
(1988) 10 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1654 of 1980

Sri. Pramod Kumar Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-10-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 29(2)

Citation : (1989) 67 CLT 136

Hon'ble Judges : H.L. Agrawal, C.J.; A.K. Padhi, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; K.C.J. Ray, Government Advocate, for the Respondent

Judgement

A.K. Padhi, J. <1988 (1) O.L.R. 301/p> 1. The Petitioner was desirous of taking admission to the M.B.B.S. 1980-81 course in one of the Medical Colleges in Orissa. He prayed for a seat for the session 1980-81. We are informed that he had already taken admission and completed the M.B.B.S. Course.

2. Though the prayer has become infructuous the advocate for the Petitioner: requested us for our view relating to the modality and manner of admissions into the M.B.B.S. Course in the Medical Colleges. This Court is always reluctant to pass any observation or give any direction after the writ application has become infructuous. However, keeping in view the substantial public interest involved and keeping in view the fact that the question of admission into the Medical Colleges has become an annual problem in this Court when several writ applications being filed, I propose to, express my view. In this connection submissions of Mr. Mohanty, Senior Advocate are:

(i) The prospectus for admission into the M.B.B.S. vades from year to year. There is no specific guideline under which the prospectus is issued and the students of each year are at a loss to know as to how to prepare for the entrance examination;

(ii) The prospectus are not in accordance with the recommendation of the Medical Council of India such as:

(a) examination in English is a must in the entrance test "which is "not being adhered to by the authorities in our State;

(b) according, to the prescriptions of the Medical Council of India, the eligibility for medical entrance test should be 50 per cent at least for general candidates in English and Science in the qualifying examination. However, the same is not adhered to and (iii) The examinations and admissions are not held in time.

3. There can be no doubt that the demand for admission into the Medical Colleges for the last few years has increased enormously. But as things stand today, there is considerable paucity of seats in Medical Colleges to satisfy the increasing demand of students, for admission and some principles have to be evolved for making selection of students for admission into the Medical Colleges. Exclusion of more meritorious students on one ground or other would likely bring in sub-standard students and there would be resultant deterioration of competence and proficiency, As has been often quoted in many decisions" it is no blessing to inflict quacks and medical mid-gets on people by wholesale sacrifice of talent at the threshold."

The authorities reposed with task of selecting and admitting students to medical institutions must act fairly and objectively. They have a solemn obligation to discharge. Admissions should not be made and criteria for admission should not be fixed on extraneous considerations as it will create lot of discontentment amongst the students wrongly left out. In the recent past, it is seen that students wrongly admitted do not suffer the consequences of the illegalities made on their behalf by the interested persons as the Courts are reluctant to cancel the admissions of students though illegally done.

The modality of admission to the Medical Colleges of Orissa has been questioned in this Court almost each year for last few-years and in the course of time principles have already been evolved by the judgments of this Court and Supreme Court.

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

...To devalue merit at" the summit is to temporise with the country"s development in the vital areas of professional expertise.

Their Lordships further observed:

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

In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . their Lordships observed that:

...The effort must therefore, always be to select the best and most meritorious students for admission to technical institutions and medical college by providing equal opportunity to all citizens....

In *Dr. Dinesh Kumar and Ors. v. Motilal Nehru . Medical, College, Allahabad and Ors.* A.I. R. 1986 S.C. 1877 the Supreme Court had caned upon the Government of India and Medical Council to come forward with the schemes regulating admissions to Post-graduate course. In this decision their Lordships considered the .reasonableness of weightage regarding three years rural service in All India Entrance Examination observed:

...It is of course eminently desirable that some incentive should be given to our doctor to go to the rural areas because there is concentration of doctors in the urban areas and the rural areas appear to be neglected. 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....

In *Fazal Ghosi and Others Vs. State of U.P. and Others*, their Lordships have given a complete guideline for the examination for the Post-graduate course and have given some indications regarding the examinations to be held in the M.B.B.S. course.

In *Dr. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, their Lordships clarified the earlier decision and gave the direction as follows:

The All India entrance examination for the admission shall be held between 16th May and 31st May and the results shall be notified between 15th and 20th June. The list of the candidates will be prepared within one week from the publication of the results and three weeks" time shall be allowed to intervene before actual admission starts. By the end of August such process having been completed, actual teaching should start from the beginning of September. In all medical colleges/institutions to which the scheme applies, teaching for MBBS/BDS course should start in the first working day of September and even those institutions which are outside the scheme might as well commence their academic sessions from September to that throughout the country there would be uniformity in that regard.

More time is not necessary for implementing the scheme and therefore, its implementation should not be deferred until 1990, As all States would have four years of notice of the Supreme Court judgment proposing the switch over to the Scheme, by the time the scheme is put into operation in 1988-89 session and four years" period is certainly sufficient notice and no one can have any occasion to feel aggrieved that there is any hustiling up is the implementation of the Scheme.

The objection that the syllabus curriculum of study in some of the States being different from the syllabus formulated under the orders of the Court the students would be handicapped when taking the entrance examination, would not be tenable. Those States who have not taken steps to bring their syllabi in line with the scheme syllabus must be blamed for indifference but there is still time to remedy the situation. Such of the students who propose to sit at the entrance examination must from now on undertake an extended study of the subjects covered by the syllabus in case some portions from the approved scheme syllabus are not covered by their own.

The medium of study of the M.B.B.S. course being in English, those students who propose to study the M.B.B.S. have got to be reasonably proficient in that language. Besides, the manner in which the entrance examination would be held, does not require long answers to be written so that proficiency in English should become an absolute necessity so far "as that examination itself is concerned. In these circumstances the objection relating to the language of the examination would not be tenable.

The authorities should hold the examination in manner directed, in June: 1988. The Union of India, the Medical Council, the Dental Council, the several States. Universities and Medical Colleges or institutions who are covered by the scheme are directed to comply with these orders in time.

In view of directing the Scheme to be operative from the 1988-89 academic session, the order of injunction passed on by the Supreme Court regarding the 15% seats is recalled. The respective institutions are now free to fill up these vacancies in accordance with their own procedure of admission.

This decision of the Supreme Court has clarified all the aspects of the admission into the M.B.B.S. course by taking into account the recommendation of the All India Medical Council and the prospectus which have been used by the various states.

In *A. K. Gupta v. The Dean University of Delhi* AIR 1988 Del 261, it has been held:

...The principle of reasonableness is an essential element of equality. There is no reasonableness in the impugned restriction on the alleged ground of loss of education time. The admissions to B. D. S. Course commenced earlier after the completion of admissions in M.B.B.S. Course. There may be a delay of two or three months but it is insignificant when compared to the total period of B. D. S. Course of five years including internship. The net effect of the impugned clause resulted in diluting the merit for admission and denial of opportunity of admission to more meritorious candidates. The object to be achieved was the securing of the best possible talent which has been defeated by the impugned restriction:

In *Amisha Nagpaul and Others Vs. State of Orissa and Others*, it has been held

that the State Government prescribing "Oriya" as a subject in the entrance test is irrational and arbitrary having no nexus with the object to be achieved and is violative of Articles, 14, 16 and 29 (2) of the Constitution.

It is true that the State Government has full power to lay down, principles and criteria in the prospectus for admission in the Medical Colleges, but the same should also follow the recommendation of the Indian Medical Council.

In *Dr. Knushendu Bhatta Mishra v. The State of Orissa and Ors.* 65 (1988) C.L.T. 683 it has been held: -

.... Despite such declaration of law the State Government changed the principles and criteria from year to year placing either this section or that section of the students into inconvenience which culminates in a number of writ petitions during the admission season not only for M.B.B.S. Course, but also for postgraduate course in medical education.

Their Lordships further held:

...Although the State Government has full competence to cry halt to such an unsavoury situation unfortunately it has not been done and is being repeated...

In *Salil Kumar Nayak v. State of Orissa*, represented by the Secretary, Health and Anr. 1988 (1) O.L.R. 301, the prescription for weightage for working in-rural-area was considered in a Full Bench of this Court. Their Lordships were of the view that: .

...any weightage which has no relation to and connection with the merit and excellence of a candidate is undesirable and invalid....

Their Lordships further held:

...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...

4. All the aforesaid decisions have clearly laid down the dictum relating to the different aspects of admissions into the medical colleges. My purpose of reiterating them is to bring to the notice of the concerned authorities that they should keep in mind the various decisions of Supreme Court as well as of this Court while laying down the criteria of admission into Medical Colleges. .

5. For English to be one of the subject in the entrance test Mr. Mohanty relies on the recommendation of the Medical council of India adopted, in April, 1977 in which it has been laid down:

11. Selection of Students.

The selection of students to a medical college should be based solely on "merit of the candidate and for determination of merit, the following criteria be adopted

uniformity throughout the country:

(a) "In States having only one Medical College and one University/Board/Examining body conducting the qualifying examination the marks obtained at such qualifying examination be taken into consideration.

(b) In States having more than one University/Board/Examining Body conducting the qualifying examination (or where there are more than one medical college under the administrative control of one authority a competitive entrance examination should be held so as to achieve a uniform evaluation due to the variation of the standard of qualifying examinations conducted by different agencies.

(c) Where there are more than one college in a State and only one University/board conducting the qualifying examination then a joint selection board be constituted for all the colleges.

(d) A competitive entrance examination is absolutely necessary in the case of Institutions of All India character.

(E) To be eligible for competitive entrance examination, candidate must have passed any of the qualifying examinations as enumerated under the head-note "Admission to Medical Course".

xx xx xx

Provided also that a candidate for admission to the Medical course must have obtained not less than 50% of the total marks in English and science subjects taken together (i) at the qualifying examination (or at a higher examination) in the case of medical colleges where the admissions are made on the basis of marks obtained at these examinations or (ii) 50% of the total marks in English and Science subjects taken together at the competitive entrance examination where such examinations are held for selection.

Provided further that in respect of candidates belonging to Scheduled . Caste/ Scheduled Tribes the minimum marks required for admission shall be 40% in lieu of 50% for general candidates.

6. Now coming to the specific submission the first submissions that the eligibility of the students to appear in the Entrance Test is to be fixed at 50 per cent marks in English and Science subjects in the qualifying examination is not correct. The Medical Council of India has advised to have an Entrance Test in case where there are more than one Universities in a State. Only in case of a State where there is one University, the Indian . Medical Council has recommended the minimum 50 per cent marks in the qualifying examination as eligibility for admission into the M.B.B.S. course without further having an Entrance Test.

7. Number of infirmities in the prospectus issued in the year 1980-81 is the subject matter of this writ application. In the meantime several writ applications had been filed in this Court for different academic years and the modality of

examination has been almost settled. The only question which now arises is whether English should be also a subject for examination along with the Science subject in the Entrance examination as the medium of teaching in the M.B.B.S. course is. English and the All India Council has recommended .for an Entrance examination in English. I hope, in future, this aspect of the matter will be considered by the State Government keeping in view the guidelines laid down in Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (supra) for conducting the Entrance examination publishing the results and giving admissions to the students.

8. I will be failing in my duty if I do not observe a few things which have come to my notice during the past few years with regard to the conduct of the entrance test for admission to M.B.B.S. Course in the three medical colleges in Orissa. Though under the University Statutes academic session begins from June of the year yet usually the examination for admission to M.B.B.S. Course is held erratically and not within any specified date. Sometimes admissions are held in October or November or even beyond that. Even this year the entrance test has been held only during the last week of September. 1988 and it is not known when the results will come out and when the admissions will take place. Now in accordance with the decision of the Supreme. Court in Dr. Dinesh Kumar's case⁵. referred to above, certain percentage of the seats in this State also has to be held up on the basis of All India Entrance Test and the results of the said test have already been published even before the commencement of the entrance examination in our State. Those students will have to sit idle until the results of the entrance test for admission are published and students are admitted. Since a percentage of the seats available in our State is also to be filled up on the basis of the entrance test held on All-India basis in my opinion it would be more appropriate for the authorities concerned to follow the guideline prescribed in Dr. Dinesh Kumar's case⁵ even with regard to the time when the prospectus has to be issued and when the examination will be held as far as practicable. That will have a uniformity and no student can have a grievance on that score. I would also command that the State Government or the Selection Board should adhere to a uniform practice and entrance examination, should be held as far as practicable during the same period every year so that the students will have no uncertainty and it will be beneficial for all concerned.

The writ application is disposed of with the above observations as the same has become infructuous.

A copy of this order be transmitted to the Secretary Department of Health, Government of Orissa.

H.L. Agrawal, C.J.

9. I agree.