

(1990) 08 OHC CK 0019

In the Orissa High Court

Case No : O.J.C. No"s. 1656, 1959 and.1983 of 1990

Dr. Sri Kumar Mohanty, Major Dr. Upendra Narayan Hota and
Dr. (Mrs.) Sangeeta Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 1 OLR 142

Hon'ble Judges : R.C. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : R.K. Mohanty, S.R. Patnaik and T.K. Patriaik, N. Beuria, G.B. Jena, S. Mohanty and B.M. Kar in O.J.C. No. 1656/90, A.K. Mishra, S.K. Das and S.B. Jena in O.J.C. No. 1959/90, S.K. Sarangi, K.N. Sinha and T. Khan in O.J.C. No. 1983/90, for the Appellant; Government Advocate and Addl. Standing Counsel, for the Respondent

Judgement

A. Pasayat, J.—Attacking vires instead of virus has become regular feature for doctors seeking selection to the Resident House Staff Assignment (in short "RHS"), Post Graduate Courses (in short "PG") and Higher Specialties in the three Government medical colleges of the State. It does not indicate a Wealthy state of affairs in the Department of Health and Family Welfare of the Government of Orissa. The malady continues in spite of several Judicial operations undertaken by the Supreme Court and this Court to prevent it. The present three writ applications involve challenge to paragraph 7.5 of the prospectus issued for selection of candidates for the aforesaid courses relating to year 1930-91. Since the grounds of attack and defence are common, the writ applications are disposed of by this common judgment which shall govern each one of them.

2. Applications in the prescribed form were invited, for selection of candidates for the Three Year P. G. Courses including one year of RHS Alignment and two year P. G. courses. The former course was intended for direct candidates, and those in-service candidates not covered by the impugned paragraph, while the latter

course was prescribed for in-service candidates having requisite eligibility as prescribed in paragraph 7-5. The minimum qualifications prescribed for both the courses have been laid down in paragraph 7 including allegedly offending paragraph and relevant portion reads as follows:

"7. Minimum Qualifications (for RHS & PG.)

7. 1. The candidates must have passed the final M. B. B. S. examination from any other University, if such qualification is recognised as equivalent o thereto by the University to which the candidate is admitted on selection.

7.2 The candidate must have satisfactorily completed completing the compulsory Rotating. Internship/ Housemanship training in a Hospital, recognised for this purpose by the 31st March of the year of admission."

7.3. The candidate must have obtained full registration with the State/Central Council of Medical Registration before he/she is allowed admission.

7.4.

7.5. In addition to the requirements prescribed in Clause 7.1,7. 2 and 7. 3 an in-service candidate for P. C. study must have worked as a Medical Officer for a period of five years under the Govt. of Orissa or Public Sector Undertakings Under the Orissa Govt. or taken together by 31st March of the year of admission.

OR

Must have put in at least one year of service as a Medical Officer under Government of Orissa /Public Sector Undertaking under the Government of Orissa by the 31st March of the year of admission.

(a) after having completed Resident Housemanship in The subject of study for a minimum period of one year ; or

(b) after having obtained diploma in the subject applied for from an Institution recognised by the Medical Council of India for the purpose; or

(c) incase of candidates seeking Admission to State sponsored subjects as defined in para 4.2 he/she must have worked as Demonstrator/Tutor/Research Worker under the State Government Medical Colleges for a period of not Jess than one year in the subject applied for."

According to the petitioners the prescription that only those in-service doctors who have worked as medical officers for. a period of Five years under the Government of Orissa or Public Sector Undertakings under the Orissa Government either continuously taken together by " 31st of .March of the year of admission, shall be eligible is unreasonable and is to be struck down being discriminatory. According" to them, in the past the prescription included those who have worked as medical , officers for a period of five years under the Government of Orissa, Government of India, or Public Sector Undertakings under either of Governments or the Armed Forces or under all or any other taken

together. "An in-service doctor" has been defined in Note to para. 1 as under:

"Note :—An in-service doctor is one who is in the employment of the Government of Orissa or Public Sector Undertakings under the Orissa Government. This includes all categories of employment like ad hoc, temporary, contract, regular or substantive on the date of application."

3. The petitioners have assailed this definition on the ground that the departure from the definition given in the prospectus for the earlier periods is uncalled for, arbitrary and discriminatory,, particularly when this Court had declared that the Note appended to paragraph 1.2 of the prospectus in so far as it excluded certain categories of doctors invalid, in the case of *Dr. Jagannath Behera etc. v. State of Orissa* represented by the Secretary to Government of Orissa in the Department of Health and Family Welfare and Ors. : 1989 (II) OLR 85 for the year 1988-89. In this backdrop it is relevant to quote the provisions of the Note as appear in the prospectus for the previous years. Upto 1987-88, in-service doctor was prescribed to be one who is- in the employment of the Government of Orissa, Government of India, Public Sector Undertakings and other Organisations under the Orissa" Government and Government of India, This includes all categories of employment like ad hoc, temporary, contract, regular or substantive on the date of application. For 1988-89 a change was effected and it was prescribed that an in-service doctor is one who is in the employment of the Government of Orissa, Public Sector Undertakings and other Organisations under the Orissa Government or is an Armed Forces Personnel. This includes all categories of employment like ad hoc, temporary, contract, regular or substantive on the date of application.

4. Elaborating their grounds of attack, the petitioners have submitted that after this Court has deprecated the exclusion of doctors of certain categories in *Dr. Jagannath Behera's* case (*supra*), the malady has continued in the prospectus under consideration and deserves to be judicially dissected and removed. The State has countered the allegations on the ground that keeping in view the guidelines indicated by the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, : *Dr. Dinesh Kumar and Ors. (1) v. Motilal Nehru Medical College Allahabad and Ors. AIR 1985 SC 1049* and *Dr. Dinash Kumar and Ors. (II) v. Motilal Nehru Medical College, Allahabad and Ors. AIR 1986 SC 1877*, 25% of the seats were available for the candidates qualifying in the All-India Entrance Examination and there was no scope for any grievance as doctors serving in the Army or under Central Government or its Public Sector Undertakings could come through that channel.

5. Petitioner in OJC No. 1656 of 1990 (*Dr. Sri Kumar Mohanty*)s and petitioner in OJC No. 1959 of 1990 (*Major Dr. Upendra Narayan Hota*) are ex-Army Service Personnel and Army Service Personnel respectively, while petitioner in OJC No. 1983 of 1990 (*Dr. (Mrs.) Sangeeta Dash*) is working as a Senior Medical Officer in National Thermal Power Corporation, a Government of India Undertaking. While the former two challenge the deletion relating to entry "or Armed Forces",

the third petitioner challenges deletion of provisions relating to employees of Government of India or Organisations thereof and Public Sector Undertakings. It is not in dispute that the petitioners fulfil all other eligibility criteria fixed except those required under paragraph 7.5 of the prospectus. The principles relating to reservations have been laid down by the Supreme Court in several cases and more particularly relating to reservations of seats for Post Graduate Courses in medical colleges, In Dr. Pradeep Jain's case (supra) and two Dr. Dinesh Kumar's cases supra). The object of the provisions which are to be made for regulating admissions is aimed at securing the best of most meritorious students. The State is permitted to make reservation based on residence requirement in order to, make the medical education available to the best talents out of the classes of persons who are likely to serve as doctors the inhabitants of a particular State and since it bore the financial burdens of running the colleges, it is authorised to lay down criteria for admission in its own colleges and to decide the source from which the admission would be made, but excepting possibility of arbitrary classification. The rational basis and reasonable nexus with the object has to be kept in mind while laying down the criteria. There is no dispute that the petitioners are inhabitants of the State, they prosecuted their studies in one of the medical colleges of the State and were either serving inside the State in Government of India Undertaking or in the Armed Forces. While call of the day is India is one and rendering Army Service is regarded- as a service of honour, distinction and pride, the exclusion of Army Personnel or Ex-Army Personnel from the category "in-service doctor", in our view, is a step in the negative direction. The plea of 25% preservation did not impress this Court in Dr. Jagannath Behera's case (supra) to which one of us, R. C. Patnaik, J. was a party). The following extract from paragraph 7 of the judgment is relevant:

"7.....There is no reasonable basis for the classification. The petitioners are residents of Orissa, taken their degrees, from the universities in the State, served in the hospitals located in and rendered service to the people of the State. The further classification in the category of in-service doctors by preserving seats only for in-service doctors serving under the State and under State Government Undertakings and Organisations goes beyond the permissible classification mandated by the Supreme Court, the Supreme Court was averse to reservation of any seat in P. G. Course but having regard to the various circumstances prevailing in States, permitted reservation on grounds of residence; backwardness and institutional preference. There is no rational nexus between the exclusion of doctors serving in approved hospitals run by local bodies and private organisations in the State, if there be any, and the object sought to be achieved. The reason for reservation applies equally to them, if that such doctors after post-graduation would render service to the people of the State. There can be no justification to exclude them when under the guidelines of the Medical Council of India, they are entitled to take the 2-year P. G. Course if they qualify the other requirements prescribed by the Medical Council of India. We, therefore, hold that the exclusion of doctors of the category as the petitioners cannot be justified as a

justifiable classification. We, therefore, declare the note appended to paragraph 1.2 of the prospectus in so far as that excluded the category of doctors as the petitioners as invalid."

In adopting the view, we feel that the exclusion of the doctors serving in the Armed Forces and who are Ex-Army Personnel or those who belonged to the Public Sector Undertakings working inside the State is unreasonable and needs interference.

6. Art. 14 of the Constitution ensures equality amongst unequals, its aim is to protect persons similarly placed against discriminatory treatment. Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group, and differential attributes must bear just and rational relation to the object sought to be achieved. It cannot be gainsaid that judicial scrutiny extends to the consideration whether classification rests on a reasonable basis and whether it bears nexus with the object in view. On the touchstone of reasonableness, classification has to be tested primarily to ascertain policy underlying the provision and the object intended to be achieved by it. After ascertaining the policy and the object thereof, a dual test has to be applied to gauge, (i) whether classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of group ; and (ii) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object. (See *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, and *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*,) As observed by the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , principle of reasonableness, and rationality is legally as well as philosophically an essential element of equality or non-arbitrariness and is protected by Art. 14. and it must characterise every State action, whether it be under the authority of law or in exercise of executive power without making of law. State's action must conform to some standard or norm which is rational and non-discriminatory. Thus admission to medical colleges may in certain cases depart from the general requirement based on merit, where it is necessary to do so for the purpose of bringing about real equality, of opportunity between those who are unequals. A certain percentage of reservation on the basis of institutional priority and residential requirements may legitimately be made in order to afford opportunities. But such institutional preferences and residential requirements may be allowed to operate within reasonable limits and should not be over-stretched to frustrate specialised Post-Graduate education. The Supreme Court has stressed on such desirability in *Dr. Pradeep Jain's case* (supra). As observed by the Supreme Court in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, , merit must be the test when choosing the best, according to general rule of equal chance for equal marks. In advanced medicine and other critical departments of higher knowledge, crucial to material progress" there should be attempt to. remove regional "or class inadequacy or such disadvantages.

Quantum of reservation should not be excessive and socially injurious judged in the background of over-all competency of the end-product i. e. Post-graduate degree-holders. Institutional preference if over-emphasised may become counter productive. As indicated by us above, prescriptions as made are unjustified. We are informed that a large number of seats are going begging and a minimal percentage of seats is being filled up. Considering high cost involved, efforts should be made to avoid vacancy in seats while making reasonable reservations within legitimate limits."

The Supreme Court has stressed on such desirability by observing that for admission to the M. B. B. S. Courses in super specialties, there should be really no reservation in the general interest of the country and for improving the standard of higher education and thereby utilising and improving the quality of available medical service to millions of citizens of the country. (See *Fazal Ghafoor Vs. Union of India (UOI) and Others*,)

7. The other aspect that survives for consideration is the relief that can be extended . to the petitioners in different cases, So far as petitioner Dr. Sri Kumar Mohanty is concerned, it " is stated that he has taken the selection test His case shall be considered as one related to Two Year Post Graduate Course as an in-service doctor, and" his selection would depend on his performance in the test he has undertaken.

So far as the petitioner Dr. Upendra Narayan Hot a is concerned, he has not taken the test; but while issuing notice on the question of admission on 1-6-1990, this Court observed that depending upon the result of the writ application, dirscion may be given for holding special eximinatron for petitioner and other applicants similiary sitinted who have moved this Court. We direct that a special examination may be held under similar situation as was done for the candidates who have already taken the examination. His selection would depend¹ upon his performance- in the test to "be conducted. The same eximiners who examined the candidates who have token their test would conduct the examination and as far as practicable the same standard shall be maintained. Those terms - also would govern the petitioner Or (Mrs.) Sangeeta Dash.

8. In the ultimate result, the writ appllcations are dispcsed of on the terms as indicated aboved, but in the circumstances without any order as to costs.

R.C. Patnaik, J.

I agree.