
(2011) 09 JH CK 0063
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5538 of 2011

Pragya Manini

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Citation : (2011) 09 JH CK 0063

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—Since the issue involved in both the cases is the same, both the applications were heard together and are being disposed of by this common order.

2. In both the application notification issued by Special Secretary, Department of Health, Family Welfare and Medical Education, as contained in memo No. 367(7A) dated 9.9.2011 has been challenged whereby decision has been taken that candidates belonging to Scheduled Castes, Scheduled Tribes and other backward classes are required to obtain 40% marks separately in qualifying examination as well as in competitive entrance examination for being eligible to be admitted in Medical Colleges.

3. The facts giving rise these two applications are that the Petitioner, Pragya Manini secured 57.3% in the Physics, Chemistry and Biology in qualifying examination (Indian School Certificate Examination, New Delhi) whereas Petitioner, Akash Bhengra had secured 69.66 marks in the aforesaid three subjects in qualifying examination. When an advertisement was issued by the Respondent for holding joint test known as JCECE-2011 for selecting candidates to be admitted in the Engineering, Medical Colleges and Agriculture Colleges in the State of Jharkhand, both the Petitioners did apply. The prospectus-cum-application form stipulated about the eligibility criteria, the process of selection

etc. Clause 3.2 of the said prospectus speaks about minimum qualifying marks to be acquired in the qualifying examination as well as in the competitive test. According to the Petitioner, the said clause does prescribe that if the candidate of the reserved category (Scheduled Castes, Scheduled Tribes and Other Backward Classes) gets 40% marks in the qualifying examination together with competitive examination, he would be eligible to be appointed in the Medical Colleges.

4. Both the Petitioners appeared in the competitive examination (JCECE-2011). The Petitioner Pragya Manini secured 22.75, 12.75 and 15.75 in Biology, Physics and Chemistry respectively out of total 150 marks, total being 51.25, percentage of which comes out 34.16. According to the Petitioner, 57.33 marks obtained in the qualifying examination if is clubbed with 34.16% marks, it would come 45.74% which is more than 40% and as such, she would be eligible to be admitted in terms of Regulation of the Medical Council but the Petitioner was not allowed to participate in the counselling, though in the first counselling, the candidates of the reserved category securing 40% of marks together in both the examinations were allowed to participate and even some of the candidates have been admitted in the Medical Colleges, through provisionally. The Petitioner was not allowed to participate in the second counselling as by the time of holding second counselling, a notification dated 9.9.2011 (Annexure 7) had been issued whereby directives were issued that the candidates of the reserved category securing minimum of 40% marks each in qualifying examination and also in competitive examination would be eligible to be admitted in the Medical Colleges, which, according to the Petitioner, was against the Regulation issued by the Medical Council of India and also against the decision/direction issued by the then Secretary, Government of Jharkhand, vide its letter dated 31.7.2006 (Annexure 2) where it had been laid down clearly that if the candidates secure 40% marks in the qualifying examination together with competitive examination, they would be eligible to be admitted in medical colleges.

5. So far Petitioner Akash Bhengra is concerned, his case is also on the same line. The Petitioner, Akash Bhengra, has secured 28.75, 16.5 and 11.25 marks in Biology, Chemistry and Physics respectively, out of total 150 marks in which in percentage would come to 37.66% if it is clubbed with 69.66% marks obtained in qualifying examination, average would come to 53.66% and as such, he would be eligible to be admitted in the Medical Colleges. Since he had secured more than 40% marks, he on being called attended counselling where he was allotted a seat at Patliputra Medical College but the Principal of the college did not allow the Petitioner to take admission, though number of candidates securing less marks than this Petitioner had been admitted in Rajendra Institute of Medical Science and other Medical Colleges, keeping in view the interim order passed in a case of Tarun Baxla v. State of Jharkhand and Ors. W.P. (C) No. 4956 of 2010. Under the circumstances, the prayer has been made to direct the Respondent to take admission of the Petitioner in MBBS course.

6. Learned Counsel appearing for the Petitioners by referring to that part of

Clause 5.5(II) of the Regulation of the Medical Council of India which reads as "respective candidates belonging to Scheduled Caste, Scheduled Tribe and Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination will be 40% instead of 50% as stated above" submitted that the word "taken together" appearing in the aforesaid clause clearly stipulate that the marks obtained in the qualifying examination as well as competitive examination is to be clubbed together and by clubbing if one gets 40% or more, would be eligible to be admitted in the Medical Colleges. Since this could be the only interpretation, then the Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, vide its letter dated 31.7.2006 (Annexure 2) issued directive to the Controller of Examination that eligibility of the candidates of the reserved category would be 40% marks obtained in the qualifying examination together with competitive examination. Therefore, since then, under the aforesaid directives the candidates of the reserved category obtaining 40% or more marks are being allowed to be admitted in Medical Colleges and even this year some of the candidates securing 40% marks and above, below in the rank of the Petitioner have been allowed to be admitted but the Petitioners have been denied admission and as such, the authority be directed to allow the Petitioners to be admitted after holding the decision taken by the Respondent in the notification dated 9.9.2011 to be effect that the candidates of reserved category would be eligible to be admitted only when they obtain 40% marks or above separately in qualifying examination as well as competitive examination as contrary to the Regulation of the Medical Council of India as well as directions issued by the then Secretary, Department of Health and Family Welfare under his letter dated 31.7.2006.

7. As against this, learned Senior counsel appearing for the RIMS and Learned Counsel appearing for the JCECE and also Learned Counsel appearing for the State submitted that the Clause 5.5(II) of the Regulation framed in the year 1997 by the Medical Council of India clearly does stipulate that the candidate belonging to the reserved category (Scheduled Caste, Scheduled Tribe and Other Backward Classes) is required to have minimum of 40% marks in qualifying examination and also in competitive examination for being eligible to be admitted in Medical Colleges but the State authority wrongly interpreted it and issued a letter dated 31.7.2006 (Annexure 2) wherein directive was issued to admit the students of the reserved category, if they have secured 40% marks in competitive examination together with qualifying examination and on that basis, students were allowed to be admitted in past and also this year but the candidates who have been allowed to be admitted, they have been admitted provisionally at their own risk and peril.

8. It was further pointed out that when Medical Council of India came to know that the candidates securing less than 40% marks in the competitive examination have been admitted in the Medical Colleges, College authority as well as State authority were asked to take steps for cancellation of the admission

of those candidates, otherwise they would have to face consequences of de-affiliation. On receiving such directive, when the State Government taking into account that the students admitted in previous year have pursued their studies for more than a year moved before the Medical Council of India for relaxing the criteria so far reserved candidates are concerned, Medical Council of India turned down the request of the State Government. Therefore, under the circumstances, these two writ applications are devoid of any merit and are fit to be dismissed.

9. For achieving the purpose of the Indian Medical Council Act, 1956, the Medical Council of India has made Regulations which are statutory in nature and also binding in character and therefore, admission to medical courses could not be made in violation of the Medical Council of India Regulation.

10. Clause 5.5(ii) of the Regulation framed by Medical Council of India prescribes the procedure for selection and admission to the MBBS course on the basis of competitive entrance examination, reads as under:

5.5 Procedure for selection to MBBS course be as follows:

(ii) In case of admission on the basis of competitive entrance examination under Clauses (2) to (4) of this Regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to the course until he fulfils the eligibility criteria under Regulation 4.

It will be clear from a careful reading of this clause of the MCI Regulations that candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must have secured 40% marks in Physics, Chemistry and Biology taken together in both the qualifying examinations and must also secure 40% marks in the competitive entrance examination on the basis of which admission to the MBBS course is being made in a State.

11. From careful reading of the said clause it is quite clear that the candidates falling in general category must secure minimum of 50% marks taken together in

Physics, Chemistry and Biology and in addition to that the candidate must secure 50% marks in Physics, Chemistry and Biology taken together in the competitive examination, for being eligible to be admitted in Medical Colleges whereas in case of candidates of the reserved category (Scheduled Castes, Scheduled Tribes and Other Backward Classes) the percentage of the minimum marks to be secured in the competitive examination and also in the qualifying examination has been prescribed as 40% but the counsel appearing for the Petitioners by putting much emphasis that clause "taken together" appearing in the last part of the main provision submitted that it qualifies marks obtained in the qualifying examination and also marks obtained in the competitive examination and therefore, submission was advanced that if the marks obtained by the candidates in qualifying examination is clubbed together with the marks obtained in the competitive examination and comes to 40% or above, he would be eligible to be admitted in the Medical Colleges. The submission made in this respect appears to be quite fallacious for the reason that if a candidate secures 80% marks in the qualifying examination and secures zero mark in competitive examination, he, as per the submission, would be eligible to be admitted in the Medical Colleges. Conversely, if one secures sufficiently high marks in the competitive examination and gets less than 30% (30% being qualifying marks) in qualifying examination he even, according to the submission, would be eligible to be admitted in the Medical Colleges if the marks obtained in the competitive examination is added with the marks obtained in the qualifying examination comes to 40%, though in the qualifying examination he would be declared failed. If the submission is accepted, this would be self defeating to the purpose which Regulation has been laid down by the Indian Medical Council for maintain high standard of efficiency.

12. Further on going through the aforesaid clause one would come to the conclusion that the word "taken together" have been used to make it clear that one should obtain atleast 40% marks in Physics, Chemistry and Biology conjointly and not separately.

13. Further the clause instead of 50% "as stated above" appearing in the last line of the aforesaid provision go to indicate that candidate of general category should obtain 50% marks in qualifying examination and also 50% marks in the competitive examination but so far candidates of reserved category is concerned, they instead of 50% should obtain 40% in the qualifying examination and also in the competitive examination.

14. Thus, the only conclusion which can be drawn by the aforesaid clause is that the candidates of the reserved category securing 40% marks in the qualifying examination as well as in the competitive examination would be eligible to be admitted in the Medical Colleges.

15. The Hon"ble Supreme Court had also occasioned to deal with this aspect of the matter relating to the aforesaid Clause 5.5(II) of the Regulation, though in different context in a case of Chowdhury Navin Hemabhai and Others Vs. The State of Gujarat and Others, wherein the Hon"ble Supreme Court after taking

notice of the clause as enshrined in Clause 5.5(II) of the Regulation did hold as under:

It will be clear from a careful reading of this clause of the Medical Council of India Regulations that candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must have secured 40% marks in Physics, Chemistry and Biology taken together in both the qualifying examinations and must also secure 40% marks in the competitive examination on the basis of which admission to the MBBS course is being made in a State.

16. Under these circumstances, it can easily be said that directive issued by the State authority under letter dated 31.7.2006 (Annexure 2) was quite contrary to the Regulation which never warrants to be given effect to whereas directive issued under notification dated 9.9.2011 seems to be absolutely inconsonance with the provision as laid down in Clause 5.5(II) of the Regulation.

17. Since both the Petitioners have not obtained minimum of 40% marks in Physics, Chemistry and Biology taken together in competitive examination, they are not entitled to be admitted in the Medical Colleges and therefore, they are not entitled to get relief as claimed in the writ application. Accordingly, both the writ applications stand dismissed.