
(2008) 07 OHC CK 0031
In the Orissa High Court

Suhasini Padhi

APPELLANT

Vs

Chairman, Joint Entrance Examination and Others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Citation : (2008) 106 CLT 841 : (2008) 2 OLR 786 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner is one of the applicants for the Joint Entrance Examination, 2008, Orissa (in short "the JEE").

2. It is the case of the Petitioner that along with the application form, she submitted copies of documents as required under Clause 2.1 of the information brochure as Orissa State Candidates (S-Category) and the Chairman, Joint Entrance Examination-Opposite Party No. 1 as well as the Director of the Medical Education Training, Orissa-Opposite Party No. 2 without considering her case as a Orissa State Candidates in (S-Category), they considered her in the Outside State Category, i.e., (ZZ-Category) and gave her the 60th rank in the said category, depriving her from getting a chance for admission to the MBBS course in any of the Government Colleges and other Private Colleges of the State.

3. The Petitioner has stated that she submitted requisite certificate granted by the competent authority showing that the parents of the Petitioner are permanent resident of State of Orissa, including a residence certificate duly granted by the Tahasildar-cum-Revenue Officer, Niali in Miscellaneous Certificate Case No. 1123 of 2008 showing her parents to be the native of the district of Cuttack in the State of Orissa. In paragraph-5 of the petition, the Petitioner has stated that while filling up the application form in the JEE, inadvertently the Petitioner had encircled the category Non-Resident Oriya (NRO) instead of Orissa State Candidates (S-Category).

4. Learned Counsel for the Petitioner contends that in the information brochure Orissa State Candidates (S-Category) has been defined in Clause-2.1, the Outside State Category (ZZ-Category) has been defined in Clause-2.2(2) and Non-Resident Oriya (NRO) has been defined in Clause-2.2.1. He further submits that a bare reading of the above clauses would go to show that (S-Category) candidates will be eligible for admission to Government Colleges except Government Medical and Dental Colleges on the basis of their merit and rank. For MBBS/ BDS courses in Government and Private Colleges and lateral entry, the parents of the candidates must be permanent residents of Orissa and they are required to furnish at the time of Counselling, a permanent resident certificate in the prescribed form (Appendix-I) from a Revenue Officer not below the rank of Tahasildar whereas, out side State Category Candidates are not eligible for admission to MBBS/BDS either in Government Medical Colleges or in Private Medical Colleges. But no such stipulation with regard to Non-Resident Oriya (NRO) Category has been made in the brochure. According to the Learned Counsel, the Petitioner should have been considered as a Orissa State Candidates for all practical purposes as she attached the residential certificate along with her application.

5. Mr. R.K. Dash, Learned Counsel appearing for the Opposite Party Nos. 1 vehemently urged that since the Petitioner has admitted that she has encircled in (NRO Category) in her application form, her case was rightly not considered as Orissa State Candidates under (S-Category). A corrigendum was issued correcting Clauses 2.2(2) and 4.2 (admission into BDS Programme in the Private Colleges) where under the nativity restriction in respect of BDS Programme was withdrawn and outside candidates were to be considered as eligible to take admission in to BDS Programme in Private Colleges through JEE-2008 (Orissa) subject to the condition that the merit list of State Candidates and outside State Candidates in respect of BDS Programme shall be prepared separately and the outside State Candidates" merit list shall be considered for Counselling only after the State Candidates" merit list is fully exhausted. In the said corrigendum, the last date for receipt of the application for sale application forms and receipt thereof were extended to 15.04.2008 and 17.04,2008 respectively.

6. A counter affidavit has been filed by the Opposite Party No. 1 staling that in the information brochure under the heading "important notice" in Clause-15, it was specifically mentioned that no documents were required to be submitted along with the application form and other instructions were also given with regard to the method of filling up the form.

7. Since the Petitioner mentioned herself to be belonging to Non-Resident Oriya (NRO) Category, she could not have been considered under the Orissa State Candidates (S-Category) and, therefore, in accordance with the corrigendum she was considered as Outside State Category (ZZ Category) and has been given the ranking as "60" in such category for taking admission to BDS course in Private Colleges in accordance with the corrigendum.

8. For better appreciation of the contentions made by the respective parties, the relevant clauses of the information brochure, being Clauses-2.1, 2.2(2) and 2.2.1 are quoted hereunder:

2.1. Orissa State Candidates (S-Category).

For admission to colleges under state category one has to satisfy at least one of the following three criteria. They will be eligible for admission to Government colleges, except Government medical and Dental colleges, on the basis of their merit rank. However, for MBBS/BDS course in Govt. and Private Colleges and lateral entry the parents of the candidate must be permanent resident of Orissa. The S-category candidates under (a) and (c) are to produce the permanent residence certificate (Annexure-

1) to claim any reservation.

(a) The candidate must have passed/appeared 10+2 examination from any of the recognized institution in the State.

(b) Parents of the candidate must be permanent resident of Orissa. To claim benefit under this category, a candidate shall furnish at the time of Counselling a permanent residence certificate, in prescribed form (Appendix 1) from a Revenue Officer not below the rank of Tahasildar of the area where his/her parents have permanent residence.

(c) Sons/daughters/spouse of the permanent employees of Government of Orissa/Govt. of India/Government of Orissa undertakings/Govt. of India undertakings serving in the State of Orissa at the time of application. To claim the benefits under this category, candidates have to submit a certificate from the employer of his/her parents/spouse in the prescribed form (Appendix-II) at the time of Counselling.

Reservation of Seats under State Categories.

The reservation of seats in different colleges under various categories will be as per the policy of the Government of Orissa. The percentage of reservation of seats to be reserved for different categories are subject to change and the decision of the State Government as on the date of admission will be applicable.

2.2(2) Outside state category: (zz)

Outside state candidates are not eligible for admission in Government Colleges to Engineering/Architecture/MBA/MCA/MBBS/BDS and admission under lateral entry programme and for private MBBS/BDS programmes.

Outside state candidates are eligible for admission in private colleges as per their eligibility criteria.

2.2.1. Non-Resident Oriya (NRO).

3% of seats in Government Engineering colleges are reserved for Oriya speaking

people residing outside the State of Orissa. A candidate to be eligible to avail such facility should have Oriya as a subject at High School/at level of VIII or at primary level and he/she should produce attested copies of the mark-sheet/certificate of concerned State (except Orissa) in support of his/her claim at the time of Counselling.

9. A Oriya person who has been ordinarily resident in India, Outside the State of Orissa for a minimum period of 5 years immediately preceding the year in which his/her ward is seeking admission as non-resident Oriya irrespective of whether he/she is self-employed, privately employed or Govt. Servant or unemployed. To qualify as an Oriya person either mother tongue should be Oriya/should have resided for at least 15 years in Orissa. This will applied to parent/legal Guardian of the candidate. Here it is necessary that the student has also been residing outside Orissa and has passed the qualifying examination outside Orissa. For the purpose of establishing NR the candidate is to produce domicile certificate and if he/she is unable to produce to do so, the following proofs of permanent resident will be accepted for relevant period: ration card/pan card/passport/official ID card/driving license/telephone bill/electricity bill/voter ID card. Besides above educational certificate of passing relevant examination (+2 Sc.) outside the State should be produced. In addition to above, the candidate, who produce prescribed Oriya pass certificate would eligible for admission under NR category. Those who unable to produce such prescribed certificate should appear and obtain pass mark (40%) in a ME standard examination in Oriya language to be conducted by the JEE committee.

10. It appears from the above clauses of the information brochure that Orissa State Candidates (S-Category) are eligible to take admission into the MBBS/BDS Courses in Government and Private Medical Colleges and lateral entry whose parents are permanent residents of Orissa and candidates as under (a) and (c) are to produce permanent resident certificate (Annexure-1) to claim any reservation. Clause-2.1 (a) prescribes that the candidate must have passed/appeared +2 Examination from any of the recognized institution in the State and Clause-(c) is in reference to permanent employees of Government of Orissa/Government of India/Government of Orissa undertakings/Government of India undertakings serving in the State of Orissa at the time of application, who shall have to submit a certificate from the employer in the prescribed form (Appendix-II) at the time of Counselling. Clause- (b) of 2.1 is in relation to a permanent resident of State of Orissa.

11. The Outside State Category (ZZ Category) in the information brochure, before issue of the corrigendum, were stated to be not eligible for admission in Government Colleges to Engineering/Architecture/MBA/ MCA/MBBS/BDS and admission under lateral entry programme and for Private MBBS/BDS programme. They were only made eligible for admission in Private Colleges as per their eligibility criteria. This clause was, however, subsequently corrected pursuant to the corrigendum as already stated above, which has been marked as Annexure-B

to the counter affidavit, whereas, in Non-Resident Oriya (NRO) Category, it has been only mentioned that 3% of seats in Government Engineering Colleges are reserved for Oriya speaking people residing Outside State of Orissa and a candidate to be eligible to avail such facility should have Oriya as a subject at High School/at the level of VIII or at primary level and the candidates should produce attested copies of the mark-sheet/certificates of the concerned State (except Orissa) in support of his/her claim at the time of Counselling. Nothing is stated in Clause 2.2.1 with regard to Non-Resident Oriya (NRO) Category for being admitted into MBBS/BDS courses either in Government or in Private Colleges of the State.

12. Even if the Petitioner stated that she belongs to the Non-Resident Oriya (NRO) Category in her application form by marking the relevant circle for the said category, that itself, ipso facto, did not authorize the Opposite Party No. 1 to put her in Outside State Category (ZZ Category) under Clause 2.2(2) of the Brochure and to rank her at position "60" in the said category.

13. This Court finds that since there is no bar mentioned in Clause-2.2.1 with regard to Non-Resident Oriya (NRO) Category from taking admission into MBBS/ BDS courses in either Government or Private Medical Colleges of the State as has been provided in respect of Outside State Category (ZZ Catogory) under Clause-2.2.(2), the Clause 2.2.1 with regard to Non-Resident Oriya (NRO) Category was only meant for reserved seat darning 3% reservation in Government Engineering Colleges. By no stretch of imagination, the Petitioner could have been placed in Outside State Category, i.e., (ZZ Category). As there is no bar for Non-Resident Oriya (NRO) Category mentioned in the brochure, to take admission to MBBS/BDS courses in Government or Private Colleges in the State, considering the Petitioner in the Outside State Category was not permissible and for the self-same reason, the Petitioner should have been considered for taking admission to MBBS/BDS courses in the Government as well as Non-Government Colleges in the State along with Orissa State Candidates, i.e., (S - Category).

14. No doubt, as submitted by Mr. R. K. Dash, Learned Counsel on behalf of the Opposite Party No. 1 , the Petitioner was not required to submit copy of any of the certificate along with application form but even if the Petitioner has submitted such copy of certificates that, it self, cannot be a ground for considering her case under Outside State Category. Mr. Dash further submits that in the event, if it is directed to consider the case of the Petitioner along with Orissa State Candidates under (S-Category) since the list showing the rank of each of the examinees under (S-Category) has already been published, it will disturb the entire list, thereby causing much hardship to all the successful candidates. In support of his contentions, he relied upon the decisions in the cases of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, , Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and Om Prakash

Shukla Vs. Akhilesh Kumar Shukla and Others, .

15. In the case of Krishna Priya Ganguly etc. etc. (supra), the Supreme Court held that the High Court could not have given a go-by to the rules framed by the admission committee. It was a matter for decision of the academic body and since the academic body had applied the rules in a bona-fide manner to all the students equally, there was no jurisdiction, whatsoever, on the part of the High Court to interfere with the internal working of an academic institution concerned with imparting higher education. It was further held that the High Court cannot relax the rules or rewrite them nor can devise its own criterion for admission.

16. The Supreme Court in the said decision was examining the Judgment of the High Court by which the High Court specified certain criteria for admission, which was not found in the rules framed by the admission committee. Such a contingency does not arise in the present case, for the reasons as already stated above, as in the instant case though the Petitioner mentioned herself to be belonging to Non-Resident Oriya (NRO) Category, but such category, according to the brochure, is not stated to be not eligible to take admission in MBSS/BDS courses.

17. In the case of Maharashtra State Board of Secondary and Higher Education and other (supra), the Supreme Court has held as follows:

...As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience Of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice....

18. Keeping in view the above observations made by the Apex Court in the aforesaid decisions, this Court finds that in the instant case, question of substituting the own view of the Court in place of what has been mentioned in the brochure does not arise, as it is seen that the relevant clauses of the brochure, which comes into play, in the facts of the case, does not debar the Petitioner from being considered to take admission in the MBBS/BDS courses. This Court cannot also accept the contention of Mr. Dash that considering the Petitioner as a Orissa State Candidate (S Category) will prejudice the candidates under the said category, whose ranks have been declared, since even if the rank of a candidate has been declared under (S Category), admission to MBBS/BDS

courses can only be made after Counselling which has not yet taken place. Rather, it is seen that due to irregularities committed by the Opposite Party No. 1, in considering the Petitioner as an out-side State Category under clause 2.2(2) though she did not mention that she belongs to such category in her application form, has, in fact, prejudiced the Petitioner and deprived her from being considered to take admission to MBBS/BDS Courses. It also appears from the Annexures to the Writ Petition that the residential certificate under Annexure-2 granted by the Tahasildar -cum - Revenue Officer, establishes that she is a S-Category candidate though inadvertently, she mentioned herself to be belonging to NRO Category.

19. In view of the above position, the Petitioner is entitled to be considered as a candidate belonging to S-category for which a re-ranking is necessary in case of the Petitioner.

20. This Court has also heard Mr. R.K. Mohanty, Learned Counsel, who has appeared on behalf of the Medical Council of India and appreciates his effort in assisting this Court.

21. The Writ Petition is, therefore, allowed directing the Opposite Party No. 1 to find out the rank of the Petitioner on the basis of the marks secured by her in the JEE as a candidate belonging to the S-category and if she has secured such rank entitling her to be called for Counselling to take admission to MBBS/BDS Courses in the Government as well Non-Government Medical Colleges of the State, she shall be called for such Counseling, which is stated to be commencing from 11.07.2008.

22. As there is little time left for the Counselling to commence, a free copy of this order shall be furnished to Mr. R.K. Dash, Learned Counsel for the Opposite Party No. 1 to implement the directions as given above as expeditiously as possible.