 5% seats of the total number of seats.

4. Mr. R.C. Mohanty, learned Counsel for the opp. parties, on the contrary, relying upon the counter affidavit filed by him, submits that admission to P.G. Medical Course is always in accordance with the guidelines of the M.C.I. which do not prescribe any reservation for children of Green Card holders. He further submits that admittedly no reservation has been made in the prospectus for P.G. Medical Selection, 2010 for children of Green Card holders, and, therefore, there is no scope to consider the petitioner under any such imaginary reserved category. According to Mr. Mohanty, the clause contained in the Green Card with regard to reservation of 5% seats for Medical Course can only mean for MBBS and not P.G. Medical Course which is a specialized course and, where merits should be the only consideration, though some provision is made for reservation of seats for S.C./S.T. candidates as per the guidelines of the M.C.I. Hence, it is submitted by him that no direction can be issued to the State Government to reserve 5% of the seats for family members of Green Card holders. He further relying upon the decision in the case of Dr. Gulshan Prakash and Others Vs. State of Haryana and Others, submits that the power to make reservation under Article 15(4) of the Constitution is discriminatory and not mandatory and, it is for the State Government to decide the said question where Court should not interfere by issuing directions to make reservation.

5. Clause-4 in the Green Card issued in favour of the mother of the petitioner, which is relevant for the purpose, is as follows:

1 to 3 xx xx xx

4. Reservation of 5% seats in Engineering, Medical Polytechnic and I.T.I. institutions will be made for admission of children of these families.

Xx xx xx

6. Purpose of giving such incentive to Green Card holders is to encourage citizens to undergo operations for family planning keeping in view the population explosion in the country. Persons being attracted by such incentive will be encouraged to undergo such operation. A Welfare State cannot go back from its promise and deny the holder of the Green Card from such benefits. It is an admitted case that the petitioner did not take admission into MBBS Course under the Green Card quota. Therefore, it was incumbent upon the State to make provision for reservation of 5% of the seats in the P.G. Medical Course for children of persons holding Green Card.

7. However, as the admission process in P.G. Medical Admission, 2010 is on the verge of completion, no benefit can be given to the petitioner this year. The opp. Parties are directed to make provision for reservation of 5% of the total number of seats meant for P.G. Medical Course in the State for the children of persons holding Green Card from the next year. With the aforesaid observation and direction, the writ petition is disposed of.

8. Urgent certified copy of this order be granted as per rules.