
(2014) 04 OHC CK 0055
In the Orissa High Court
Case No : W.P. (C) No. 26896 of 2013

Raktimabha Jena

APPELLANT

Vs

Director of Ayush and four Others

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 2 ILR 127

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed with a prayer to issue a writ of mandamus directing opposite party no. 1-Director of Ayush, Government of Odisha, Bhubaneswar to allow the petitioner to take admission in Bachelor of Ayurvedic Medicine and Surgery Course (for short "BAMS") either at Gopabandhu Ayurvedic Mahavidyalaya, Puri or KATS Ayurvedic College, Ankushpur, Ganjam.

2. Petitioner's case in a nut shell is that the petitioner has secured 1st Class in H.S.C. Examination and 2nd Class in +2 Science Examination. As per the terms and conditions enumerated in the advertisement of OJEE, 2013, she has secured more than 50% of marks in Physics, Chemistry and Biology. She was qualified in the Joint Entrance Examination Odisha (OJEE) 2013 in BAMS Stream holding Rank No. 4249 for the academic year 2013-14. The Chairman, OJEE, 2013 issued a notification/advertisement with regard to vacancy counselling for admission to BAMS and BHMS Courses on the basis of revised merit list fixing the date for appearance of the rank holders on 26.11.2013. On 12.11.2013, there was a natural calamity on account of heavy cyclone (Phailin) and Krushna Prasad Block, to which the petitioner belongs, was seriously affected/devastated and cut off from other parts of the State. Apart from that, there was also no supply of water, electricity, availability of telephone/internet facility until 5.12.2013 for which reason the petitioner was not able to appear for the OJEE Counselling, which was held on 26.11.2013. Thus, the petitioner has been deprived of taking

admission to the college, despite having requisite qualification and securing good rank. The petitioner made representations ventilating her grievances to opposite party No. 1-Director of Ayush on 05.12.2013 with a request to allow her to take admission in BAMS Stream as candidates securing rank below her got admission. No action having been taken on her representations, she has approached this Court in the present writ petition seeking the above relief.

3. Mr. R.K. Patnaik, learned counsel for the petitioner submitted that the students securing rank much below the petitioner have participated in the OJEE Counselling held on 26.11.2013 and their names were placed in the selection list for taking admission in different colleges. The petitioner belongs to Krushna Prasad block, which is an island in Chilika lake. Due to natural calamity on account of heavy cyclone Phailin), Krushna Prasad block was cut-off from other parts of the State and the petitioner was prevented from participating in the OJEE Counselling held on 26.11.2013. He, therefore, prayed that necessary direction may be issued to opposite party no. 1 to allow the petitioner to take admission in BAMS Course.

4. Mr. Palit, learned counsel appearing on behalf of opposite party no. 2-Chairman, OJEE submitted that after counselling for admission in BHMS stream, the OJEE further published for a vacancy round of counselling for the vacant seats, which remained vacant as per the Government letter dated 11.11.2013. The said notification was published in the newspapers, wherein it has been mentioned that a Centralized Vacancy Counselling in BHMS and BAMS Stream is planned to be conducted tentatively for two days during 24-25 of November, 2013 and accordingly, an advertisement was published in the newspapers fixing the date of counselling on 25th and 26th of November, 2013 for different categories in a particular scheduled time mentioned therein. The cut-off date of admission is 31st October for each academic year for UG and PG Courses in Ayurved, Unani and Siddha (ASU) Medical Colleges, but in the current academic session 2013-2014, the Central Council for Indian Medicines vide its notification implemented a new minimum standard for ASU Colleges. As per the policy decision taken by the Central Government, the admission in the said stream/category could not be completed during the stipulated time. For that reason, the Government of Odisha requested to the IMCC (Central Council for Indian Medicines) for extending the cut-off date of admission. On request of the State Government, the Under Secretary to Government of India requested the Central Council of Indian Medicines for extension of the cut-off date for completion of the process of admission of the students in Ayurved, Unani and Siddha Medical Colleges and the cut-off date was extended till 30th November, 2013. Thereafter, a notification was published by the OJEE for Vacancy Round Counselling on 25th and 26th November, 2013 through due process and merit based centralized counselling. On the aforesaid date, the present petitioner did not turn up for counselling and the counselling was already over on 26.11.2013. After the cut-off date, admission is not permissible and if any admission is given after the cut-off date, the same is illegal and not recognized by the Central Council of Indian

Medicine.

It was further submitted that since the writ petitioner filed a representation on 05.12.2013 before opposite party No. 1-Director of Ayush, there was no scope for consideration of her representation after the cut-off date.

5. Placing reliance upon the decision of the Hon''ble Supreme Court in the case of Sangham Tape Company Vs. Hans Raj, , Mr. Palit submitted that after the cut-off date, i.e., 30th November, 2013, the OJEE cannot admit the students. Any admission in any vacant seat has to be notified and admission to the same is to be done through a counselling process and not on the basis of any representation. Mr. Palit also relied upon the decisions of the Hon''ble Supreme Court in the case of Medical Council of India Vs. Manas Ranjan Behera and Others, , and in the case of Faiza Choudhary Vs. State of Jammu and Kashmir and Another, and submitted that a medical seat has life only in the year it falls that too only till the cut-off date fixed, i.e., 30th September, 2013 in the respective year. Concluding his argument, Mr. Palit submitted that the writ petition being devoid of merit is liable to be dismissed.

6. An affidavit has been filed by opposite party no. 4-Prof. (Dr.) Sudarshan Behera, working as Principal, Gopabandhu Ayurveda Mohavidyalaya, Puri on 22.3.2014 in a similar case, i.e., W.P. (C) No. 26898 of 2013, inter alia, stating that the admission process of 1st BAMS Course for the session 2013-2014 has been completed by OJEE, Bhubaneswar on 28.11.2013. The OJEE has conducted 1st counselling on 29-30th October, 2013 and 2nd counselling on 25-26th November, 2013 and accordingly, ten candidates have been admitted on 31.10.2013 and 18 candidates have been admitted on 28.11.2013. The 1st Year BAMS Class has been started with effect from 1st November, 2013. Till now, 435 classes have been completed. The total sanctioned strength of the faculty is 10 out of which only 6 of teaching staffs are managing the teaching work of the 1st Year BAMS Course.

7. An affidavit has been filed by opposite party no. 5-Prof. (Dr.) Jaya Narayan Hota-Principal-in-charge of K.A.T.S. Ayurveda College & Hospital, Ankushpur, Ganjam on 24.03.2014 in a similar case, i.e., W.P. (C) No. 26898 of 2013, inter alia, stating that the 1st Prof. BAMS class has been started with effect from 5th December, 2013. Till now, 216 numbers of classes have been completed. The total sanctioned strength of the faculties is 9 out of which only 4 numbers of teaching staffs are managing the teaching work of the 1st Prof. BAMS Course. Since the numbers of theory and practical classes for 1st Prof. BAMS course have already been completed, it is unable to manage the shortfall of the education of the petitioner in the mid-session. The Department of Samhita, Sidhanta & Sanskrit is lying completely vacant. The Department covers 5 papers of 1st Prof. BAMS. The teaching staff of the College is not as per the Minimum Standards of Recruitment of Ayurvedic Colleges and Hospitals, Regulation-2012 of CCIM, New Delhi. The C.C.I.M., New Delhi clearly instructed to take admission within 30.11.2013 in U.G. Course vide its letter No. 11011/10/2013 dated 24.10.2013.

The duration of 1st Prof. BAMS Course is one year as per C.C.I.M. norm, as four months of the current academic year have passed, it would be improper for the new students to cope-up with the advance course in the mid-session.

8. One Dr. Surendra Kumar Biswal, working as Professor in Department of Agadatantra and Vidhi Ayurved in Sri Nrusinghanath Ayurved College and Research Institute, Paikmal, Bargarh has filed an affidavit on 27.3.2014 in a similar writ petition, i.e., W.P. (C) No. 26898 of 2013, inter alia, stating that the 1st Professional BAMS Course, 2013 has commenced from 1st of December, 2013 and both theory and practical classes have been conducted in the aforesaid course. About 45% of the syllabus of the Course has been completed. Hence, new admission at this stage will deprive the students in respect of those classes, which are already over. Since the practical classes, particularly in Anatomy and Physiology have been completed partially, it will be much difficult to again to arrange and repeat those practical classes at this stage. Further more, as per the Sambalpur University Examination Norms, minimum 75% attendance in both theory and practical classes are required to appear in the University Examination. Hence, any new admission at this stage will put the students in trouble to cope-up with the subject and it will also not possible for the institution to repeat the classes afresh.

9. On rival contentions of the parties, the only question arises for consideration by this Court is whether the petitioner is entitled to get admission in BAMS Course for the academic year 2013-14 after the cut-off date of admission, i.e., 30th November, 2013.

10. To deal with the above question, it will be relevant to note certain facts which are not in dispute. The petitioner was qualified in JEE Orissa 2013 in BAMS stream holding rank No. 4249 for the academic year 2013-14. Krushna Prasad block to which the petitioner belongs is an island in Chilika Lake. On 12.11.2013, there was a natural calamity on account of heavy cyclone (Phailin) and Krushna Prasad Block was seriously affected and disconnected from other parts of the State. There was no supply of water, electricity, availability of internet/telephone till 05.12.2013 due to devastation of cyclone for which the petitioner could not be able to appear in OJEE counselling which was held on 26.11.2013. Students securing ranks much below the petitioner have participated in the OJEE counselling held on 26.11.2013 and their names were placed in the selection list for taking admission in different courses. The cut-off date of admission is 31st October for each academic year for UG and PG courses in Ayurved, Unani and Siddha (ASU) Medical Colleges but for the current academic session 2013-14, the cutoff date was extended till 30th November, 2013. The petitioner made a representation on 05.12.2013 ventilating her legitimate grievance to opposite party No. 1-Director of Ayush with a request to allow her to take admission in BAMS Course. Candidates securing rank below to her got admission. Since no action was taken on her representations, she filed the present writ petition on 09.12.2013. Now, we have to examine whether on the above undisputed facts

the petitioner is entitled to take admission in BAMS stream against two seats lying vacant in Gopabandhu Ayurveda Mahavidyalaya, Puri and one seat in KATS Ayurvedic College and Hospital, Ankushpur, Ganjam.

11. At this juncture, it would be appropriate to refer to the judgment of the Hon''ble Supreme Court in the case of Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, . The Hon''ble Supreme Court in the case of Asha (supra) after taking note of its earlier judgment in the case of Mridul Dhar (minor and another) (supra) held as under:

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible. We are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.

36. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

ANSWERS

(a) The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly and without demur.

(b) 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the

admissions must close by holding of second counseling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta (supra)). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

(c) & (d) Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment.

Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

(underlined for emphasis)

12. In the present case, the petitioner has not committed any fault. She was prevented from participating in the OJEE counselling held on 26.11.2013 due to natural calamity, which was beyond her control. Thus, there was no negligence on the part of the petitioner. On the contrary, she appears to have been the victim of circumstance beyond her control. Such cases are covered by act of God. When her representation filed on 05.12.2013 before opposite party No. 1 was not attended with promptitude, she immediately approached this Court by filing the present writ petition on 09.12.2013. Thus, the petitioner is not at fault and she is diligent in pursuing her rights and legal remedy.

Admittedly, two seats are lying vacant in Gopabandhu Ayurveda Mahavidyalaya, Puri and one seat in KATS Ayurvedic College and Hospital, Ankushpur, Ganjam and students who ranked below the petitioner have been given admission to the BAMS course. It may be noted that a meritorious student if not given admission in a medical course for no fault of her and the seat remains vacant, it is a national waste and the country will lose a qualified doctor. Needless to say that education is national wealth.

13. For the reasons stated above, the petitioner is entitled to get the relief as prayed for in view of the judgment of the Hon"ble Supreme Court in the case of Asha (supra). Therefore, in the peculiar and extra-ordinary facts of the case, we direct the petitioner to be admitted in BAMS course for the academic year 2013-14. Accordingly, we direct opposite party No. 1-Director of Ayush to give admission to the petitioner in any of the Colleges where seats are lying vacant in BAMS stream according to the rank held by the petitioner. However, the petitioner's right to appear in the examination, shall be in accordance with the Examination Rules/Regulations and if the petitioner does not meet the attendance requirement, she shall be permitted to repeat the academic year. This order is being passed in the peculiar and extra-ordinary factual background.

14. With the aforesaid observations and directions, this writ petition is allowed to the extent indicated above, but without any order as to costs.

Urgent certified copy of this judgment be granted on proper application in course of the day and free copy of the same be handed over to learned Counsel for the opposite parties for compliance.