
(2016) 09 TP CK 0006
In the Tripura High Court
Case No : W.P.(C) No. 1128 of 2016

Sri Trishanu Pal

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Indian Medical Council Act, 1956 — Section 33

Citation : (2017) AIR(Tripura) 8

Hon'ble Judges : T. Vaiphei, CJ. and Mr. S. Talapatra, J.

Bench : Division Bench

Advocate : Mr. T.D. Majumder, G.A, for the Respondents in W.P.(C) No. 1139 of 2016; Mr. A.K. Bhowmik, Sr. Advocate, Mr. R. Datta and Ms. A. Banik, Advocates, for the Petitioners in W.P.(C) No. 1128 of 2016; Mr. T.D. Majumder, G.A. Mr. Arijit Bhowmik and Mr. Anujit D

Final Decision : Allowed

Judgement

1. All these writ petitions being W.P.(C) No.1128 of 2016, [Sri Trishanu Pal v. The State of Tripura and Ors.], W.P.(C) No.1129 of 2016, [Smt. Shalini Bhaumik v. The State of Tripura and Ors.] and W.P.(C) No.1139 of 2016, [Smt. Meghali Das v. The State of Tripura and Ors.] are clustered for disposal by a common judgment as the petitioners in these writ petitions have challenged the part of the Educational Notification under No. F.11(1)-ET/DME/2016 dated 24.09.2016 issued by the Director of Medical Education, Government of Tripura (Annexure-9 to the writ petitions). In the said Educational Notification, the petitioners have challenged the part which reads as under:

"(B) Counselling for the reverted back All India Quota (A.I.Q) Seats (MBBS) will be held on 28.09.2016 as per merit list of overall NEET - 2016 ranking. Eligible interested candidates of Permanent Residents of Tripura may attend the counselling along with all original certificates, i.e., PRTC/Caste Certificates, Mark sheet & Pass Certificate (10+2), over all NEET-2016 Ranking Card & admit card etc. Distribution of seats are given below:-

Sl. No.

Name of the Discipline

Name of the Medical College/Institutions where different seat are available

Total number of seats are available

UR

ST

SC

1.

MBBS

Agartala Government Medical College

12

6

4

2

2. As the counselling for those reverted All India Quota (AIQ) seats for MBBS was scheduled to be held on 28.09.2016, on 27.09.2016 we passed the following order in W.P.(C) No.1128/2016:

"The writ petition will come up again tomorrow at 10.30 a.m. as first item.

The learned counsel for the intervener will supply a copy of the intervention application to the learned Sr. counsel for the petitioner.

In the meantime, let the counselling proceed as scheduled, which shall be subject to the order passed tomorrow."

On 28.09.2016 we had renewed the similar order refraining the respondents from taking any further action.

3. Out of 100 seats for MBBS Course in Agartala Government Medical College (AGMC), 15 seats fell in AIQ to be filled up by the Government of India through the Director General for Health Services at New Delhi from the NEET-2016 merit list. There is no dispute that for those 15 seats, the Medical Counselling Committee (MCC) as constituted following the direction of the apex court vide order dated 07.06.2012 in I. A. No.35 of 2012 in the Writ Petition (Civil) No.443 of 1992 in the matter of Sharwan Kumar v. Director General of Health Services and Anr., AIR 1984 SC 1448 conducted online counselling on the basis of NEET-UG Results, 2016 declared by the CBSE, New Delhi. Even after 2nd counselling they could not fill up more than 3 seats. Consequentially, the remaining 12 seats have been reverted to the State. The solitary question that has engulfed in the

controversy is that whether those seats should be filled up from the candidates domiciled in Tripura following the NEET merit list or for filling up of those seats, the merit list as prepared by the State on the basis of the results of the Tripura Board of Joint Entrance Examination (TBJEE) should be followed. From the said Educational Notification it transpires that the respondents have decided to fill up those posts as per overall merit list of NEET-2016 ranking, but the candidates shall be resident of Tripura. The petitioners in these writ petitions have challenged that process asserting that those 12 seats have been released from AIQ and hence those shall be treated as the seats in the State quota. There is no mechanism under the control of the State to fill up the seats in AIQ. For that, MCC has been formed.

4. Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioners has submitted that when the seats are reverted from AIQ, those are to be treated as the State seats and merit list of TBJEE-2016 shall be followed in filling up of those seats. Mr. Bhowmik, learned senior counsel has stoutly submitted that the process that has been adopted by the respondents is not germane as by the ordinance called Indian Medical Council (Amendment) Ordinance, 2016 it has been clearly provided that there shall be conducted a uniform entrance examination to all medical educational institutions at the under graduate level and post graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

"Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-2017 conducted in accordance with any regulations made under this Act in respect of State Government seats (whether in Government medical college or in a private medical college) where such State has not opted for such examination."

5. Mr. Bhowmik, learned senior counsel has further submitted that the respondents are under impression that by the order dated 23.09.2016 in I. A. Nos.9, 16-19, 23-29 [Writ petition (Civil) No.76/2015] in the matter of Ashis Ranjan and Ors. v. Union of India and Ors. the apex court has given direction to fill up the reverted post from the NEET-2016 merit list and from the candidates domiciled in Tripura. The said order is reproduced for further reference:

"In the course of hearing, we have been apprised that after the counselling held for All India quota, fifteen hundred seats are still vacant. They are reverted to the State.

Let these seats be reverted and counselling be held as per schedule.

The number of seats filled up by the counselling be intimated to this Court by the respective States."

6. Mr. Bhowmik, learned senior counsel has expressed his dismay at how the said order can be used by the respondents to support the process as adopted for filling up of those reverted seats. The process lacks in any reasonable basis and it would cause prejudice to the meritorious candidates. Mr. Bhowmik, learned senior counsel has submitted further that the word "revert" essentially means return to previous state. In this context, the reversion would mean and imply that those seats are released and reverted from AIQ and would be treated as the state seats.

7. Mr. T. D. Majumder, learned Government Advocate appearing for the respondents has submitted that considering the urgency, the State would place its submission without filing the reply on the basis of substantive instruction. Mr. Majumder, learned GA at the outset has submitted that the process as adopted by the respondents is in tune with order dated 28.09.2015 delivered in *Kritika Nigam v. Union of India and Anr.*, 2015 (4) PLJR 320 (SC), [in W.P.(C) No.629 of 2015] where the apex court has given the direction in terms of para-19 of the judgment in *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* reported in (2005) 2 SCC 65 :

"Thus, making it clear that the last date for admission shall remain 30th September, 2015, we dispose of these petitions with the following directions:

1. All India Quota shall remain 15%.
2. The admissions shall be strictly in accordance with merit as stipulated in para 15 of the Information Bulletin/Rules.
3. While making the admissions the directions contained in para 19 of *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* [(2005) 2 SCC 65] shall be borne in mind."

8. According to Mr. Majumder, learned GA in *Mridul Dhar (supra)* the Supreme Court has stipulated the process. The direction as referred in *Mridul Dhar (supra)* is as under:

"19. For utilisation of All India Quota to its fullest extent, another vital stage of admission process is timely reporting to DGHS by Deans or any other authority whatever be the designation responsible for giving information as to the joining and/or non-joining of students after first round of counselling/admission of the State quota seats. The counselling for allocation of seats of All India Quota is conducted by DGHS at Delhi. The reporting to be made to DGHS has to be sincere and accurate as wrong reporting has chain reaction. As per time schedule, the first round of counselling for State Quota is to be over by 17th July. There is no reason why this time schedule shall not be adhered to. After this counselling, the last date for joining the allotted college and course under State Quota is 29th July. The object of the admission and last date of joining college in State Quota before the start of second round of counselling or allotment of seat from waiting list in All India Quota clearly is that the correct factual position as to

the availability of the seats ought to be known to the DGHS before start of second round of counselling. If it is not done, number of seats would be lost to the merit ranking candidates from All India Entrance Examination. They, though otherwise entitled, would be deprived of those seats and to that extent All India 15 per cent quota would stand reduced. Such seats get reverted to State quota for no fault of the candidates on All India Quota, thus, reducing the All India Quota and increasing the State Quota. The Head of the Colleges are required to intimate their vacancies existing after 18th July in respect of All India Quota seats to the DGHS by 25th July. This gives about a week to the DGHS before it starts second round of counselling on 1st August. This year (2004) it was found that the time schedule in this regard by most of the States, was not complied. As per Appendix-E to the notification dated 25th February, 2004, the first round of counselling/admission of seats filled up by State Governments/Institution is to be over by 25th July. For State Quota seats, one week after completion of first round of counselling to join the allotted college is sufficient. The date 29th July, mentioned in the time schedule attached to the directive dated 14th May, 2003 shall be suitably changed and the date 25th July shall be mentioned to make it consistent with the date mentioned in the notification dated 25th February, 2004. The intimation is required to be sent to the DGHS well before the commencement of second round of All India Quota counselling by it. The details about the vacancy position shall be signed/counter signed by three top functionaries responsible for admission of State Quota seats."

9. Mr. Majumder, learned GA has further submitted that after those seats were reverted, the Assistant Director General (ME) from the Directorate General of Health Services by a communication dated 29.09.2015 has asked to comply the directions in *Kritika Nigam* (supra) in the following manner:

"I am directed to refer the above mentioned subject and attach copy of order dated 28/09/2015 (received on 29/09/2015 at 05:30 PM) in above mentioned case passed by the Hon"ble Supreme Court for your information with request to comply with directions of the Hon"ble Supreme Court. You may recall that the vacant seats due to non-joining/resignation of the 15% All India Quota (MBBS/BDS) were surrendered/reverted to respective State/Universities on 17/09/2015."

10. Mr. Majumder, learned GA has brought to our notice that by the order dated 01.10.2015 in *Kritika Nigam* (supra) the apex court has passed the following order clarifying the order dated 28.09.2015 as reproduced above.

"Having regard to the peculiar facts of this case wherein initially the States were restrained from giving any admissions from All India Quota seats and thereafter, final orders were passed only on 28th September, 2015, the prayer made in these applications is allowed and we permit the State Governments to complete the admission process with the extension of period by one week from today, i.e. by 7th October, 2015, by filling up the vacant/left over All India Quota seats which have been surrendered to the respective States.

Needless to mention this process shall be undertaken in accordance with the directions issued by this Court vide orders dated 28th September, 2015 in Writ Petition No.629 of 2015.

We also direct the Director General of Health Services to inform all the States about this order today itself to avoid any such applications from other States for further extension of time. We also make it clear that no further extension shall be granted."

11. Mr. Majumder, learned GA has also referred to us the clause relating to "Admission And Reservation" in the information bulletin as referred in the order dated 28.09.2015. The said clause reads as under:

"An All India merit list of the qualified candidates shall be prepared on the basis of the marks obtained in the National Eligibility Entrance Test and candidates shall be admitted to MBBS/BDS courses from the said list only by following the already existing reservation policy."

12. According to Mr. Majumder, learned GA the State has been following the said procedure for filling up those reverted seats and the process has commenced with publication of the notification dated 24.09.2016, Annexure-9 to the writ petition. He has further asserted that the directives of the apex court lay down the said procedure. Even the Directorate General of Health Services, Government of India by their notification dated 29.09.2015 has asked the participating states to comply with the order dated 28.09.2015 as passed in Kritika Nigam (supra).

13. We have permitted Mr. A. Bhowmik, learned counsel to make his submission for the intervener [the petitioner in I.A. No.1379 of 2016 in W.P.(C) No.1129 of 2016]. Mr. Bhowmik, learned counsel has supported and adopted the submission advanced by Mr. Majumder, learned GA for the respondents contending that the seats from AIQ has to be filled up only from the NEET-2016 merit list and from the candidates domiciled in the State of Tripura. According to him, if the seats are not filled up following the NEET-2016 merit list, it would amount to reduction of AIQ, which has been unequivocally prohibited by the apex court by their order dated 28.09.2015. Having referred to Mridul Dhar (supra), Mr. Bhowmik, learned counsel has submitted that if AIQ is not utilised to its fullest extent, seats would be lost to the merit ranking candidates in the NEET-2016 merit list. He has further submitted that by the notice at Annexure-P/4 to the petition seeking intervention being I. A. No.1379/2016 it has been clearly observed as under:

"In view of the above representation, Secretary (Health)/Director Medical Education of all the concerned States are requested to follow the directions of Hon"ble Supreme Court of India 28/09/2015 and 01/10/2015 to avoid contempt/legal complication of Court."

14. Despite our repeated queries on how the respondents has limited the consideration within "the residents of Tripura" meaning from the candidates domiciled in Tripura, none of the counsel appearing for the respondents or for the

intervener had any answer. Even they could not satisfy us how the NEET-2016 merit list can be applied for filling up "reverted seats" when after 2nd counselling following their bench mark, MCC has surrendered and reverted those seats to the State so that those seats are not wasted. What to our surprise we have noticed that the State respondents had applied the reservation policy of the State for filling up of those reverted seats. In *Olivia Dasgupta v. State of Tripura and Ors.* reported in (2015) 1 TLR 698 this court has observed as under:

"12. A perusal of this aforesaid portion of the letter makes it abundantly clear that the reservation as envisaged by the Central Government is 22% out of which 15% for the Scheduled Castes and 7% for the Scheduled Tribes. This reservation is interchangeable amongst the castes if suitable number of candidates from the one caste are not available. If no candidate from any of the reserved category is available, then alone will the seat go to the unreserved category. We are of the considered view that these seats being central pool seats will be governed by the terms of the letter of allocation of the seats. These seats are not seats in colleges run by the State of Tripura. No doubt, these seats are to be filled in on the basis of the merit obtained in the examination conducted by the Tripura Board of Joint Entrance Examination, but that would not in any way dilute the condition of the letter with regard to the maximum reservation applicable."

15. Mr. Majumder, learned GA did not place any record that reversion was subject to any condition attached by the Government of India. As we gather from the record, conditionalities are conspicuous by their absence only. As such, what has been decided by this court in *Olivia Dasgupta (supra)* the whole process as adopted by the respondents defied reason. It might result in serious anomaly in filling up of those reverted posts.

16. In similar circumstances, Madras High Court in *V. Shrivika v. Secretary, Selection Committee, Directorate of Medical Education* [judgment dated 05.10.2015 in W.P.(C) Nos.31390 and 31391 of 2015] has observed as under:

"13. The learned Advocate General appearing for the State of Tamil Nadu submitted that the Order dated 1.10.2015 passed by the Apex Court has to be understood in the context of the applications filed by the State of Tamil Nadu. It has to be seen on a construction of the order passed by the Apex Court in *Mridul Dhar case*, ((2005) 2 SCC 65). When once seats have been surrendered, they partake the character of the seats available under the State List. In fact, States like Maharashtra, Karnataka and Kerala have understood the same. Learned Advocate General made reliance upon a judgment of the Division Bench of the High Court of Kerala in *Govind Jayan v. Arya Sanjeev & Others*, (2007(1) KLJ 633) on the effect of seats having been surrendered from the All India Quota. Further submission has been made that there is no mechanism to fill up All India Quota 15 by the State. Thus, it is prayed that the writ petitions will have to be dismissed, more so, when the counselling is likely to be concluded today by treating the seats under the State quota.

Discussion:

14. Challenge has been made in W.P.(C) No.659 of 2015 before the Supreme Court by a student seeking admission under the All India Quota 15% on merit. In that writ petition, orders referred supra have been passed on different dates. There is no conflict among all the three orders passed. In other words, all the three Orders have to be read in unison. In the second order passed, it has been clearly held that All India Quota shall remain at 15% and the admission shall be strictly in accordance with the merit as stipulated in paragraph No.15 of the Information Bulletin/Rules. In the subsequent Order dated 1.10.2015, it has been made clear in specific terms that the process of admission by the respective States shall be undertaken in accordance with the directions issued vide Order dated 28.9.2015. Thus, the said order has to be seen and understood on its own context. It is not only the petitioners but the Government of India, which has clearly understood the said Order. In fact, Government of India did not have any difficulty in the order passed on 28.9.2015. The communications following the said Order dated 28.9.2015 and the subsequent order dated 1.10.2015 make the position very clear. That is the reason why the list of eligible candidates for admission to 15% All India quota seats have been published in the Website by the Medical Counselling Committee to all the authorities concerned. It is not in dispute that 15% seats have been earmarked based upon a process of selection on merit. Therefore, the endeavour is to make sure that the meritorious candidates get admission. A surrender of seat would come only when there is no availability of seats under the merit list. That has to be the object and rationale behind the principle in surrendering the seats. In other words, the object is to see to it that merely because there are no takers under the merit list in All India quota, such seats shall not go waste when there is a possibility of filling them under the State Quota. After all, a procedural mechanism is meant to help a meritorious candidate and not to destroy his rights. If the said principle is understood then there is no difficulty in understanding the orders passed by the Apex Court.

15. The cut-off date of 30th September has relevancy qua admission to a College rather than the selection either under State or All India quota. The observations of the Apex Court in the Order dated 1.10.2015 can at best be construed to mean that the States can fill up the remaining vacant/unfilled seats when no one is staking any claim under the All India Quota.

16. The learned Advocate General has made reliance upon the judgment of the Apex Court in *Mridul Dhar (Minor) and another v. Union of India and others*, ((2005) 2 SCC 65), particularly with reference to paragraph No.19 of the said decision. It is apposite to place on record the relevant portion in the said passage, which reads as under:

""19. The object of the admission and last date of joining college in State Quota before the start of second round of counselling or allotment of seat from waiting list in All India Quota clearly is that the correct factual position as to the

availability of the seats ought to be known to the DGHS before start of second round of counselling. If it is not done, number of seats would be lost to the merit ranking candidates from All India Entrance Examination. They, though otherwise entitled, would be deprived of those seats and to that extent All India 15 per cent quota would stand reduced. Such seats get reverted to State quota for no fault of the candidates on All India Quota, thus, reducing the All India Quota and increasing the State Quota.'''

17. A reading of the said paragraph would make it clear that what weighed in the mind of the Apex Court is given the credit and weightage to merit. The Apex Court was anxious that meritorious students should not be denied the respectable placement. That is the reason why it has been observed that though otherwise entitled, students would be deprived of those seats by virtue of time lapse. The scheme of the fulfilment of seats both under the State list and the All India quota is to start from the State List and followed from the subsequent list. Therefore, there has to be a level playing field by not having a hyper-technical view of the matter. A student standing on merit has to be considered for Medical/ B.D.S seat and cannot be allowed to get his dream destroyed. "

[Emphasis supplied]

17. We have no iota of doubt in our mind when the MBBS seats from AIQ are reverted to the State, the State cannot recommence the counselling from the NEET-2016 merit list inasmuch as after 2nd counselling [following the bench mark] MCC surrendered those seats finding no takers. We have not found any directive of the apex court to fill up the reverted posts in terms of the NEET-2016 merit list nor have the respondents been permitted to limit the consideration within the candidates domiciled in Tripura by attaching conditions or by way of authorization. Reversion means bringing back the AIQ seats to the State quota as those could not be filled up following the due process by MCC. This cannot be called or termed reduction of AIQ. This is an eventuality-based action so that the UG medical seats are not wasted.

18. Having observed thus, the Educational Notification dated 24.09.2016, Annexure-9 to the writ petitions, as far as the Part (B) for the 12 reverted seats is concerned, is set aside. In this context, we are persuaded to give the following directions to the respondents:

- i. 12 reverted seats as released from AIQ shall be filled up from the merit list of TBJEE-2016.
- ii. Counselling for this purpose shall be held on 30.09.2016, even though that day is a Government holiday.
- iii. Venue and time of counselling for those seats shall be determined by the Director of Medical Education, Government of Tripura, the respondent No.3 in the course of the day.
- iv. The Director of Medical Education, Government of Tripura shall be responsible

for giving wide publicity of counselling by publishing a fresh Educational Notification in the major dailies published from Agartala through broadcasts in Doordarshan, Agartala, AIR, Agartala and other electronic channels, the official websites of the Directorate of Medical Education and the Directorate of Health Services and also in other popular web-portals.

v. Nomination be made and endorsed to Agartala Government Medical College (AGMC), Agartala by 30.09.2016 and for that purpose, necessary arrangement shall be made in the course of the day.

19. We further order that the nomination, if any from the counselling held on 28.09.2016 in terms of the Educational Notification dated 24.09.2016 against those 12 reverted posts will have no effect whatsoever. Admission shall be made in those 12 reverted posts in AGMC solely on the basis of counselling that has been scheduled on 30.09.2016. The nominees shall be allowed to complete the admission requirements by 04.10.2016, in view of consecutive holidays. The Medical Council of India shall be informed of this decision. It shall be deemed in view of this order that the last day of admission i.e. 30.09.2016 is extended to 04.10.2016 in the circumstances as emerged for reverting 12 seats without leaving sufficient time.

The writ petitions therefore succeed. There shall be no order as to costs.