
(2011) 05 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 2030 of 2011

Sukalyan Dey

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006 — Rule 4, 4(2), 4(3), 7, 7(2)

Citation : (2011) 4 GLT 411

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S. S. Dey, Mr. M. Nath and Mr. A. Roy, for the Appellant; B. Gogoi, Standing Counsel, Health, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. S.S. Dey, learned Counsel appearing for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Health appearing for the respondents.

2. This matter pertains to admission into a Post Graduate Seat in a State Medical Colleges in Assam, against the North Eastern Council (NEC) Quota for the year 2011. The petitioner appeared in the entrance examination and secured the 10th position in overall merit but 1st amongst the NEC category candidates.

3.1. Admissions are regulated through the Assam Medical Colleges (Regulation of Admission to Post Graduate Courses) Rules, 2006 (hereinafter referred to as "the Admission Rules") and the availability of the seats and the respective disciplines and their breakup is given in Appendix-I of the Admission Rules. Since reservation in admission is envisaged for different categories such as, NEC quota, Teachers quota, State Health quota, All India quota etc., Rule 4 provides for the quota/reservation of seats for Post Graduate courses. For NEC category, 1 seat each in degree and diploma, is provided under Sub-Rule (2) of Rule 4. But it is mandatory for everyone applying in these categories, to appear in the entrance

examination and admission is given on the basis of performance, in the entrance examination

3.2. The selection process for admission is given in Rule 7 and Sub-Rule (2)(b) of Rule 7 provides that, candidates whose names appear in the merit list shall be called for counselling serially in order of merit. Subject to verification of the testimonials, candidates are to be admitted in the discipline and the college of their choice, under Clause (d) of Rule 7(2) of the Admission Rules, in accordance with the merit position of the candidates.

4. The difficulty in giving admission on merit in this case arise out of the provision in Sub-Rule (7) of Rule 7, which provides that counselling for each category of candidate is to be conducted in a given order i.e. firstly, for General category seats; next NEC Quota seats; thirdly Reserved Quota seats and finally counselling for State Heath Services Quota seats.

5.1 Mr. S.S. Dey, learned Counsel appearing for the petitioner submits that if counselling for the NEC Quota seats are held only after counselling for the General Quota category seats, notwithstanding the 10th overall merit position, the petitioner is unlikely to get a discipline of his choice, as his turn for counselling and admission will come only after admission is given for the General Category candidates (the largest group) for the 71 seats available in that category.

5.2. Mr. Dey contends that petitioner has aptitude for Orthopedics or Radiology and considering that 7 seats in these 2 discipline are available under Appendix-I of the Admission Rules, with his 10th rank in overall merit, the petitioner has a good chance to get admission in a discipline of his choice, as it is unlikely that Orthopedics or Radiology would be the preferred option, for all the 9 higher ranked candidates. The Counsel submits that if opportunity to exercise option is given first to the General category candidates, the more meritorious candidates in other categories, only because their counselling is slotted later, will get to opt for the leftover disciplines and merit will have no place in their choice of admission.

6.1. Mr. B. Gogoi, learned Standing Counsel submits that NEC Quota seats is treated as a separate category where only 2 Post Graduate seats are available. Referring to the counter affidavit filed by the Comptroller of Examination, he contends that the specific discipline for the NEC quota Seats are decided by the State Government after entrance results are notified and since counseling for the NEC Quota seats are held after the admission for the General quota Seats, the petitioner has to wait for his turn for admission.

6.2. Mr. Gogoi further contends that the petitioner is entitled to be called for counselling in accordance with Sub-Rule (7) or Rule 7, only after counselling and admission of the general category seats is over.

6.3. It is also submitted that since discipline for the NEC Seat is decided before

the counselling starts, the candidate in this category is not affected in the choice of his discipline, because of belated counselling.

7. A reading of the provisions of Rule 7(2)(d) shows that merit is the sole criteria for a candidate to opt for a college or discipline of his/her choice. But if counselling is held category wise on different dates and those in the General category has the first opportunity to exercise option, the later categories are unlikely to have a choice of discipline and college, notwithstanding their higher merit position in the entrance examination.

8. In Appendix-I of the Admission Rules, General Quota/Teachers Quota/NEC Quota Seats are clubbed together in Column 10 and no distinction is made amongst these 3 categories for the 71 available seats. Therefore if admission is to be given category wise in accordance with Rule 7(7), a candidate in relatively higher merit position who is competing for a seat in the NEC category, is unlikely to get a discipline/college of his or her choice. Thus application of the Rule 7(7) procedure would result in admission not on the basis of merit ranking as provided under Rule 7(2)(d) but on the timing of the counselling session,

9. During the previous 5 years allotment of discipline for the NEC Quota seat was made by the Government as under:-

SL. NO.

SESSION

DISCIPLINE

1

2010

MS (Surgery)

2

2009

MS (Ophthalmology)

3.

2008

MS (ENT)

4.

2007

MS (Ophthalmology)

5.

2006

MD (Medicine)

As can be seen from the allotment in the last 5 years, the discipline for NEC category is chosen whimsically in no particular order and objective yardstick is not discernible in the process. In the absence of any laid down criteria, it is obvious that specification of Post Graduate subject is made arbitrarily and since the Post Graduate subject is decided after the admission results are notified (just on the eve of the counselling), the process is capable of being misused to tilt the balance one way or the other. Since no rational and transparent criterion is laid down for exercise of the State's discretion, the possibility of manipulating the process to sway the balance for or against a NEC category candidate in choice of discipline, becomes a distinct possibility.

10. When the Admission Rules provides choice of discipline to candidates in priority of their merit position, scheduling counselling for one category after counselling is over for another category, would obviously result in merit taking a back seat. The Rules conspicuously doesn't take into account this possibility and since the total 71 seats for General category/Teachers category/NEC category are clubbed together under Column 10 of Appendix-I, the application of Rule 7(7), is resulting in further sub-categorization, which has the effect of relegating merit to a back seat, in the admission process.

11. The Admission Rules, interestingly have specified the Post Graduate subjects available in other reserved category, leaving no scope for manipulation in choice of Post Graduate subject. For instance, Teachers Quota Seats earmarked under Rule 4(3) of the Admission Rules, are earmarked in the subjects of Physiology, Biochemistry, Pharmacology, Microbiology and Forensic Medicine and candidates know well in advance, the available 5 disciplines, as it is specified in the Rule itself. But in so far as the NEC category seats are concerned, the available discipline is notified midway on the eve of counselling and this can't be anything, but a non transparent and illogical process. Therefore steps must be taken to rectify this unfair system of admission for NEC category candidates, who are left at the mercy of the State's decision on choice of discipline available for them.

12. For the foregoing, I am of the considered opinion that the admission authorities must ensure that the petitioner is permitted to exercise his option in accordance with his merit position and the advantage of his merit position can't be allowed to be obliterated, by applying the procedure of Rule 7(7) of the Admission Rules. Accordingly the admission to this category is ordered to be granted, on the basis of the merit ranking of the candidate. Necessary changes in the counselling process be made accordingly. The respondents are at liberty to make suitable amendments in the Admission Rules, to ensure admission on the basis of merit, to each category of candidates for the future admissions.

13. The petition stands allowed accordingly without any order of cost.