
(2013) 10 OHC CK 0014
In the Orissa High Court
Case No : Writ Petition (C) No. 12827 of 2013

Neha Goel

APPELLANT

Vs

Siksha 'O' Anusandhan University, Bhubaneswar and Others

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 117 CLT 491 : (2014) 1 ILR (Ori) 49 : (2014) 1 OLR 331

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Panda, J.—Petitioner, in the present writ application, challenges the action of opposite party No. 1 in not allotting her an M.B.B.S. seat opted by her instead allotted a B.D.S. seat in the Institute of Dental Science. The petitioner has filed the writ application on 10th June, 2013. On 12th June, 2013 Mr. V. Narsingh, learned counsel undertakes to appear on behalf of opposite party Nos. 1 and 3 and Court has directed to serve two extra copies of the writ petition on him and an extra copy of the same on Mr. R. Mohanty, learned counsel, who usually appears for Medical Council of India to file counter affidavit within two weeks. On the same day, this Court also passed interim order that any admission made in the M.B.B.S. course 2013 shall be subject to the result of the writ application. The facts leading to the present writ application are as follows:-

The petitioner passed Senior School Certificate Examination, 2012 from Central Board of Secondary Education, Delhi and obtained application form along with information brochure 2013-14 and applied for medical examination. Accordingly, admit card was issued to her and she faced the Entrance Test, SAAT 2013 held on 18.5.2013 at Suraj Bhan D.A.V. Public School, New Delhi. In the said entrance examination the petitioner got 234(General) rank in M.B.B.S./B.D.S. course. Admittedly there are 100 number of M.B.B.S. seats allotted to the institution of opposite party. According to the rank card, petitioner appeared at the Counseling Center on 9.6.2013 at 7 A.M. along with all relevant documents and deposited

Rs. 30,000/- in favour of opposite party No. 1 and registered her name. At the time of counselling the petitioner submitted seat choice in which she has clearly written to take admission in 1st year M.B.B.S. course. Unfortunately, the admission was closed after 70 number of candidates in the M.B.B.S. course and announcement was made that M.B.B.S. seats in the institution has been filled up and they have invited the candidates to take admission in 1st year B.D.S. course in the said institution of Dental Science. Finding no other way the petitioner has registered her name in B.D.S. programme of the institution and she is attending the classes of the B.D.S. course. It is contended by the petitioner that at the time of counselling the opposite party No. 1 after taking admission of 70 numbers of candidates declared that the seats are filled up without clarifying about the remaining 30 numbers of seats. However, on enquiry they have stated that the remaining 30 numbers of seats are only to be filled up by the N.R.I. quota. Opposite party No. 1 has not disclosed in the information brochure regarding allotment of seat in respect of different category of candidates and as the action of opposite party No. 1 was illegal, the petitioner has filed the present writ application immediately on the next date i.e. 10th June, 2013. In the present writ application, the petitioner has specifically prayed to pass any other appropriate order as may deem fit and proper in the interest of justice.

2. Opposite party Nos. 1 and 3 have appeared and filed their counter affidavit on 19th August, 2013 taking a stand therein that the institution is a Deemed University in terms of Section 3 of the U.G.C. Act, 1956. The Medical Council of India accorded for renewal of permission for admission of 7th batch of 100 M.B.B.S. students for the Academic Session 2013-14. Accordingly, they have issued a brochure for conducting entrance test styled as "SAAT, 2013". As per Clause-14 of the said brochure, it was stipulated that selection for admission will be strictly on the basis of rank secured in the merit list subject to the availability of seats in the disciplines at the time of counseling for admission. A candidate failing to report for counseling on the date and time prescribed will not be given chance subsequently under any circumstances. Further in Clause-16 it was also stipulated that the University reserves the right to fill up the vacant seats, if any, in any discipline on a suitable basis as approved by the competent authority of the University. Since the petitioner has got 234 rank in the general category as per the rank a seat in B.D.S. course was offered to her. They have also taken a stand that out of 100 seats for M.B.B.S. course available to be filled up, 15% of seats was earmarked for NRI students and 15% of seats shall not be filled up through SAAT, 2013 awaiting the out-come of the results of NEET, 2013, which was the subject matter of challenge before the Apex Court. The last student who got admitted in M.B.B.S. course has secured the 107 rank in SAAT, 2013 and there are meritorious students than the petitioner, therefore, B.D.S. seat was offered to the petitioner and 15% of seats were earmarked for NEET, 2013 qualified candidates. Advertisement was invited through electronics media as well as through press advertisement. Pursuant to such advertisement on 27th July, 2013, 57 NEET, 2013 rank holders registered their names online seeking

admission in the institution and out of them 26 candidates were found eligible for admission into the M.B.B.S. course. Out of the said 26 candidates, 15 candidates have taken admission in M.B.B.S. course and all the 100 seats of M.B.B.S. course were filled up and classes have already commenced since 1st August, 2013. Hence taking into the merit position of the petitioner in SAAT, 2013 she has no subsisting right to claim for admission in M.B.B.S. course. Opposite party No. 2-M.C.I. has not filed any counter affidavit in this case.

3. After receiving copy of the counter affidavit from the opposite party, the petitioner has filed rejoinder affidavit. It was submitted that as per the M.C.I. Notification dated 12.2.2012 there shall be a single Eligibility-cum-Entrance Examination namely National Eligibility-cum-Entrance Test (in short "NEET") for admission into M.B.B.S./B.D.S. course in each academic year. The said test was conducted on the superintendence and control of the M.C.I. The said Notification of the M.C.I. was under challenge before the Apex Court where the Apex Court by interim order dated 13.12.2012 directed that the M.C.I., D.C.I., as well as State and Universities and other institutions will be entitled to conduct their respective examinations for the M.B.B.S./B.D.S. and Post Graduate Courses, but shall not declare the results of the same until further orders. The aforesaid interim order was modified on 13.5.2013 and direction was made to publish the result of the examinations already conducted to enable the students to take advantage of current year. The petitioner has also contended that the opposite party No. 1-institution has not maintained transparency in the process of admission as directed by the Apex Court time and again and nowhere in the information brochure they have reflected that 15% M.B.B.S. seats are earmarked for the NEET, 2013. The press advertisement made by opposite party No. 1 for NEET-2013 in Oriya paper inviting qualified NEET rank holders to apply online application for admission into M.B.B.S. course instead of publishing the said advertisement in National Newspapers and particularly by the time the advertisement was made by opposite party No. 1 for NEET rank holders 2013, the petitioner had already filed the writ petition before this Court and had obtained an interim order. The opposite parties have also admitted that 13 number of candidates, who are less meritorious than the petitioner were allowed to take admission. Petitioner's NEET All India rank is 139043 and her percentile score is 78.9452. Hence, the petitioner placed at serial No. 3 of the candidates who have taken admission under NEET rank and without giving admission to the petitioner in the M.B.B.S. course, the opposite party No. 1 admitted the candidates who have secured less rank than the petitioner.

4. Additional counter affidavit filed by opposite party Nos. 1 and 3 in response to the aforesaid rejoinder reiterating their earlier stand taken in the counter affidavit and further stated that it was open to the petitioner to apply for admission in respect of the seats meant for NEET, 2013 rank holders and the petitioner having chosen not to do so, it is no longer for her to claim that her merit vis-?-vis NEET, 2013 qualified rank holders is to be evaluated and claim admission on the said basis.

However, it appears that the opposite party Nos. 1 and 3 have not disclosed anything in their information brochure regarding percentage of seat meant for NEET rank holders, suddenly they have issued advertisement on 26.7.2013 for admission during pendency of the writ application without disclosing the said fact to the Court.

5. Considering the above facts and circumstances it appears that the petitioner being aggrieved by the action of the opposite party Nos. 1 and 3 approached this Court at the earliest i.e. 10th June, 2013 and Court has also passed an interim order on 12th June, 2013. Admittedly, the rank of the petitioner in NEET is higher than the candidates who have taken admission in the M.B.B.S. course. Her rank in the said list is at serial No. 3. Thus, less meritorious candidates have taken admission in the M.B.B.S. course after 27th July, 2013 and during pendency of the writ application the opposite party Nos. 1 and 3 have not disclosed all those facts to the Court to complete admission as per the NEET list nor they have maintained transparency about the procedure followed in admission. They have also not disclosed the number of seats maintained NEET holders in the information brochure issued.

6. The Apex Court in the case of *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, has observed as follows:-

21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of the scheme formulated by this Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. (Ref.: *Priya Gupta v. State of Chhattisgarh*, *Harshali v. State of Maharashtra*, *Pradeep Jain v. Union of India*⁵, *Sharwan Kumar v. DG of Health Services*⁶, *Preeti Srivastava v. State of M.P.*⁷, *Guru Nanak Dev University v. Saumil Garg*⁸ and *AIIMS Students' Union v. AIIMS*⁹.)

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23. Adherence to the schedule is the obligation of the authorities and the students both. The prescribed schedule is to be maintained *stricto sensu* by all the stakeholders because if one party adheres to the schedule and others do not or there is some kind of lack of communication or omission to make proper announcements and maintain proper records for such counselling, disastrous results can follow, of which the present case is an apt example.

24. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a

particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high competitiveness in the present times, where on a fraction of a mark, admission to the course could vary. Higher the competition, greater is the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The authorities concerned are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations.

25. Strict adherence to the time schedule has again been a matter of controversy before the courts. The courts have consistently taken the view that the schedule is sacrosanct like the rule of merit and all the stakeholders including the authorities concerned should adhere to it and should in no circumstances permit its violation. This, in our opinion, gives rise to dual problem. Firstly, it jeopardises the interest and future of the students. Secondly, which is more serious, is that such action would be ex facie in violation of the orders of the court, and therefore, would invite wrath of the courts under the provisions of the Contempt of Courts Act, 1971. In this regard, we may appropriately refer to the judgments of this Court in *Priya Gupta*³, *State of Bihar v. Sanjay Kumar Sinha*¹⁰, *Medical Council of India v. Madhu Singh*¹¹, *GSF Medical and Paramedical Assn. v. Assn. of Self Financing Technical Institutes*¹² and *Christian Medical College v. State of Punjab*¹³.

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30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS

course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer *Arti Sapru v. State of J & K*²³, *Chhavi Mehrotra v. DG, Health Services*²⁴ and *Arvind Kumar Kankane v. State of U.P.*²⁵)

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38. Now, we shall proceed to answer the questions posed by us in the opening part of the judgment.

ANSWERS

38.1(a) The rule of merit of preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.

38.2(b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in *Priya Gupta*). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in *Priya Gupta* and this judgment are found to be unexceptionally satisfied and the reasons therefore are recorded by the court of competent jurisdiction.

38.3 (c) & (d) Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and

empowerment. Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

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40. Besides providing the above answers to the questions, we also issue the following directions to put the matters to rest beyond ambiguity and to ensure that the authorities act in accordance with law

40.1. From the records of this case it is clear that two different records are being maintained at the time of counselling. Firstly, the attendance register and thereafter photography and thumb impressions are taken and, secondly, the Committee maintains a record of the counselling where the (sic)406students are actually given a specific college/course of his/her preference. We direct that the second set of records shall be maintained more accurately. It shall not only contain the signatures of the candidate and the Committee members but also the date and time when the candidate is given a seat and it shall also be signed by the candidate with the course clearly written by the Committee and signed by the candidate in the remarks column.

40.2. The essence of all the judgments dealing with this issue is to nurture discipline, fairness and transparency in the selection and admission process and avoid prejudice to any of the stakeholders. Thus, while we expect the authorities to be perfect, fair and transparent in the discharge of their duties, we make it clear that the students who adopt malpractices in collusion with the authorities or otherwise for seeking admissions and if their admissions are found to be irregular or faulty in law by the courts, they shall normally be held responsible for paying compensation to such other candidates who have been denied admission as a result of admission of the wrong candidates.

40.3. The law requires adherence to a settled protocol in the process of selection and grant of admission. None should be able to circumvent or trounce this process, with or without an ulterior motive. The courts are duty-bound to ensure that litigation relating to academic courses, particularly professional courses, should not be generated for want of will on the part of the stakeholders to follow the process of selection and admission fairly, transparently and without exploitation.

40.4. Keeping in mind the hard reality that there are number of petitions filed in each High Court of the country, on the one hand challenging the admissions on varied grounds while, on the other, praying for grant of admission on merit to the respective professional courses of MBBS/BDS, the Court cannot lose sight of the fact that the career of the meritorious youth is at stake. These are matters relating to adherence to the rule of merit and when its breach is complained of, the judiciary may be expected to deal with the said grievances preferentially and

effectively. The diversity of our country and the fact that the larger population lives in rural areas and there being demand for consistent increase in the strength of qualified medical practitioners, we are of the considered view that such cases, at least as of now and particularly for a specific period of the year require higher priority in the heavy business of court cases. We are not oblivious of the fact that the Hon''ble Judges of the High Court are working under great pressure and with some limitations. However, we would still make a request to the Hon''ble Chief Justices of the respective High Courts to direct listing of all medical admission cases before one Bench of the Court as far as possible and in accordance with the Rules of that Court. It would further be highly appreciable if the said Bench is requested to deal with such cases within a definite period, particularly during the period from July to October of a particular year. We express a pious hope that our request would weigh with the Hon''ble Chief Justices of the respective High Courts as it would greatly help in serving the ends of justice as well as the national interest.

41. For the reasons afore-recorded and with the directions as mentioned above, we direct the respondents to grant admission to the appellant to the MBBS course in the current academic year subject to the condition that she will pursue her MBBS course right from its beginning and to the conditions afore-noticed. However, in the facts and circumstances of the case, we award no costs.

The Medical Council of India in their regulation clearly indicates that the authority has to strictly adhere to rule of merit at the time of admission. Inaccuracy and improper admission process defeat the Rule of Merit. The Apex Court time and again declares such position of law in series of decisions. In the present case ignoring the merit list and without maintaining transparency and fairness in the admission of M.B.B.S. course, opposite parties have given admission to less meritorious students.

The Apex Court further in the case of Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, has observed as follows

7. Ordinarily, where the High Court exercises such jurisdiction it merely quashes the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before the inferior court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of jurisdiction in the inferior court or tribunal to entertain or to take the proceeding at all. In that event on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offending order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice

require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstances that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it.

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The court in exercising its powers under article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the income tax Officer, while passing an order u/s 132(5), did not give an adequate opportunity to the party concerned it should not be left with the only opinion of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the income tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage.

Applying the above settled position of law and principle to the present case and as already stated in the foregoing paragraphs, the opposite party Nos. 1 and 3 have not maintained transparency and fairness at the time of admission of the candidates to the M.B.B.S. course. Therefore, this Court directs the opposite party Nos. 1 and 3 to give admission to the petitioner in M.B.B.S. course during the current academic year 2013 within a period of seven days and allow her to attend the M.B.B.S. classes. However, the last candidate who has been granted admission in the M.B.B.S. course be transferred to B.D.S. course and in the fact and circumstances of the case the writ application is allowed. No costs.