
(1994) 05 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 1082, 1470 and 2155 of 1994

Penakshi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : AIR 1995 Ori 168

Hon'ble Judges : G.T. Nanavati, C.J.;K.L. Issrani, J

Bench : Division Bench

Advocate : P. Palit, D. Mohanta, F.K. Misra, S. Ratho, B.N. Patnaik and P.K. Choudhary, for the Appellant; R.K. Mohapatra and S.K. Das and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nanavati, C.J.—These three petitions are filed by the students, who desire to appear at the Joint Entrance Examination -The Engineering and Medical, for admission to Orissa quota of seats in Government Medical Colleges to be held on 14th and 15th May, 1994. They have challenged the minimum eligibility criteria, fixation of upper age limit, provision for subjective and objective type questions and non-fixation of minimum qualifying marks in advance. In O.J.C. No. 1082 of the petitioners are 19 in number. The number of petitioners in O.J.C. Nos. 1470 and 2155 is 23 and 24 respectively.

2. Their grievance in these petitions is that the requirement of passing the +2 Science Examination or equivalent examination by appearing in all the papers in one attempt and fixation of 25 years on 31st December, 1994 as the upper age limit will make them ineligible, for appearing at the said examination. Their contention, shortly stated, is that both these conditions are irrational and discriminatory. Regulation regarding short answer type of questions is also irrational as it leads to arbitrariness.

3. The Chairman of the Admission Sub-Committee published an advertisement on 30-1-1994 declaring that the Joint Entrance Examination-Engineering and Medical-1994 for admission to Engineering Colleges; such as U.C.S., Burla, R.E.C., Rourkela, I.G.I.T., Sarang, C.E.T., Bhubaneswar. O.E.C. (Pvt.), Bhubaneswar, A.B.I.T. (Pvt.), Cuttack, Orissa quota of seats in other R.Cs. and Technological Institutes outside Orissa, and Medical Colleges, such as S.C.B. Medical College, Cuttack, V.S.S. Medical College, Burla, M.K.C.C. Medical College, Berham-pur and Dental Wing of S.C.B. Medical College, Cuttack and D, Pharma, Colleges (Pvt.) of Orissa, will be held on 14th and 15th May, 1994. In that advertisement the Chairman has indicated the minimum eligibility criteria and the maximum age limit and has further stated that further information can be obtained from the Brochure published by the Admission Sub-Committee. In the Brochure it is stated in Regulation 3.8 Clause (c) that candidates must have passed/pass (for those appearing in 1994) the +2 Science Examination or equivalent examination by appearing in all the papers in one attempt (not compartmentally). In Clause (d) of the same Regulation, it is further stated that candidates must be within the age limits of 17 years and 25 years on 31st December, 1994. Regulation 3.20 reads as under :-

"3.20. Instructions on Examination Procedure.

Examination will be conducted in Physics, Chemistry, Mathematics, Biology and English. There will be subjective and objective type questions. Objective questions will be of multiple choice type. A correct answer to an objective question will fetch full marks, no attempt will carry zero mark and wrong answer will carry negative mark. About 1 / 3rd of the questions may be of objective type. Qualifying in English is essential to qualify in J.E.E.-Exm-1994. The marks secured in English shall not be counted in drawing up of the merit list. To qualify in J.E.E.-Exm-1994 a candidate has to secure minimum qualifying marks in Physics, Chemistry and Mathematics and/or Biology separately. The minimum qualifying marks for S.C./S.T. candidates only is 2/3rd of the minimum qualifying marks for general category. For other reserved categories, the minimum qualifying marks in each subject shall be the same as for the general category.

The Joint Entrance Examination is held only for preparing a relative merit list. There is no award of class and no issue of marksheet and no provision for verification of marks secured by a candidate."

4. Shri P. K. Misra, learned Advocate for the petitioners in O.J.C. No. 1470 of 1994, contended that the two restrictions imposed by the Regulations as regards upper age limit and passing the +2 Science Examination in one attempt are violative of Article 19(1)(g) of the Constitution of India inasmuch as they debar the citizens from appearing at the said Joint Entrance Examination and thus deny to them entry into the medical profession. Without entering into any elaborate discussion as to whether such an indirect effect can be said to be violative of the fundamental right guaranteed under Article 19(1)(g) or whether such a restriction can be regarded as a reasonable restriction, the contention of the

learned Advocate will have to be rejected in view of the decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., In that case the Supreme Court has held that the right to free education is available to the children only till they complete the age of 14 years and, thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. It is also not necessary to emphasise that the State's means being limited and considering the present facilities for medical education, it cannot be provided freely, i.e., without any restriction, to every citizen. It is also urged that the aforesaid restrictions are violative of Article 21 of the Constitution. While holding that right to education flows from right to life, the Supreme Court in that case has held as under:-

".....But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution"

In view of what has been held by the Supreme Court in that case, the contention based upon Article 21 also deserves to be rejected.

5. As regards the prescription of upper age limit, it is contended by Shri Misra that no such age limit has been prescribed by the Indian Medical Association and also by the Central Board of Secondary Education for candidates appearing at the examination held for the all-India quota in medical colleges. He further submitted that the justification in this * behalf put forward by the Admission Sub-Committee in its counter-affidavit cannot be said to be rational and, therefore, this part of the Regulations should be regarded as bad. Shri Misra also submitted that no upper age limit whatsoever can be prescribed for appearing at such entrance examination because even if merit is regarded as the sole criteria for providing medical education, admission to medical colleges will be governed by the result of performance of the candidates at the entrance examination and thus the restriction by way of upper age limit does not have any rational nexus with the object sought to be achieved. Even if we assume, in the absence of any material produced before us, that Indian Medical Association has not prescribed any upper age limit, it cannot be said that because of that reason the authorities concerned with imparting education cannot prescribe such age limit if otherwise there is justification or valid purpose behind it. It may be stated that in the counter-affidavit filed by the Admission Sub-Committee in O.J.C. No. 1470 of 1994, it is stated that the All India Institute of Medical Sciences has prescribed an upper age limit of 22 years. It is also stated by it that Banaras Hindu

University has also prescribed the upper age limit so far as entry into medical colleges is concerned. It is further stated therein that all engineering institutions/ colleges like Indian Institutes of Technology have prescribed the upper age limit of 27 years. As regards the contention that no upper age limit has been fixed by the Central Board of Secondary Education for the candidates appearing at the All India Pre-Medical Entrance Examination and, therefore, prescribing such upper age limit by the State of Orissa would amount to discriminatory treatment to the candidates desirous of appearing at the entrance examination, what is required to be borne in mind is that the Central Board of Secondary Education holds the examination for the all-India quota seats whereas the Admission Sub-Committee is holding the examination for admission to Government Colleges in the State of Orissa, and that too for the State quota seats in those colleges and thus the candidates desirous of appearing at the All India Pre-Medical Entrance Examination held by the Central Board and the candidates desirous of appearing at the Joint Entrance Examination held by the Admission Sub-Committee form separate distinct classes and if there are not meted out the same treatment, it cannot be said that there is discrimination in the sense that similarly situated persons are without any justification treated differently.

6. Shri Palit, learned counsel appearing for the petitioners in O. J.C. No. 1082 of 1994, and Shri Misra submitted that fixation of upper age limit for entrance examination for professional courses like medicine and law is irrational and, therefore, no upper age limit should have been prescribed by the Admission Sub-Committee. Shri Misra relied upon a decision of the Kerala High Court in *K. A. Shau v. State of Kerala* 1987 (1) KLT 730. In that case what had happened was that the Kerala Government introduced an entrance examination for the five-year law course in Government Law Colleges from the academic year 1986-87. The Government also provided an upper age limit of 20 years for appearing at the said entrance examination. The fixation of upper age limit was challenged and the learned single Judge of the Kerala High Court held that it was prima facie discriminatory and also irrational. Taking selection of the brightest and the best as the objective underlying the selection to a professional course, the learned Judge held that the classification based on age has no rational nexus with the object sought to be achieved. The learned Judge was also of the view that the fixation of upper age limit is irrational. It can be seen from the judgment that the reasons given by the learned Judge for taking this view are: (1) The objective underlying the selection to a professional course should be the selection of the brightest and the best (2) For having the best talents for an exacting professional, it is totally unnecessary to offer a feather bed, to weaklings who do not measure up to the requisite standards in a competitive field. The absence of a special treatment to the younger ones will not in any way frustrate the object underlying a higher standard in the legal education. (3) Large sections of the society still suffer from handicaps of tradition or social oppression and may require comparatively a longer time before they can pass the qualifying course. (4) An Advanced age may not in any way affect serious prosecution of plans and

projects. Those having age marginally over 21 could not be treated as lacking in the impulses and responses required of a daring and tiring profession. It also appears that the learned Judge was influenced by the fact that the decision to fix the upper age for admission was not based on any study or report by the experts in the field; that there was no consultation with individuals and institutions having intimate connection with law and legal education and with the Law Department of the Government nor was there any document or useful material before the Committee when it took the decision. It becomes clear from a close reading of the judgment that the learned Judge was more influenced by the fact that there was no proper application of mind. As we will point out later, the factual position of this case is quite different. But before doing so, we would like to observe that while deciding what could have been the object underlying the fixation of upper age limit, the learned Judge does not appear to have given sufficient consideration to the objects stated in the reply filed by the Government in that case. It was that in order to achieve improvement they were lowering the admission stage from graduation stage so as to limit the admission to young and motivated students who opted to the profession of law just as in other professional disciplines. If such a policy decision is taken after due consideration by an expert body, then it will not be proper for the Court to substitute its own view for the same. If the object is to limit admission to young and motivated students and if otherwise there is some justification for the same, then it is difficult to appreciate how fixation of age limit cannot be said to have no rational nexus with the object sought to be achieved. It is also difficult to appreciate how such a provision can be regarded as discriminatory on the face of it. In this case it is pointed out in the counter filed on behalf of the Admission Sub-Committee that a High Level Committee was constituted by the State Government consisting of the Commissioner-cum-Secretary, Industries Department, Commissioner-cum-Secretary, Health and Family Welfare Department, all Vice-Chancellors of different Universities of the State, all Principals of different Medical and Engineering Colleges of Orissa, Director of Technical Education and Training, Orissa, Director of Medical Education and Training, Orissa and Chairman of the Admission and Examination Sub-Committee of previous year which is known as State Level Policy Planning Body. It is further pointed out that the Health and Family Welfare Scheme of the State is dependant heavily upon the doctors produced by the three Medical Colleges of the State, that the Government is spending nearly rupees five lakhs for each medical student, that the Government desires to have doctors for the primary purpose of meeting its obligation as a welfare State, that self-employment of doctors is considered secondary and that upper age limit for entry into Government service is at present 32 years. It is also pointed out that it takes a little more than six years from entry to graduation and internship thereafter, before a medical student is available as a qualified doctor. Considering all these factors, as a matter of policy it was decided to fix the upper age limit at 25 years. Merely because there would be deprivation of opportunity to some who did not or could not complete the +2 Science Examination before attaining the age of 25 years, it cannot be said that the

fixation of age limit for entrance examinations for professional courses is irrational. The students of the age group of 17 to 25 years would certainly form a class by itself and considering the objects stated above, it cannot be said that such a classification does not have rational nexus with the objects sought to be achieved. Therefore, this contention raised on behalf of the petitioners has to be rejected.

6A. Shri Patnaik, learned counsel for the petitioners in O.J.C. No. 2155 of 1994, conceding that there can be a restriction in the nature of age limit, contended that it should not be given much importance and, therefore, it should not be fixed in such a way as to deprive a large number of candidates from appearing at such entrance examination. He submitted that if comparative assessment of merit is the criterion, the age limit is not a very relevant factor though it cannot be said to be irrelevant. He further submitted that as the State is spending a huge amount for preparing a doctor, it would be relevant to see that he serves as a doctor for a reasonably long period. In his submission, if a doctor is able to serve for a period of about 30 to 35 years, then that should be regarded as reasonable and keeping in mind the longevity and the normal age up to which a doctor ordinarily serves or practices, fixation of upper age limit at 35 or even 30 can be regarded as reasonable but lowering it further should be regarded as unreasonable and irrational. In our opinion, this contention cannot be accepted for the same reasons which we have stated above while rejecting the contention that no age limit can validly be prescribed for appearing at the entrance examinations for the professional courses.

7. It was next contended by Shri Misra that as a result of the condition imposed by Regulation 3.8(c), a candidate who has passed the examination compartmentally is to be regarded as ineligible whereas a candidate who has failed on many occasions earlier but has passed the last examination in one attempt would be regarded as eligible. He submitted that a candidate who might have failed at the examination because of circumstances beyond his control and, was, therefore, required to appear again in the papers in which he had failed would be debarred from appearing at the Joint Entrance Examination. Therefore, the regulation is discriminatory. In our opinion, if in order to restrict the entry or the number of students appearing at the qualifying examination, a restriction is placed, such a restriction cannot be regarded as bad merely because it is not comprehensive and does not include others who can well be excluded in order to achieve the object. Such matters being policy matters, if the decision is taken after due deliberations and bona fide and possibly as a first step, it cannot be regarded either as discriminatory or irrational. Shri Palit, learned counsel appearing for the petitioners in O.J.C. No. 1082 of 1994, attached this restriction on the ground of rationality and submitted that the requirement of passing the +2 Science Examination by appearing in all the papers in one attempt is arbitrary and, therefore, bad. He submitted that it is also bad because of it is vague inasmuch as it does not specify what is meant by +2 Science Examination or by one attempt. He also submitted that no such provision has been made by the

Central Board of Secondary Education which is holding. All India Pre-Medical Entrance Examination for the purpose of selecting candidates for the all-India quota seats. According to him, the source will remain the same, though the two bodies are different; the process will remain the same; the training to be given to the candidates will remain the same; and, therefore, there is no rational basis for making a distinction between the students appearing at the Joint Entrance Examination to be held by the State Government for its Medical Colleges and by the Central Board of Secondary Education for the All-India quota seats. In this connection, it should be borne in mind that the students appearing at the Joint Entrance Examination held by the Orissa Government would not be entitled to secure admission in the all-India quota seats unless they independently pass the examination held by the Central Board of Secondary Education and get selected for that purpose. The two groups of students are not identically situated and education which they might have received may not be the same. It was submitted by the learned counsel Shri Patnaik that this condition being in the nature of a restriction, it should be construed as narrowly as possible. He also submitted that there was no such condition earlier and no other State has prescribed such a condition. He also pointed out that a brilliant student might have failed in some subjects in +2 Science Examination because of misfortune or because of circumstances beyond his control and might have cleared the other papers in which he had failed at the second attempt. Thus, comparatively a less meritorious student will be eligible to appear at the Joint Entrance Examination whereas a brilliant and more meritorious student will be regarded as ineligible. Thus, this restriction will go with anti-merit rule and not with pro-merit rule. It is no doubt true that the condition which is imposed by Regulation 3.8(c) is in the nature of a restriction, but question of construing it narrowly does not arise in this case, because it is clearly stated in the regulation itself as to what is meant by one attempt. By one attempt, it is made clear that a candidate should not have passed the examination compartmentally, that is, by appearing in some papers at the first attempt and appearing in the rest of the papers thereafter. That is also made clear by the Chairman of the Admission Sub-Committee in his counter-affidavit. For this reason, this contention and the contention raised by Shri Palit that the said clause is vague have to be rejected. As regards the attack on the ground of rationality, for the same reason which we have given for rejecting the contention regarding age limit, it has to be regarded as not tenable.

8. It was then contended that since Regulation 3.20 provides for subjective and objective type questions for the examination, that regulation should be regarded as bad as it is now well recognised that objective test is the proper test for judging merits and that subjective questions lead to arbitrariness as it leaves a very wide scope open for the examiners while awarding marks. As pointed out above, all the petitioners are treated as ineligible for appearing at the Joint Entrance Examination and, therefore, it is not really necessary to consider this challenge made on their behalf. No candidate appearing at the examination has thought it fit to challenge this regulation as bad. Moreover, by the corrigenda

issued on 1-3-1994 by the Chairman of the Admission Sub-Committee; the word "subjective" has been deleted and is replaced by the words "short answer". Thus, the questions to be put in the said examination are going to be of objective and not subjective type. What is meant by the expression "short answer" is explained in the affidavit filed by the Chairman of the Admission Sub-Committee. It is stated that in respect of such question, a model answer is prepared by the Board of Examiners indicating the step-wise distribution of marks and when a candidate answers all the steps correctly, full marks are given to him. When a candidate answers only a few steps correctly, he gets credit for the correct steps only and when a candidate does not attend the short type question, he is awarded "zero" mark. It is further pointed out that short answer type questions are not different from objective type questions except that a candidate is required to have clear understanding of the subject-matter in order to answer the question as it may not be possible to answer the questions by guess-work only. They are not subjective in nature. They are objective type questions where something more is required to be stated, than saying "yes" or "no" or pointing out the appropriate word out of three or four mentioned words. As regards the subjective and objective type questions, the argument of Shri Palit was that when only objective questions are put, then the testing of the candidate is on a wider basis as more number of questions can be put; whereas in case of subjective type questions, the number of questions would be very less. As stated earlier, the word "subjective" was subsequently deleted and now only objective type questions are going to be put at the examination. What was submitted in this behalf by Shri Patnaik was that in case of subjective type questions, there is scope for fraud and keeping in mind the modern trends, namely, deteriorating standards of examiners, only the objective type questions should be put for the sake of transparency. This contention is misconceived, as it overlooks the deletion of the word "subjective" later on.

9. It was next urged by the learned counsel Shri Patnaik that Regulation 3.20 is also bad inasmuch as it does not provide for specification of minimum qualifying marks in advance even though it does provide for minimum qualifying marks. With respect to this provision also, what we have to keep in mind is that no eligible candidate has thought it fit to challenge the same. In such and every type of examination, it would not be necessary to fix the minimum qualifying marks in advance in the sense that they should be specified or determined before the examination starts and should be made known to the candidates also. If considering all the relevant facts the examiners or the persons concerned determine the minimum qualifying marks in advance and thereafter Judge the performance of all the candidates on a uniform basis, it cannot be said that non-fixation of minimum qualifying marks in advance as contended should be regarded as bad. As regards the grievance made by him with respect to non-issuance of mark-sheet to a candidate, Shri Mohapatra appearing for the Admission Sub-Committee stated that whoever wants to know his mark would be supplied the mark-sheet. In view of this statement, this contention does not

deserve any further consideration. Learned advocate Miss Rath in reply to the submission made on behalf of the opposite parties submitted that a High Level Committee had considered only one aspect, namely, the merit, and, therefore, the policy decision taken by the Government in this behalf and reflected in the regulations should not be taken as well considered. This contention does not appear to be based on any material. On the contrary, as stated above, the decision appears to have been taken by the Government after considering the view of the High Level Committee which had considered various other aspects also.

10. As we do not find any substance in any of the contentions raised on behalf of the petitioners, the writ petitions are dismissed. The rule is discharged in each of these petitions. There shall, however, be no order as to costs.

K.L. Issrani, J.

11. I agree.