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**Court : Orissa**

**Decided On : Oct-04-1996**

**Reported in : 83(1997)CLT200**

**Judge : R.K. Patra and ;S.C. Datta, JJ.**

**Acts : [Constitution of India](#) - Article 226**

**Appeal No. : O.J.C. No. 6923 of 1996**

**Appellant : Sudeep Ranjan Das**

**Respondent : Chairman, Joint Entrance Examination (Engineering and Medical), 1996, Orissa Regional Engineering Co**

**Advocate for Def. : K.K. Mohapatra, Adv.**

**Advocate for Pet/Ap. : Biswajit Mohanty-I, Adv.;D. Chatterji and ;A.K. Misra, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**S.C. Datta, J.**

1. The petitioner in the writ petition has challenged the procedure adopted by the opposite parties for selection to the Medical Course under category-wise counselling instead of merit-wise counselling On the ground that is violative of Article 14 of the [Constitution of India](#). According to the petitioner, such category-wise counselling runs contrary to the clauses 3.5 and 3.16 of the Information Brochure of Joint Entrance Examination (Engineering and Medical), 1996, Orissa.

2. The petitioner appeared at the Joint Entrance Examination (Engineering and Medical), 1996, Orissa, under reserved category 'G'. This reserved category 'G' covers children of Green-card holders. Result of the above mentioned examination was published on 12th July, 1996 and, in the merit list for medical stream, the name of the petitioner has been shown against Sl. No. 253. According to the petitioner, the above noted Joint Entrance Examination (for short, 'JEE -- E&M; -- 1996') was conducted by opposite parties, as per the provisions contained in the Information Brochure for admission to 1st year Degree Courses in Medical Dental Courses at the three medical colleges in the State of Orissa for the academic year 1996-97.

3. According to the petitioner, as per Clause 3.1 of the Information Brochure, four merit lists are required to be drawn up, viz., one for candidates seeking admission to Engineering/Architecture, Technology, one for candidates seeking admission to Medical and Dental Courses: one for candidates seeking admission to Nursing Course; and one for candidates seeking admission to Pharmacy. As per Clause 3.3.2 of the Information Brochure, five per cent of the total seats are reserved in three medical colleges of the State for children of Green-card holders.

4. According to the petitioner, there is no provision in the Information Brochure for drawing a separate list for 'G' category candidates. The petitioner states that Clause 3.5 of the Information Brochure clearly provides that selection for admission will be strictly on the basis of rank in the merit list subject to availability of seats in colleges and disciplines which will be decided at the time of counselling. Further, Clause 3.16 of the Information Brochure deals with allotment of colleges and disciplines. The same makes it clear that counselling would be held according to the position of the candidates in the merit list. The petitioner

alleges that the opposite parties have published the merit list for medical stream on 12th July, 1996. Simultaneously, they have also published a separate merit list for 'G' category candidates. Upon enquiry, the petitioner came to learn that such separate merit list for 'G' category candidates has been published with intention to hold counselling of such 'G' category candidates first instead of holding counselling serially as per merit positions. The petitioner represented to the authorities for adopting serial-wise counselling in order or rank in the merit list for medical stream, but the authorities having not responded to his request he has moved this Court praying for a writ in the nature of mandamus directing the opposite parties to follow the procedure of serial-wise counselling according to the position of candidates in the merit list of the medical stream.

5. According to the petitioner, in case of category-wise counselling, the very purpose of reservation for 'G' category will be defeated as it would arbitrarily force the candidate to exercise the option in a blind manner when such an exercise is not at all needed and not warranted by the provisions contained in the Information Brochure.

6. Opposite parties Nos. 1 and 2 have filed counter wherein they denied that they have adopted a procedure in the matter of counselling different from that enjoined in the Information Brochure. They challenged the maintainability of the writ petition on the ground that the petitioner has exercised his option as provided under Note No. 5 of Clause 3.3 of the Information Brochure on 5.8.1996 and has taken admission under the reserved category in B.D.S. Course, as per his merit rank in the reserved category of Green-card holders. It has been further contended that the petitioner was quite aware of the reservation for the candidates for children of Green-card holders as provided under Sub-clause 3.3.2 and the Note No. 5 which is an integral part of the aforesaid clause well before he took the examination. He has also taken admission to the B.D.S. Course under the reserved categories for children of Green-card holders and is prosecuting; B.D.S. Course, and as such, he cannot now turn round and challenge the aforesaid provision contained in the aforesaid Information Brochure.

7. According to the opposite parties, Clause 3.3 along with notes therein in the Information Brochure deals with the modality of selection in different reserved categories. Note No. 5 categorically lays down that the candidates belonging to Clause 3.3.2 (children of Green-card holders) can also compete with the candidates under the general category. They submit further that Clause 3.3 of the Information Brochure provides different types of reservation seats. Sub-clause 3.3.1 under Clause 3.3 provides about the reservation of 8% and 12% of seats for the S.C. and S.T. candidates respectively. It has been specifically indicated therein that a separate merit list will be drawn up for them. Sub-clause 3.3.2 under Clause 3.3 provides about the reservation for the children of the Green-card holders and Sub-clause 3.3.3 provides about the reservation for the physically handicapped candidates. Similarly, Sub- Clause 3.3.4 provides about the reservation for children of defence and para-military personnel and Sub-clause 3.3.5 provides about the reservation of 30% of seats for woman candidates in all engineering colleges.

8. According to the opposite parties, Note No. 5 under Clause 3.3 specifically postulates preparation of general merit list and separate merit list for qualified candidates under such of the reserved categories. It is also submitted that the general merit list is prepared irrespective of the categories to which they belong to, whereas in the merit list of any reserved category the names of the qualified candidates belonging to that category only would appear. Thus the name of a candidate who has qualified under any of the reserved categories may also figure in the general merit list according to the marks secured by him and in a number of cases the same candidate's name figures both in the general merit list as well as in one or more reserved categories' merit list. The candidate can take admission under any of the categories where his name figures according to his choice.

9. According to the opposite parties a separate merit list is always prepared for each of the reserved categories, since a fixed number of seats are allotted to each reserved category. The opposite parties assert that there is no departure from the procedure mentioned in the Information Brochure in the matter of counselling and admission to different medical colleges of the State. Accordingly, they have prayed for dismissal of the writ petition.

10. Two candidates, namely, Aswini Kumar Kar (merit position No. 238) and Sanjay Agrawal (merit position No. 223) have intervened in the matter claiming admission to medical colleges, as per their ranks in the merit list.

According to Shri Aswini Kumar Kar, the petitioner having exercised his option under the reserved categories which are excluded from the total number of seats available, cannot now claim allotment of a seat in M.B.B.S. course under 'G' category which would amount to debarring other eligible, suitable candidates like the intervenors. According to the intervenors category-wise counselling in respect of specific seats available to the reserved categories as per the Information Brochure is quite in consonance with the provisions contained in Information Brochure. According to them, Note No. 3 at page 13 stipulates that seats are made available for general category students after deducting the number of seats pertaining to all the reserved categories from the total number of seats available. The intervenors support the action taken by the opposite parties 1 and 2 in the matter of counselling and admission to medical colleges. Consequently, they pray for dismissal of the writ petition.

11. We have heard learned lawyers for both the sides at length.

The petitioner has challenged the procedure adopted by the opposite parties for selection to the medical course under category-wise counselling instead of merit-wise counselling on the ground that it would frustrate the very intent and purpose of reserving seats belonging to the category of Green-card holders like the petitioner. The petitioner took the Joint Entrance Examination, 1996 for admission to 1st year Degree Course in three medical colleges in the State of Orissa and in the merit list for medical stream his name has been shown against S.No. 253. Subsequently, on 5-8-1996 he had exercised his option as provided in Note No. 5 under Clause 3.3 of the Information Brochure and has taken admission under the reserved category of Green-card holders for B.D.S. course as per his merit rank. It is admitted that as per Clause 3.3.2 of the Information Brochure, five per cent of the total seats are reserved in three medical colleges of the State for children of Green-card holders. The petitioner is the son of a Green-card holder and as such he was categorised under Code 'G'. According to the petitioner, the selection for

admission will be strictly on the basis of rank in the merit list subject to availability of seats in colleges and disciplines which would be decided at the time of counselling. He submits that categorised counselling has never been contemplated in the provisions contained in the Information Brochure. It is also submitted that nowhere in the Information Brochure it has been provided that separate merit list should be prepared in respect of reserved categories of candidates. Learned counsel appearing for the petitioner has drawn our attention to last paragraph in page 10 of the brochure to contend that four merit lists shall be drawn up, viz., one for candidates seeking admission to Engineering/Architecture/Technology; one for candidates seeking admission to Medical/Dental; one for candidates seeking admission to Nursing; and one merit list for candidates seeking admission to Pharmacy. He contends that besides these, no other merit list is required to be drawn up. He has also referred to Clause 3.16 of the Brochure to contend that candidates will be shown against vacancy as would be available discipline-wise in various colleges as and when their turn comes for counselling according to their positions in the merit list. According to learned counsel for the petitioner, candidates would be selected for admission strictly on the basis of rank in the merit list as per JEE-E&M-1996.; He has also referred to Clause 3.5 of the Information Brochure. Learned counsel for opposite parties disputes the contention of the learned counsel for the petitioner to the effect that only one merit list is required to be drawn up. He has drawn our attention to Clause 3.3 which provides reservation of seats under the State categories. On a reference to Clause 3.3 it would appear that 8% and 12% of the seats respectively are reserved for scheduled caste and scheduled tribe candidates and a separate merit list will be drawn up for them and, if eligible candidates are not available belonging to one category, seats can be filled up by the candidates belonging to other scheduled categories. Similarly, Clause 3-3.2 provides for reservation of 5% of total seats for children of Green-card holders. Likewise, Clause 3.3.3 provides for reservation of two seats in each of the Medical Colleges for physically handicapped candidates. Note No. 5 below Clause 3.3 at (sic) enjoins that candidates belonging to categories (sic) 3.3.2, 3.3.3, 3.3.4, 3.3.5 and 3.3.6 can also (sic) with candidates under general category provided they satisfy all conditions to be eligible for consideration under general category. At the

time of counselling for admission, a candidate figuring in the merit list for both reserved and general categories may first exercise his option for the college and discipline for his admission according to his merit position under reserved categories. A candidate who forgoes option under reserved categories is only entitled subsequently to exercise his option for the college and discipline for admission according to his (sic) position under general category.

12. A close scrutiny of these provisions clearly shows that two such lists are required to be framed on the basis of result of the examination, i.e., one for the reserved categories and another for the general category. Note No. 3 below Clause 3.3 (page 13) provides that seats available under General category in any course means the member of seats available after deducting the number of seats pertaining to all the reserved categories from the total number of seats available for that particular course. According to opposite parties, these instructions have been issued by the Government of Orissa and they are following it strictly in the matter of selection and admission of candidates to Medical and Engineering colleges for long and there has been no departure from the procedure adopted by them so far, we have been taken through the various provisions contained in the Information Brochure and on close examination of these provisions, we are of definite opinion that two merit lists are required to be prepared, one for general category candidates and another for reserved category candidates so as to give effect to the reservation policy of the Government.

13. In that view of the matter, we think that the petitioner cannot make any grievance in this regard. The petitioner has himself taken admission in B.D. S. Course under 'G' category on exercise of option under Note No. 5 below Clause 3.3. Moreover, he ranks far below the intervenors whose merit positions are 223 and 238 respectively. Therefore, even if the content ion raised by the petitioner is allowed, he cannot be taken in, in view of the fact that there are candidates much above him. For the reasons aforesaid, the petitioner cannot succeed. It seems that he labours under a misconception about the procedure to be followed in the matter of selection and admission to Medical colleges. The provisions contained in the Information Brochure are quite clear and there is no scope for any ambiguity. Consequently, we find and hold that the claim of the petitioner is without any merit

and is liable to be dismissed.

14. In the result, the writ petition is dismissed. There will be no order as to costs.

15. The interim order dated 5-8-1996 is vacated.

**R.K. Patra, J.**

16. I agree.

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