
(2005) 02 GAU CK 0036
In the Gauhati High Court
Case No : WP (C) No. 7877 of 2004

Utpal Pamey

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 GLR 305

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : M. Bhuyan and P. Hazarika, for the Appellant; S. Munir, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The writ petitioner was an aspirant for admission to the First Year M.B.B.S. Course in the Medical Colleges of the State of Assam for the academic session 2004-05. Fortified with a certificate issued by the competent authority, i.e., the Deputy Commissioner, Dhemaji that the petitioner belongs to the Schedule Tribes (Plains), the petitioner staked a claim against the seats reserved for Scheduled Tribes (Plains) candidates. In the selection that was held, the petitioner secured 131 marks and was placed at serial No. 4 of the waiting list of candidates for admission against the seats reserved for Schedule Tribe (Plains) candidates. In the counseling and the consequential admissions that took place, the first three candidates in the waiting list were offered admission against the MBBS/Dental courses and according to the petitioner he had, in the above manner, become the first candidate in the waiting list. The respondent No. 5, i.e., Pranamika Konyak, whose name appeared against serial No. 4 of the main list of candidates selected for admission against the seats earmarked for the Schedule Tribe (Plains) candidates according to the petitioner, is a Naga living in a plains district of Assam, i.e., Sibsagar. According to the petitioner, a member of any Naga Tribe is a member of a Schedule Tribe (Hills) and though such a person

may be living in a plains district, he/she has to be treated as such. Specifically such a situation is dealt with by the Government Memorandum dated 24.12.1982, in terms of which, the respondent No. 5 has to be treated as a Scheduled Tribe (Hills) candidate though a caste certificate certifying her to be a member of the Schedule Tribe (Plains) was issued by the Deputy Commissioner, Sibsagar. Contending that the Office Memorandum dated 24.12.1982 had clearly visualised categorization of persons like the respondent No. 5 as members of the Schedule Tribe (Hills) and not Schedule Tribe (Plains), the instant writ application has been filed calling into question the admission granted to the respondent No. 5 as a Schedule Tribe (Plains) candidate against the seats earmarked for such candidates. The upgraded position of the petitioner in the waiting list, i.e., at serial No. 1 has been advanced to justify the claim made by the petitioner for admission against the seat allotted to the respondent No. 5.

2. The petitioner having prayed for what can now legitimately be termed as "Midstream admission", perhaps, it will be appropriate to consider the said entitlement of the petitioner at the first instance on an assumed unjustified denial of admission and, thereafter, proceed in the matter, as may be required.

3. The power of the Court to grant admission to an eligible candidate upon recording a finding of unjustified denial of admission to such a candidate has now to be exercised by the Court keeping in mind the policy guidelines and time-schedule framed by the Medical Council of India pursuant to the judgment of the Apex Court in the case of Medical Council of India Vs. Madhu Singh and Others, While it will not be necessary for the Court to extract the detail provisions of the time-schedule framed by the Medical Council of India, two dates in this connection, which would be of particular significance must be noted. The first is the dates between 1st August and 31st August of a Calendar year, which has been stipulated to be the dates between which the 1st Year MBBS session must start. The second date of particular significance would be 30th September of a year, which has been stipulated to be the outer date for completion of all admissions against all categories of seats and beyond which date no admission will be permissible. The above time schedule fixed by the Medical Council of India as the expert body being pursuant to the Apex Court's judgment directing the Medical Council of India to lay down clear policies and guidelines in the matter of medical admissions, and the said guidelines and time schedule having been subsequently approved by the Apex Court, the principles therein must be understood to be largely inflexible knowing little departures which, if permitted, must be justified by the overwhelming facts and circumstances of a given case.

4. The subject of midstream admissions has, indeed, been a troubled subject attracting the repeated attention of the Courts, perhaps, in view of the course in question being a highly competitive and specialised course and the nature of duties that the persons undergoing the course would be required to perform on completion thereof. It is precisely to put a check on rampant midstream admissions that had been going on to such a highly competitive and demanding

course that the law was laid by the Apex Court in para 23 of the Judgment in Madhu Singh's case (supra) pursuant where to the time schedule, the details of which has been noted above, were laid down by the Medical Council of India. To reiterate the view taken by this Court in several other pronouncements, it must once again be repeated herein that to the extent possible, the time schedule fixed by the Medical Council of India must be adhered to by the authorities entrusted with the tasks of medical admissions and the Court must be extremely cautious in granting any midstream admissions contrary to the aforesaid time-schedule.

5. To convince the Court that the parameters laid down by the Medical Council of India pursuant to the decision of the Supreme Court in Madhu Singh's case do not lay down any inflexible principles. Mr. Bhuyan, learned counsel for the petitioner has placed before the Court the facts stated in para 5 of the judgment in Madhu Singh's case to contend that the law laid down by the Apex Court in para 23 of the judgment must be understood in the context of the peculiar facts that had confronted the Apex Court in the case. While it is correct that in Madhu Singh's case, the Apex Court was concerned with midstream admissions granted after 18 months of the commencement of the course, the discussions available in the judgment and the law laid down in para 23 must be understood as already held by this Court, to be law/ principles of general application conceived of by the Apex Court to combat the menacing proportions that midstream admissions had reached. Another judgment of the Apex Court in the case of Paramjeet Gambhir and Anr., Appellants v. State of Madhya Pradesh and Anr. reported in (2003) 4 SCC 276, has been cited by Sri Bhuyan to contend that departures from the time schedule framed by the Medical Council of India would be permissible, if the facts of the case would so justify. This Court finds that in Paramjeet Gambhir (supra), the second round of counseling had taken place in December 2002 and the order of the Apex Court directing consideration of the cases of the appellants before it was passed on 13th March, 2003. There is no indication in the judgment of the Apex Court as to when the classes had actually commenced. In such a situation, this Court does not consider it proper to rely on Paramjeet Gambhir as a precedent authorising a departure from Madhu Singh. The decision in Paramjeet Gambhir must, therefore, be understood to be a judgment in the context of the facts of that case.

6. Having dealt with the judicial precedents cited at the Bar, we may now proceed to apply the principles governing midstream admissions to the facts of the present case to see whether the petitioner's claim for admission, in the event his contentions with regard to the admission granted to the respondent No. 5 are upheld, would be justified. There is no dispute at the bar that in the State of Assam the 1st Year MBBS course in all the three Medical Colleges commenced with effect from 2nd August, 2004. Nearly six months, which could be roughly one semester of the course is over. Admission of the petitioner, at this stage, would put him at a disadvantageous position and even if he can be assumed to complete the course by putting in all extra efforts that may be necessary, the

quality of the education and the practical training that the petitioner may receive would be open to serious doubt. The petitioner, if admitted, would eventually become a doctor and the healthcare of the citizens of the country would be in the hands of persons like the petitioner. Keeping in mind the very specialised training that the petitioner must receive before qualifying as a doctor, the Court is of the view that putting the petitioner in any of the Medical Colleges, at this stage, may compromise the quality of training received and the same may consequently jeopardise the quality of service that the petitioner would be called upon to render after qualifying as a doctor. In such a situation, this Court does not consider the present to be an appropriate case for exercise of its discretionary powers under Article 226 to facilitate the midstream admission of the petitioner by passing any order contrary to the guidelines framed by the Medical Council of India in this regard, even if the admission of the respondent No. 5 is found to be unjustified, as contended.

7. Having answered the entitlement of the petitioner to admission on a supposed/hypothetical tenability of the case projected with regard to the legality of the admission of the respondent No. 5, this Court would have liked to assume the said aspect of the challenge, i.e., with regard to the admission of the respondent No. 5 to be an academic question. However, the very strong and persuasive arguments advanced by Sri Bhuyan, learned counsel for the petitioner has persuaded the Court to go into the merits of the challenge and what this Court finds is that the grounds urged by the petitioner indeed have some substance. If a member of any Naga tribe irrespective of his residence in the hills or plains districts of the State of Assam is to be treated as a Schedule Tribe (Hills) candidate, in terms of the Government O.M. dated 24th December 1982, it is difficult to visualise how the respondent No. 5 could have been granted a certificate to the effect that she is a Schedule Tribe (Plains) candidate and on that basis admission could have been granted to her. The provisions contained in the O.M. dated 24.12.1982 make it clear that persons like the respondent No. 5 even if they are residing in the plains district are to be treated as members of Schedule Tribe (Hills) and not Schedule Tribe (Plains). The submissions made by Sri Mushahari, learned Senior Government Advocate appearing on behalf of the official respondents are not in justification of the actions done in certifying the respondent No. 5 to be a Schedule Tribe (Plains) candidate. What Sri Mushahari has submitted is that the genuineness of the issuance of the certificate in question and not the entitlement of the respondent No. 5 to be treated as a Schedule Tribe (Plains) candidate was enquired into before admission was granted to the respondent No. 5. The affidavit filed by the State also is not indicative of any policy decision subsequent to the one reflected in the Office Memorandum dated 24.12.1982. In such a situation, the Court is left with serious doubt as to whether the respondent No. 5 is a member of the ST(P) and could have been granted a seat on that basis.

8. The question as to whether in these facts, the admission of the respondent No. 5 should be cancelled is the next issue that confronts the Court. The

respondent No. 5 had secured 157 marks in the selection and was placed at serial No. 4 of the merit list of the Schedule Tribe (Plains) candidates. If she is to be treated as a Schedule Tribe (Hills) candidate, a position which is conceded to at the Bar, her marks would entitle her to be placed at serial No. 1 of the merit list of Schedule Tribe (Hills) candidates. In any case, the respondent No. 5 must be granted a seat to pursue the course. In the above facts and particularly taking into account that interference with the admission of the respondent No. 5 is not likely to bring any benefit to the petitioner and instead is likely to cause a serious dislocation in a settled process, the Court considers it proper, in the facts of the present case, to refrain from causing any interference with the admission of the respondent No. 5.

9. For the foregoing reasons and in the facts noted, this Court is unable to afford any relief to the petitioner. Consequently, this writ petition shall stand dismissed. However, in the peculiar facts of the case, I make no order as to cost.