
(2020) 12 GAU CK 0024
In the Gauhati High Court
Case No : Writ Appeal No. 216 Of 2019

Surabhi Bhattacharyya	Vs	APPELLANT
State Of Assam And Ors		RESPONDENT

Date of Decision : 22-12-2020

Acts Referred:

Citation : (2020) 12 GAU CK 0024

Hon'ble Judges : N. Kotiswar Singh, J; Manish Choudhury, J

Bench : Division Bench

Advocate : U K Nair

Final Decision : Dismissed

Judgement

N.Kotiswar Singh, J

1. Heard Mr. U.K. Nair, learned Senior counsel assisted by Mr. K.P. Pathak, learned counsel for the appellant. Also heard Mr. D. Saikia, learned

Senior Standing Counsel, Health Department assisted by Mr. B. Gogoi, learned Standing Counsel, Health Department, Government of Assam; Mr.

D.K. Baidya, learned counsel for respondent No.5 and Mr. P. Deka, learned counsel for respondent No.6.

2. The present appeal has been preferred against the judgment and order dated 09.08.2019 passed in WP(C) No.6949 of 2018 challenging admission

of respondent Nos.6 and 7. The admission given to the respondent Nos. 8 to 17 have also been challenged primarily on the ground that the State

Government had given excess seats to the State of Meghalaya at the cost of meritorious candidates belonging to the State.

3. At the outset, we would like to mention that this appeal has been heard along with WA No.251/2019.

For the reasons assigned in the said appeal which is also disposed of today, we do not intend to disturb the admission already granted to respondent

Nos.6 and 7, namely, Shri Ramayak Pranjali Sharma and Shri Partho Pratim Saikia, who were respondent Nos.6 and 7 respectively in the said appeal

and who are also impleaded as respondent Nos.6 and 7 in the present appeal.

As regards, respondent no. 6, though his admission cannot be said to be in terms of the rules, since he has already got the admission on the strength of

an order of this Court in W.P.(C) No. 4156 of 2018 based on certain concessional stand taken by the State Government, we did not disturb his

admission. We do not find any other reason in the present proceeding to disturb the same.

Similarly, as regards respondent no.7, as the present appellant does not belong to OBC (Non Creamy Layer) under which category, the respondent

no.7 was admitted, the appellant cannot have any grievance.

4. As regards the remaining respondent Nos. 8 to 17, who are residents of Meghalaya against whom the present appellant has pressed this appeal, we would like to confine our consideration to their admission only.

5. The case of the appellant, who was the writ petitioner No.4 in WP(C) No.6949/2018, essentially is that as per the Medical Colleges and Dental

Colleges of Assam (Regulation of Admission into 1st Year MBBS/BDS Courses) Rules, 2017, (2017 Rules), certain numbers of seats are assigned to

the neighbouring States of Meghalaya, Arunachal Pradesh, Nagaland and Mizoram, which States otherwise have no State Medical Colleges. The said

Rules were amended in 2018. In Schedule III of the amended Rules of 2018, 8 seats were allocated for the following States, which are as follows:-

Meghalaya â?" 2

Nagaland â?" 2

Mizoram â?" 2

Arunachal Pradesh â?" 2

6. According to the appellant, after allocating seats for the aforesaid four States and taking into consideration the All India Quota, Central Pool, etc,

603 seats were available for the State of Assam out of which 302 were meant for un-reserved category and 301 for various reserved categories.

Though as per the aforesaid amended Rules of 2018, only two seats were

allocated for the State of Meghalaya, the same was subsequently increased to 10, thus, eating away 8 precious seats from the State quota of Assam thereby denying opportunity to the appellant and other more meritorious candidates of admission under the State Quota.

7. It has been stated that increase of seats from 2 to 10 in favour of Meghalaya was done by virtue of an executive order issued on 18.08.2018, which according to the appellant, is impermissible being in violation of the Rules.

8. On the other hand, it was the plea of the State-respondents that there was a prior agreement between the State of Assam and the State of

Meghalaya that for the year sessions of 1978 to 2016, 10 seats would be kept reserved for the State of Meghalaya every year. For the session 2017-

2018, State of Assam kept only 2 seats reserved instead of 10. However, pursuant to an interim order dated 22.09.2017 passed by the Honâ??ble

Supreme Court in SLP(C) No.21223/2017, Government of Assam again allotted 10 seats to the State of Meghalaya, which interim order was

subsequently made absolute by the Honâ??ble Supreme Court on 30.01.2018. Subsequently, for the session 2018, inadvertently, Government of

Assam kept reserved only 2 seats for the State of Meghalaya by amending the UG Admission Rule because of which State of Meghalaya again

approached the Government of Assam for allotting 10 numbers of MBBS seats as per above direction of the Honâ??ble Supreme Court and

accordingly, Government of Assam allotted 8 more seats from the 15% All India Quota vacancy and not from the State quota. It has been stated that

the vacancy of the State quota seats as well as the remaining All India quota vacant seats (after giving 8 seats to the Government of Meghalaya from

All India Quota vacant seats) were filled up category-wise according to the merit position of the candidates.

9. The aforesaid stand of the State Government relating to increase in seats was, however, contested by the petitioners stating that there was no such order issued by the Honâ??ble Supreme Court for increase in seats.

10. We have perused the order dated 22.09.2017 passed by the Honâ??ble Supreme Court in SLP(C) No.21223/2017 where some specific directions were issued. The directions read as under:-

â??Having heard learned counsel for the parties at length and after bestowing consideration, we pass the following directions by way of interim

measure:-

(i) Keeping in view the interest of the State of Meghalaya, it is directed that ten seats out of twenty-seven seats shall be allocated to it.

(ii) The State of Assam is allocated seventeen seats out of twenty-seven seats.

(iii) Both the States of Assam and Meghalaya shall conduct counselling in an objective and appropriate manner so that the merit should be exclusive criterion from amongst the NEET qualified candidates.

(iv) Any candidate who is not qualified in NEET, shall not be entitled for consideration.

(v) If the petitioners and the intervenor qualify in accordance with the merit list drawn up by the competent authority, they shall be called for counselling and seats shall be accordingly filled up.

(vi) Barring twenty-seven seats, no counselling shall take place in respect of any other seats.

(vii) The counselling shall be completed within ten days from today.

It is hereby made clear that this is purely an interim arrangement and the controversy that has been raised in the special leave petition and the original suit shall be decided on their own merits.â??

11. We have also perused the order dated 08.03.2019 passed in Original Suit No.8/2017 filed by the State of Meghalaya against the State of Assam in

which the following order was passed:-

â??Heard learned counsel for the parties.

It has been assured by learned counsel for the State of Assam that the State of Assam is going to amend the Medical Colleges and Dental Colleges of

Assam (Regulation of Admission into 1st Year MBBS/BDS Courses) Rules, 2017 for incorporating reservation of 10 numbers of MBBS seats for the

State of Meghalaya and the same is under process in the Health and Family Welfare Department, Government of Assam. The following has been

stated in the affidavit:

4. It is humbly submitted that in furtherance of such deliberations and with an intent to settle the issue arising in the present suit, the State of Assam

has vide letter No.170/2007/Pt/374 dated 18.08.2018 allotted 10 nos. MBBS seats of Assam to the plaintiff-State of Meghalaya for the sessions 2018-

19 in continuation of previous years.

5. It is most respectfully submitted that the State of Assam has already moved a proposal for amendment of the Medical Colleges and Dental Colleges

of Assam (Regulation of Admission into 1st year MBBS/BDS Courses Rules), 2017 (Amendment, 2018) for incorporating the reservation of 10 nos.

of MBBS seats for the State of Meghalaya and the same is under process in Health & Family Welfare Department, Govt. of Assam.

6. It is submitted that in light of the above-mentioned developments taking place after filing the present suit, the Addl. Chief Secretary, Health &

Family Welfare Department, Govt. of Meghalaya vide his letter No.Health.263/2017/158 dated Shillong 4th February, 2019 has intimated the Principal

Secretary to the Govt. of Assam, Health & Family Welfare Department that the Govt. of Meghalaya will be taking necessary action for withdrawal of

the present suit.

It is mentioned in the affidavit that on 4th February, 2019, Additional Chief Secretary, Health and Family Welfare Department, Govt. of Meghalaya

has also intimated the Principal Secretary to the Government of Assam, Health and Family Welfare Department that the Government of Meghalaya

will be taking necessary action.

In view of the aforesaid undertaking furnished, nothing survives in this matter. Let needful be done as assured.

The suit is accordingly disposed of.â??

12. Perusal of the aforesaid order dated 08.03.2019 makes it very clear that the State of Assam had undertaken to amend the Rules of 2017 and the

Honâ??ble Supreme Court in the aforesaid order on the basis of the affidavit filed by the State of Assam has mentioned about providing 10 MBBS

seats to the State of Meghalaya for the session 2018-2019 in continuation of the previous years.

13. In view of the above order dated 08.03.2019 passed by the Honâ??ble Supreme Court in Original Suit No.08/2017, we do not find any illegality in

allotting 8 MBBS more seats, thus, totalling 10 MBBS seats in favour of the State of Meghalaya.

14. We are also of the view that the aforesaid decision taken by the State Government as communicated on 18.08.2018 for increase of seats to 10

against which respondent Nos.6 and 7 were given admission comes in the realm

of public policy, which is supported by the decision of the Honâ??ble Supreme Court. Further, merely because a candidate finds place in the merit list does not create any vested right to get admission. If the number of seats available for the State of Assam was reduced for reasons which were found to be rational which also seems to have been supported by judicial sanction in terms of the order of the Honâ??ble Supreme Court, such reduction in the seats of the State cannot be said to cause any prejudice to any candidate of the State of Assam including the appellant. Further, the State Government has stated in their earlier affidavit that the said 8 seats were adjusted from the All India Quota.

15. Accordingly, we are not inclined to disturb the finding and observation made by the learned Single Judge in this regard, and resultantly, for the reasons discussed above, the present appeal is dismissed as far as the present appellant is concerned.