
(2007) 08 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 3564 of 2007

Omar Faruque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2009) 1 GLR 835

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.M. Mazumdar and B. Sinha, for the Appellant; D. Saikia, A.K. Goswami and V. Rajkhowa, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—Being aggrieved by the selection of the Respondent Nos. 5 and 6 for admission into MBBS Course for the session 2007-08 against the Char Area Reserved Quota under the Medical Colleges of Assam, Regional Dental College, Guwahati and Government Ayurvedic College, Guwahati (Regulation of Admission of Under-Graduates Students) Rules, 2007 ("the Rules"), the Petitioner has approached this Court for redress. This Court by order dated 20.7.2007, in the interim, has restrained the official Respondents from filling up one vacant seat in the above institution for the aforementioned course.

2. I have heard Mr. A.M. Mazumdar, senior advocate assisted by Mr. B. Sinha, advocate for the Petitioner and D. Saikia, learned standing counsel, Health and Family Welfare (B) Department, Assam. Also heard Mr. A.K. Goswami, senior advocate, assisted by Mr. U. Rajkhowa, advocate for the Respondent No. 6.

3. The pleaded facts would be necessary to outline the respective cases of the parties. The Petitioner claims to be a local resident of village Bonnyaguri within Lakhipur P.S. in the Goalpara District, which according to him, is located within the Char Area contemplated by the Rules. He has insisted to belong to an economically and educationally backward class of the State. In order to pursue

the MBBS Course, he applied under the Rules for appearing in the related Combined Entrance Examination ("the CEE") and on a due scrutiny of the accompanying testimonials, he was issued the admit card. He accordingly appeared in the written test. The results were duly declared and he qualified to appear before the Selection Board in the office of the Principal, Guwahati Medical College, Guwahati for counselling preceding selection for admission. He had been allotted Roll No. 310224 and on securing 186 marks in the aggregates in the CEE, was ranked as 602. The Petitioner has asserted that having regard to his ranking he stood first amongst the candidates applying for the seats reserved for Char Areas and was, therefore, entitled to get the top most preference therefor.

4. In the educational notice dated 21.6.2007, issued by the concerned authorities, the dates of counselling for different categories of candidates were set out mentioning their roll numbers, aggregate marks obtained and ranks secured. The counselling for the successful candidates for selection against Char Area Quota was fixed on 12.7.2007. Counselling for the candidates for another reserved category, namely, Rural Quota was also scheduled to be conducted on the same date. Though, according to the Petitioner, in terms of the educational notice, the process for Rural Quota ought to have preceded the one for Char Area Quota, the Selection Board undertook the process in the reverse order. As a result whereof, the Respondent Nos. 5 and 6, who had applied for the Rural Quota and OBC Quota respectively and had secured higher marks and ranking than the Petitioner, were accommodated against two seats for the Char Area Quota. The Selection Board also picked up another candidate, namely, Sriparna Baruah, of the general category, who had not submitted the prescribed form in Annexure-VI, endorsing her claim for Char Area Quota at Sl. No. 1 in the waiting list for the category and included the Petitioner next to her at Sl. No. 2 therein.

5. The Petitioner has asserted that the Respondent Nos. 5 and 6, had not applied for the Char Area Quota and had their candidature been considered against their choice of Rural Quota and OBC Quota respectively, they would have been selected for those, whereupon considering the Petitioner's ranking, he would have been accommodated against the seat earmarked for the Char Area Quota. The Petitioner has, thus, contended that he had been wrongly denied a seat in the Char Area Quota in violation of the Rules. For ready reference, the names of the candidates referred to in the petition with their roll numbers marks and rankings are extracted hereinbelow:

Following the selection and as reflected in the educational notice dated 22.7.2007, Respondent Nos. 5 and 6, were provided admission in Assam Medical College, Dibrugarh and Silchar Medical College, Silchar against Char Area Quota, respectively. In his additional affidavit, the Petitioner also questioned the genuineness of Respondent No. 5's claim against the Char Area Quota.

5A. In their affidavit, the official Respondents while controverting the Petitioner's stand of being first amongst the candidates applying for the Char Area Quota, have stated that in terms of the educational notice 21.6.2007, the first 250

candidates in order of merit, had been called at the counseling for the unreserved seats. The process having culminated with the candidate at the rank No. 163 those from rank 164 to 250 were considered in the counseling for the respective reserved categories opted for by them. Two amongst those candidates having applied for Char Area Quota in view of their higher merit positions, were, thus, considered therefore, Ms. Sriparna Baruah, who had applied to the Selection Board to consider her candidature also for the Char Area Quota, had secured higher rank than that of the petitioner. However, the certificate in Annexure-VI of Form B application of hers, having been detected to be deficient, it was sent for verification by the appropriate authorities. The inter se ranking of the Petitioner and the Respondent Nos. 5 and 6, Sriparna Baruah and one Abu Zaman Safar Alam, contending for admission against the Char Area Quota, was provided as hereunder:

Thus, according to the answering Respondent, the Petitioner was at Sl. No. 5, in order of merit amongst the candidates electing for the Char Area Quota. They have insisted that the Selection Board was not obliged to follow for the purpose of counselling the order in which the reserved categories were referred to in the educational notice to be taken up on a particular day. As the candidates vying for the Char Area Quota seats were lesser in number, it decided to complete the counselling for the said category before advertizing to the Rural Quota. The Respondents affirmed that the Respondent No. 5 had been selected for the Char Area Quota considering her merit position. The Respondent No. 6, an OBC candidate though, had applied both for OBC and Char Area Quota, he did not attend the counselling for the former on 10.7.2007 but did so for the latter on 12.7.2007 and in view of his higher merit position than the Petitioner, he was allotted a seat in the Char Area Quota. The Respondents clarified that a candidate in the process could apply for more than one reserved category of his/her choice and, therefore, did not stand disqualified for exercising multiple options.

In his reply affidavit, the Petitioner pleaded that the Respondent No. 5, had opted for Rural as well as Char Area category, whereas, the Respondent No. 6 against OBC as well as Char Area Quota. He insisted that Ms. Sriparna Baruah, had not indicated her choice for Char Area Quota, but was picked up to be placed at Sl. No. 1 in the waiting list therefor, in spite of her incomplete application which otherwise necessitated a summary rejection thereof.

6. Mr. Mazumdar, referring to the educational notice dated 21.6.2007, has argued that the same having displayed for general circulation, the placement of the candidates with their ranks for counselling on the dates specified against the categories referred to therein, the Selection Board was obliged to follow the schedule so published. The learned senior Counsel, therefore, urged that the Selection Board ought to have conducted the counselling on 12.7.2007 for the Rural Quota prior to that of the Char Area Quota. It not having done so, the Respondent Nos. 5 and 6, were extended undue benefit by accommodating them

against the Char Area Quota seats by illegally depriving the Petitioner in contravention of the Rules, more particularly Rule 6 thereof. According to Mr. Mazumdar, the Respondent No. 5, having also applied for admission against Rural Area Quota, his candidature should have been considered against that category. The learned senior Counsel, contended that the Respondent No. 6, having failed to appear in the counselling for the OBC/MOBC Quota, he forfeited his claim altogether for admission. According to Mr. Mazumdar, the Respondent Nos. 5 and 6 have, thus, been accommodated on extraneous considerations against Char Area Quota seats to divert the available Rural Quota seats to other non-deserving candidates.

7. In reply, Mr. Saikia, has emphatically argued that the Petitioner's claim of being first amongst the candidates for the Char Area Quota, is factually incorrect and, thus, misconceived. Both the respondent Nos. 5 and 6, having elected for the Char Area category along with other reserved seats, viewing their higher ranks in order of merit, they were validly allotted two seats earmarked for the Char Area Quota. He reiterated that neither the Rules nor the educational notice dated 21.6.2007 made it obligatory for the Selection Board to follow in particular, the order for any category in the matter of counselling of candidates for selection and that the plea to the contrary is, thus, unsustainable. The original records produced pertaining to the candidates involved, have been placed before this Court for perusal.

8. Mr. Goswami, while endorsing the stand of the official Respondents, has urged that the Petitioner's claim of being first amongst the candidates selected for the Char Area seats and that the Respondent Nos. 5 and 6 had not applied therefor, being without any basis, wholly presumptive in nature, the contentions mounted therein, are utterly flawed and fallacious and are liable to be rejected in limine. The learned senior Counsel emphasised that the candidates having been permitted to offer multiple choices against the reserved category seats his/her non-appearance at the counselling, scheduled for a particular category cannot entail forfeiture of his/her merit position or the choice for other quotas. According to Mr. Goswami, if it is otherwise, the underlying purpose of permitting the candidates to elect for alternative quotas would be frustrated rendering the process irrational and unintelligible. On the failure of the candidate to appear for counselling against a particular quota, he/she may have to forgo his/her claim therefor, but the same in no case can result in effacement of his/her overall merit position, he urged. Mr. Goswami, while dismissing the allegation of irrelevant considerations for conducting the counselling for the Char Area Quota before the Rural category contended that even Rule 6 relied upon by the Petitioner, did not envisage the same. The Petitioner's assertions being founded on wrong facts and misinterpretation of the Rules, the same are liable to be rejected, he pleaded.

9. I have extended my cautious consideration to the contesting arguments. Admittedly, the Petitioner ranks lower than the Respondent Nos. 5 and 6 in merit. There is no dissention at the Bar that the candidates were permitted to

exercise multiple preferences in the alternative for the reserved quotas prescribed by the Rules.

The original records produced disclose the following options of the Petitioner and the Respondent Nos. 5 and 6.

10. The educational notice dated 21.6.2007, set out the roll number, aggregate marks and ranks of the candidates together with the dates of their counselling against various categories of seats. The notice, inter alia, recited that all candidates must appear for counselling on the scheduled dates and time failing which he/she would forfeit his/her merit position and that no claim would be considered later. Though, considerable reliance has been placed by the learned senior Counsel for the Petitioner on his declaration, in my opinion, in view of the liberty granted to the candidates to elect more than one category for admission, his/her failure to appear in the counselling for one quota, cannot ipso facto obliterate his/her overall merit position, so as to annul his/her claim for selection against a seat in any other category. His/her nonappearance for counselling for one category of seats though would entail forfeiture of his/her claim for the said seat, it would not disqualify him/her for a seat in any other category. The interpretation as sought to be offered on behalf the Petitioner, if sustained, would render the permissibility of multiple options meaningless. The authorities having consciously allowed several choices to be made by a candidate understandably on well conceived reasons so as to enable him/her to avail all alternatives modelled on his/her merit position, a narrow and pedantic construction as suggested on behalf of the Petitioner ought to be eschewed. Not only otherwise the purpose of permitting the multiple elections would be frustrated, the process would be rendered illogical, irrational and inconsistent with the professed norms informing a public process.

11. It is the categorical plea of the State Respondents that the counselling for the general category seats numbering 161 ended with the candidate at the rank 163. The candidates with the next lower ranks, were, thus, available subject to the options exercised by them for their selection against the other category posts following their counseling. As the records reveal, the Petitioner and the Respondent Nos. 5 and 6, that all applied for the Char as well as Rural Area Quota. Evidently, the Respondent Nos. 5 and 6, are higher in order of merit than the Petitioner. If the Respondent Nos. 5 and 6, can be validly considered for Char Area Seats, the Petitioner's claim to be first amongst the candidates, therefore, would fall flat. Their applications are self-sufficient and have been accepted to be valid and complete in all respects. The date of counselling as the education notice disclose for the Rural Area and Char Area Quotas, was the same, i.e., 12.7.2007.

Rule 6, which deals with the reservation of seats and catalogues, the various categories with the percentage and/or the numbers of seats correspondingly earmarked, does not embody a mandate that the counselling for the Rural Area Seats, has to be compulsorily undertaken prior to that of the Char Area Seats.

The second proviso appearing under Clause (m) thereof, also does not prescribe such a course. True it is that in the educational notice in the order in which the reserved categories have been arranged for counselling on 12.7.2007, the Char Area Quota follows the Rural Area category. The date of counselling for the two categories being the same and there being no other enjoinder obligating the Selection Board totally denuding it of any discretion in the matter, I do not feel persuaded to hold that the counselling for the Char Area Seats could by no means been conducted before that for the Rural Category Seats. In awarding the Char Area Seats to the Respondent Nos. 5 and 6, the Selection Board has not forsaken merit, which has been consistently underlined to be the paramount criteria for admission in academic courses.

The Selection Board in allotting Char Area Seats to the Respondent Nos. 5 and 6 has not accommodated candidates not applying therefor. The Petitioner's plea that had they been counselled for the Rural Area Seats earlier and the Respondent No. 6, in particular for the OBC/MOBC Quota, they would have been accommodated against the seats in those categories paving the way for his admission against a seat in the Char Area Quota, in the present factual premise appears to be hypothetical as well as far fetched. Though, the tick mark appearing in the application of the Respondent No. 5, indicating her choice of being considered for Char Area Quota, seems to have been scored off in the face of the certificate appended to her application in Form VI, it is unlikely that the Selection Board would have considered her candidature therefor, had the interpolation existed at the relevant time. For obvious reasons, no further dilation on this aspect is considered expedient.

In view of the above revelations, the Petitioner's claim of being first amongst the candidates electing for Char Area Quota Seats, cannot be sustained. Having regard to the Respondents' pleaded stand that the application of Sriparna Baruah in view of some inadequacy therein, is lying with the appropriate authorities for verification, I am not inclined to dwell on the aspect of her placement at Sl. No. 1 in the waiting list for the Char Area Quota candidates above the Petitioner. Needless to say the Respondent-authorities in taking a decision on her (Sriparna Baruah) application would meticulously adhere to the extant Rules, guidelines and the stipulations in this regard.

12. In the above view of the matter, I am of the unhesitant opinion that the Petitioner's contentions impeaching the selection of the Respondent Nos. 5 and 6 for admission to Char Area Seats, cannot be upheld. As observed hereinabove, the Selection Board, has exercised its discretion within permissible limits to hold the counselling for Char Area Seats before that for the Rural Area Category and its decision to prefer the Respondent Nos. 5 and 6 for admission on the basis of their higher rankings in order of merit, is neither absurd nor arbitrary or in defiance of logic, warranting interference of this Court in the exercise of its power of judicial review. The petition, thus, being without any merit is dismissed. Consequently, the interim order stands vacated. No costs.