
(2008) 08 OHC CK 0014
In the Orissa High Court
Case No : W.A. No. 143 of 2008

Dr. Rashika Bhardwaj

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Citation : (2008) 08 OHC CK 0014

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Jayanta Das, N. Sahani, K. Pradhan and B.D. Patra, for the Appellant; P. Panda, A.S.C. for Resp. No 1 to 4, R.K. Rath B.R. Sarangi and L. Bhuyan for Resp. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ appeal has been filed against the judgment and order of the learned Single Judge dated 24.07.2008 passed in W.P. (C) No. 8433 of 2008 by which the writ petition, filed by the Respondent No. 5/Petitioner for canceling the admission of the Appellant and issuing direction for admission of Respondent No. 5 in M.D.S. Course of Oral and Maxillofacial Surgery of Dental wing of S.C.B. Medical College & Hospital, Cuttack (hereinafter called the "said course") for academic session 2008-09 has been allowed.

2. The facts and circumstances giving rise to this appeal are that there is only one seat in the said course and a large number of students submitted their applications for admission. The Committee constituted for the purpose prepared the merit list and vide letter dated 6th June, 2008 offered admission to one Dr. Sheetal Agrawal, who was at Sl. No. therein, asking her to take admission by 12.00 noon on 9th June, 2008. She did not turn up by the said time on 9th June, 2008. The Respondent No. 5 herein/Petitioner was at Sl. No. 2 in the merit list. She did not attend the college for admission on 9th June, 2008. The candidate whose name appeared at Sl. No. 3 was not found eligible for admission for want of proper documents. Appellant who was at Sl. No. 4 was present there and had

been offered the admission. She deposited the fee on the same day.

On 12th June, 2008 a representation was filed by the Respondent No. 5/Petitioner raising the grievance that she being No. 2 in the merit list ought to have been offered the admission. As her representation was not considered, she "filed the writ petition before this Court on 17th June, 2008, which has been allowed. Hence this appeal.

3. Learned senior counsel for the Appellant, Mr. Jayant Das, has submitted that there was a direction by the Hon'ble Supreme Court that all the admission should be concluded by 10th June, 2008 and it was in the knowledge of every candidate. The advertisement, while inviting application, made it clear that 9th June, 2008 was the last date for admission. Therefore, keeping these two dates in mind, as the first student of merit list i.e. Dr. Sheetal Agrawal did not turn up for admission in pursuance of the letter dated 6th June, 2008 and the Respondent No. 5 did not attend for counseling on that date and student at Sl. No. 3 was found not eligible, the Appellant had rightly been offered the admission and admitted in the said course. The Appellant has raised certain objections regarding the eligibility of the Respondent No. 5/Petitioner pointing out that she had wrongly been awarded Degree of BDS in 2005 and she had not completed her internship and the same stand had been taken by the State authorities before the learned Single Judge. Once the learned Single Judge was of the view that the petition raised disputed question of facts, he ought not have decided the writ petition on merits. Therefore, the judgment and order is liable to be set aside.

4. On the contrary, Shri Rath, learned senior counsel appearing for the Respondent No. 5/Petitioner has vehemently opposed the appeal contending that the said Respondent was fully eligible and she had completed the internship. The learned Single Judge was fully satisfied regarding her eligibility and in view of the fact that the Committee, constituted for the purpose of admission, after verifying all the facts was satisfied regarding her eligibility, therefore the learned Single Judge did not consider it proper to re-examine the case. As there was No. requirement or No. instruction for the candidates to remain personally present on 9.6.2008, No. fault can be found with the impugned judgment and order and, thus the appeal is liable to be dismissed.

5. Learned Addl. Standing Counsel has canvassed before us what has been argued before the learned Single Judge-on behalf of the State.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the record. Admittedly the Respondent No. 5/Petitioner was higher in merit than the Appellant. The Respondent No. 5 secured 69.30% marks while the Appellant secured 69.18%. Dr. Sheetal Agrawal whose name appeared at Sl. No. 1 in the merit list had been asked vide letter dated 6th June, 2008 to take admission by 12.00 noon on 9.6.2008, but she did not turn up. We fail to understand as if she had been given time to complete the formalities of

admission by 12.00 noon on 9.6.2008, how the Admission Committee could expect other students to remain present on 9.6.2008 immediately after 12.00 noon. Had Dr. Sheetal Agrawal come and taken admission, what for other candidates could be there. No. personal notice to this effect had ever been served or given to any of the candidates. Undoubtedly, as per the judgment of the Hon'ble Supreme Court 10th June, 2008 was the last date for admission and the advertisement also provided as 9th June, 2008 as the date of admission. There is a letter dated 6th June, 2008 on record written by the Convener MDS Selection Committee -cum- Vice Principal, Dental Wing, S.C.B. Medical College, Cuttack to the Director Public Relation (P & R), Bhubaneswar that information regarding MDS admission should be published in daily news papers. Proceedings of the meetings of the Selection Committee dated 5.6.2008 (Annexure-C-3 of the writ petition) also reflects that every candidates selected would be informed telegraphically j telephonically etc. or by any other speediest means and the Convener was requested vide a letter to the Public Relation Department for publication of the notice regarding declaration of the result. These two documents make it crystal clear that every candidate seeking admission was not supposed to remain present personally on 9.6.2008 in the college and to take a chance that in case Dr. Sheetal Agrawal did not turn up, next to her in the merit will be offered admission. There is nothing on record to show that the Respondent No. 5, though stood second in the merit list, had ever been informed about the non-joining of Dr. Sheetal Agrawal and giving her opportunity to take admission.

In view of the above, No. fault can be found with the impugned judgment and order of the learned Single Judge.

7. So far as the second limb of argument on behalf of the Appellant is concerned, on the date of admission i.e. 9.6.2008 itself, she filed an application making allegations against the Respondent No. 5/Petitioner that she was awarded B.D.S. Degree on 30.6.2005 though she had not completed the internship, and therefore she was not eligible to get admission.

8. The Committee constituted for the purpose of admission, after these allegations verified from the record and came to the conclusion that the said Respondent was eligible. Undoubtedly the allegations raised by the Appellant have also been raised by the" State Authorities in their counter affidavit before the learned Single Judge, but after examining the documents filed by the parties and in view of the fact that the Committee constituted for Admission verified and came to the conclusion that she was eligible, the learned Single Judge did riot consider it proper to enter into the controversy. Undoubtedly the learned Single Judge has used the term as factual controversy involved, but in view of the learned Advocate General's submissions to the effect that Petitioner had been found eligible by the Admission Committee, there was No. requirement for the learned Single Judge to probe the issue further.

9. There are documents on record showing that Respondent No. 5/Petitioner was

eligible for admission. More so, the Degree awarded to her in June, 2005 can not be doubted at such a belated stage.

10. Undoubtedly, the Court does not have expertise in the subjects, therefore, it has to be slow in disturbing the decision taken by the Committee of experts, working in the field, have day to day experience, and which has acquired special skill in the subject.

11. A Constitution Bench of the Supreme Court, in *The University of Mysore and Anr. v. C.D. Govindarao and Anr.*, 1965 SC; 491, held that in academic matters where the decision under challenge has been taken by the Committee of Experts, "normally the Court should be slow to interfere with the opinion expressed by the experts" unless there are allegations of mala fide against any of the members of the expert committee.

12. A similar view has been reiterated by the Hon'ble Supreme Court in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, ; *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, ; *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, ; *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, , *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, ; *Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others*, ; *Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others*, ; *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, ; *Central Areca Nut and Cocoa Marketing and Processing Cooperative Ltd. Vs. State of Karnataka and Others*, ; *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*, ; and *The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another*, ; wherein the Court held that in the matter of academic courses, the Court should not disturb the decision taken by the educational institution unless there are compelling circumstances and sufficient material warranting the interference.

13. In view of the above, the view taken by the learned Single Judge that as the Admission Committee, which was consisting of by the experts of the subject found Respondent No. 5 eligible for admission, it is not open for the Court, who lacks expertise on the subject to adjudicate the controversy.

14. In view of the above, we do not find any cogent reason to interfere with the judgment of the learned Single Judge. The appeal lacks merit and is accordingly dismissed. No. costs.

B.N. Mohapatra, J.

15. I agree.