

Dr. Rabindra Kumar Panda and ors. Vs. State of Orissa and ors.

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Court : Orissa

Decided On : May-14-2003

Reported in : 2003(II)OLR227

Judge : B. Panigrahi and ;P.K. Misra, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.P. (C) Nos. 854, 1832, 2528, 3746, 4426 and 4503 of 2003

Appellant : Dr. Rabindra Kumar Panda and ors.

Respondent : State of Orissa and ors.

Advocate for Def. : G.K. Mohanty, Addl. Govt. Adv.

Advocate for Pet/Ap. : J.K. Rath, ;R.K. Rath, ;M.R. Panda, ;R.P. Kar, ;B.K. Patnaik, ;G.P. Samal and their associates

Judgement :

B. Panigrahi, J.

1. All these writ petitions involved common question of facts and law. Therefore, they are heard together and disposed of by this common judgment.

2. All the petitioners have passed M.B.B.S. Examination in the year 1999 from the S.C.B. Medical College and Hospital, Cuttack, V.S.S. Medical College and

Hospital, Burla and M.K.C.G. Medical College and Hospital, Berhampur. They are eligible to be admitted in the Post Graduate Course and accordingly, pursuant to the prospectus issued by the Government of Orissa in Health and Family Welfare Department for admission into P.G. Medical Course, 2002 in all the three Medical Colleges of the State, they submitted necessary applications and were found eligible to face written test. The results of the written test have been published and the petitioners' names find place in the merit list of direct candidates. The merit list, which was published in the News Paper in the month of October, 2002 has been filed as Annexure-1. After they were selected in the written test and their names found place in the merit list, the candidates in S1. Nos. 1 to 150 were called for counselling, which commenced from 11th October, 2002. In the counselling some of the petitioners could take admission under the State Quota, whereas others could not get any opportunity to take admission under the State Quota. Subsequently, it was found that 13 seats in All India Quota had fallen vacant in different disciplines. The Prospectus does not indicate that any candidate who has given option for the State quota cannot take admission or change his subject even if seats in other quota or subject have fallen vacant subsequently. The petitioners attended the counselling and signed on the relevant documents in the counselling. It is claimed by some of the petitioners that since the subject of their choice was not available, they did not take admission. It is found that in V.S.S. Medical College and Hospital, Burla 5 seats from All India quota, 3 seats in S.C.B. Medical College and Hospital, Cuttack and 5 seats in M.K.C.G. Medical College and Hospital, Berhampur had fallen vacant. In the event any seat from the All India quota fell vacant, it would merge in the State quota, which is meant for the direct candidates. Accordingly, the petitioners who are claiming to be in the merit list of the direct candidates are entitled to avail the same. They have also claimed that the subjects of their choice should be given to them.

3. Since the petitioners were refused to take admission in P.G. Medical College. 2002 they filed these cases for appropriate direction to allow them for taking admission in the seats, which are lying vacant in All India Quota by giving them the subject of their own choice.

4. The opposite parties have filed their counter by stating that the Counselling for Post Graduate (Medical) Selection. 2002 was scheduled to be held on 11.10.2002 from 10.00 A.M. onwards for the direct, candidates. The Selection Committee sought for clarification from opposite party No. 1 and the Additional Secretary to Government in the Department of Health and Family Welfare for filling up of the vacant posts under the All India quota. 2002. The Selection Committee received intimation at about 3.45 P.M. on that date not to fill up the vacant seats under 25% All India quota. Another letter was communicated to the Selection Committee, whereby they were instructed to fill up the vacant, seats of 25% except M.D. (Aneesthesiology), M.D. (Community Medicine) and M.D. (Psychiatry). The Selection Committee after thorough discussion in the matter decided that there was no scope to fill up those vacancies at the time of counselling because 35 students had already exercised their option to take admission by 5.00 P.M. on 11.10.2002 and many others had left the counselling center. Once again the Selection Committee assembled on 18.2.2002 in the S.C.B. Medical College and Hospital, Cuttack and decided that there should be no second round of counselling and accordingly, did not permit the petitioners to take admission into the P.G. Course.

5. Mr. R. K. Rath, learned counsel appearing on behalf of Dr. Suprava Patel (petitioner in W.P. (C) 1832 of 2003) has submitted that once the candidate has been given opportunity to exercise his/her option, the same shall be held to be final and cannot be changed under any circumstances. Therefore, if any candidate has already taken admission under the State Quota after exercising his/her option, there will be no further scope for such candidate to exercise any further option by changing his/her subject. It has however, appeared from his submission that once a candidate fails to turn upon the date of counselling, he/she shall forfeit his/her claim. But if a candidate does not appear in the counselling at the time when his/her turn comes and late appears on the date of counselling, then he/she shall be given opportunity at the end of the scheduled counselling on that date and he/she shall be allotted a seat out of the available vacant, seats if any. but he/she shall not have a right to claim a seat as per his/her position in the merit list.

6. Mr. J. K. Rath, learned counsel appearing on behalf of Dr. Rabindra Kumar Panda (petitioner in W.P. (c) No. 2528 of 2003) has placed reliance on a Division Bench judgment of this Court in OJC No. 14892 of 2001 disposed of on 5.3.2002 and contended that in the light, of the said judgment, the petitioners shall have to be given opportunity to exercise their option for admission into the P. G. Course in the subjects of their choice.

7. We are buttressed by the view taken by the Supreme Court in *Dr. Jeevak Almast v. Union of India* : AIR 1988 S.C. 1812. wherein it has been held :

'...It is well-known that our country does not have sufficient number of qualified doctors and every step should therefore, be taken to turn out as many doctors with Post Graduate qualification as possible. The problem to be solved, therefore, is as to what method should be adopted to fill up those unfilled reserved seats'.

The Division Bench of this Court in *Pratap Chandra Mohanty v. State of Orissa*. OJC No. 4777 of 1995 disposed of on 25.9.1996 have also taken the similar view.

The Supreme Court in *Miss Neelima Shangla v. State of Haryana and Ors.* AIR 1987 S.C. 169 and in *State of Orissa and Ors. v. Praina Paramita Samanta and Ors.* (1996) 7 SCC. 106. have mandated that ordinarily counselling should be conducted in so far as the eligible candidates are concerned.

8. In the aforesaid factual backdrop, we hold that if seats are available and it is not. impossible or impracticable to fill up those seats, the opposite parties shall have to take appropriate steps for filling up those seats, otherwise 13 seats will continue to fall vacant when there is great demand for the specialized treatment of the patients. If those seats would remain vacant, the society at large would be deprived of getting specialized treatment from 13 P.G. qualified doctors in different subjects. Further, even though the brochure stipulates that any change of subject is not permissible, but in view of the earlier judgment of this Court, we do not have any option but to direct the opposite parties to permit the candidates who have already taken admission under the State Quota to exercise their option in the subject of their choice. Therefore, we direct the opposite parties, more particularly, the Selection Committee, to hold 2nd counselling in the peculiar situation for all the

eligible candidates whose names found place in the merit list, otherwise more meritorious candidates shall be denied of the subject of their choice. The opposite parties will issue notice of counselling for filing up 13 P.G. seats in two leading News Papers of wide circulation inviting options from the candidates already admitted in the P.G. courses to appear in the fresh round of counselling on a fixed date or dates. A candidate who would opt for any other subject but the subject now available was offered to him/her earlier, shall not be allowed to change his/her subject. The selection should be on the basis of the merit position. After the process of change of subjects is over, the seats, which are available in different clinical and non- clinical subjects be given to the candidates strictly in accordance with the merit list prepared by the selection committee. We hope the entire exercise shall be completed within a period of six weeks from today so that the candidates who are likely to be admitted in the P.G. courses shall not be prejudiced on account of late admission.

9. With the aforesaid observation and direction, the writ petitions stand disposed of. No cost.

P.K. Misra, J.

I agree.

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