
(2008) 07 OHC CK 0046
In the Orissa High Court

Rajashree Samal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2008) 2 OLR 976

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—In this application under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of mandamus directing the opp.parties to admit the petitioner to MDS Course of Oral and Maxillofacial Surgery of Dental Wing of the S.C.B. Medical College, Cuttack for the session 2008-09 after quashing the admission of the opp.party No. 5- Dr. Rashik Bharadwaj, to the said seat.

2. In order to appreciate the rival contentions of the parties, it is necessary to refer to the facts in brief, which are as follows:

The opp.party No. 3- Convener of MDS Selection Committee issued an advertisement published in the daily Oriya Newspaper, "The Dharitri", dated 21.5.2008 (Annexure-8) inviting applications for admission to MDS Course of Dental Wing of S.C.B. Medical College, Cuttack for the academic session 2008-09 in the discipline of Pedodontics & Preventive Dentistry and Oral in Maxillofacial Surgery. It was mentioned in the said advertisement that the cost of application form is Rs. 1000/- which will be available in the office of Vice-Principal, Dental Wing, S.C.B. Medical College, Cuttack from 22.5.2008 to 28.5.2008 on all working days. The payment was directed to be made in shape of A/C Payee Bank Draft to be drawn in favour of the Convener, MDS Selection Committee-cum-Vice Principal, Dental Wing, S.C.B. Medical College, Cuttack payable at SBI, S.C.B.

Medical College Campus Branch, Cuttack. The last date of receipt of the application was fixed to 4.6.2008 by 5.00 P.M. and it was stipulated that the merit list would be published on 6.6.2008 and the date of admission was fixed to 9.6.2008. The eligibility criteria were also mentioned in the advertisement.

3. In response to the said advertisement under Annexure- 8, the petitioner submitted her application along with the requisite documents as required for the purpose of consideration for selection. The same was duly acknowledged by the competent authority and she having secured 69.30% marks, she was placed at serial No. 2 in the merit list prepared by the opp.party No. 3 for being admitted to the single seat available in MDS Course of Oral and Maxillofacial Surgery. A separate merit list was also prepared for in-service candidates. The petitioner has stated that she having been placed at serial No. 2 in the merit list, she was eligible to take admission to the said seat in the above course in the event the candidate at serial No. 1 does not take admission to the said seat. One Dr. Sheetal Agrawal was placed at serial No. 1 in the merit list. She was communicated with a letter dated 6.6.2008 asking her to take admission into the said three years MDS Course in the aforementioned subject for the session 2008-09. The letter was sent to her by registered post. Dr. Agrawal though received the same but did not turn up on the date and time fixed, i.e., 9.6.2008, to take admission to the said seat. The petitioner alleges that Dr. Sheetal Agarwal, who was placed at serial No. 1 having not responded to the registered letter for taking admission to the said seat on 9.6.2008, the petitioner being placed at serial No. 2 expected that she would be called to take admission to the said seat, but on 9.6.2008, without intimating the petitioner and without affording her an opportunity to participate in the process of admission, the opp.party No. 3 proceeded with the counselling process and allowed opp.party No. 5, who was placed at serial No. 4 in the merit list and was present on 9.6.2008, to take admission to the said seat. The petitioner claims that she having placed at serial No. 2 and having secured more marks than the opp.party No. 5 in the process of selection, her legitimate right to take admission to the single seat in the aforesaid subject was infringed by the opp.party No. 3 in allowing the opp.party No. 5, who was placed at serial No. 4 in the merit list, to take admission to the said seat. When the petitioner made an enquiry on 12.6.2008, she could come to know that the seat has already been filled up by the candidate in the 4th rank, i.e., opp.party No. 5 on 9.6.2008 in the absence of the candidates placed at serial Nos. 1 and 2 and non-consideration of the candidate placed at serial No. 3. It is, on this ground, the petitioner has challenged the process of selection of the opp.party No. 5 and has made the prayer, as stated earlier.

4. A counter affidavit has been filed by the opposite parties 1 to 4 to which a rejoinder affidavit has also been filed by the petitioner. The opp.parties 1 to 4 in the counter affidavit admit that the petitioner applied for MDS Course as a direct candidate pursuant to the advertisement under Annexure-8. It has been averred that in order to complete the selection and admission process within the schedule

period and keeping the Dental Council of India Guidelines and revised MDS Course Regulation, 2007 in view, the advertisement was published. In paragraph-11 of the counter affidavit, it has been stated that on 5.6.2008 he meeting of the MDS Selection Committee, 2008 was held in the office Chamber of the Director, Medical Education and Training, Orissa, who is the Chairman of the Selection Committee. The proceeding in the meeting has been annexed to the counter affidavit as Annexure-C/3. The relevant portion of said Annexure-C/3 is quoted herein below:

After due deliberation, the selection committee approved the merit list that has prepared by the Convenor MDS Selection Committee 2008 enclosed as Annexure-A (for in-service candidates) and Annexure-B (for direct candidates). The said merit list may be published in the office of the Vice-Principal, Dental Wing SCB MC, Cuttack, office of the Principal, SCB MC, Cuttack, Office of the DMET, Orissa and one set is to be sent to Government for their perusal. The Convenor may write to the P.R. Department for publication of a notice regarding declaration of results in the offices mentioned in the foregoing sentences. The candidates selected will be informed telegraphically/telephonically etc. or by any other speediest means.

(Emphasis supplied)

It has been also admitted in the counter affidavit that Dr. Sheetal Agrawal, who was placed at serial No. 1 in the merit list, was intimated to take admission on 9.6.2008 on or before 12.00 noon. However, though it has been stated that all other candidates were intimated through different means to remain present in the office of the deponent for admission in case their term comes as per the merit list, but nothing has been stated in the affidavit to show regarding the manner in which such communication was made to the petitioner nor any document in support of such intimation has been filed by the opp.parties. It has been alleged in the counter affidavit that during the course of admission process, the opp.party No. 5 pointed out that the Housemanship certificate of the petitioner is not authentic and on receipt of the said allegation, the husband of the petitioner - Dr. Surya Kanta Das was called for and impressed upon the fact and simultaneously requested to ask his wife (writ petitioner) to be present for admission in MDS Course, in case, the allegation made by the opp.party No. 5 is not true and the candidate placed at serial No. 1 does not come for admission. It is further stated that after perusing the allegation, the husband of the petitioner stated before the Convener that his wife will not take admission in the MDS Course during the session 2008-09. The above statements are not supported by any document. The petitioner in the rejoinder affidavit has categorically denied the aforesaid averments that her husband stated that she will not take admission to the MDS Course for the session 2008-09. The petitioner has stated in the rejoinder affidavit that in the meeting of MDS Course dated 5.6.2008, the proceeding of which has been annexed as Annexure-C/3 and which has been duly approved by the Director of Medical Education and Training, it was resolved

that the candidates selected will be informed telegraphically and telephonically etc. or by any other speediest means. But the said decision has not been followed when the candidate at serial No. 1 did not turn up to take admission on the date and time fixed in her call letter under Annexure-10. The petitioner has further averred that it is the admitted case that the petitioner has not been communicated either telegraphically or telephonically or in any other speediest means to attend the office of the opp.party No. 3 to take admission into the said course. The allegation that the husband of the petitioner was communicated regarding the petitioner taking admission to the said course has been denied by the petitioner on oath.

5. Mr. R.K. Rath, learned senior Counsel for the petitioner vehemently argued that no where in the advertisement under Annexure-8, it was mentioned that all the candidates who will be named in the merit list are required to attend the office of the Convener on the date of admission fixed on 9.6.2008. He further submitted that there being only one seat available and the petitioner being placed at serial No. 2 inasmuch as the candidate placed at serial No. 1 having been intimated through registered post to appear before the Convener on 9.6.2008 at the time stipulated to take admission, clearly goes to show that it was only after the candidate at serial No. 1 of the merit list does not take admission, the Convener would intimate the petitioner who was placed at serial No. 2. Mr. Rath further submitted that this fact is fortified by the proceeding of the meeting of the selection committee annexed as Annexure-C/3 to the affidavit filed by the opp.parties 1 to 4, which clearly stipulates that the candidates selected will be informed telegraphically/telephonically etc. or by any other speediest means. Hence, he submitted that one Dr. Sheetal Agrawal, who was placed at serial No. 1 having failed to respond to the call letter asking her to take admission, the petitioner legitimately expected that she would be called to take admission to the said seat, she having secured the second place in the merit list. To the allegation/objection raised by the opp.party No. 5, who was placed at serial No. 4 in the merit list, Mr. Rath submitted that once the selection committee after verifying all documents approved the merit list (ANNEXURE-B to Annexure-C/3), there was no scope for the opp.party No. 5 to raise any objection with regard to eligibility of the petitioner to take admission to the said seat in the MDS Course.

6. Though Mr. Rath did not contend that there is violation of principles of natural justice, but, nevertheless, the learned Advocate General appearing for the opp.parties 1 to 4 relied upon two decisions of the Supreme Court in the case of Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, and Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, and contended that where observance of principles of natural justice is an empty formality, it cannot be said that the action of the opp.parties is liable to be nullified on the ground of non-observance of principles of natural justice. In the case of Rajesh Kumar and Ors. (supra), the Supreme Court was considering an appeal under the Income Tax Act, 1961. In the context of the said case, while dealing with the principles of

natural Justice, the Supreme Court held that while applying the principles of natural justice, the Court must bear in mind the theory of useless formality and the prejudice doctrine thereby meaning that if adherence to their principles of natural Justice, in the facts of the case, is an empty formality or an useless formality and non-observance of the same has not caused any prejudice to the party concerned, the act cannot be held to be arbitrary on that ground. In the case of Ashok Kumar Sonkar (supra), the Supreme Court while dealing with the principles of natural Justice laid down that there cannot be any doubt whatsoever with the audi alteram partem is one of the basic pillars of natural justice, which means no one should be condemned unheard. But, however, whenever possible the principles of natural Justice should be followed and the said principles cannot be put in any straitjacket formula, inasmuch as the said principles may not be applied in a given case, unless a prejudice is shown. It is not required to follow the said principles, where it would be a futile exercise. In essence, the ratio of the said decision is that a Court of law does not insist on compliance with useless formality and it would not issue any such direction, where the result would remain the same in view of the fact situation prevailing or in terms of the legal consequences.

7. I am not inclined to consider the above submissions made by the learned Advocate General keeping in view the fact situation of the present case as well as the fact that the petitioner has never alleged violation of any principles of natural justice in this case. With regard to the objection raised by the opp.party No. 5 who was at serial No. 4 in the merit list, it was fairly conceded by the learned Advocate General that the selection committee, after scrutinizing all records produced by the candidates, prepared the merit list. Even though, Mr. Ashok Mohanty, learned senior Counsel appearing for the opp.party No. 5 vehemently urged that the petitioner was not eligible to be admitted to the MDS Course on the basis of the objections made by the opp.Party No. 5 before the concerned authority at the time of admission, it is seen that the advertisement under Annexure-8 specified the eligibility criteria for a candidate to make an application for "admission" and in Clause 5 of the said advertisement, it was stipulated that at the time of application, the candidate (i) must have passed the 1st BDS; 2nd BDS; 3rd BDS and final BDS examination from the same university, (ii) must have completed one year of compulsory rotating internship/Housemanship by 31.3.2008; (iii) must have permanently registered himself/herself with State/Central Counsel and finding the petitioner eligible, the MDS selection committee resolved in its meeting that the merit list being correct in all respect is accepted. It, therefore, goes without saying that the petitioner was found eligible as per the above criteria stipulated in the advertisement and after being placed at serial No. 2 in the merit list, there is neither any scope for the opp.parties 1 to 3 nor for the opp.party No. 5 to contend that the petitioner was not eligible to take admission to the MDS course. I am, therefore, considering the fair submission made by the learned Advocate General that the selection committee has accepted the merit list on scrutinizing all documents furnished by the candidates,

not inclined to enter into the arena of disputed questions of fact which has been raised by the opp.Party No. 5.

Further, the opp.party No. 5 having been admitted to the MDS Course on the basis that he was placed at serial No. 4 in the merit list, it is not open for the said opp.party No. 5 to now turn around and contend that the petitioner was not eligible to be included in the merit list, thereby indirectly challenging the correctness of the merit list, which according to this Court, would amount to sitting on the fence. Till date, the opp.Party No. 5 has also not challenged the merit list in any proceeding and rightly so, as he has been given admission on the basis of his position in the said merit list and due to the absence of the candidates placed at serial Nos. 1 and 2, on 9.6.2008.

8. Mr. R.K. Rath, learned Counsel for the petitioner, on being queried by the Court as to what right of the petitioner has been infringed so as to maintain the writ petition with a prayer for issuance of writ of mandamus, submitted that, in the fact situation of the present case, the doctrine of legitimate expectation comes into play and since it is seen that the expectation of the petitioner to be admitted to the MDS course was legitimate and the same has been refused by the concerned authority, the said decision of refusal amounts to unfairness and arbitrariness on the part of the authority, giving rise to a right to the petitioner to challenge the said arbitrary and mala fide action of the opp.parties.

9. Examining the facts involved in the present case as well as the respective submissions made by the learned Counsel for the parties, it is required to be seen as to, when admittedly the petitioner does not allege violation of any statutory, legal or constitution right, whether by applying the doctrine of legitimate expectation, the prayer made on behalf of the petitioner can be granted?

10. The doctrine of legitimate expectation evolved in England, but has been followed in English Speaking countries including India by application of which the Court insists a duty to hear upon an administrative authority in cases where otherwise, the affected individual had no right to be heard. While the common law rule of natural justice applied only to (a) the exercise of statutory power, and (b) to the prejudice of existing legal rights or interests, the doctrine of legitimate expectation extends this protection of natural justice to (a) the exercise of non-statutory administrative power as well, (b) where the interest affected is only a privilege or benefit and it is not existing but prospective. See (1984) 3 All E.R. 935 (C.C.S.U. v. Min.). This doctrine of legitimate expectation can be considered to be an off-shoot of the general doctrine that every public authority must act fairly. In England, it has been held that the plea of legitimate expectation provides a sufficient interest to a person to enable him to have judicial review in a case where he cannot point to the existence of a substantive right. See (1984) 3 All E.R. 801 (Findlay v. Secy. of State). Of course, a mere hope of a person that he would obtain or enjoy the benefits would not suffice the doctrine. In order to constitute a legitimate expectation, the same must have a reasonable

basis. In the case of Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , the Supreme Court held that mere reasonable or legitimate expectation of a citizen, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. In the case of Union of India and others Vs. Hindustan Development Corpn. and others, , the Supreme Court elaborately dealt with the doctrine of legitimate expectation. The Supreme Court held that the concept of legitimate expectation in administrative law has now undoubtedly gained sufficient importance. "Legitimate expectation" is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action and this creation takes its place besides such principle as the rules of natural justice, unreasonableness, the fiduciary duty of legal authorities and "in future perhaps, the principles of proportionality". While dealing with the doctrine, the Supreme Court also held that the legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. Thus observing, the Supreme Court also concluded that after a denial of legitimate expectation in a given case whether it amounts to denial of rights guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violations of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 of the Constitution, but a claim based on a mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference and it depends very much on the facts and the recognized general principle of administrative law applicable to such facts and the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits."

11. Putting the facts of the present case in the touch stone of law as it has developed in respect of the doctrine of legitimate expectation, it would be seen that the petitioner being placed in serial No. 2 of the merit list her expectation that since there is one seat available in the MDS course, in the event, the candidate at serial No. 1 does not take admission, the said seat would be offered to her, is very much legitimate and the doctrine of legitimate expectation can be squarely made applicable to the facts of this case. It is further submitted that the action of the opp.parties 1 to 3 in allowing the opp.party No. 5, who was placed at serial No. 4 in the merit list to take admission to the said seat without giving an opportunity to the petitioner amounts to an arbitrary and unfair action. The

above conclusions are more fortified by the fact that nowhere in the advertisement under Annexure-8, it was stipulated that all the persons who would be selected, should attend the office of the Chairman of the selection committee on the date fixed for admission and hence, no fault can be found with the petitioner remaining absent and not attending the said office on the date fixed for admission, as she rightly expected that there being only one seat available, in the event, the candidate in serial No. 1 who was called to take admission, appears and takes admission to the said seat, the question of offering the petitioner to take admission would not have arisen. She, therefore, rightly after coming to know that the candidate at serial No. 1 did not turn up for admission, expected that she would be called to take admission to the said seat.

12. In view of the above facts and discussions made, as the action of the opp.parties 1 to 4 is per se arbitrary and unreasonable, the same cannot be sustained. This Court, therefore, has no hesitation to quash the action of the opp.parties 1 to 4 in giving admission to the opp.Party No. 5 to the only available seat in the MDS Course for direct candidates for the session commencing from 2008 and the said admission given to the opp.Party No. 5 is accordingly quashed. Consequentially since in ordinary course, the petitioner should have been given admission to the said seat, the opp.parties 1 to 4 are directed to give admission to the petitioner to the said seat in the MDS Course of Oral and Maxillofacial Surgery of Dental Wing of S.C.B. Medical College, Cuttack. The petitioner should be given admission within a period of two weeks from the date of production of the certified copy of this order by the petitioner before the opp.party No. 4 - Principal, S.C.B. Medical College and Hospital, Cuttack.

The writ petition is accordingly allowed, but in the circumstances without cost.