

(1999) 12 OHC CK 0039

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11270 of 1999

Sayantana Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 OLR 271

Hon'ble Judges : P.K. Patra, J; P.K. Misra, J

Bench : Division Bench

Advocate : M.R. Panda, M.K. Nayak, S.P. Swain and R. Panda, for the Appellant; A.G.A., (O. Ps. 1, 2, 4, 5 and 6) and R.K. Mohapatra, R.K. Dash, S. Swain, S. Kar, U.C. Mohapatra, D.P. Das, D.R. Swain and N.K. Sahu (O.P.-3), for the Respondent

Judgement

P.K. Misra, J.—The petitioner has sought for a writ of mandamus directing the opp. parties to admit the petitioner to MBBS/BDS Course. The petitioner is the daughter of Lt. Col. H. Patra, presently serving in Indian army as a Doctor. She appeared in the Joint Entrance Examination for the year 1999-2000. Being child of a military personnel, she was shown against serial No. M-1 3. It is the case of the petitioner that as per the terms contained in the brochure (Annexure-1), particularly Sub- clause 2.3.4 of Clause 2.3, three seats in medical college and one seat in BDS in SCB Medical College had been reserved for the children of defence and para-military personnel. The petitioner claims that though she was placed at serial No. 13 among the children of defence and para-military personnel, the candidates securing 1st, 2nd, 3rd and 4th position in such reserved list relating to children of defence and paramilitary personnel, were, in fact, within the list of general category candidates being placed at serial Nos. 22, 56, 94 and 144 respectively. In such view of the matter, the petitioner claims that the aforesaid four persons who were also selected on merit in general category should have been considered in the general category and consequently, the petitioner should have been placed at serial No. 9 of the reserved category relating to children of defence and para-military personnel and allowed to take

admission.

2. Though notice on behalf of opposite parties 1, 2, 4, 5 and 6 had been accepted by the counsel for the State, no counter had been filed on their behalf. However, counter has been filed on behalf of opposite party No. 3, the Chairman of Joint Entrance Examination Committee. In the counter it is stated that actually as per the resolution of the Government contained in Annexure-A, three per cent of the total seats in MBBS Course and three per cent of the seats in BDS course had been reserved. The total seats available for MBBS Course in the three Colleges being 273, three per cent of such number comes to 8.19 and disregarding the fraction, only 8 seats are available for reserved category of children of defence and para-military personnel and similarly, three per cent of 17 seats for BDS Course being 51, when rounded off, only one seat was available. It has been indicated in the counter that inadvertently in the information brochure in place of "three per cent of seats", it has been printed as "three seats" in the second line of Sub-clause 2.3.4 of Clause 2.3. It is further stated that though first four candidates in the list relating to children of defence and para-military personnel were found place in the merit-list of general candidates, only two of them chose to take admission as general candidates and two others chose to take admission as reserved candidates and accordingly, candidates up to serial No. 11 in such list relating to children of defence and paramilitary personnel were offered admission against eight seats in MBBS Course and one seat in BDS Course. It is, therefore, indicated in the counter that petitioner's serial being at No. 13, she could not be admitted. It has been further pleaded that admission to the medical colleges having been completed and all seats in MBBS Course and BDS Course having been filled up, the writ application has become infructuous.

3. The first question to be decided is as to whether opp. party No. 3 was correct in treating the two candidates who also found place in the merit-list relating to general candidates, as reserved candidates for the purpose of filling-up the seats available to children of defence and para-military personnel. There is no dispute that serial Nos. 1 to 4 of the list relating to children of defence and para-military personnel were selected in the merit-list relating to general category being placed at serial Nos. 22, 56, 94 and 144. From the counter of opp. party No. 3, it appears that while candidates securing merit rank Nos. 1 and 2 in the reserved list for children of defence and para-military personnel took admission as general candidates, the two candidates securing merit rank Nos. 3 and 4 in the reserved list took admission against the reserved category and consequently, candidates up to serial No. 11 of the reserved list were admitted. This approach of opp. party No. 3 is evidently based on a misconception of law. The position of law is no longer in doubt in view of series of decisions of the Supreme Court many of which have been noticed in the decision of the Supreme Court reported in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, . After discussing the various decisions, it was observed in paragraph 17 :

".....In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less-meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate....."

In view of the aforesaid decision which had been followed by this Court in OJC No. 9909 of 1998 and other connected matters (Miss Pragyan Chhotray etc., etc. v. State of Orissa and Ors.) disposed of on 13.11.1998, there was no scope for opp. party No. 3 to construe that serial Nos. 3 and 4 of the reserved list of children of defence and para-military personnel were not to be considered as general candidates for the purpose of admission. It is, of course, true that so far as the question of taking admission into a particular college is concerned, the option given by those two candidates had to be given preference, as they were more meritorious than the other candidates in such reserved list for children of defence and para-military personnel. In other words, while considering the question of admitting candidates as reserved candidates in the category of Sub-clause 2.3.4, serial Nos. 1 to 4 could not have been considered as candidates of the reserved quota and other candidates commencing from serial No. 5 were to be considered. In such view of the matter, the petitioner is right in contending that she should have been considered to be at serial No. 9 in the reserved list so far as children of defence and para-military personnel were concerned. It is thus evident that petitioner was illegally deprived of her right to be admitted to MBBS/ BDS Course.

4. At the time of entertaining the writ application, no stay had been granted, nor any seat had been reserved. The counsel for opp. party No. 3 states that all the seats in MBBS Course as well as BDS Course have been filled up. The learned counsel appearing for the petitioner states that about three seats are available in MBBS Course. If the petitioner would have challenged the admission of last ranked person admitted into the MBBS/BDS Course, by impleading such candidate, such admission possibly could have been set aside. The petitioner has not prayed for setting aside the admission of any candidate already admitted.

Thus, though the petitioner has been illegally deprived of being admitted into the MBBS/BDS Course, the question as to whether she can be allowed to take admission into MBBS/BDS Course now depends upon the contingency as to whether any seat is lying vacant. In the facts and circumstances of the case, it is directed that opp. party No. 2, the Director of Health (Medical Education), shall ascertain within a period of seven days regarding any vacancy in MBBS/BDS Course in the colleges concerned and if any seat is available, the petitioner shall be permitted to be admitted within a period of two weeks from today. However, if no such vacancy is available, the petitioner has to rue her luck and wait for the next year.

5. In view of the above direction, the question as to whether nine seats were available for children of defence and para-military personnel or 8 seats are available becomes academic though the contention of the petitioner, in view of the specific clause in the brochure providing for reservation of nine seats, prima facie appears to be acceptable and the explanation offered in the counter does not prima facie appear to be justified.

6. The direction is given to opp. party No. 2 as opp. party No. 3 who was the Chairman of Joint Entrance Examination Committee for the year 1999-2000 being the Principal of Burla Engineering College, Sambalpur may not be in a position to monitor the situation. On the other hand, opp. party No. 2 being directly in link with opp. parties 4, 5 and 6, the three Principals of the three medical colleges, would be in a better position to implement the direction of this Court. This order be communicated to opp. party No. 2 by a special messenger in course of the day at the cost of the petitioner. Tentatively, the petitioner is directed to deposit a sum of Rs. 1000/- towards special messenger cost. Copy of this order shall also be handed over to counsel appearing for the State for information and necessary action.

7. The writ application is disposed of accordingly. There is no order as to costs.

P.K. Patra, J.

8. I agree.