
(2005) 09 GAU CK 0065
In the Gauhati High Court
Case No : Writ Appeal No. 477 of 2005

Sangeeta Ngangom

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Manipur MBBS/BDS Entrance Examination (Selection of Candidates for Nomination)
Rules, 2004 — Rule 14, 16, 17(2), 18, 19

Citation : (2006) GLT 581 Supp

Hon'ble Judges : D. Biswas, J;A. Hazarika, J

Bench : Division Bench

Advocate : N.K. Singh, M.G. Singh, N.S. Singh and S.K. Singha, for the Appellant; S. Sarma and B. Sarma, for the Respondent

Judgement

D. Biswas, J.—This appeal is directed against the judgment and order dated 9.8.2005 passed by the learned Single Judge in WP (C) No. 766/2005.

2. We have heard Mr. M.G. Singh, learned Counsel for the Appellant and Mr. S. Sarma, learned State Counsel.

3. The Appellant as writ Petitioner filed the aforesaid Writ Petition for appropriate direction for her admission in MBBS/BDS Course against a seat reserved for meritorious sports persons. The final list of the selected candidates was published on 6.6.2005. Thirty eight candidates were enlisted in order of merit in the general category and nineteen candidates were enlisted for admission against seats reserved for the S.T. category candidates. Similarly, one candidate was selected for admission against one reserved seat for each of the reserved categories, namely, children of armed forces personnel and meritorious sports persons. One Rabishwaree Asem who had secured 340 out of 400 marks occupied 22nd position in the merit list of general category candidates. Her name also appeared in the select list of meritorious sports persons. The name of the Appellant was also shown as a wait listed candidate of meritorious sports persons. Ms. Rabishwaree Asem was admitted against the seat reserved for the

meritorious sports persons. The Appellant challenged his admission against the lone seat reserved for sports persons on the ground that having secured 22nd position in the merit list of the general category candidates, he ought to have been admitted/adjusted against a general category seat only. Had it been so done, the seat reserved for the meritorious sports person would have remained vacant and this would have made the Appellant eligible for admission against that seat as she is the only candidate enlisted in the waiting list.

4. The argument advanced on behalf of the Appellant was not accepted by the learned Single Judge on the ground that the protection given under Article 15(4) or Article 16(4) to the members of the S.C., ST., O.B.C. cannot be made available to the candidates from the meritorious sports persons category and, therefore, no seat is left vacant for being filled-up from the waiting list of the meritorious sports persons. Further, the learned Single Judge noticed that of all the wait listed candidates of different categories, the State Government selected the candidate who had secured the highest marks and, this in his opinion was a good ground for not considering Appellant's case.

5. Let us at the very outset examine the State policy with regard to admission of candidates from the meritorious sports persons, children of armed forces personnel etc. The Manipur MBBS/BDS Entrance Examination (Selection of Candidates for Nomination) Rules, 2004 was promulgated by the Governor on 28th April, 2004. Rule 2(1) defines meritorious sports person as follows:

2(f) "Meritorious Sports person" means a candidate who had represented the State of Manipur as a competitor in the National Level Sports of Sub-Junior, Junior or Senior Level conducted under the auspices of the National Sports Federation or National Sports Association, recognized by the Government of India or All India School Championship under the auspices of the School Games Federation of India or who had represented India as a competitor at International Level Sports Championship only for the sports disciplines mentioned in Annexure-IV.

6. Chapter-III of the Rules provides for selection by competitive test examination for the purpose of admission. Rule 14(xii) prescribes the authority for issuing certificates of meritorious sports persons. Rule 16 lays down the procedure for award of marks to the meritorious sports persons and Rules 17(2) provides for preparation of separate select list and waiting list for candidates belonging to General, Scheduled Castes, Schedules Tribes, Meritorious Sports Persons and Children of Armed Forces Personnel/Ex-Servicemen categories. The provisions in Rule 18 and 19 which are relevant for the purpose at hand read as follows:

18. (i) Subject to provision of Rules 8 and 19, candidates in the Select Lists shall be nominated by the Government in order of merit and after taking into consideration of their options for nomination against the available seats.

(ii) Similarly, candidates in the Waiting Lists shall be considered by the Government in order of merit and taking into consideration of their options for

nomination against the available seats which may arise due to selected candidates surrendering/not availing their seats or additional seats which become available to the Government after declaration of the result of the Competitive Test.

19. (i) The Government shall reserve seats for ST & SC as per policy of the State Government from time to time in force.

(ii) The Government shall reserve one MBBS or BDS seat for the Children of Armed Forces Personnel/Ex-servicemen for nomination against the seat as opted by the Selected Candidate in accordance with these rules.

(iii) The Government shall also reserve one MBBS or BDS seat for meritorious sports person for nomination against the seat as opted by the Selected Candidate in accordance with these Rules.

7. It would appear from above that the candidates in the select list shall be nominated by the Government for admission in order of merit after taking into consideration their option against available seats. The waiting list candidates are required to be considered for admission by the Government in order of merit on consideration of their options. Rule 19(iii) provides for reservation of one seat for meritorious sports persons. The provisions above show that admission will normally depend upon the option exercised by the candidates. However, the Rules do not specify that the reserved category candidates having secured a place in the merit list for open seat is to be adjusted against reserved seat only. Therefore, the question arises before this Court is whether a candidate having secured a position in the merit list for open category seat is to be admitted only against the seat meant for the reserved category?

8. Mr. M.G. Singh, learned Counsel for the Appellant argued that the principles of reservation as interpreted by the Hon"ble Supreme Court in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, and in *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, will be applicable in the present case since the lone candidate, namely, Ms. Rabishwaree Asem who secured 22nd position in the merit list of general category candidates could not be admitted against a reserved category seat. This means that the admission of Ms. Rabishwaree Asem has to be treated against a general category seat by virtue of her merit leaving the lone seat reserved for meritorious sports persons vacant. The Appellant, the learned Counsel submits, being the lone candidate in the waiting list for meritorious sports person is entitled to admission against the vacant seat reserved for meritorious sports persons.

9. Mr. Sarma, learned State counsel vehemently argued that Sri Rabishwaree Asem was admitted as per option exercised by him and, therefore, he cannot be adjusted against an open seat. Mr. Sarma further submitted that the candidates in the waiting list for the general category have secured more marks than the Appellant and, therefore, their right for consideration for admission will be in jeopardy and no order adverse to them can be passed by this Court since they

have not been made parties. Mr. Sarma further argued that the admission process in the instant case cannot be guided by the principles of law enunciated in *Ajay Kumar Singh (supra)* and *Ritesh R. Sah (supra)*.

10. In the aforesaid two judgments, the Hon'ble Supreme Court dealt with the question relating to admission of reserved category candidates in Medical Colleges. The law settled is that the students from reserved category who are entitled to be admitted against open seats on the basis of their performance in the selection test cannot be admitted against reserved category seats.

11. It may be mentioned here that the Rules of 2004 nowhere say that a candidate who has given his option for consideration for a reserved category seat will not be admitted against an open seat even if he is entitled to such admission on the basis of his performance in the selection test. The intention of the State Government is discernible from the above Rules. In clear and unambiguous terms, one seat has been reserved for each reserved category. The policy embodied in the Rules of 2004 are definitely not empty formalities. For all intent and purposes, the Rules will have to be interpreted as they are. We find no reason to deviate from what is expressed in the Rules of 2004 and to act upon it in terms of the ratio available in *Ajay Kumar Singh (supra)* and *Ritesh R. Sah (supra)*. In our considered opinion, the principles of law evolved in the aforesaid judgments will also be applicable in the instant case. In our opinion, Ms. Asem having secured 22nd position in the merit list could not be admitted/adjusted against the reserved category seats. If the argument of Shri Sarma is accepted, that would mean that in a case where the list of reserved category consist of more than the number of seats reserved, and their performance are such that all of them are eligible to secure admission on merit against open seats, only one of them will be entitled to admission against the lone reserved category seat and other meritorious candidates will remain excluded. This course of action, if taken, would result in total obliteration of meritorious candidates. Therefore, the admission of Ms. Asem has to be treated as an admission against open category seat. The lone reserved seat for meritorious sports persons will have to be filled up either by the next candidate in the select list of meritorious sports persons, if any, or by the candidate from the waiting list of the same category. Under no circumstances, the seat reserved for sports persons can be filled up by the candidate meant for general category candidates. The Government's stand that they are going to admit the candidate from the waiting list of general category seat as he has secured highest amongst all the wait listed candidates would mean another process of selection amongst the wait listed candidates of different categories. This cannot be permitted under the law. Such an exercise is also not contemplated in the Rules of 2004.

12. It would appear from the judgment under appeal that the learned Additional Advocate General, Manipur made a submission before the learned Single Judge that the policy of the State Government is to go for admission of the candidate securing highest marks amongst the reserved category candidates. However, no

document to this effect was made available before the learned Single Judge or is traceable on record. Mr. Sarma, learned Counsel also could not produce any document to show that such policy was adopted in deviation by the State Government. A mere submission by the Additional Advocate General that there is a policy decision to that effect is not enough for a Court to act upon. That apart, this submission is contrary to the basic principles of fair play and justice. The rules are clear and the seats reserved for each category candidates will have to be filled up by the candidates enlisted in the lists of reserved categories other than those who by virtue of merit are entitled to admission against open seats.

13. Mr. Sarma, learned State Counsel relied upon the decisions in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, ; *Ishwar Singh v. Kuldeep Singh*; *Khetrabasi Biswal Vs. Ajaya Kumar Baral and Others*, and in *Dattatreya and Others Vs. Mahaveer and Others*, in order to bring home the point that the Court shall not entertain a writ when the parties likely to be affected by the order that may be passed are not on record. According to Shri Sarma, the first candidate in the waiting list of general category had secured higher marks than the Appellant and, therefore, any direction in the manner as prayed for by the Appellant would adversely affect the right of the said candidate. We are in complete disagreement with the submissions of Shri Sarma. Reservation has been made for different categories. The Rules do not provide for any exercise to find out the best of the candidates belonging to different categories. It would be impermissible to club all the candidates belonging to different categories and to select the best for the purpose of admission. We have no doubt that the first candidate in the waiting list of general category has no legal right under the Rules for consideration for admission against a seat meant for meritorious sports persons or children of Army personnel. He being in the waiting list of general category candidates can under no circumstances be considered for admission against a seat reserved for sports persons. He has no legal right to vindicate and, therefore, cannot be treated as a person likely to be aggrieved if the prayer of the Appellant is allowed in his absence. There is no reason to deny the additional protection guaranteed to the Scheduled Caste, Scheduled Tribes and Other Backward Classes to the meritorious sports persons, children of ex-servicemen etc. The compartmentalization of candidates from these categories is rigid and inflexible and cannot be tinkered with unless it is provided under the relevant Rules. A statement in the affidavit contrary to what are available in the Rules cannot have overriding effect to set at naught the policy available in the Rules. Decision of the State, if any, that Ms. Asem, though qualified in the open competition for admission against open seats will be admitted against the seat reserved for meritorious sports persons appears to be contrary to Rules, and the decision cannot stand the test of judicial scrutiny.

14. In the result, we allow this writ appeal and set aside the judgment and Order dated 9.8.2005 passed in Writ Petition (C) No. 766 of 2005. The writ petition is, therefore, allowed and the Respondents are directed to admit the Appellant against the lone seat reserved for meritorious sports persons.

No costs.