
(1999) 11 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 5260 of 1999

Safiqul Islam (MD.)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLT 394

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.B. Choudhury, I. Rafique and R. Das, for the Appellant; B. Choudhury and D. Goswami, for the Respondent

Judgement

A.K. Patnaik. J.

1. Heard Mr. A.B. Choudhury, learned Counsel for the Petitioner. Mr. B. Choudhury, learned Additional Senior Government Advocate, Assam, assisted by Mr. D. Goswami, learned Government Advocate, Assam.

2. In this application under Article 226 of the Constitution of India, the Petitioner has sought for a writ of mandamus on the Respondents to admit him into the First Year MBBS Course/BDS Course for the session 1996-97 either in the Assam Medical College, Dibrugarh or in Silchar Medical College, Silchar.

3. The facts briefly are that by an Educational Notice issued by the Chairman, Selection Board and Director of Medical Education, Assam, applications were invited from candidates for admission into the First Year MBBS/BDS course in the Medical Colleges of Assam and the Regional Dental College, Guwahati. In the said educational Notice, it was clearly indicated that two seats in MBBS course one in the Assam Medical College, Dibrugarh and the other in the Silchar Medical College, Silchar were reserved for candidates belonging to Char areas. The admissions to the Medical Colleges of Assam and the Regional Dental College, Guwahati, are regulated by a set of Executive Instructions notified by notification

dated 16.8.1996, called the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under-Graduate Students) Rules, 1996 (For short "1996 Rules"). Under the 1996 Rules, the eligible amongst the applicants were to take common entrance examination and on the basis of the marks secured by the candidates in the said common entrance examination in Physics, Chemistry and Biology, merit list was to be prepared separately for the general seats and for the reserved seats. Rule 6 of the 1996 Rules provided that two seats in MBBS course only would be reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority and not entitled to any other forms of reservation. In response to the said advertisement, the Petitioner applied for admission to the aforesaid seats reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority and took the common entrance examination. In the merit list of socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority, one Abdus Salam with 124 marks was shown in the first position. Farhad Akhtar Zaman with 124 marks was shown in the second position and the Petitioner. Md. Safiqul Islam with 123 marks was shown in the third position. The Petitioner then filed a writ petition being civil Rule No. 622/97 in this Court contending that Farhad Akhtar Zaman was not entitled to admission in the reserved seat meant for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority. So Farhad Akhtar Zaman also filed a writ petition in this Court numbered Civil Rule No. 1216/97 contending that the Petitioner, Md. Safiqul Islam was also not entitled to admission to the seat reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority. The two writ petitions were heard and a common judgment was delivered by this Court on 23.7.1997. In the said common judgment, the court found that the Deputy Commissioner, Dhubri had already made an enquiry and submitted a report on 16.5.1997 to the effect that Farhad Akhtar Zaman was the son of a retired Additional Chief Engineer, PWD, Government of Assam and was neither a resident of Char area nor could he be regarded as an economically and socially backward person. In view of the said report Deputy Commissioner, Dhubri, the Court held that Farhad Akhtar Zaman was not entitled to admission in the quota reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority. But by the said common judgment, the court was of the view that since there was some doubt with regard to the Petitioner. Md. Safiqul Islam, an enquiry should be held by the authority as to whether he was entitled to admission in the said quota reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority, and accordingly directed for such an enquiry. Pursuant to the said judgment of this Court, an enquiry was conducted by the Director of Medical Education and by order dated 19.8.1997, the Director of Medical Education, Assam, held that the Petitioner,

Md. Safiqul Islam was not socially and educationally backward person and rejected his claim for selection in the aforesaid reserved quota. Aggrieved, the Petitioner moved this Court again under Article 226 of the Constitution in Civil Rule No. 4676/97 and by judgment and order dated 8.4.1999, this Court was of the view that the Petitioner was entitled to protection as a socially and educationally backward person and directed the Secretary to the Government of Assam, Health and Family Welfare Department to under the exercise and examine the matter as early as possible. By the said judgment and order, this Court continued the interim order passed on 23.7.1997 in the said Civil Rule for keeping the reserved seat for Char Areas vacant. Pursuant to the said direction of this Court, the Secretary to the Government of Assam, Health and Family Welfare (B) Department made an enquiry and finally held that the Petitioner was a resident of Char areas and his father was a low paid LP School teacher without any other earning member in the family and, as such, the Petitioner was eligible to claim a seat under the Char Areas quota. In the said order dated 22.6.1999, however, the secretary, Health and Family Welfare (B) Department observed that the Petitioner was selected for admission for 1996-97 academic session and that two more batches have been admitted thereafter. He further observed that medical education is a highly technical and professional subject which does not permit entry of a student in the middle of the course in the interest of the student himself and also in the interest of public and on these facts left the matter to the Selection Board for examination and consideration. The grievance of the Petitioner is that although about 5 months have passed thereafter, the Selection Board has not intimated the result of the examination and consideration in the matter.

4. Mr. A.B. Choudhury, learned Counsel appearing for the Petitioner, submitted that it is clear from the order dated 22.6.1999 of the Secretary to the Government of Assam, Health and Family Welfare (B) Department that the Petitioner was entitled to admission to one of the two seats in the MBBS course reserved for socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority under Rule 6 of the 1996 Rules. Hence, the Petitioner was entitled to admission and the authorities had instead delayed the matter by selecting Farhad Akhtar Zaman for the said reserved quota though he was not entitled to be so selected and for denying admission to the Petitioner. Mr. Choudhury submitted that it has been held by a Division Bench of this Court in *State of Assam v. Rajeev Dey and Ors.* 1995 (11) GLT 157 following the judgment of the Supreme Court in *Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others*, that where the court comes to the conclusion that the candidates of an earlier session have been denied admission in violation of the relevant Rules, suitable directions can be issued to the authorities to admit such candidates, if necessary by creating additional seats and it would be no defence for the authorities who in such cases are guilty of breach of the Rules to say that they do not have the resources for such additional seats or that the Medical Council of

India will not sanction such additional seats. Mr. Choudhury further pointed out that in that case the Division Bench having found that 18 candidates had been denied admission contrary to the relevant Rules directed admission of the said 18 candidates into additional seats to be created for the purpose pursuant to the direction in consultation with the Medical Council of India. He further submitted that in the present case, one seat out of the two seats reserved for Char Areas has been kept vacant pursuant to the interim order passed by this Court and hence the Petitioner can be adjusted in the said seat for Char Areas for the academic session 1996-97. According to Mr. Choudhury, therefore, the Petitioner ought not to have been denied admission merely because two batches had been admitted after 1996-97.

5. Mr. B. Choudhury, learned Additional Senior Government Advocate, Assam, however, submitted that the Secretary to the Government of Assam, Health and Family Welfare (B) Department has taken a right view that since the medical education is a highly technical and profession subject, a student ought not to be admitted in the middle of the course in the interest of student himself and in the interest of public. He further contended that the Secretary, Health and Family Welfare (B) Department had left the matter for examination and consideration by the Selection Board, and no interference is called for in the said order of the Secretary.

6. There can be no doubt over the fact that medical education is a highly technical and professional subject and that direction ought not to be given by this Court to the authorities to admit a student in the middle of the course. But in case the court comes to the conclusion that a candidate has been unduly denied admission in breach of the relevant Rules despite his merit, appropriate direction can always be issued to the authorities to admit the candidate at the beginnings of the new session so that he studies the entire course and completes the same. In the instant case, two seats were reserved under Rule 6 of the 1996 Rules for the socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority and not entitled to any other forms of reservation. In the merit list prepared for the said reserved seats on the basis of common entrance examination in Physics, Chemistry and Biology, the Petitioner has stood third and one Farhad Akhtar Zaman has stood second. On the basis of the enquiry report dated 16.5.1997 submitted by the Deputy Commissioner, Dhubri, this Court in its common judgment dated 23.7.1997 in Civil Rule Nos. 622/97 and 1216/97, came to the conclusion that said Farhad Akhtar Zaman was not entitled to admission to any one of the aforesaid two reserved seats and had ordered an enquiry in the case of the Petitioner and enquiry was conducted in the case of the Petitioner and an order was passed by the Director of Medical Education, Assam on 19.8.1997 to the effect that the Petitioner was not entitled to any one of the aforesaid reserved seats. But when the Petitioner moved this Court again in Civil Rule No. 4676/97, this Court by his judgment and order dated 8.4.1999 directed a fresh enquiry to be made by the Secretary to the Government of Assam, Health and Family

Welfare Department. The Secretary, Health and Family Welfare (B) Department, has now by his order dated 22.6.1999 come to a positive finding that the Petitioner was entitled to admission into the said reserved seats for the academic session 1996-97. If that be so, at this stage, the Petitioner cannot be denied admission on the ground that two more batches of students have been admitted thereafter for the academic session 1997-98 and 1998-99. Admission to Medical College is extremely competitive and difficult and when a candidate belonging to socially and economically backward class has on the basis of his merit been selected for such admission for the academic session 1996-97 and has yet been denied admission on account of lapses on the part of the authorities, it will be contrary to justice and equity if he is to be denied admission altogether to the MBBS course on the ground of delay, I am of the opinion that it is a fit case in which a direction should be issued to the authorities to admit the Petitioner for the academic session 1999-2000, admissions to which are yet to take place.

7. In the result, I dispose of this writ petition with the direction that the State Respondents will admit the Petitioner in MBBS course either in Assam Medical College, Dibrugarh or in Silchar Medical College, Silchar for the academic session 1999-2000. It is, however, made clear that by such admission the number of seats meant for the candidates applying for academic session 1999-2000 belonging to socially and educationally backward persons ordinarily residing in areas covered by the Assam State Char Areas Development Authority will not be reduced and if necessary the authorities will create an additional seat for the Petitioner for the academic session 1999-2000 in consultation with the Medical Council of India. A certified copy of this judgment and order be filed by the Petitioner before the Director of Medical Education, Assam, (Respondent No. 4) who will comply with the directions contained in this judgment at the time of admission of candidates to the Medical Colleges of Assam for the academic session 1999-2000.

However, considering the entire facts and circumstances of the case, the parties shall bear their respective costs.