

(2002) 03 OHC CK 0025

In the Orissa High Court

Case No : O.J.C. No's. 7230 and 7231 of 2000

Ms. Pupli Das and Ms. Sunayana Mohanty

APPELLANT

Vs

Chairman, Admission Sub-Committee, JEE (E and M) and
Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 93 CLT 590

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : Sushil K. Patnaik, S.N. Nayak and P.K. Das, for the Appellant; R.K. Mohapatra R.K. Dash, N.K. Sahoo, D.P. Dash, B. Swain, S. Kar, N.C. Nayak and A. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Naik, J.—The prayer is both the writ petitions being common, they were heard analogously and are being disposed of by this common judgment.

2. The writ petitioner appeared at the Joint Entrance Examination (E & M) - 2000 for which counselling was held on 24th and 25th July, 2000. The rank of petitioner - Ms. Pupli Das (OJC No. 7230/ 2000) was at serial No. 213 and that of petitioner - Ms. Sunayana Mohanty (OJC No. 7231/2000) was 214 in the general category. It is the case of the petitioners that due to the wrong procedure having been adopted by the Opp. parties, they were deprived of being admitted to the M.B.B.S. Course and accordingly, there being no other option, they were forced to take admission to the B.D.S. Course, 2000 at S.C.B. Medical College, Cuttack. it is their further case that since 229 seats are available in the general category, the petitioners, who were placed at Serial Nos. 213 and 214 were entitled to take admission to the M.B.B.S. Course. But that was not done and contrary to the established norms, the J.E.E. Committee illegally diverted 11 (eleven) seats to the reserved quota to the prejudice of the candidates in the general category.

Accordingly, the prayer is for declaring the action of the opposite parties to be illegal, irregular and arbitrary and for a direction to the authorities to select and admit the petitioners to the under graduate M.B.B.S. Course, 2000.

3. Accordingly to the petitioners, there are, in all, 321 seats in the three Medical Colleges of the State for M.B.B.S. Course and deducting therefrom 92 reserved seats, the available seats for the general category would be 229 and all these seats should have gone only to the candidates belonging to the general category which has not been done.

4. The Opp. party No. 1 has filed a counter affidavit opposing the writ petition. Denying the averments made in the writ petitions, it is stated that the process of selection has been conducted strictly in accordance with the guidelines laid down by the Apex Court as well as the High Court and that the allegations made by the petitioners that the action is arbitrary and illegal is not correct. With reference to the total seats available, it is specifically stated in paragraph 5 of the counter affidavit that the total intake of the three Medical Colleges of the State including reserved seats is 290-273 in M.B.B.S. stream and 17 in B.D.S. stream.

5. It appears from the material on record that, in all, there are 321 seats in the M.B.B.S. stream of the three Medical Colleges of the State, out of which 15% are reserved for All India Quota which comes to 48 seats. So the seats available for the State are $(321 - 48)$ 273. Out of 273 seats, 12% (33 seats) are reserved for ST., 8% (22 seats) are reserved for S.C., 5% (14 seats) are reserved for children of Green Card Holders, 3 seats are reserved for physically handicapped persons and eight seats are reserved for Ex-servicemen. Thus, in all, the number of seats reserved for the aforesaid categories are $(33 + 22 + 14 + 03 + 08)$ 80. Hence, the seats available for the general category are $(273 - 80)$ 193 only. Thus, the calculation of the seats worked out by the writ petitioners in paragraph 8 of both the writ petitions cannot be accepted as correct and the contention that there is confusion regarding the exact number of seats available in the general category cannot also be accepted. The further contention that all these available seats should have been allotted only to the candidates belonging to the general category cannot also be accepted in view of the decision of the Apex Court in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others,

6. It is now the settled position that if a candidate belonging to the reserved category is high up in the merit list and is entitled for admission on his own merit, then, his admission has to be considered in the open category and not under the reserved category. In other words, a student who is entitled to be admitted on the basis of merit, though belonging to a reserved category, cannot be considered to be admitted against the seats reserved for the reserved category. But at the same time, as has been observed by the Apex Court in Ritesh R. Sah (supra), in order to safe-guard their interest they are to be given option for admission into the different colleges which have been kept reserved for reserved category and it is only after their option is given, then the case of less meritorious reserved category candidates is to be considered and they are to

be allotted seats in whichever college the seats may be available. In the words of the Apex Court "while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation, he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate....."

7. In the case at hand, it has been specifically averred in the counter affidavit that candidates who are placed at Serial Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the reserved Green Card category were placed at Serial Nos. 6, 11, 27, 35, 39, 51, 59, 71 and 87 in the general merit list and had exercised their option to take admission under the general category and accordingly, their admissions were treated as such. Likewise, three candidates who are at Serial Nos. 12, 14, and 15 in the Green Card category were also at Serial Nos. 121, 138 and 141 of the general merit list and thus, exercised their option to take admission in the S.C.B. Medical College, Cuttack in the reserved category, but again as their rank came within the general merit list, their admissions were also computed as under general category. By this stage, the cases of those who were upto rank 202 had been considered and counselling started for filling up 12 general seats in B.D.S. Course in S.C.B. Medical College, Cuttack from merit list 203 onwards and accordingly, the candidates in general merit rank 203 to 214 exercised their option to take admission in B.D.S. Course and accordingly, they were admitted. As has been already indicated above, the petitioners are at Serial Nos. 213 and 214 and consequently, they were admitted to the B.D.S. Course.

8. Since some of the candidates in the other reserved categories were also higher in the general merit list, their options were also accepted, and their admission has to be considered against the general category keeping the reserved seats intact. Thus, in the process, 193 seats which were available in the three Medical Colleges in the general category were filled up. However, since 9 candidates did not take admission, the last candidate to be admitted in the M.B.B.S. Course was at Serial No. 202 in the merit list.

9. At this stage, it may be relevant to mention that the candidate who was at Serial No. 203 in the general merit list, namely, Sambit Kumar Mohanty, had approached this Court by way of O.J.C. No. 6827 of 2000 in which the challenge was not only to his selection and non-admission but also to the process of counselling which according to the petitioner therein was discriminatory and resulted in his not being admitted. Thus, the controversy involved in the present writ petitions was also the subject-matter of controversy in the earlier writ petition (OJC No. 6827/2000) in which the action of the authorities in considering the case of candidates in the reserved category against the general quota, in view of their high rank in the common merit list, was upheld as it was in accordance with the law laid down by the Apex Court in Ritesh R. Sah's case (supra) and accordingly, the principle adopted in the matter of selection of

candidates was not found to be arbitrary or discriminatory. The matter, thus, stands concluded by the judgment of the Division Bench of this Court in Sambit Kumar Mohanty V. Chairman, Admission Sub-Committee, JEE (E & M), 2000 U. C. E. Burla and another, (OJC No. 6827/2000 disposed of on 2.7.2001). It, therefore, follows that the procedure adopted in the present case is neither arbitrary nor discriminatory. The contention, therefore, needs to be and is hereby over-ruled.

10. Before concluding, we may also observe that there cannot also be any transfer from B.D.S. Course to the M.B.B.S. Course because of the decision of the Division Bench of this Court in Debapriya Pradhan and Ors. v. State of Orissa and Ors. 82 1996 CLT 266 wherein it has been clearly laid down that the first two years of the M.B.B.S. Course and B.D.S. Course are completely different and cannot be held to be similar or identical to such other for the purpose of transfer of a candidate from the B.D.S. Course to the second or third year M.B.B.S. Course.

11. Thus, having considered the matter in all its aspects and in view of the decision in Ritesh R. Sah's case (supra), the contention of the learned counsel for the petitioners that the petitioners suffered due to wrong procedure adopted by the Opp.parties cannot be accepted and is, accordingly, over-ruled. It follows that no error has been committed by the authorities in the procedure adopted by them at the time of counseling.

12. In the result, both the writ petitioners fail and are dismissed. There shall, however, be no order as to costs.