

(1987) 12 OHC CK 0017

In the Orissa High Court

Case No : Original Jurn. Case No. 2080 of 1985

Salil Kumar Nayak

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 22-12-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1988 Ori 146

Hon'ble Judges : R.C. Patnaik, J;L. Rath, J;D.P. Mohapatra, J

Bench : Full Bench

Advocate : C.A. Rao, C.M.K. Murty and C.V. Murty, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner who was a candidate for admission to the Postgraduate medical course during the session 1985-86 has filed this writ application for a declaration that para. 10.2.2. of the Prospectus was violative of Article 14 of the Constitution and for a mandamus directing the opposite parties to consider his case for admission on the basis of merit.

2. The petitioner passed the M.B.B.S. examination from V.S.S. Medical College, Burla in October, 1976. He completed the compulsory rotating housemanship in 1977 and the Resident Housemanship during 1977-78 and was appointed as an Assistant Surgeon in the Sub-divisional hospital at Boudh in the district of Phulbani where he served till 14-9-84. With effect from 15-9-84 he served as a Demonstrator in Anatomy in the S.C.B. Medical College, Cuttack. In 1981, he applied for admission to the P. G. Course in obstetrics and Gynaecology but he could not secure admission due to fortuitous circumstances. In 1983 he moved the Government for transfer to a rural area so that he could have the advantage of rural service for the purpose of admission to P. G. Course but his request was turned down. In the year 1983 though he had applied for admission to the course, less meritorious students secured admission getting the advantage of

weightage for rural service. In 1983 he was not granted a no objection certificate to secure admission to P. G. Course at the Bhaba Atomic Research Centre. In November, 1983 he applied to the Government for permission to take admission to the P. G. Course in the Delhi University but no objection certificate was not granted. Had he been transferred to rural area in 1983, he would have got some weightage for rural service. The petitioner has contended that though he was more meritorious than others who were admitted with the weightage of rural service, he has been denied the opportunity. He had no control over his posting. He has asserted that even in 1985-86 candidates less meritorious than he secured admission with the advantage of weightage for rural service.

3. He has averred that admission to medical course, especially to the P. G. Course and the super specialities should be on merit alone. No other consideration should outweigh the merit of a candidate. He has assailed the note under para. 10.2.2. of the prospectus as irrational and devoid of any nexus. It has been urged that certain area not included in any N.A.C. or Municipality are no less developed than the areas covered by certain N.A.Cs. and Municipalities.

4. In the return the opposite parties have submitted that the weightage for service rendered in rural areas by inservice doctors was being given on the basis of the recommendation of the Indian Medical Council. Doctors show reluctance to accept rural postings. Hence, the weightage is given by way of an incentive and for providing them an opportunity for serving in the rural area. It has further been averred that doctors who serve in rural areas exhibit greater dedication in the profession and, therefore, are more desirable. Weightage for reaching the target under the family welfare programme is given by way of an incentive to enable the inservice doctors to reach the target.

5. During the course of hearing, we called upon the learned Additional Government Advocate to produce the records relating to admission to the P. G. Course. It appears from records that had not some candidates been given weightage for rural service, the petitioner who did not receive any weightage would have been selected. The question, therefore, is if the provision granting weightage for rural service is valid and constitutional.

6. This question fell for consideration before a Division Bench of this Court in Dr. Niranjana Pradhan and etc. Vs. State of Orissa and Others, . That related to admission to the P. G. Course for the session 1981-82. A candidate" could secure, maximum of weightage of 15 marks if he had rendered 5 years of service in rural areas -- 3 marks for each completed year of rural service. Medical Council to the effect that "other conditions being equal, weightage may be given to persons who have worked in rural areas or the Armed Forces Medical Services for at least two years". The provision of weightage was not challenged as violative of Article 14 of the Constitution. It was contended there that when place of posting was beyond the control of the employee and in the discretion of the employer, giving of weightage of 15 per cent was excessive. This Court did not strike down the giving of weightage on principle but held that weightage of 15

per cent was excessive and observe that weightage between 5 per cent and 10 per cent could be acceptable. Considering the language of the recommendation of the Indian Medical Council that other conditions being equal, weightage could be given, this Court observed :

".....The recommendation of the Medical Council had clearly indicated that weightage should be available when other conditions are equal. This obviously means that when candidates are almost of the same excellence, weightage could be extended on the basis of service in rural area. In our opinion, the condition had been indicated so that by mere weightage merit may not be brushed aside and the process of selection may not fail to serve the social interest....."

Having so held it nevertheless did not strike down the giving of weightage for rural service as objectionable on principle. A Division Bench of this Court entertaining doubt about the correctness of the decision, directed the matter to be placed before a Full Bench and that is how this matter has come before us.

7. It cannot be disputed that selection to the medical course especially to the P. G. Course and the higher specialities should be on the basis of merit and excellence.

"The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens.....Exclusion of more meritorious students on the ground would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region....."

The aforesaid observation in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, considering the constitutionality of residence requirement for admission to medical colleges of the State is also apposite while considering the case of admission to the P. G. Course in this case. The best should not be rejected because that would amount to a national loss and sacrifice of talent at the threshold. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.

In Dr. Jagadish Saran and Others Vs. Union of India (UOI), it was observed :

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses..... To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise.....in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce....."

Their Lordships further observed :

"If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves....."

8. Rural service or willingness to render rural service has no connection with the merit or excellence of a candidate for admission to the post-graduate medical course. There is no guarantee that a person who has rendered rural service would be willing to render rural service after securing the post-graduate degree. A person who has rendered rural service need not necessarily be one who has rendered service with proficiency or satisfaction. Besides posting in rural area does not depend upon the volition of the party but upon the discretion of the employer. It depends upon chance: It is an accident. Should an accident of service or chance entitle a less meritorious student to secure admission beating and outstripping the more meritorious? It has been argued that a candidate securing 51 per cent of marks on merit with having 5 years rural service would secure admission while a candidate securing 60 per cent marks on merit would be denied the opportunity. Reaching the family planning target is also an accident in service. It has been argued that not all doctors are afforded the opportunity even if they are willing to work under the programme or reach the target. Therefore, giving weightage of 2 marks to those who have reached the target has no rational nexus with merit which can be the only criterion for selection. If a candidate has 5 years of rural service and by accident of his posting at the appropriate place has reached the target in the family planning programme he can secure admission though he has secured 49 marks on merit, whereas a candidate securing 60 marks on merit without the advantage of any weightage would fail to be selected

9. We are, therefore, of the view that giving of any weightage which has no relation to and connection with the merit and excellence of a candidate is undesirable and invalid. It is open to the Government to provide incentive or reward the doctors who are willing to serve or have served in the rural areas monetarily or by granting service benefits but not in such a manner that sub-standard is considered the better or more meritorious. We get support from a decision of the Supreme Court in *Dr. Dinesh Kumar v. Motilal Nehru Medical College* AIR 1986 SC 1877. The Supreme Court had called upon the Government of India and the Indian Medical Council to come forward with schemes regulating admission to post-graduate courses. Though the Government of India presented a scheme, the Indian Medical Council, it was provided that a weightage by the Government of India adopting the recommendation of the Indian Medical Council (sic), it was provided that a weightage equivalent to 15 per cent of the total marks obtained by a student at the All India Entrance Examination should be given if he had put in a minimum of three years of rural service. The Supreme Court considered the reasonableness of such measure and observed:

"..... It is, of course, eminently desirable that some incentive should be given to

our doctors to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected....."

After noticing the reasons why the doctors are not inclined to go to rural areas, the Court observed :

".....We do not think that by merely offering a weightage of 15% to a doctor for three years" rural service we shall be able to bring about a migration of doctors from the urban to the rural areas. We are of the view that when selection of candidates is being made for admission on an all India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to Post-graduate courses and if we want to produce doctors who are M.D. or M.S., particularly Surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. Moreover, we are extremely doubtful if a candidate who has rendered three years" rural service for the purpose of getting a weightage of 15% would go back to the rural area after he has got MD. or M.S. Degree, We are, therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to Post-graduate Courses are concerned....."

10. We are, therefore, of the view that the object being the selection of the meritorious and the deserving, tilting of the scale against the more meritorious by providing for weightage for rural service or for having reached the target under the family planning programme, is arbitrary and unreasonable and invalid. In our view, the rule laid down in Niranjana Pradhan's case that some weightage for rural service can be given is contrary to the decision of the Supreme Court in Dinesh Kumar's case and is, therefore, bad in law.

11. The next question is the relief that the petitioner should be entitled to. We have noticed in an earlier para, that candidates securing lesser marks than the petitioner were selected for admission to the Post-graduate medical courses with the advantage of weightage for rural service and/or family planning programme whereas the petitioner with higher marks was not. The petitioner has suffered for a number of years by reason of the operation of the weightage for rural service rule. We, therefore, direct that the petitioner be admitted to the session 1987-88, if necessary by increasing a seat in the speciality.

12. In the result, the writ application is allowed there would be no order as to costs.

D.P. Mohapatra, J.

13. I agree.

L. Rath, J.

14. While completely agreeing with the views of my learned brother Hon'ble Justice R. C. Patnaik, I would wish to add a few lines to record the driving

reasons compelling the agreement. In a society governed by the rule of law, so jealously enshrined in our Constitution, there is no scope of an arbitrary handle to whittle down the guarantee of equality before law. Resort to a fortuitous circumstance to make the balance steady where it is otherwise tilting is a dangerous device cutting at the very root of the cherished right of equality. A mere accident can never be allowed to compensate for merit and indeed compel the latter to take a back seat. As has been fairly conceded by the learned counsel for the State, gathering of experience in rural service is only through postings in rural areas for which however there is no uniform rule as to how such postings are to be made. The postings are beyond the control of the candidates and dependent upon the absolute unfettered discretion of authorities charged with the responsibility of the same. It is perfectly possible for a wholly unworthy candidate to manage a posting in a rural area and to earn credit therefore while a more meritorious one is denied such privilege resulting in inequalities to march in. The very case of the petitioner is an illustration by itself. It is thus abundantly clear that the present provision of giving weightage for rural service is one which is capable of being grossly misutilised and is inherently an uncertain circumstance and has thus the potentiality of converting merit into de-merit and de-merit into merit. Such a position can never be countenanced in a welfare society and hence must be emphatically denied. Apart from the decision in AIR 1986 SC 1877 (*supra*), a similar situation was adversely viewed by the Supreme Court in *State of Maharashtra Vs. Raj Kumar*, where candidates who had passed S.S.C. Examination held from villages or towns only having "C" type municipalities being treated as rural candidates was held violative of Articles 14 and 16 of the Constitution since the rule in practice was held to be far removed from the objects sought to be achieved. There can thus be no hesitation that acquiring experience of rural service as is obtained in the present rules of the State is a mere hit or miss circumstance incapable of forming the basis of any equal consideration between candidates and hence must be held to be hit by Article 14 of the Constitution. In that view of the matter alone, apart from other things, the petitioner is entitled to the relief claimed.