
(1996) 09 OHC CK 0034

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 4777, 5131, 5367, 5507, 6219, 7126, 7257, 7281, 8580, 8891 and 8912 of 1995 and No's. 63, 776, 986, 4653, 4654, 4676, 4720, 4728, 4763, 4764, 4765, 4820, 4397, 5016, 5051, 5052, 5078, 6262 and 6845 of 1996

Dr. Pratap Chandra Mohanty and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 2 OLR 440

Hon'ble Judges : R.K. Patra, J; R.K. Dash, J

Bench : Division Bench

Advocate : Susant Kumar Dash, S.B. Jena, B.B. Acharya and J. Sengupta, B.S. Tripathy, K.P. Mishra, N.R. Kar, A. Das and N. Sarkar, Milan Kanungo, L. Kanungo, S. Das, P. Pradhan, S. Nanda, L. Mohapatra, D.K. Mishra and S.C. Mohanty, P.N. Mohapatra and S.K. Patnaik, R.K. Mohapatra, U.K. Samal, Sanjib Swain and R.K. Dash, Y. Das, N.C. Mohanty, D.K. Dey and D. Bhanja, Jagabandhu Sahoo, B.K. Mishra, S.K. Mohanty and G.K. Sahu, P.K. Nayak-3, A.K. Mallick, S.N. Biswal, D.K. Mohapatra, M.K. Das and B.P. Das, R.P. Kar, A.N. Ray, N. Paikray, B.P. Mohanty and M.K. Badu, B.K. Sahu, M. Dasburma and S.K. Mishra, Sanjat Das and S.B. Agrawal, Laxmidhar Dash, S.K. Mohanty and S.C. Satpathy, Prabodh Kumar Patnaik and H.K. Agrawalla, S.S. Rao, B.S. Mishra-2, S.C. Kar, G.P. Mishra and M.R. Mishra, S.K. Ghose, B.N. Tripathy, C.R. Nanda and D. Chatterji, S.S. Rao and M.R. Tripathy, N. Behuria, C.R. Patnaik, A.K. Rath and D.K. Das and B.K. Mohanti, B.K. Sahu, M. Dasburma and S.K. Mishra, for the Appellant; R.K. Mohanty, Additional Government Advocate, for the Respondent

Judgement

R.K. Patra, J.—The controversy in all the aforesaid writ petitions is with regard to filling up of 14 Post Graduate (Medical) seats of the All India (Central) quota (hereinafter referred to as "the Central quota") surrendered by the Government of India to the State Government. The seats are of the year 1995 and are available in the three Government Medical Colleges of the State.

2. In May, 1995, applications in the prescribed forms were invited for selection of candidates for Post Graduate Courses in the three Government Medical Colleges of the State. The selection was conducted by the P. G. Selection Committee. As per Clause 5,1 of the Prospectus, 184 seats (91 seats for direct candidates and 93 seats for in-service candidates) were available under the "State quota". 25 per cent of the total P. G. seats were to be filled up by candidates selected on All India basis which is called "Central quota" as per Clause 5. 2 of the prospectus, Some candidates filed a writ petition (Civil) No. 394 of 1995 in the Supreme Court praying for an appropriate direction to the Government of India to re-allocate suitable vacant seats to then in different colleges of the country in order of their merit as per their specialities against the central quota. During the pendency of the writ petition, the Supreme Court by an interim order directed the State Government to keep the seats of the central quota vacant. By the time the order was passed all the seats of the central quota of the State were filled up except fourteen. In obedience to the direction of the Supreme Court, those 14 seats were accordingly kept unfilled. On 28-8-1995, the Supreme Court disposed of the writ petition. Following the disposal of the case. Assistant Director General, M. E. in the Directorate General of Health Services Medical Examination Cell, New Delhi in his letter dated 25-10-1995 informed the Director of Medical Education and Training, Orissa, Bhubaneswar (to be referred to as "D. M. E. T.") that the vacant seats (fourteen seats as already indicated) which were held up in the Medical Colleges of the State "may be treated as surrendered back to State quota". As a sequel to surrender of Central quota seats, all these writ petitions have come to be filed claiming inter alia that they should be made available to the petitioners.

3. For proper disposal of these writ petitions, we have divided them into two groups; one group consists of petitions which were filed on or before 2-5-1996 and the other group comprises petitions filed after 2-5-1995. The date "2-5-1996" is hereinafter referred to as "the cut-off date". In the first group, there are fourteen writ petitions and in the second group, there are sixteen writ petitions. In the first group of fourteen petitions the petitioners consist of both in service and direct candidates. The details are as follows :

The petitioner/petitioners in OJC Nos. 4777,5131, 5367, 5507, 6219 and 7281 of 1995 are all in-service candidates. They besides challenging the constitutional validity of Clause 5. 8 of the prospectus have prayed for filling up of the central quota seats proportionally amongst the in-service and direct candidates. The petitioner/petitioners in OJC Nos. 7126 of 1995, 7257 of 1995, 8580 of 1995, 8851 of 1995, 8912 of 1995, 63 of 1996, 776 of 1996 and 986 of 1996 are all direct candidates. They have prayed for a direction to the opp. parties to fill up the surrendered seats by holding counselling. The petitioner--Akash Bihari Pati in OJC No. 776 of 1996 has already taken admission in General Surgery in M. K. C. G. Medical College, Berhampur and has prayed for his transfer to S. C. B. Medical College," Cuttack after counselling. As already indicated, the second group of writ petitions(OJC Nos.4653 4654,4675,4720,4728,4763 4764,4765.4820, 4997,

5016, 5051% 5052, 5078, 6262, 6845 of 1996) have been filed after the cut-off data, The common prayer "of all the petitioners is that they should also be permitted to participate in the counselling directed to be held as per the orders of this Court. The case of petitioner-Bijan Kumar Mohanty (OJC No. 5016 of 1996) stands on a different footing which will be dealt with at appropriate stage.

4. When some of the writ petitions came up for admission, it was contended on behalf of the D. M. E. T. that Clause 13.1 of the prospectus prohibits second counselling and even if the seats of the Central quota are surrendered, they will have to remain vacant and cannot be filled up. On the direction of the Court, a memo supported by an affidavit was filed by an officer of the department concerned on 19-12-1995 stating that the State Government have no intention to fill up the 14 surrendered seats by way of second counselling. To our query, as the learned State Counsel could not with definiteness State whether it was the Government policy not to fill up the 14 surrendered seats, we called upon the Secretary of the department to file an appropriate affidavit. In pursuance of the said direction, the Secretary has filed an affidavit stating that the State Government have decided not to fill up the 14 seats at all.

5. It is needless to mention that there is acute dearth of qualified doctors in the State and the 14 surrendered seats would go vacant without serving any purpose and this is definitely not in the interest of the medical education. In a similar situation, the Supreme Court in *Jeevak Almast Vs. Union of India (UOI) and Others*, observed as follows :

".....it is well-known that our country does not have sufficient number of qualified doctors and every step should, therefore, be taken to turn out as many doctors with Post Graduate qualification as possible. The problem to be resolved, therefore, is as to what method should be adopted to fill up these unfilled reserved seats."

In view of the aforesaid, we directed the D.M. E. T. to prepare a combined merit list of the petitioners (direct and in-service). On 3-5-1996, OJC No. 8680 of 1995 alongwith the connected cases came up for consideration. Shri Y. Das, learned counsel for the petitioner filed an additional affidavit indicating that besides the 14 surrendered seats, 21 more seats would be available after adjustment in view of the fact that some other seats have meanwhile become vacant for different reasons and as a consequence, all the petitioners (both direct and in-service candidates) could be accommodated. We accordingly directed the State Counsel to take instruction on the additional affidavit referred to above. Shri Das also submitted that taking advantage of the cases being adjourned to enable the D. M. E. T. to prepare the merit list, further writ petitions might be filed in the meantime by candidates and the Court would be flooded with petitions without any end to it. On consideration of the said submission, we passed order on that day (3-5-1996) in OJC No. 8580 of 1995 saying that no writ petitions filed after 2-5-1996 would be entertained. When the matters came up for further consideration on 17-5-1996, the learned Additional Government Advocate

informed the Court that pursuant to the previous order, the D. M. E. T. prepared a combined merit list of the petitioners excluding petitioner-Akash Bihari Pati (OJC No. 776 of 1996). Accordingly, on that day (17-5-1996), the Selection Committee was directed to hold counselling of the petitioners excluding those who did not appear at the previous counselling and the Selection Committee was directed to submit the result on the next date of hearing i.e. 26-6-1996 (vide Order No. 4 dated 17-5-1996 in OJC No. 776 of 1996).

6. The first question that arises for consideration is whether this Court was justified by fixing the "cut-off date" (vide order dated 3-5-1996 in OJC No. 8580 of 1395) for entertaining and considering the writ petitions relating to the filling up of the surrendered seats. Shri B. K. Mohanty, learned Senior Counsel for some of the petitioners who have filed the writ petitions after the "cut-off date" contended that because of the hurdle put in the form of the cut-off date meritorious candidates are kept out of consideration which is not in the best interest of the medical education. The learned Additional Government Advocate and the counsel appearing for some of such petitioners argued on the same line supporting Shri Mohanty. Counsel appearing for intervenors who filed applications after the "cut-off date" also argued and supported Shri Mohanty. On the other hand, Shri R. K. Mohapatra, learned Senior Counsel and Shri Y. Das and other counsel submitted that fixing of "cut-off date" by the Court in the facts and circumstances of the case is fair, reasonable and justified. According to them, fixing a "cut-off date" for entertaining the writ petitions does not mean less meritorious candidates would get themselves admitted. We have carefully considered the rival contentions of the learned counsel for the parties and are of the opinion that fixing a cut-off date by the Court is not an unusual step. The Supreme Court in fact, fixed such cut-off date in *Kanpur University and Others Vs. Samir Gupta and Others*, . In the concluding para of the aforesaid judgment, the Court observed infra :

".....We. however, direct that no fresh petitions should be entertained by the High Court and, of course, none will be entertained by us hereafter on the questions involved in these appeals arising out of the test which was held in 1982....."

This Court in *Priyadarshini Acharya and Others Vs. State of Orissa and Others*, while disposing of the cases, in the concluding part of paragraph-12 of the judgment stated as follows :

".....Some cases have been filed after the hearing and some applications were filed for intervention in this Court. We would accordingly direct that the same principle should also be applied to the cases of candidates who approached this Court either as petitioners or as intervenors till 31st March, 1991. and their results shall be published after fresh valuation within 10 days from today in accordance with the direction given above."

The same procedure was followed by this Court in *Raghunath Pradhan and*

Others Vs. State of Orissa and Others, while disposing of the said case, this Court directed that cases of the candidates who have approached the Court till the date of judgment should be considered afresh keeping in view the observations made in the judgment.

In Civil Appeal No. 732 of 1993 (State of Orissa v. Prajnaparamita Samanta) decided on 11th August, 1994, it was urged before the Supreme Court that the High Court went wrong in fixing the cut-off date for consideration of writ petitions challenging certain key answers given to questions set for the entrance examination for the medical courses. The Supreme Court by order dated 11-8-1994 while disposing of the matters noted as follows :

"Admittedly, the petitioners and the appellants in question had approached either the High Court or this Court after the decision of the High Court on 27-1-1992. The High Court has rightly set down the said date as cut-off limit and directed consideration of the answer books only of those examinees who had approached the High Court till that date. It is only those who are diligent and approach the Court in time who can be given such relief. The academic year cannot be extended for any length of time for the benefit of those who choose to approach the Court at their sweet-will. The consideration on the basis of which relief is granted in such cases is always circumscribed by the tenure of the academic years concerned. We, therefore, do not see anything wrong, if the High Court has laid down the said date as the cut-off date for the purpose. In the circumstances, there is no merit in these writ petitions and the civil appeals, and they are dismissed with no order as to costs."

In view of the aforesaid, the "cut-off date" fixed by this Court in these matters for entertaining the writ petitions cannot be said to be arbitrary or unfair.

7. The next question is whether Clause 5. 8 of the prospectus is invalid as urged by and on behalf of the in-service candidates. Clause 5. 8 of the prospectus provides that the vacant All India seats surrendered to State by the date of counselling shall be treated as direct general seats for the purpose of selection. According to the in-service candidates no such discrimination should be made for filling up of the surrendered seats and it should be made available on merit to both direct candidates as well as in service candidates. It is an admitted fact that for filling up the seats earmarked under State quota, direct candidates as well as in-service candidates are eligible to apply. A competitive entrance examination is conducted in which the direct candidates and the in-service candidates are required to appear and the merit list is prepared on the basis of the result of the combined entrance examination. The learned counsel for the State could not bring to our notice any reason to show as to why the in-service candidates should be given a differential treatment by debarring them from being considered for the surrendered Central quota seats. The classification made on the basis of status of candidates i. e. whether they are direct candidates or in-service candidates) has no nexus with the object of finding out meritorious candidates. We accordingly declare Clause 5.8 of the prospectus of 1995 as

violative of the equality clause enshrined under Article 14 of the Constitution. We declare so prospectively. This question has otherwise become academic in view of the fact that during counselling all the in-service candidates who filed writ petitions prior to the cut-off date have been allotted different subjects.

8. It is admitted by the D. M. E. T. in the show cause affidavit dated 2-7-1996 that in pursuance of the order dated 17-6-1996, counselling as to be held on 10-6-1995. It was contended that in view of Clause 13. 1 of the prospectus there could be no second counselling. To appreciate the said objection, it is profitable to extract the relevant part of the clause :

"13.1. The allotment of seats shall be made to the candidate through personal appearance (Counselling). The candidates for personal appearance should bring their relevant certificate including the internship in original for verification.....The seats remaining unfilled after counselling shall remain vacant and there shall be no second counselling."

(Underlining supplied)

The opp. parties have clearly failed to appreciate the circumstances in which second counselling is prohibited under Clause 13.1. On careful reading of the different clauses of the prospectus including Clause 10.1, it would appear that after the examination is over, the answer scripts are evaluated and thereafter merit/waiting list is prepared and candidates securing less than 50% marks (40% marks in respect of S. C and S. T. candidates) will not be considered for admission. Thereafter allotment of seats is made and for this purpose candidates are required to appear before the Selection Committee which is known as counselling. There is no charm in the expression "counselling". As the clause itself provides, allotment of seats will be made to the candidates on their personal appearance. It means that on the appearance of the candidates, allotment of seats will be done keeping in view their position in the merit list, choice of subjects and choice of the college. Such step is taken to facilitate the process of allotment of seats. After the process of allotment is completed, if it is found that some seats remain vacant, they would remain unfilled throughout and the authorities are prohibited to conduct another counselling to fill up the seats. This restraint against filling up of the vacant seats by another counselling is applicable to the authority concerned and no such restraint can be made against the Court. In the present case, an extraordinary situation has arisen because of the fact that the Central quota seats had to be kept vacant in view of the interim order passed by the apex Court. After the disposal of the case, the Central Government instead of keeping those seats for themselves took a pragmatic view and surrendered the Central quota seats to the State Government obviously not to keep them unfilled but to fill up them according to the merit list drawn earlier under the State quota. For the Central quota seats (14 in number) the State Government have had no control but for the surrendering of those seats by the Central Government to the former. Since there was no counselling at all for the surrendered Central quota seats, the question of holding a second counselling for

those seats is misconceived and opp. parties have failed to appreciate the circumstances in which second counselling is not permitted under Clause 13.1 of the prospectus. For the reasons stated above, we reject the contention of the opp. parties that there could be no counselling for the 14 seats.

9. The opp. parties conducted counselling on 1-7-1996 pursuant to the order of this Court dated 26-6-1996 passed in OJC No. 776 of 1996. In the further affidavit filed on 2-7-1996, the D.M. E.T. has enclosed a list indicating the "vacancy position" (30 in number which includes 14 Central quota seats and seats falling vacant on account of other reasons) of P. G. seats in the three Medical Colleges displayed on 1-7-1996. Out of 27 petitioners, Dr. Amrut Kumar Mohanty (one of the petitioners in OJC No. 5131 of 1995) was absent and the remaining 26 petitioners gave their signatures in token of their presence. One Dr. Sandip Nayak (one of the petitioners in OJC No. 8580 of 1995) refused to opt for any subject for which he was not allowed any subject. The remaining 25 petitioners participated in the counselling and their selection in order of merit is at Annexure-D.

10. At this stage, we may consider OJC No. 776 of 1996 filed by Akash Bihari Pati. As a direct candidate, he was selected from the State quota at the first counselling and has taken admission in General Surgery in M. K. C. G. Medical College, Berhampur and is pursuing his studies there. On 1-7-1996 he attended the counselling in pursuance of this Court order. He has now been selected in the same subject in S. C. B. Medical College, Cuttack. It was contended on behalf of the opp. parties that Clause 13.3 of the prospectus prohibits change of subjects or college after the candidate takes his admission. In *Dr. Sujata Misra v. State of Orissa* : 80 (1995) CLT 630 this Court held that there is no statutory bar in transferring a student from one college to another under the Regulations of the Medical Council of India. In view of the said decision and as he has now been selected in the same subject in S. C. B. Medical College, Cuttack, we direct the opp. parties to admit the petitioner-Akash Bihari Pati in S. C. B. Medical College, Cuttack on transfer.

11. The learned Additional Government Advocate contended that since the academic session 1995-96 is already over and the subsequent academic session 1996-97 has already started, admission of the petitioners at this stage against the seats of 1995 session will be against the norms of the Medical Council of India and will create many problems for the State Government and may entail de-recognition of the colleges by the Medical Council of India. We have considered the submission of the learned counsel for the State and are of the opinion that in the interest of justice, the candidates who have been selected as per the counselling held on 1-7-1995 should be admitted this year. There is no statutory prohibition against admission of these students this year against the 1995 seats inasmuch as by this order the total number of seats are not inflated and they remain intact. The admission to P. G. courses of the current session 1996 has just started and the study of selected candidates will to be much affected.

12. OJC No. 5131 of 1995 has been filed on behalf of three petitioners, one of them is Dr. Amrut Kumar Mohanty. In the counselling held on 1-7-1996 he remained absent and did not attend the counselling. As a result. OJC No. 5131 of 1995 so far as Dr. Amrut Kumar Mohanty (petitioner No. 1) is concerned, is dismissed. Similarly, from the first group of cases, the writ petition of Sandip Nayak (petitioner No. 2 in OJC No. 8580 of 1995) is dismissed as he refused to opt for any subject in the counselling held on 1-7-1996.

13. In the result, OJC Nos. 4777, 5367, 5507, 6219, 7126, 7257, 7281, 8891, 8912 of 1995 and OJC Nos. 63, 776 and 986 of 1995 are allowed. OJC Nos. 5131 and 8580 of 1995 are partly allowed. The opposite parties are directed to admit the selected candidates as per the revised Annexure-D filed on 29-7-1996 in the Court within a fortnight hence and to report compliance by 15-10-1996.

14. Now let us consider OJC Nos. 4653, 4554, 4675, 4720, 472S, 4763, 4764, 4765, 4320, 4937, 5051, 5052, 5078, 6262 and 6845 of 1996 filed after the cut-off date and the intervention applications filed in some of the writ petitions after the cut-off date. By order dated 5-5-1996 passed in OJC No 8580 of 1995, we have clearly indicated that writ petitions filed after the cut-off date will not be entertained for consideration. We have already given our reasons in support of fixing the cut-off date. For those reasons, all the 15 writ petitions mentioned above and the intervention applications filed after the cut-off date are dismissed. so far as OJC No. 5016 of 1996 is concerned, it stands on a different footing. The petitioner Bijan Kishore Mohanty has previously filed writ petition bearing OJC No. 6427 of 1995 which was disposed of on 27-11-1995 with a direction that the opposite parties will consider his case according to the prospectus and the relevant rules. In view of the said order, the Selection Committee issued notice to him and he appeared in the counselling held on 1-7-1996. His case was considered on the footing that he was a pre-cut-off date applicant Accordingly, no specific order is necessary to be passed in the present writ petition (OJC No. 5016 of 1996) including on the application (Misc. Case. No. 5703 of 1996) filed in the disposed of OJC No. 6427 of 1995.

There would be no order as to costs.

R.K. Dash, J.

I agree.