
(1996) 09 GAU CK 0046
In the Gauhati High Court
Case No : Civil Rule No. 96 (K) of 1996

Neilatuo Suokhrie

APPELLANT

Vs

State of Nagaland and Another

RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Nagaland Technical/Professional Degree Courses (Selection of Candidates) Rules, 1995
— Rule 5.2

Citation : (1997) 3 GLR 41

Hon'ble Judges : H.K.Sema, J

Bench : Single Bench

Advocate : R. Iralu, for the Appellant; E.Y. Renthungo, Jr. Govt. Advocate, for the Respondent

Judgement

H.K. Sema, J.—I have heard Mr. R. Iralu, learned Counsel for the Petitioner as well as Mr. E.Y. Renthungo, learned Jr. Government Advocate.

2. The facts leading to the filing of the present petition may be recited strictly for the purpose of disposal of the present writ petition. The Petitioner after completing two years course in Pre-University from Science College, Kohima in 1995 securing First Division filed an application for Joint Entrance Examination conducted by the Board of School Education, Kohima vide its notification No. 15/96. Thereafter the merit list under (PCB) group was published by the authority. The name of the Petitioner appears at serial No. 19 of the merit list having secured marks in Physics-48, Chemistry-62 and Biology-80 totalling 190 marks.

3. The Government of Nagaland vide notification dated Nil published the Nagaland Technical/Professional Degree Courses (Selection of Candidates) Rules 1995 (hereinafter the Rules). In Rule 5.2 of the Rules preference has been categorised for the purpose of nomination of candidate. This Rule has been assailed as arbitrary and therefore, this Rule shall be dealt with in-extenso at the

appropriate time. The case of the Petitioner has been included in Group B. According to the Petitioner, the case of the Petitioner is deserved, to be included in Group A.

4. The Petitioner has also assailed the minutes of the Cabinet Meeting dated 18.9.95 (18.9.95) (Annexure-H) circulated by Office Memorandum dated 21st September, 1995 on the ground that the Petitioner's father was originally from Srinagar and known as S.L. Munshi. However, in 1956 Petitioner's father settled in Kohima and in 1958 he became a member of Kohima village by paying Rs. 5/- as registration fee. After becoming a member of Kohima village he is converted into Christianity and he got his Baptism from Kohima village Baptist church by late Rev. Kevizolie in the year 1958 and now the name of the Petitioner has been changed as Rev. Haizotuo Angami and therefore, the Petitioner is entitled to be included in Group A of Rule 5.2. Rule 5.2 has also been assailed as being arbitrary because Rule 5.2 did not specify the percentage to be reserved in each category and as such it would give scope for arbitrary exercise of powers.

5. Rule 5.2 of the Rules reads:

5.2 For the purpose of nomination of candidates the order of preference shall be as under:

Group A-Local candidates hailing from the State of Nagaland.

Group B-Indigenous non-Naga Local residents (Nepalies/Gurkhas settled in the erstwhile Naga Hills District prior to 31st December 1940) declared vide Home Department (P and AR) No. GAB-8/2/9/73 as published in the Nagaland Gazette part-II dated 31-12-1975.

Group C-Children of Nagaland State Government Servants. (Not covered under Group A and B).

Group D-Children of Central Government Servants working in Nagaland for a period of not less than 2 (two) calendar years/All India Services of Nagaland cadre.

Group E-Others (Not covered by Group A to D above).

6. A cursory reading of Rule 5.2 would clearly show that what percentage of seats has been reserved for each category has not been disclosed, The submission of Mr. Iralu, therefore, is substantiated, because if no percentage of post reserved is indicated in each category, it would give scope for arbitrary exercise of power.

7. In Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., (popularly known as Mondal Commission judgment), the Constitutional Bench of the Apex Court has held in paragraph 121(6)(a) and (b) and (c) as under:

(6(a) and (b) The reservations contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out

consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main-stream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

(c) The rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be. (para 96).

Therefore, the law is now well settled that the competent authority cannot reserve seats exceeding 50% of the total seats, unless there is compelling circumstances to relax the Rule giving sufficient reasons necessitating for relaxation of the Rules which must be exercised with extreme caution and only in a special case made out as observed by the Apex Court.

8. A bare perusal of Rule 5.2, there is no indication as to what percentage of seats has been reserved in each category. Group E deals with others (not covered by Group A to D). Presumably this Group E deals with the general category, however, no percentage of reservation has been indicated. Unless the percentage of seat reserved in each category is indicated it would give scope for an arbitrary exercise of power even reserving say 100% seats in Group A or Group B so forth and so on. Therefore, Rule 5.2 was in clear violation of the law settled by the Apex Court and the same has been quashed as being unconstitutional. Rule 5.2 is accordingly quashed.

9. Before I advert to the second point it would be pertinent to mention here that besides what has been stated above, putting the case of the Petitioner in Group B is misconstrued. At the time of hearing of this writ petition, it is fairly submitted by Mr. E.Y. Renthungo, learned Jr. Govt. Advocate that putting the case of the Petitioner in Group B is a mistake of fact. According to him the Petitioner's case would cover by Group E. A reading of persons/group of persons who are entitled in Group B category would amply suggest that the Petitioner is not one of those to be put in Group B.

9.1 The second submission of Mr. Iralu that the Cabinet decision dated 18/9/95 is discriminatory can not be accepted. Article 14 and 16 of the Constitution prohibits discrimination, but allow reasonable classification on intelligible differentia. The Cabinet in the sitting on 18/9/95 has minuted which is extracted:

NOT ON AGENDA (i) The Cabinet did not agree for allotment of MBBS seat to children of non-Naga father who are not Members of Scheduled Tribe or Scheduled Caste. Instructions should also be issued to all administrative officers to follow the existing Govt. instructions for issue of indigenous certificate to Non-Naga children who are adopted as sons and daughters by Naga family.

10. A submission has been made by Mr. Iralu that the Petitioner's father has been adopted by valid adoption order and for all intents and purposes the Petitioner has now become a Naga. He has also referred to Annexure-M which is a certificate showing that the Petitioner's father has been adopted as per Naga Custom of Angami Nagas. The certificate also shows that the Petitioner's father has buildings and other landed property in L. Khel of Kohima village and paying taxes as bonafide members of the Kohima village. The certificate has been signed amongst others by the president L. Khel. Kohima village and chairman of Kohima Village Council. This Court had an occasion to deal with such similar case in Civil Rule No. 81(K) 93 disposed on 14/10/93 interalia, observing that the wife follows the domicile of her husband and also the indigenous Certificate issued by A.D.C. Kohima was not in accordance with the guidelines issued by the Government from time to time. In that case the offshoots of the Naga lady married to an outsider claimed to be the indigenous Naga on the basis of caste certificate issued by the A.D.C. Kohima. It is submitted at the bar that the decision of this Court is pending before the Apex Court for disposal. The present case in hand with regard to the claim to be Naga by virtue of adoption is similar to that case. Therefore, no contrary finding is possible in the case in hand.

11. This now remains to be seen as to what relief the Petitioner is entitled to. From the Notification dated 19th August, 1996 it clearly appears that the number of seats available to the Nagaland Government from different Medical Colleges in the country is 27. From the same notification it also clearly appear that candidates selected for MBBS is only 24. Therefore, the remaining three seats are now available un-filled. The second Respondent is accordingly directed to consider the case of the Petitioner along with others qualified in the Entrance Examination for the available three seats treating her as candidate under general category. This shall be done within 2 (two) weeks from the date of receipt of this order. Needless to say that the case of the Petitioner along with others will be considered strictly on merit and on the basis of marks secured by them in the Entrance Examination. If ultimately the Petitioner and others are nominated by the competent authority pursuant to this direction they shall get admission to their respective Colleges as assigned to them by the competent authority, without resorting to delay.

12. Considering the importance of the case, the competent authority shall see that the Rule 5.2 of the Rules shall be suitably amended as indicated by this Court as soon as possible and in any case before the next Entrance Examination is commenced.

With the aforesaid direction and observation this writ petition is disposed of. No costs.