
(2016) 09 GAU CK 0040
In the Gauhati High Court
Case No : WP(C) No. 4904 of 2016

Shri Hiralal Choudhury

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLR 194 : (2016) 5 GauLT 588

Hon'ble Judges : Hrishikesh Roy And M.R. Pathak, JJ.

Bench : Division Bench

Advocate : Mr. A. Dasgupta, Mr. S. Chakraborty, Ms. B. Das, Mr. B. Das and Mr. R. Sarkar, Advocates, for the Petitioner in WP(C) No. 5180 of 2016; Mr. A. Dasgupta, Ms. B. Das and Mr. B. Das, Advocates, for the Petitioner in WP(C) No. 4904 of 2016; Mr. D. Saikia, Add

Final Decision : Allowed

Judgement

Hrishikesh Roy, J. - These cases pertain to admission of students into the State quota seats (85%) for the MBBS/BDS course in the medical/dental colleges of Assam. The common grievance of all the petitioners is their disqualification since they studied from Class-VI to X at schools, outside of Assam. The admissions are regulated by the Medical Colleges of Assam and Regional Dental College, Guwahati (Regulation of Admission into 1st Year MBBS/BDS Courses) Rules, 2015 (hereinafter referred to as the "2015 Rules") and substitution of Rule 3(1) (c), by the amendment notification of 30.01.2016, has led to deprivation of the petitioners. Therefore, the candidates who secured high ranks in the 2016 entrance test, have questioned the legal validity of the amended provision by raising common contentions.

2. Heard the learned Sr. counsel Mr. A. Dasgupta and Mr. H.R.A. Choudhury and the learned advocate Mr. U. Dutta, who made submission for the petitioners in this series. Mr. D. Saikia, the learned Addl. Advocate General argues for the State respondents. The Dibrugarh University who conducted the entrance test is

represented by Mr. N.C. Das, the learned Sr. counsel.

3.1 The WP(C) No.4904/2016 is filed by the father of the candidate Luit Raj Choudhury, who appeared in the medical entrance test and secured the 395 rank (Annexure-J), as per the result notified by the Dibrugarh University. The counselling for this OBC category candidate with the Roll No.201090 was scheduled on 28.08.2016, under the educational notice dated 08.08.2016. But because of the eligibility criteria specified under the amended Rule 3(1)(c) of the 2015 Rules, brought into effect from 30.01.2016 (Annexure-K), the applicant, who studied in a Andhra Pradesh school, is disqualified for admission, against the 85% state quota seats.

3.2 In the WP(C) No.5183/2016, the petitioner with his Roll No.507414 secured the 110 rank, which entitles him to admission. But the selection board declared him to be ineligible as the candidate studied up to Class-X from the Little Star Higher Secondary School, Dimapur, Nagaland. However he passed the qualifying PU examination from the Cotton College, Assam.

3.3 The candidate in the WP(C) No.4602/2016 with his Roll No.200926 was ranked 233 in the entrance examination but since he studied up to Class-X in the Little Flower English School at Jalpaiguri, West Bengal, he is also declared to be disqualified under Rule 3(1)(c) of the 2015 Rules.

3.4 The petitioner in the WP(C) No.5180/2016 has studied up to Class-X at the Kendriya Vidyalaya No.1, Itanagar, Arunachal Pradesh and therefore despite his high rank at 160 with Roll No.504728, he is similarly disqualified for admission under Rule 3(1)(c) as he studied in a non-Assam school.

3.5 The applicant in the WP(C) No.5219/2016 with his Roll No.200669 secured the 121 rank in the entrance examination, but he too was declared to be disqualified under Rule 3(1)(c) of the 2015 Rules, as he completed his Class-X schooling from the St. Thomas Higher Secondary School, Mendipathar, Meghalaya. His father Soidur Rahman Mollah is employed as a mechanic in the Meghalaya Police and that is how the petitioner studied in the Meghalaya school.

4. As we are concerned with the validity of the eligibility criteria, the Rule 3(1)(c) before amendment and the substituted Rule 3(1)(c) post 30.01.2016 are extracted herein below:-

Before substitution:-

"3(1)(c) The candidate including son/daughters of officers of All India Services must study in all classes from Class-VII to XII in the State of Assam and must pass the qualifying examination from the Institutes situated in Assam. (Certificate at Annexure-II in Application Form B at Schedule-I of these rules must be submitted if a candidate is called for counselling):"

Substituted:

30.01.2016 "3(1)(c) The candidate, including sons/daughters of the officers of All

India Services, must study in all classes from Class-VI to X in the State of Assam and must pass the HSLC or its equivalent examination conducted by Government recognised Board/Council from any Institute situated in the State of Assam. (Certificate at Annexure-II in Application Form-B at Schedule-I of these rules must be submitted if a candidate is called for counselling):

Provided that if a candidate studies outside Assam from Class-VI onwards because his/her father/mother is posted outside Assam as a State/Central Government employee or employee of any State/Central Government Corporation/Agencies or Instrumentalities on deputation or transfer or regular posting, then the period for which the said father/mother is working outside the State shall be relaxable for such candidate. (Certificate of employment of father/mother outside the state indicating the period of service must be submitted if a candidate is called for counselling.)"

5. The reservation of medical seats for State based candidates is incorporated with the expectation that those who are residents of the region are more likely to serve the people of their own State. Therefore, a State which is short of medical personnel can legally justify the preference for their own residents for admission to the State quota seats. Such legislative objective is discernible from Rule 13 of the 2015 Rules as those, who are admitted against the State quota seats, are to furnish undertakings to serve in Assam for some duration, after they qualify as doctors.

6. The Supreme Court in *Dr. Pradeep Jain v. Union of India* reported in (1984)3 SCC 654 has upheld the residential or institutional preference for admission to medical colleges, with the following observation:-

"19.We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State....."

7. In this litigation, the court has to answer whether the petitioners who are permanent residents of Assam can be further classified into another sub-group amongst the permanent residents, on the basis of the location of the school, where they studied up to Class-X. It may be borne in mind that pursuing education in Class-XI and XII from an outside school is not a disqualification under the amended Rule 3(1)(c), whereas those, who have done their schooling up to matriculation standard in an outside school, are made ineligible. The objective of the eligibility prescription is admittedly to provide reservation for local student who with their medical degree will serve the people of the State. But how it can be said that in the event they get admission against State quota

medical seats, the Class-XI & XII category will serve the Assam residents whereas such service can't be expected from those, who have studied in the lower classes in an outside school. This distinction amongst the students in our perception, is not based on any rational differentia.

8. The nature of education up to matriculation level is not of much relevance for MBBS curriculum but the subjects in Class-XI and XII will surely have greater connection and relevance for medical studies. Therefore, the classification between these two category of students are not found reasonable since one is not disqualified by outside schooling at the Class-XI - XII level, whereas those who studied up to Class-X in an outside school, is rendered ineligible, under the amended provision of the 2015 Rules.

9. That the petitioners are permanent residents of Assam, is not being questioned by the admission authorities. But sub-categorization is made by grouping those who pursued their Class-VII - X studies in an outside school. This in our perception is an artificial division, which do not have any rational nexus with the objective of providing medical education for the State residents.

10. It is also necessary to observe that the curriculum and academic parameters under the CBSE Board is uniform for the schools all across the country and thus the education received in a CBSE school of Assam is no different from what is taught in an outside Assam school. Therefore, the students following the uniform curriculum particularly in CBSE schools, cannot be classified separately on the basis of the location of the schools, as such distinction is arbitrary and irrational.

11. In *Suneel Jatley v. State of Haryana* reported in (1984)4 SCC 296, the Apex Court was considering the reservation of seats for admission to MBBS/BDS courses for students who received education from Class-I to VIII in common rural schools. In that context, the Court held that classification between students educated in rural schools and those educated in urban schools from Class-I to Class-VIII, is not based upon intelligible differentia. It was also observed that classification based on education up to Class-VIII is wholly irrational, when object is to provide incentive to local students. Such classification accordingly was declared to be invalid. Likewise in *Vishal Goyal v. State of Karnataka* reported in (2014)11 SCC 456, the reservation for candidates of Karnataka region was the issue before the Court in the context of reservation in the post-graduate medical/dental courses. The Supreme Court held that Clause 2.1(a) is ultra vires of Article 14 of the Constitution, as this clause tries to disguise residence requirement, as institutional preference.

12. The Supreme Court in *Anant Madaan v. State of Haryana* reported in (1995)2 SCC 135 was considering a case where reservation is made on the basis of candidates having studied for the preceding 3 years in a recognised school/college in Haryana for the 85% state quota seats. In this context, the Court held that such eligibility criteria, is not unreasonable and is consistent with Article 14 of the Constitution. Here the Court had commented on the phenomena of bogus

domicile certificate and the resultant recommendation of the committee to require studies in Class-IX, X and XI in a Haryana school, for qualifying for the State quota medical seats. This decision, heavily relied by the learned Addl. AG in our opinion, does not help the respondents, as the facts here are distinguishable and the eligibility criteria in this litigation is not relatable to the final years of study in the school. In fact under the impugned 2015 Rules, as amended in 2016, the final two years study (Class-XI & XII) in an outside school is no disqualification whereas studying for the lower classes in a non-Assam school, attracts the disqualification under Rule 3(1)(c) of the 2015 Rules.

13. In *Meenakshi Malik v. University of Delhi* reported in (1989)3 SCC 112, the Apex Court was considering the eligibility requirement of pursuing the last 2 years of school education in a local school for admission to a medical college in Delhi. The applicant's father in that case was employed in the National Council of Educational Research and Training (NCERT), but he was deputed at the relevant time, to serve with the Ministry of Education in Nigeria. His daughter accompanied the parents to Nigeria and completed her "O"-Level studies (equivalent to Class-XI in India) in a Nigerian school. She was refused admission as she had not received the last 2 years of school education in a school in Delhi. But this was found to be unreasonable by the Supreme Court as the posting of the parent in a foreign country left the candidate with no choice but to accompany them and accordingly the rigor of the admission condition was ordered to be relaxed by the court for the candidate, who faced the compulsion.

14. The father of the candidate in the WP(C) No.5219/2016 is serving with the Meghalaya Police and that is how the schooling up to Class-X was necessitated in a Meghalaya school out of compulsion. Such exigencies could perhaps be addressed by the proviso to Rule 3(1)(c) of the 2015 Rules. But as we have already held that Rule 3(1)(c) is discriminatory and relief is being granted to the petitioners on this ground, we refrain from examining the applicability of the proviso, in this case.

15. Mr. D. Saikia, the learned Addl. A.G. relies on *State of Assam v. Sitalakshmi Srinivasan* reported in 2014(4) GLT 396, to argue that studying in a Assam school for a particular duration can be an objective criterion for stipulating the eligibility for the State quota seats. It is now well settled that class legislation is forbidden under Article 14 of the Constitution, but reasonable classification for the purpose of legislation can always be made. But to pass the test of permissible differentia, the classification must be found to be based on an intelligible differentia and there has to be nexus between the basis of classification and the objective sought to be achieved. Here Rule 3(1)(c) of the 2015 Rules as it was originally enacted disqualified those, who did their schooling from Class-VII - Class-XII from a school outside of Assam. But after the 2016 substitution of Rule 3(1)(c), the bar is removed against those who studied in Class-XI and XII in such school but the students who did their education of Class-VI to X from non-state school are still disqualified for admission. When the

objective of the enactment is to encourage medical education for those who are expected to serve in the State after they secure the medical degree, the sub-classification of Class-XI & XII in one group and Class-VI to X students in the other, in our understanding, is not germane to the objective of the enactment. How it can be presumed that the group who completed their final two years of schooling in a outside school is likely to render medical service in the State and those who studied in the lower classes (VI to X) in a non-state school, will not have such inclination. Hence the intelligible differentia which permits lawful classification is missing amongst the two groups of students who did their schooling in an outside Assam school.

16. In the above context, the State counsel upon instruction submits that govt. records do not indicate any reason for the 2016 amendment to exclude the Class-XI & XII category from the disqualification norms and therefore Mr. Saikia submits that the State has decided to reverse the artificial classification. He further submits that because of the Supreme Court stipulation, the admission window shuts down this year by 30th September and therefore unless judgment is rendered quickly in these cases, the seats kept aside on court orders, will remain unfilled and this will be detrimental to public interest.

17. What follows from the discussion above is that State can provide for institutional basis preference but such action can be struck down by the Court if it can be shown that the decision is ultra vires the right of equality guaranteed by the Constitution. The separate treatment of those studying in a non-Assam school, on the basis of the matriculation and Higher Secondary level education, do not indicate any nexus to the objective of the enactment i.e. to provide more doctors for the people of Assam. Consequently we declare the classification to be irrational, legally discriminatory and thus violative of Article 14 of the Constitution and thus the Rule 3(1)(c) substituted by 2016 amendment in the 2015 Rules, in our judgment can't be invoked to deny admission.

18. In view of the above conclusion, the respondents are directed to process the admission of the candidates as per their respective ranking in the entrance examination without disqualifying them for having done their schooling (Class-VI to X) in outside Assam schools. The cases are accordingly allowed with this order without any order on cost.