
(1994) 12 GAU CK 0022

In the Gauhati High Court

Case No : Civil Rule No's. 2002, 2838, 3420, 3558, 3559, 3579, 3580, 3581, 3583, 3585, 3586, 3587, 3589, 3594, 3597, 3603, 3608, 3650, 3654, 3659, 3660, 3661, 3662, 3663, 3664 and 3665 and Miscellaneous Case No's. 983, 1048, 1004 and 1049/94 (in Civil Rule No's.

Dr. Sanjeeb Roy Baruah and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Citation : (1995) 2 GLR 115

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : A.K. Phookan, M. Bhuyan, J. Roy, in C.R. No. 2002 of 1994; K.K. Mour, in C.R. Nos. 2838 and 3579 of 1994, B.P. Katakya, M.R. Pathak, in C.R. No. 3594 of 1994, N.C. Das, R.C. Das, in C.R. No. 3597 of 1994, N. Dutta, U. Bhuyan, in C.R. Nos. 3559 and 3660 of 1994, K.P. Pathak, M. Singh, in C.R. No. 3608 of 1994, U. Bhuyan, in C.R. No. 3661 of 1994, A.K. Bhattacharyya, K. Agarwal, N.T. Nath, in C.R. Nos. 3385, 3586, 3587 and 3662 of 1994, B.K. Sarma, M.K. Choudhury and B.K. Baishya, in C.R. No. 3559 of 1994, A.K. Phookan, J. Roy, I. Bora, D. Bora, in C.R. No. 3420 of 1994, A. Roy, S.R. Sen, in C.R. No. 3583 of 1994, M. Choudhury, H.S. Thankhiew, S.C. Kayal, in C.R. No. 3589 of 1994, K. Devi, in C.R. Nos. 3580, 3581 and 3603 of 1994, P. Pathak, R. Baruah, in C.R. No. 3650 of 1994, G. Uzir, B. Chetry, B.K. Chetry, in C.R. No. 3558 of 1994, A.C. Buragohain and N. Devi, in C.R. No. 3654 of 1994, G.N. Sahewalla, A.K. Goswami, P. Bora, in C.R. Nos. 3663, 3664 and 3665 of 1994, N. Islam, D.S. Bhattacharyya and R. Baruah, in C.R. No. 3564 of 1994, for the Appellant; K.C. Mahanta, G.A. for Assam, N. Dutta, U. Bhuyan, U. Das, A.C. Das, D. Das, B.D. Das, M. Singh, H.K. Barua, K.P. Pathak, R. Bora, G. Uzir, B. Chetry, B.K. Chetry, N. Tamuli Nath, P. Pathak and R. Baruah, for the Respondent

Judgement

D.N. Baruah, J.—The above Civil Rules were heard together and during the course of hearing various anomalies came to the notice of this Court. It transpired that the selection of candidates for the Post Graduate Courses for the Session 1992-93 were not made in due compliance of the Rules and in

consideration of their respective merit. As the lime was very short this Court directed the State Government as well as the Director of Medical Education (Respondents Nos. 1 and 2) and the Principals of three Medical Colleges in Assam (Respondent Nos. 4, 5 and 6) by order dated 15.09.94 to give admission to those candidates, whose names were mentioned in the said order within one week from that date. This Court also directed the Gauhati and Dibrugarh Universities to allow them admission. The said order was passed without giving any reason and hence I give the reason hereunder.

2. Civil Rule No. 2002 of 1994 Dr. Sanjeeb Ray Baruah v. State of Assam and Ors. was moved on 30.5.94 and this Court issued Rule and called for the records and also stayed the select list published vide Memo No. DME/9/92/Pt/4407 dated 29th May, 1994. Thereafter, the cases came up on 25.8.94 (Misc. Case No. 1062/94 in CR 2002/94). The State Government was directed to file an affidavit indicating the number of students admitted in the Colleges from the first list, their position in the list, marks secured and number of seats offered and also to indicate the number of students admitted in the Colleges giving full details fixing 1.9.94 for filing of affidavit. As no affidavit was filed on 1.9.94 this Court extended time till 5.9.94. Time for filing affidavit was further extended till next date, i.e. on 6.9.94. An affidavit-in-opposition was filed by the State Government and the Director of Medical Education (Respondent Nos. 1 and 2) on 6.9.94. This affidavit was filed by the Director of Medical Education. As the affidavit was not very clear, this Court directed the Government to furnish further details, The Government was asked to notify in daily news papers of Assam to inform the intending candidates seeking admission into the Post Graduate Degree/Diploma Courses, to file application before this Court by 9.9.94, the Government accordingly published notice in various News papers. Pursuant to the said notice, the Petitioners of other Civil Rules approached this Court.

3. The cases were, thereafter, heard on 12.09.94, 13.09.94 and 15.09.94 and this Court after hearing the counsel for the Petitioners and the Government Advocate of Assam, assisted by the Director of Medical Education, passed the aforesaid order dated 15.09.94.

4. The case of the Petitioners may be stated, in brief, as follows:

Pursuant to the advertisement issued and notified by the Authority concerned, Petitioners alongwith other candidates appeared in the entrance examination for admission to the Post Graduate Courses for the Session 1992-93 in the three Medical Colleges of Assam. Thereafter, on the basis of marks secured by the candidates, the Controller of Examinations prepared two general lists on the basis of merit. One for the candidate securing 50% of above marks and the other securing 45% or above out below 50%. On the basis of the said list 120 candidates were admitted in various subjects of Post Graduate Course for the Session 1992-93. However, 72 candidates could not be admitted from the first list as their marks were below 55% from the second list 93 candidates could not be admitted. As a result, some seats were lying vacant. Situated thus the

Director of Medical Education, Assam, issued nonces asking the candidates who secured 45% to 54% marks in the examination to appear before the Selection Board on 19.5.94, for selection of the candidates to fill up the vacant seat. Many candidates remained absent on 19.5.94, therefore, the Director of Medical Education by Memo dated 20.5.94 again directed those candidates to attend his Office on 26.5.94 for consideration of their selection for the vacant seats. Pursuant to that notice, some candidates appeared before the Selection Board many however were absent, Thereafter the Director of Medical Education, published a list of 97 candidates, who were selected for admission in to the Post Graduate Degree/Diploma Course for the said Session 1992-93 in different Medical Colleges of Assam, in the disciplines shown against their Roll Numbers.

5. The contention of the Petitioners is that the notices issued by the Director of Medical Education requiring the candidates to appear before the Selection Board on 19.5.94 and 26.5.94 had not been properly circulated to enable the candidates to know about the meetings of the Selection Board. As a Result, many of the Petitioners could not appear before the Selection Board on the aforesaid two dates. The said notices were published in the local News bulletin of Guwahati Doordarshan Kendra. Normally such publication of notices cannot be said to be a proper publication. The usual practice is to publish it in News papers. Petitioners feel that this was done just to accommodate some candidates of inferior calibre. The Petitioners further state that the select list was not prepared on the basis of merit list. Petitioner in Civil Rule No. 2002/94 has given a churl to show that the candidates securing lesser marks and placed much below the Petitioner had been given admission by ignoring the claim of better eligible candidates. Besides, names of some candidates appearing in the serial number 90-97 are persons whose roll numbers did not figure in the merit list prepared on the basis of entrance examination. The select list thus prepared suffered from the vice from pick and choose" method. The Petitioners further state that the manner in which the candidates were given admission was highly illegal, arbitrary and unreasonable.

6. The affidavit-in-opposition has been filed in Civil Rule No. 2002/94. In other Civil Rules the Respondents have not filed any affidavit-in-opposition.

7. I heard the counsel for the Petitioners and the Government Advocate, assisted by the Director of Medical Education, Assam. On hearing the counsel for the parties, the following questions fall for determination:

(1) Whether the notices issued by the Director of Medical Education directing the candidates to appear before the Selection Board on 19.5.94 and 26.5.94 were properly circulated to enable the candidates to appear before the Selection Board on the dates mentioned in the notices;

(2) Whether the authority gave admission to candidates in order of merit in accordance to the provisions of Rules.

8. POINT No. (1):

The Petitioners allege that the notices issued by the Respondent the Director of Medical Education, Assam, were not circulated properly. It was circulated only by the local News bulletin of Doordarshan Kendra, Guwahati. These notices were never circulated in any other manner. The usual practice, according to the Petitioners, is to publish it in daily news papers. These allegations have not been denied by the Respondents in paragraph 7 of the affidavit-in-opposition filed by the Respondents in Civil Rule No. 2002/94, it has been stated thus:

7. That the statements made in paragraph 6 relating to the provisions of Rule providing for giving additional 5% marks on the marks secured by Doctors serving in rural areas in competitive examination being question of law and it will take in own course.

As many people do not look to television for various reasons, e.g. for want of time or for power failure which is rampant in the State, there is every possibility of missing the news item, But, if it is published in the news paper, it can be looked by the interested persons at any time. It is not known why the authorities decided to circulate the notice through Doordarshan that too only a day before the meeting of Selection Board on 19.5.94 and just few days before the next sitting of the Selection Board on 26.5.94. Besides, this was never repeated in the subsequent News bulletin. Petitioners have suggested mala fide action of the officials of the Government. According to the Petitioners, the publication of notices was done in a hush hush manner just to accommodate the undeserving candidates for whom they (the officials) had interest.

9. Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith if it is in fact done honestly whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in bona fide manner and should never act for an improper motive, or ulterior purpose or contrary to the requirement of any Act or Rules, or improperly exercise discretion to achieve some ulterior purpose. The determination of a plea of mala fide involve two questions, viz; (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the object, and condition of a valid exercise of administrative power. However, before coming to a finding regarding mala fide action, it must be proved. Mere assertion or a vague or bald statement is not enough. It must be demonstrated either by admitted or a proved fact. In this case, there is no sufficient material to come to the conclusion that the action of the Respondents are mala fide.

10. From the facts and circumstance, it may not prove mala fide, but these actions are definitely not fair and reasonable. The purpose of the said notices was to inform the candidates seeking admissions and for that wide circulations of the notices was necessary. In my opinion, circulation of the notices in the local news bulletin through local Doordarshan Kendra, Guwahati, cannot be said to be wide circulation. In view of the above I have no hesitation to hold that the said

notices issued by the Director of Medical Education, Assam were not properly circulated and as a result some deserving candidates failed to appear before the Selection Board Therefore, the select list published on 29.5.94 cannot be said to be valid and proper.

11. POINT No. (2):

The Petitioners have clearly stated that the admission had been given to the candidates securing lower marks ignoring the claim of the Petitioners, who secured higher marks. The select list was prepared not in order of merit and contrary to the provisions of Rules. The counter affidavit filed by the Respondents in Civil Rule No. 2002/94 have not specifically controverted the said averments. In para 8 of the affidavit-in-opposition they have stated thus:

8. That with regard to the statements made by the Petitioner in the aforesaid Civil Rule alleging arbitrary action on the part of the Respondents selecting the candidates for admission into the Post Graduate Courses for the Sessions 1992-93 in different Medical Colleges of Assam with the scant regard to the merit but prepared on the basis of the entrance examination conducted by University concerned under the Post Graduate Admission Rules. 1990 in respect of candidates (sic) 55% marks and above are not true and same are hereby denied.

In view of specific averments giving details in paragraph 9 of the writ petition (Civil Rule No. 2002/94) the statements made in paragraph 8 of the Affidavit cannot be said to be specific denial. The Respondents have not filed any counter affidavits in other Civil Rules. At the time of hearing the argument, the learned Government Advocate as well as the Director of Medical Education, Assam, did not dispute the same. In view of the above, it can be presumed that the averments made by the Petitioners are correct. If that be so, the selection of candidates in the said manner cannot be said to be reasonable and fair. At must be held to be arbitrary and not informed of any reasons. Therefore, in my opinion, the impugned select list must be held to be arbitrary, unfair and unreasonable and be set aside and quashed. From the above, it is abundantly clear that the Respondents did not give admission to the deserving candidates strictly on merit. Some candidates could not appear before the Selection Board on 19.5.94 and 26.5.94 for lack of proper circulation of the notices issued by the Director of Medical Education, Assam.

12. This Court was informed that all the three Medical Colleges are run and funded by the State. Therefore, it is the property of the State and the candidates seeking admission have reasonable and legitimate expectation to get admission as per the provisions of Rules. The State is bound to act fairly. It cannot act arbitrarily at its own whims and caprices. All action of the State must be informed of reasons. In *Lakshmansami v. (sic) Salvamani*, reported in *Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others*, the Apex Court while dealing with publication of notice of sale by auction held thus:

The publication is an invitation to the intending bidders to prepare and participate at the bid. Unless there is a due publication of the date and place of sale, the intending purchasers cannot be excepted to run after the Sale Officer to find out the date and place of sale and to participate thereat. The Sale Officer has a statutory duty and responsibility to have the date and place of sale mentioned in the notice and given due publication in terms of the Act and Rules. Public auction is one of the mode of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities or the Sale Officers who should act fairly, objectively and kindly. Their action should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the debtor. The fair and objective public auction would relieve the public authorities or sale officers from above features and accountability. Any infraction in this regard would render the sale invalid.

13. In *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others*, the Supreme Court Observed thus:

The procedural fairness in the main requirement in the administrative action, The fairness" or fair procedure in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration....

14. In the present cases also, object of issuing notices was to give wide publicity to all so that, all the deserving candidates could appear before the Selection Board to ensure fairness in the actions of the Government. Similarly to avoid the suggestion of bias, favouritism, nepotism, the Respondents ought to have offered admission to the deserving candidates strictly in order of merit and in accordance with the provisions of Rule and practice. But it is really sad to say that this was not done by the Respondents in the present case and so all these grievances of the Petitioners. Therefore, in my opinion, the impugned selection cannot sustain inlaw.

15. At the time of hearing of the argument, the counsel for the Petitioners as well as the Government Advocate submitted that students as per the select list dated 29.5.94 had already taken admission. Besides, they were not made parties in all these Civil Rules. Learned Counsel for the Petitioners submitted that still there were vacancies and without disturbing the candidates, who took admission on the basis of the said select list, the authorities could give admission to the present Petitioners. Learned Government Advocate did not object to the said suggestion. The Director of Medical Education, Joint Director of Medical Education, Assam, who were present in the Court and gave all the informations from the records and agreed to give admission to the present Petitioners as seats were then available. The list of Petitioners was prepared in order of merit after taking into consideration of the subject of choice etc. as far as possible. After

preparation of the list as mentioned in the order dated 15.9.94, learned Government Advocate as well as the Director of Medical Education and Joint Director of Medical Education, Assam, confirmed the list so prepared and informed this Court that admission would be given accordingly. Dr. H. Das. representing Gauhati University and Mr. N.C. Phukan, Counsel representing Dibrugarh University also informed that the Universities would allow the candidates to take admission and there would be no difficulty in this regard.

16. Considering all these this Court passed the order dated 15.9.94 giving directions as mentioned therein without disturbing the candidates who took admission on the basis of select list dated 29.5.94.