
(2002) 10 OHC CK 0069

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11024 of 2001

Rajan Rahaman

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2002) 2 OLR 674

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Ashok Kumar Mohapatra, K.N. Parida, M.R. Mishra, R.K. Mohanty, N.C. Rout, N.K. Rath and B.P. Das in OJC No. 11024/2001 and A.N. Das, A.N. Pattanaik, N. Sarkar and R. Sahu in OJC No. 16010/2001, for the Appellant; A.G.A. for opp. parties 1 and 3, R.K. Mohapatra, N.K. Sahoo, D.R. Swain and S. Kar and Manas Mohapatra, S. Pinakin, L.N. Sahoo, S.K. Prusty, S.K. Routray, R.P. Kar, A.N. Ray and N. Paikray for O.P. No. 4 in OJC No. 11024/2001 and R.K. Mohapatra, N.K. Sahoo, D.R. Swain, B. Swain, S. Kar, P. Prusty, N.C. Nayak and A. Mishra for O.P. No. 3 and Additional Government Advocate for O.Ps. 1, 2 and 4 in OJC No. 16010/2001, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—These two writ petitions relate to admission to seats in Medical Colleges in the State of Orissa reserved for the children of green card holders for the academic session, 2001.

2. The facts briefly are that an Information Brochure for Joint Entrance Examination (for short, "the J.E.E.") Engineering and Medical-2001, Orissa was published by the J.E.E. authorities. Clause 2.3.2 of the Information Brochure provided for reservation of seats for the children of green card holders and reads, as follows :

"2.3.2. 5% of total seats in all Govt. colleges, free seats of all private Colleges and Orissa quota seats in REC, Rourkela are reserved for children of Green Card holders. Candidates applying for this category shall furnish along with the

application form, a photocopy of page 5 of the Green Card.

Note : The Green Card must have been issued by Family Welfare Department, Government of Orissa and should not have been used more than once prior to claiming admission under this reserved category. In case the father/ mother of the applicant has undergone terminal method of contraception and is awaiting issue of Green Card, the candidates shall furnish a certificate in the prescribed format provided in this brochure as Appendix-V. Benefits will be given only on the production of original Green Card (vide Government Resolution No. 34707 dated 19.10.83 and memo No. 3154/M. dated 30.10.84) issued by Health and Family Welfare Department, Government of Orissa latest by the specified date of admission failing which the offer of admission to the candidate against this category, will automatically stand cancelled."

Thus, as per the aforesaid Clause 2.3.2 candidates applying for seats reserved for the children of green card holders were required to furnish along with the application form, a photo copy of page-5 of the green card. The note appended to the aforesaid Clause 2.3.2. further provided that the benefits under the said Clause 2.3.2, will be given only on production of original green card vide Government Resolution No. 34707 dated 19.10.1983 and memo No. 3154/H. dated 30.10.1984 issued by the Health and Family Welfare Department, Government of Orissa, Bingya Mishra, opp. party No. 4 in O.J.C. No. 11024 of 2001 took the J.E.E. for 2001 and her rank in the merit list of general candidates was 238 in the Medical Stream and could not get admission into the M.B.B.S. or B.D.S. Course in the seats for general candidates.

3. Bingya Mishra filed a writ petition O.J.C. No. 9065 of 2001 claiming a seat in the M.B.B.S. Course reserved for the children of green card holder. But by order dated 9.7.2001 a learned Single Judge of this Court dismissed the said writ petition. The said order dated 19.7.2001 in O.J.C. No. 9065 of 2001 is quoted herein below :

XX XX XX The petitioner took Joint Entrance Examination in Engineering and Medical (Medical), 2001 and claims to have secured rank. 238, Her mother had expired since 1999 and the parents have only two children including her and as such, was entitled to be issued with a Green Card to enable her to be considered in the reserved category meant for Green Card holders; It is contended that in view of the resolution of the Government of Orissa in Health and Family Welfare Department dated 9.10.1983, copy of which is Annexure-4, her father was entitled to a Green Card and accordingly, she should be treated as a candidate from the Green Card holder category. A reference has been made to Clause-4 of the Government resolution in Annexure-4 to contend that such a clause is discriminatory inasmuch as her father being in the age-group of 15-48 years having two children and the mother being dead is entitled to be given a Green Card and consequently she would be eligible to be considered under the Green Card holder reserved category. The contention is thoroughly misconceived and has to be rejected out-right. The benefits available under the Government

resolution is to the parents in the age group of 15-48 years having two children or less who would go for terminal method i.e. tubectomy/ vasectomy. Admittedly the petitioner's father nor her late mother had/has adopted the terminal method and as such, are not entitled to be given a Green Card and, therefore, question of availing the benefits as a Green Card holder does not arise. The question of discrimination also does not arise since the benefits under the Government resolution are afforded to persons adopting family planning measures.

The writ application is thus, dismissed, being without any merit and misconceived."

Bingya Mishra then filed an appeal A.H.O. No. 135 of 2001 against the said order dated 19.7.2001 of the learned Single Judge before the Division Bench. By order dated 2.8.2001, the said A.H.O. No. 135 of 2001 was disposed of with some directions. The said order dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of 2001 is quoted herein below :

"The appellant filed a memo stating that she has disengaged her advocate and she seeks permission to advance her arguments. Permission is granted.

It is submitted by the appellant that her rank is at serial number 235 (medical stream) in the merit list of J.E.E. Medical, 2001. She further stated that her case for admission into medical stream be considered if she is otherwise eligible, without insisting her for production of green card since her mother is dead as she stood at rank 238 (medical stream) in the merit list of J.E.E. Medical, 2001.

In view of the submission made by the appellant, we dispose of this Letters Patent Appeal directing the Respondents to consider her case for admission to 1st year M.B.B.S. Course for the present academic year without insisting production of green card, if she is otherwise eligible.

XX XX XX XX"

Pursuant to the said order dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of the 2001 directing the J.E.E. authorities to consider the case for admission for 1st Year M.B.B.S. Course for the academic year 2001 without insisting on production of green card if she was otherwise eligible, the J.E.E. (E & M) 2001 Committee in its meeting held on 5.8.2001 took the decision to carry out the said order. The relevant proceeding of the said meeting of the J.E.E. (E. & M.)-2001 Committee held on 5.8.2001 as annexed to the counter affidavit filed on behalf of opp. party No. 2 in O.J.C. No. 11024 of 2001 is extracted herein below :

XX XX XX "The Committee discussed the A.H.O. No. 135 of 2001 of Hon"ble High Court. Orissa passed vide Order No. 2 dated 2.8.2001 on Bingya Mishra, D/O. Bhaktaranjan Mishra, At House No. 1, Flat No. 1 (Fifth floor), Gagan Awas, Gajapatinagar, P.O. Sainik School, Bhubaneswar, Dt. Khurda.

The Committee decided to carry out the order of the decision of Hon"ble High

Court, Orissa and instructed the Chairman, Admission Sub-Committee, J.E.E (E & M) -2001 to follow up the orders.

Sd/- Sd/- Sd/- (Prof. S.C. Mishra) (Prof. G. K. Ray), (Sd. Prof. K. K. Mishra) Sd/- Sd/- Sd/- (Prof. A. S. Panda) (Sd. Prof. H. K. Sahu), (Sd. Prof. A. M. Panda)."

As per the aforesaid proceeding, the J.E.E. (E & M)-2001 Committee decided to carry out the order dated 2.8.2001 of the Division Bench of this Court in A.H.O. No. 135 of 2001 and to instruct the Chairman of the Admission Sub-Committee J.E.E. (E & M) -2001 to follow up the orders.

4. Thereafter, Bingya Mishra-opp. party No. 4 in O.J.C. No. 11024 of 2001 was placed in the green card category and was given rank of 34-A in the green card category and was given admission in the M.K.C.G. Medical College, Berhampur. In the green card category, candidates upto the rank of 46 had been given admission in the M.B.B.S. Course in different Medical Colleges of Orissa. Lopamudra Jena, the petitioner in O.J.C. No. 16010 of 2001 had been placed in rank 47 in the green card category and had been given admission in the B.D.S. Course in S.C.B. Medical College, Cuttack. Rajan Rahaman, the petitioner in O.J.C. No. 11024 of 2001 had been placed in rank 48 in the green card category and had not been given admission either in the M.B.B.S. Course in the B.D.S. Course. Lopamudra Jena, the petitioner in O.J.C. No. 16010 of 2001 has prayed for a direction to the Director, Medical Education and Training, Orissa and the Chairman, Admission Sub-Committee, JEE (E & M)- 2001 to allow her to take admission in B.D.S. Course at M.K.C.G. Medical College, Berhampur as per her rank in the merit list for the green card category. Rajan Rahaman has filed writ petition O.J.C. No. 11024 of 2001 praying for quashing the admission of Bingya Mishra-opp. Party No. 4 in OJC No. 11024/2001 against the seat reserved for the children of green card holders and for directing the opp. parties 1, 2 and 3 to admit him in the 1st Year M.B.B.S. Course on the basis of his rank in the merit list for green card category.

5. At the hearing, Mr. Ashok Mohapatra, learned counsel for the petitioner in O.J.C. No. 11024 of 2001 submitted that Bingya Mishra, opp. party No. 4 was not the daughter of a green card holder and had not produced the green card. He further submitted that only if the father or mother of the candidate has undertaken terminal method of contraception, a green card could be issued to the father/mother. But neither the father nor mother of the opp. party No. 4 had adopted any family planning measure and for this reason, had not been issued with a green card. Opp. party No. 4 was, therefore, not entitled to admission into any of the seats reserved for the children of green card holders under Clause-2.3.2. of the Information Brochure. He further argued that the order dated 19.7.2001 of the learned Single Judge, in O.J.C. No. 9065 of 2001 would show that the opp. party No. 4 was not entitled to the benefits available to the children of a green card holder. He further argued that the order dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of 2001 would show that the Division Bench only directed for consideration of the case of the opp. party No. 4 for

admission without insisting on production of green card if she was otherwise eligible for admission. Since the opp. party No. 4 was not otherwise eligible for admission under the reserved green card category she could not be placed in the green card category and given admission to a seat reserved for the children of green card holders. Alternatively Mr. Mohapatra submitted that the aforesaid order dated 2.8.2001 in A.H.O. No. 135 of 2001 was obtained by the opp. party No. 4 by fraud and cited the decision of the Supreme Court in *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* AIR 1996 S.C. 2592 wherein it has been held that Courts have inherent power to set aside an order obtained by fraudulent practice upon the Court. Mr. Mohapatra, therefore, submitted that this is a fit case in which the order dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of 2001 should be set aside by this Court in exercise of its inherent power and direct that the writ petitioner-Rajan Rahaman be given admission to the M.B.B.S. Course in place of Bingya Mishra-opp. party No. 4. Mr. A. N. Patnaik learned counsel appearing for the writ petitioner, Lopamudra Jena in O.J.C No. 16010 of 2001 while adopting the contentions of Mr. Mohapatra submitted that since the rank of Lopamudra Jena is 47 in the merit list for green card category and the rank of Rajan Rahaman the petitioner in OJC No. 11024 of 2001 was 48 in the merit list for green card category, Lopamudra Jena who had been admitted to the B.D.S. Course in the S.C.B. Medical College is entitled to admission in the M.B.B.S. Course and appropriate direction should be issued for giving such admission in the M.B.B.S. Course to Lopamudra Jena.

6. Mr. R. K. Mohapatra, learned counsel appearing for the Chairman, Admission Sub-Committee, JEE (E & M)-2001 assisted by Mr. N. K. Sahoo, on the other hand. Submitted that admission was given to Bingya Mishra-opp. party No. 4 in OJC No. 11024 of 2001 pursuant to the orders dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of 2001 and that no illegality has been committed by the Admission Sub-Committee of J.E.E. by giving admission to Bingya Mishra-opp. party No. 4 in OJC No. 11024 of 2001. Mr. Manas Mohapatra, learned counsel appearing for the said opp. party No. 4 in OJC No. 11024 of 2001 while adopting the said contentions of Mr. Mohapatra and Mr. Sahoo further submitted that pursuant to the admission given to the opp. party No. 4 in M.B.B.S. Course in the Medical College at M.K.C.G. Medical College, Berhampur, the opp. party No. 4 (Bingya Mishra) has already prosecuted studies for one year in the M.B.B.S. Course and she will suffer great hardship if her admission is set aside at this stage.

7. The question to be decided in these two writ petitions is whether by the order dated 2.8.2001 in A.H.O. No. 135 of 2001, the Division Bench of this Court directed consideration of the admission of Bingya Mishra-opp. party No. 4 in OJC No. 11024 of 2001 in the seats reserved for the children of green card holders without insisting on production of green card. The said order dated 2.8.2001 had been passed by the Division Bench on the appeal of Bingya Mishra against the order dated 19.7.2001 passed by the learned Single Judge in OJC No. 9065 of 2001. By the order dated 19.7.2001, the learned Single Judge had held that

neither the father of the opp. party No. 4-Bingya Mishra nor her mother had adopted the terminal method, i.e. tubectomy/ vasectomy and were not entitled to be given a green card. If that be so, Bingya Mishra was not eligible to be considered for admission into the seats reserved for the children of green card holders under Clause 2.3.2 of the Information Brochure quoted above. By the order dated 2.8.2001 passed by the Division Bench in A.H.O. No. 135 of 2001, the finding of the learned Single Judge in the said order dated 19.7.2001 in OJC No. 9065 of 2001 that neither the father of Bingya Mishra nor her mother had adopted the terminal method and were not entitled to be given a green card had not been set aside by the Division Bench. The said order dated 2.8.2001 would show that the case of Bingya Mishra before the Division Bench was that her rank in the general merit list of candidates in the Medical Stream was 238 and that " her case for admission should be considered if she was otherwise eligible without insisting on production of green card. The Division Bench by the said order dated 2.8.2001 disposed of the appeal with the direction that the case of Bingya Mishra for admission into the 1st Year M.B.B.S. Course for the academic year 2001 will be considered without insisting on production of green card if she was otherwise eligible. The said order dated 2.8.2001 of the Division Bench in A.H.O. No. 135 of 2001, in other words, meant that the case of Bingya Mishra would be considered on the basis of her rank 238 in the general merit list in the seats meant for general candidates if she was so eligible and not in the seats reserved for the children of green card holders. The admission given to Bingya Mishra-opp. party No. 4 in OJC No. 11024 of 2001 in a seat reserved for the children of green card holders was, therefore, not only contrary to the provisions of Clause 2.3.2 of the Information Brochure but also the directions of this Court in the order dated 2.8.2001 in A.H.O. No. 135 of 2001.

8. The next question is whether the admission given to Bingya Mishra in a seat reserved for the children of green card holder should be quashed by the Court. We would have no hesitation in quashing the admission of Bingya Mishra if there were materials before the Court to establish the complicity of Bingya Mishra in getting the said illegal admission into the M.B.B.S. Course. In *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, the Supreme Court has held that Courts do and should take human and sympathetic view of the matters and that is the very essence of justice but considerations of judicial policy dictated that where advantage is gained by illegal means, the same should not be allowed to be retained. In the said case of *Gurdeep Singh v. State of J & K and Ors.* (supra), the Supreme Court set aside the selection of a candidate in the Sports category for admission into the M.B.B.S. Course after recording a finding that the situation was the result of his own making. In the present case, however, there are no materials before the Court to come to the conclusion that Bingya Mishra had acted in a fraudulent manner and had obtained admission in the quota reserved for the children of green card holders. Her case before the Learned Single Judge in OJC No. 9065 of 2001 was that she should be considered for the seats reserved for the children of green card category as her parents have only two

children including herself and her mother had expired since 1999. By the order dated 19.7.2001, the learned Single Judge had rejected the claim of Bingya Mishra to the benefits of children of green card holders on the ground that neither her father nor her mother had adopted terminal method and they were not entitled to the benefits of green card holder. As would be clear from the order dated 2.8.2001 in A.H.O. No. 135 of 2001, the case of Bingya Mishra before the Division Bench was that her rank in the general merit list of candidates (Medical Stream) was 238 and her case for admission in the Medical Stream would be considered if she was otherwise eligible without insisting on production of green card and the Division Bench had passed orders accordingly. The J.E.E. (E & M)-2001 Committee comprised of three Professors of three Medical Colleges of Orissa and two Professors of R.E.C., Rourkela and Professor of S.C. Mishra as its Chairman and it is difficult to hold that Bingya Mishra had influenced the members of the aforesaid Committee or its Chairman to give her admission into a seat reserved for the children of green card holders. In the absence of any material to show that it is because of the influence or other fraudulent act of Bingya Mishra that she was given admission into a seat reserved for the children of green card holders in M.B.B.S. Course, we are not inclined to quash her admission particularly when she has already undertaken one year study in such M.B.B.S. Course in the Medical College at Berhampur.

9. But this is not to say that the two petitioners in OJC Nos. 11024 and 16010 of 2001 who have suffered wrong on account of the illegality committed by J.E.E. authorities in giving admission to Bingya Mishra into the M.B.B.S. Course in a seat reserved for the children of green card holders are not entitled to any relief. In Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, the Supreme Court held:

"6. It is strange that in all such cases the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admission made."

Thus, as per the aforesaid decision of the Supreme Court, the best solution in such cases of illegal or wrong admissions is to ensure that the strength of the seats is increased in proportion to the wrong admissions made and admission is given to the candidate who has suffered the wrong admission to an additional seat to be created in consultation with the Indian Medical Council. Thus, the petitioner in OJC No. 16010 of 2001-Lopamudra Jena whose position in the merit

list of candidates in green card category (medical stream) was 47, was entitled to admission in M.B.B.S. Course in the additional seat to be created with the approval of the Indian Medical Council, if necessary, and the petitioner in OJC No. 11024 of 2001-Rajan Rahaman whose position in the merit list of candidates for green card category was 48, was entitled to admission in the B.D.S. Course in S.C.B. Medical College, Cuttack in place of Lopamudra Jena with the approval of the Dental Council of India, if necessary.

10. For the aforesaid reasons, we allow these two writ petitions and direct that the petitioner in OJC No. 16010 of 2001 - Lopamudra Jena will be given admission forthwith in an additional seat in the M.B.B.S. Course and the petitioner in OJC No. 11024 of 2001 - Rajan Rahaman will be given admission in the B.D.S. Course in S.C.B. Medical College, Cuttack forthwith so that the said two petitioners can immediately start attending their classes during the academic session 2002-2003. The Indian Medical Council and the Dental Council of India will be moved for approval, if necessary, and such approval obtained as early as possible to regularise the admissions of the two petitioners.

11. With the aforesaid directions, both the writ petitions are allowed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

12. I agree.