
(1998) 12 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 200 of 1998

State of Assam and Another

APPELLANT

Vs

Jibeswar Barthakur

RESPONDENT

Date of Decision : 05-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Guw 83 : (1998) 4 GLT 484

Hon'ble Judges : P.G. Agarwal, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : B.C. Das, Additional Government Advocate, for the Appellant; A.K. Bhattacharyya, N.T. Nath, E. Kakati, A. Kalita and A. Bhattacharyya, for the Respondent

Final Decision : Allowed

Judgement

Pathak, J.—This is an appeal against the judgment and order dated 15-6-1998 of the learned single Judge in Civil Rule No. 1133/98.

2. The facts briefly are that the respondent's son Sri Bikash Barthakur applied for admission into First Year MBBS/BDS Courses in the Medical Colleges and the Regional Dental College located in the State of Assam for the session 1997 pursuant to advertisement dated 14-4-1997 of the Director of Medical Education, Assam. As Sri Bikash Barthakur was the cousin of Anjan Barthakur, a martyr of Assam Movement, his application was for a seat reserved for sons/ daughters/ brothers/sisters of the Martyrs of Assam Movement under Rule 6 of the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under-Graduate Students) Rules, 1996, (hereinafter referred to as "1996 Rules"). Pursuant to his application, Sri Bikash Barthakur took the common entrance examination along with other candidates and in the select list dated 14-11-1997 his name found place at the top of the two candidates selected for the seats reserved for sons/daughters/brothers/ sisters of the Martyrs of Assam Movement provisionally and thereafter he appeared before the Selection Board

along his original documents on 22-11-1997 but when the list of candidates was published for admission to the First Year MBBS/ BDS Course on 22-2-1998 in the Assam Tribune, his name did not find place in the select list and under the column meant for seats reserved for sons/daughters/brothers/sisters of the Martyrs of Assam Movement, it was slated that nobody was selected. Aggrieved, the respondent, Sri Jibeswar Barlhakur who is the father of Sri Bikash Barthakur, filed Civil Rule No. 1133/98 and by the impugned judgment and order dated 15-6-1998, the learned single Judge held that although Sri Bikash Barthakur was the cousin of a martyr of Assam Movement, namely Anjan Barthakur, and was strictly not covered within the expression "brothers of the Martyrs of Assam Movement" in terms of Rule 6(1) (g) of the 1996 Rules, he should have been given admission to the seat in relaxation of the said Rules as had been done by the authorities in various other cases. By the said judgment the learned single Judge directed the authorities to give admission to Sri Bikash Barthakur to a seat kept vacant pursuant to the order dated 11-3-1998 passed by this Court and also awarded the cost of Rs. 3000/- to be realised from the salary of the person responsible for not giving admission to Sri Bikash Barthakur. Aggrieved by the said judgment and order of the learned single Judge, the State Government has preferred this appeal

3. At the hearing, Mr. B.C. Das, learned Additional Senior Government Advocate, Assam, submitted that a reading of the impugned judgment and order of the learned single Judge would show that the learned single Judge has cited the cases of Aminur Rahman, Tashmin Rahman. Polash Bora and Lakhimi Borah where relaxation of the relevant rules was granted by the authorities, and cousins of the Martyrs of Assam Movement were admitted to the MBBS and Dental Courses in Medical Colleges of State of Assam, but these were all cases prior to the Division Bench judgment of this Court in a batch of writ appeals in the case of State of Assam v. Rajeev Dey, reported in AIR 1996 Gau 40, in which the Division Bench clearly held that no such relaxation could be granted to cousins of the martyrs of Assam Movement for the purpose of giving admission to them to the seats reserved for sons/daughters/brothers/sisters of the Martyrs of Assam Movement. Mr. Das stated referring to the averments made in the affidavit-in-opposition in the civil rule that after there was criticism against such relaxation granted to cousins of the Martyrs of Assam Movement, the authorities have discontinued the practice of granting relaxation in favour of cousins of the Martyrs of Assam Movement for admission into the aforesaid reserved category of seats. Mr. Das further submitted that in any case, in the instant case, no application had been filed on behalf of the said Bikash Barthakur for relaxation and therefore, the authorities had also not considered at all the question as to whether or not relaxation could be granted to him on the facts and circumstances of the case, the learned single Judge could not issue a mandamus directing the authorities to admit Sri Bikash Barthakur by relaxing the relevant rule.

4. In reply to the aforesaid submissions, Mr. A.K. Bhattacharyya, learned counsel appearing for the respondent/writ petitioner, contended that as Sri Bikash

Barthakur had been selected as a brother of a martyr of Assam Movement, no relaxation order at all was necessary to admit him to the seat reserved for sons/daughters/brothers/ sisters of the Martyrs of Assam Movement under Rule 6(1) (g) of the 1996 Rules. Alternatively, Mr. Bhattacharyya submitted that in view of the guarantee of equality given under Article 14 of the Constitution, the authorities could not discriminate between persons while relaxing the provisions of the rules. He vehemently argued that the judgment delivered by the Division Bench of this Court in the case of State of Assam and Others Vs. Rajeev Dey and Others, etc. etc., could not be used by the Government not to relax the provisions of the rules in some cases where they did not want to relax and at the same time relax the provisions of the rules to accommodate their favourites in some other cases. He further submitted that in the affidavit-in-opposition filed by the appellants in Civil Rule No. 1133/98 no stand had been taken by the authorities that relaxation could not be granted in view of the aforesaid judgment of the Division Bench in State of Assam and Others Vs. Rajeev Dey and Others, etc. etc., Mr. Bhattacharyya cited the decision of the Supreme Court in the case of R.K. Khandelwal v. State of U.P. AIR 1981 SC 1673: 1981 All LJ 910 , wherein it was held that the power to relax the rules must be exercised reasonably and fairly and could not be exercised arbitrarily to favour some students and to disfavour some others. He also relied on the decision of the Supreme Court in the case of Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another, for the proposition that the University and College authorities must apply the same yardstick to all students who applied for admission to different courses of studies and that relaxation in particular cases had to be governed by objective consideration and the University which was entrusted with the future of the student community could not pick and choose persons for receiving the benefit of relaxation of the rules.

5. It appears that by notification dated 16-8-1996, the Governor of Assam has framed a set of executive instructions called the Medical Colleges of Assam and Regional Dental Colleges (Regulation of Admission of Under-Graduate Students) Rules, 1996. The provisions of the said Rules which are relevant for the purpose of disposal of this appeal are quoted hereinbelow :

"6(1) Available seats shall be reserved for the following categories of candidates of the State of Assam :

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(g) Sons/daughters/brothers- 2 Seats in MBBS and 1 Seat in BDS. of Assam Movement

Provided further that if any of the seats mentioned in this rule remaining unfilled for want of candidate, such seats shall be filled up by candidate of the general category whose names appear in the waiting list recommended by the Selection Board."

"9. POWER TO RELAX :

Where the Government is of the opinion that it is necessary or expedient so to do it may, by order, not inconsistent with the provisions of these rules and for reasons to be recorded in writing, relax any of the provisions of these rules."

It will be clear that the reservation of seats under Rule 6(1)(g) is not meant for a cousin of a martyr of Assam Movement and therefore Sri Bikash Barthakur who as per the very averment in the writ petition was admittedly a cousin of a martyr of Assam Movement, namely Anjan Barthakur, could not be possibly given a seat reserved under Rule 6(l)(g) of the 1996 Rules. It is true that the name of Sri Bikash Barthakur found place at the top of the two candidates selected for the seats reserved under the aforesaid Rule 6(1)(g) of the 1996 Rules in the list of selected candidates published on 14-11-97, but at the time of interview by the Selection Board on 22-11-97, the Selection Board appeared to have found after scrutiny of the relevant documents that he was not a brother but a cousin of a martyr of Assam Movement and was therefore not entitled to the seat reserved under the aforesaid Rule 6(l)(g) of the 1996 Rules. Having so found, the Selection Board was under an obligation under the law not to publish the name of Sri Bikash Barthakur in the list of selected candidates for the aforesaid seats reserved under Rule 6(1)(g) of the 1996 Rules published on 22-2-98 unless Sri Bikash Barthakur was granted relaxation under Rule 9 of the 1996 Rules by the Government.

6. But a reading of Rule 9 of the 1996 Rules quoted above would show that the Government could relax any of the provisions of the 1996 Rules if it was of the opinion that it was necessary or expedient so to do and if such relaxation was not inconsistent with the provisions of the Rules and for reasons to be recorded in writing. The question as to whether where seats were reserved for sons/daughters/brothers/sisters of the Martyrs of Assam Movement by the Rules, admission could be given to a cousin of a martyr of Assam Movement by relaxation of the Rules was considered by the Division Bench of this Court in the case of State of Assam and Others Vs. Rajeev Dey and Others, etc. etc., and the Division Bench held at page 59 (of AIR) :--

"..... .As we have already held, under R. 10 of the 1992 Rules the Government had the power to pass an order relaxing any provision of the Rules for reasons to be recorded in writing, but the records produced before us do not indicate as to which particular provision of the 1992 Rules was relaxed. The records also do not show the reasons which were recorded for relaxing the 1992 Rules. All that is stated is that the aforesaid 3 candidates are first cousins of martyrs of the Assam Movement and that no candidate was available who was a son/daughter/sister or brother of the martyrs of the Assam Movement. If this fact was correct then Explanation to Rule 7(1) clearly provided that if any such reserved seat remained unfilled for want of eligible candidate, such seat shall be filled up by candidates of the general category in order of merit. Under the guise of relaxation under Rule 10 of the 1992 Rules; the Government cannot amend Explanation to Rule 7 to the prejudice of the candidates belonging to the general category. Similarly,

under the guise of relaxation under Rule 10, the Government cannot amend Rule 8(1)(f) so as to include cousins of martyrs of the Assam Movement in the reserved category which would have the effect of depriving other cousins of martyrs of Assam Movement the opportunity to apply for such admission to such reserved seats inasmuch as in the advertisement such cousins were not included in the aforesaid reserved category. For the reasons stated above, we are of the opinion that the orders of relaxation passed in favour of these three candidates were not passed in accordance with Rule 10 of the 1992 Rules and were arbitrary and violative of Article 14 of the Constitution. As no candidate was available in this reserved category, under Explanation to Rule 7(1) of the 1992 Rules, the two seats reserved for this category were required to be filled up by candidates of the general category in order of merit... ."

By the aforesaid judgment, the Court did not disturb the admissions of the three cousins of the martyrs of the Assam Movement as they had already pursued studies in the MBBS/BDS Course for one year, but the Court clearly held that under the guise of relaxation, the Government could not amend the relevant provision of the Rules so as to include cousins of martyrs of the Assam Movement in the reserved category which would have the effect of depriving other cousins of the martyrs of Assam Movement the opportunity to apply for such admission to such reserved seats because in the advertisement inviting applications such cousins were not included in the reserved category. It was further held in the aforesaid judgment that the orders of relaxation passed in favour of the three candidates in that case, namely, Polash Borah, Lakhni Borah and Dimpy Barthakur were not passed in accordance with Rule 10 of the 1992 Rules and were arbitrary and violative of Article 14 of the Constitution. It was further held in the aforesaid judgment that where no candidate was available in the aforesaid reserved category, under Explanation to Rule 7(1) of the 1992 Rules, the two seats reserved for the category were required to be filled up by candidates of general category in order of merit. From the 1996 Rules quoted above, it will be clear that there is a similar provision in the proviso to Rule 6(1) that if any of the seats mentioned in Rule 16(1) remained unfilled for want of candidate, such seats will have to be filled up by candidates of general category whose names appear in the waiting list recommended by the Selection Board. In the instant case, therefore, even if the seats reserved for sons/daughters/brothers/sisters of the Martyrs of Assam Movement could not be filled up for want of candidates in the reserved category, the said seats will have to be filled up by candidates of general category whose names appear in the waiting list recommended by the Selection Board. Want of candidates from amongst sons/daughters/brothers/sisters of the Martyrs of Assam Movement cannot be a ground for relaxation under Rule 9 of the 1996 Rules because such relaxation if granted would result in denying more meritorious candidates of the general category placed in waiting list admission to the MBBS/BDS Course.

7. We agree with Mr. Bhattacharyya, learned counsel for the respondent that the authorities had to apply a common yardstick while interpreting the rules and

while relaxing the same and could not interpret/relax the rules in one way for one set of students and in another way for another set of students. In the case of *R.K. Khandelwal v. State of U.P.* AIR 1981 SC 1673 (supra) cited by Mr. Bhattacharyya, the Supreme Court clearly held that the power to relax could not be exercised arbitrarily to favour some students and to disfavour some others. Similarly, in the case of *Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another*, clause (c) of Ordinance I of Chapter III of the Lucknow University Ordinances, provided that no candidate would be eligible to appear at the examination for the degree of Doctor of Medicine or Master of Surgery, unless he had, after full registration, done one year's housemanship or equivalent job, and the Supreme Court found that the said provision had not been strictly followed in the case of two doctors, Dr. (Ms) Laxmi Saxena and Dr. (Mrs) Ratna Prova Gupta, and allowed the writ petition of the respondent in the said case who was similarly situated on the ground that the University and College authorities must apply the same yardstick to all students who applied for admission to the Post-Graduate Course of studies.

8. In the instant case, it has been clearly stated in paragraph 7 of the affidavit-in-opposition of Ms. Dipti Deuri Boro, Deputy Secretary to the Government of Assam, Health and Family Welfare Department, that the Government on earlier occasions relaxed the provisions of the Rules for admission to some candidates in the MBBS/BDS Course by invoking the power of relaxation, but the authorities faced severe criticism for such relaxation. Relying on the said averment in the affidavit-in-opposition, Mr. Das, learned Additional Senior Government Advocate, Assam, stated that the Government has discontinued the practice of granting any such relaxation after the judgment of this Court in *State of Assam and Others Vs. Rajeev Dey and Others*, etc. etc., delivered on 28-6-95. In view of the said submission of Mr. Das, by order dated 23-9-98 we called upon Mr. Das to produce the relevant records of all cases where relaxation was granted under Rule 9 of the 1996 Rules. Pursuant to the said order, the State Government has produced the entire records of the Director of Medical Education, Assam, relating to admission into First Year MBBS/BDS Course for the Sessions 1996 and 1997 along with a communication of the said Director of Medical Education, Assam, to Mr. Das, Additional Senior Government Advocate, Assam, that during the years 1996 and 1997 all candidates have been admitted as per the 1996 Rules and no one has been admitted in relaxation of the Rules. Thus, the State Government does not appear to have exercised the power of relaxation under Rule 9 of the 1996 Rules in favour of any candidate for the sessions 1996 and 1997. The relaxations in favour of Deepak Rajkhowa, Aminur Rahman, Tashmin Rahman, Polash Borah, Lakshmi Borah and Mayur Pankhi Saikia referred to in the writ petition as well as the impugned judgment of the learned single Judge were for the sessions 1987, 1989 and 1993-94. The Division Bench judgment of this Court in *State of Assam and Others Vs. Rajeev Dey and Others*, etc. etc., delivered on 28-6-95, was in respect of the session 1993-94. By the said judgment, this Court clearly held that no relaxation could be granted in favour of a cousin of a martyr

of the Assam Movement for the purpose of admission to the seats reserved for sons/daughters/brothers/ sisters of the Martyrs of Assam Movement. After the said judgment of this Court, the 1996 Rules were framed and no case of relaxation in favour of a cousin of martyr of the Assam Movement under the said Rules has been brought to the notice of the Court. On these facts, it is difficult to hold that there was any discrimination on the part of the authorities while denying admission to Sri Bikash Barthakur by relaxing the provision of the Rules and that his right to equality under Article 14 of the Constitution was violated.

9. In the result, the impugned judgment and order of the learned single Judge dated 15-6-98 in Civil Rule No. 1133/98 is set aside. The writ appeal is allowed. However, considering the entire facts and circumstances of the case, the parties shall bear their respective costs.