

(1989) 02 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 3576 of 1988

Madhuchhanda Padhi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : AIR 1989 Ori 209

Hon'ble Judges : V. Gopalaswamy, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : Madanmohan Das and B.D. Pradhan, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The controversy in this case relates to admission to the M.B.B.S./B.D.S. course in the three medical colleges in the State for the session 1988-89. The petitioner who appeared at the Entrance Examination seeking admission to the said course having been unsuccessful has filed this writ application praying to issue a writ of mandamus directing the opposite parties to admit her into the M.B.B.S./B.D.S. course or in the alternative to quash the result of the Entrance Examination and direct fresh examination to be held. The State of Orissa represented by the Secretary, Health Services, the Director of Health Services and Medical Education and the Convenor of M.B.B.S. Entrance Examination-cum-Principal, V.S.S. Medical College, Burla have been impleaded as opposite parties in the writ application.

2. The facts stated in the writ application, shorn of unnecessary details, are as follows :

The petitioner had a brilliant academic career, passed the 10th class in the first division and secured second position in Berhampur University in Botany (Hons.) in the second year Science Examination of 1988 of the plus 3 course. She

appeared at the Entrance Examination held on 25-9-88 for selection of candidates to the M.B.B.S./B.D.S. course. She was assigned the Roll No. M-44-E. The examination was objective type where each candidate was required to answer in all 150 questions in four subjects, viz., Physics, Chemistry, Biology and English. The total marks were 150. In the question paper itself the answers were indicated and the candidate was required to put a cross mark in the relevant space in the answer sheet. For every correct answer one mark was to be given. There was no minus marking for wrong answers. After the examination was held, to maintain secrecy, the portion of the answer sheet containing roll No. was ripped off and in its place a Code number was allotted. The answer sheets were then sent to the computer for correction and after correction each answer sheet was de-coded and the marks allotted were given against the corresponding roll number. The petitioner alleged that she was expecting to secure 112 marks and to secure a position amongst the first ten candidates in the merit list. But she was shocked to find that she was unsuccessful. On enquiry she learnt from reliable sources that at the stage of de-coding the answer sheets, manipulation was made and the marks secured by her were allotted to some other candidate. The petitioner further alleged that the last candidate selected for admission to M.B.B.S. course had secured 91 marks and the highest marks secured were 118. The petitioner contended that though she was eligible to be selected for taking admission to the M.B.B.S. course she was not selected on account of large scale manipulation committed by the subordinate staff of the V.S.S. Medical College who handled the examination papers due to doctors' strike during the relevant period.

Subsequently the petitioner filed a further affidavit after her counsel had opportunity to peruse the merit list and the answer sheet of the petitioner which were produced by the learned counsel for the opposite parties in pursuance of the direction of the Court. It was stated in the said affidavit that her position in the merit list was 226 and she had secured a total mark of 91 along with 19 others; that the petitioner's position amongst the candidates who secured 91 marks was 14th and the candidate securing 11th position in the 91 marks series had taken admission. She further alleged that as per Clause 9.3 of the Prospectus, in case of candidates securing equal marks at the Entrance Examination according to the list prepared under Clause 9.1 their inter se merit was to be determined according to their marks secured in Physics, Chemistry and Biology at the Entrance Examination and in case of further tie their inter se merit was to be determined according to their marks secured in Biology and Chemistry. The petitioner's total marks being equal to 19 other candidates their inter se merit could be determined as per the above mentioned clause of the prospectus eliminating the marks secured in English and taking into account the number of correct answers given in Physics, Chemistry and Biology. The petitioner asserted that she had been erroneously given 83 marks after excluding marks in English and had been assigned 14th position amongst the candidates who had secured total marks of 91. Indeed she had secured 89 marks in Physics, Chemistry and

Biology and therefore was entitled to be placed in the first position amongst the candidates who secured 91 marks and her position in the merit list ought to have been shown as 213. On these averments the petitioner claimed that she was entitled to be admitted to the M.B.B.S. course.

3. Two affidavits have been filed on behalf of the opp. parties in reply to the writ petition, both of them sworn to by Shri Naba Kishore Satpathy, Convenor of the M.B.B.S./B.D.S. Selection Board and Principal, V.S.S. Medical College, Burla. Refuting the allegations made in the writ petition and the claim of the petitioner, it is stated in the affidavits that as revealed from the papers the petitioner secured 91 marks out of 150 and her position was 226. The candidate who had secured 92 marks and was placed in the 211th position in the general merit list was the last candidate selected to the M.B.B.S. course. Regarding the procedure followed for evaluation of the answer sheets it is stated in the counter affidavit that after the examination was completed, all the answer sheets (coded), key answers and the information's regarding distribution of question in respect of each of the subjects were supplied to the computer centre. The coded answer sheets were evaluated by the computer. Thereafter the coded evaluated answer sheets were de-coded by the computer and arranged according to merit. The computer centre was apprised of provision in clause 9.3 of the prospectus regarding solution in case of tie amongst candidates securing same marks. During the process, there were instances where the candidates had secured equal marks and in such circumstances the inter se merit was determined by the computer keeping in view clause 9.3 of the prospectus and the information regarding distribution of questions of such subject. After finalizing the entire procedure the computer centre provided the final merit list of the candidates from which the selection was made to M.B.B.S./B.D.S. course. The opp. parties further stated in the counter affidavit that selection to the M.B.B.S. course was over with 92 marks for general candidates and since the petitioner had secured 91 marks the question of admitting her to M.B.B.S. course does not arise. It is further stated in the affidavit that there is no vacancy in any of the three medical colleges in M.B.B.S. course. Regarding admission to the B.D.S. course, it is the case of the opp. parties that 12 candidates from the general merit list have been selected for admission to the B.D.S. course and at present there is one seat lying vacant. The petitioner is not amongst the candidates selected for admission to B.D.S. course since her position is 15th amongst the candidates who secured 91 marks.

4. From the facts stated and the respective cases put up by the parties discussed in the foregoing paragraph, the question that arises for consideration is whether the merit list of candidates prepared by the computer is correct or not. To ascertain this, we deemed it necessary to direct the learned Addl. Govt. Advocate appearing for the opp. parties to re-evaluate the answer sheets of the 20 candidates including the petitioner who had secured 91 marks. We confined re-evaluation to these candidates in view of the factual position, which was not seriously controverted at the hearing, that the last candidate selected for

admission to M.B.B.S. course had secured 92 marks and the candidates who secured 91 marks were considered for admission to B.D.S. course on the basis of their positions indicated in the result list. The information that the Learned Addl. Govt. Advocate gave after checking up the answer sheets was revealing. The marks secured by the candidates placed against Nos. 212 to 231 after excluding the marks in English in accordance to clause 9.3 of the prospectus as calculated by the Addl. Govt. Advocate are given hereunder :

SI. No. 212

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91-5-86

SI. No. 213

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91-6-85

SI. No. 214

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91-4-87

SI. No. 215

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91-4-87

SI. No. 216

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91-5-86

SI. No. 217

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91-4-87

SI. No. 218

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91-2-89

Sl.No. 219

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91-4-87

SI. No. 220

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91-6-85

SI. No. 221

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91-3-88

SI. No. 222

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91-4-87

SI. No. 223

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91-4-87

SI. No. 224

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91-7-84

SI. No. 225

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91-6-85

SI. No. 226

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91-2-89

SI. No. 227

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91-6-85

SI. No. 228

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91-1-90

SI. No. 229

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91-5-86

SI. No. 230

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91-6-85

SI. No. 231

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91-4-87

From the aforesaid, it is clear that the candidates who had secured 90, the highest mark, was given 228th position; the petitioner and another candidate who had secured 89 marks each were assigned the positions 226 and 218 respectively. What is more shocking is that the candidates who had been assigned the top two positions, that is 212 and 213, had secured 86 and 85 marks respectively. There is therefore not even the remotest scope for doubt that calculation of marks taking into account the principle of first tie up as provided in Clause 9.3 of the prospectus had not been made correctly, as a result of which persons who deserved to be admitted to the course on the basis of their merit had been kept out and candidates far less meritorious than them had been selected for admission. The normal belief and expectation that by substituting computerisation for manual evaluation possibility of mistakes, manipulation etc. will be ruled out is given a lie from the facts established in this case. On scrutiny of the calculation made by the learned Addl. Government Advocate, we find it difficult to accept his contention that the result allegedly given by the computer was an accidental error. A feature in the counter affidavits filed on behalf of the opposite parties which we cannot lose sight of is that in neither of the two affidavits sworn to by the convenor who, as stated by him, had personally gone to the computer centre, and handed over the requisite materials to the person in charge there, nothing is indicated regarding the procedure and the manner in which the necessary information is fed into the computer. Though it is contended by the learned Addl. Govt. Advocate that all necessary informations including the principles in case of tie ups as laid down in the prospectus are fed into the computer at the initial stage, we find it very difficult to accept this submission, firstly because such a case is not even stated in the counter-affidavits and secondly, it might not be possible at the initial stage when the answer sheets had not been evaluated at all, to know at what stage the occasion for the first tie or the second tie will arise. Considering the averments in the affidavits filed on behalf of the opp. parties and the submissions made by their counsel, we get the impression that due and proper care to ensure a fair and proper evaluation of answer sheets which was absolutely necessary for selection of candidates on merit had not been taken.

5, The next question that arises relates to the relief to be granted to the petitioner. As noticed earlier, the petitioner on the basis of calculation of marks following the principle of first tie up was entitled to be admitted to the B.D.S. course. By now admission of general candidates to the said course is over and one seat from the reserved quota is vacant. At one stage we were inclined to

direct the authorities to reshuffle the list of 20 candidates who had secured 91 marks and re-arrange their positions in the correct order of merit. But considering the fact that admissions are over and the candidates who are likely to be affected in case of a reshuffle have not been impleaded as parties in this writ petition, we desist from issuing such direction. The position is clear that even though three months have elapsed since admissions were made one seat from the reserved quota is still vacant. Therefore, considering the special facts and circumstances of the case, we have decided to direct the petitioner's admission. What still distresses us is that we cannot help the candidate who has secured the highest mark (90) due to technical reasons.

6. In the result, the writ application is allowed with costs. The opposite parties are directed to admit the petitioner to the B. D.S. course within a fortnight from today. Let a writ of mandamus to this effect be issued to the opposite parties forthwith. Hearing fee is assessed at Rs. 500/- (Rupees five hundred) only.

Gopalaswamy, J.

7. I fully agree with the judgment of my learned brother. The peculiar facts of the case prompt me to give vent to my own feelings in the matter.

The twenty candidates bearing serial Nos. 212 to 231 secured 91 marks each. There were only 12 seats in the B.D.S. course and the same were allotted to serial Nos. 212 to 223, on the assumption that when the first tie would be resolved by deducting their marks in English, candidates of serial Nos. 212 to 223 are the batch of the first 12 candidates in order of merit. But on a consideration of the marks secured by them, as given in para 4 above, it is seen that this assumption that serial Nos. 212 to 231 are arranged in order of merit, is found to be wrong. On an analysis of the marks secured by the twenty candidates, their order of merit would be as given in the following table :

Order of merit. Serial number. Marks secured.

No. 1 228 90

No. 2 218 89

No. 3 226 80

No. 4 221 88

No. 5 214 87

No. 6 215 87

No. 7 217 87

No. 8 219 87

No. 9 222 87

No. 10 223 87

No. 1 1 231 87

No. 12 216 86

No. 13 212 86

No. 14 229 86

No. 15 213 85

No. 16 220 85

No. 17 225 85

No. 18 227 85

No. 19 230 85

No. 20 224 84

From the above table it is seen that there are 11 candidates who secured more than 86 marks and so they are entitled to admission in the B.D.S. course. So candidates securing 85 marks had no chance of admission in the B.D.S. course, as there are 3 candidates securing 86 marks. When the second tie is resolved, according to the principle of Clause 9.3 of the Prospectus, from the marks list submitted by the Government Advocate, it is seen that serial No. 216 securing $(86 - 18 =) 68$ marks is more meritorious than serial No. 212 securing $(86 - 20 =) 66$ marks. But then what has happened in the course of selection is that while serial Nos. 212, 213 and 220, who were not entitled to seats, were allowed admission in the B.D.S. course, serial Nos. 226, 228 and 231, who deserved seats, were unjustly denied admission. It is obvious that because of the serious mistakes in the preparation of the merit list of the 20 candidates in question, the less meritorious candidates usurped the seats of the more meritorious candidates. When such grave mistakes are committed either by man or machine, whether by design or by accident, the consequences are the same in that it would result in irreparably damaging the careers of the candidates who suffer by such mistakes. Frequent recurrence of such mistakes is likely to dampen the healthy competitive spirit of the candidates by inducing in their minds the unhealthy feeling that their selection is not always dependent on their performance. We hope and expect that in future the Selection Board would take proper precautions to ensure that the merit list would truly reflect the performance of the candidates in the examination, as, otherwise their faith in the system of selection may be eroded.