

(1999) 01 GAU CK 0008

Gauhati High Court

Case No: Order passed on 17-9-1991 in Civil Rule No. 3629 (Gauhati) of 1991/30] (Imphal)
of 1990

Soubam Rani Devi

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision: Jan. 1, 1999

Citation: (1991) 2 GLJ 293

Hon'ble Judges: S.N.Phukan, J and M.Sharma, J

Bench: Division Bench

Advocate: Priyananda Singh, Nilamani Singh, H.N.K.Singh, B.P.Sahu, Advocates appearing
for Parties

Judgement

S. N. Phukan, J.

By this order we propose to dispose of an application filed by the State of Manipur praying for vacating the interim order passed by this Court on 31. 7. 91 in view of the interim report submitted by the Commission of Inquiry.

2. Briefly stated the facts are as follows : The writ petitioners appeared at the entrance test for MBBS Course for the year 1991 held on 30.6.1991 at Imphal. The test was conducted under the Manipur MBBS Course (Selection of Candidates) Rules, 1984. The results were declared on 2.7.91 and duly notified on the same day by Annexure A/1 to the writ petition. The writ petitioners could not qualify in the said test and have approached this Court alleging that there was large scale anomalies during the test conducted under the aforesaid Rule. It may, however, be stated that this Court while issuing the Rule on 17th July, 1991 also suspended in the interim, the notification dated 2.7.91 notifying the list of successful candidates for admission to MBBS Course.

3. In view of the public criticism, the State Government by notification dated 15th July, 1991 appointed a Commission of Inquiry under the provisions of Commissions of Inquiry Act, 1952 and it is a one man's Commission consisting of Hon"ble Mr.

Justice R. K. Manisana Singh, a sitting Judge of the Gauhati High Court. The State Government approached this Court for vacating the interim order passed by this Court on 17.7.91 and the said prayer of the State Government was rejected by order dated 31.7.91. While rejecting the prayer of the State Government for vacating the stay order, this Court was of the opinion that the entire matter is before a High Level Commission of Inquiry, the question of vacating the interim stay order may be considered only after the report is submitted by the said Commission of Inquiry and liberty was granted to the State Government to approach this Court again after the report of the Commission of Inquiry.

4. The present petition has been filed for vacating the stay order as the Commission of Inquiry submitted an interim report, the gist of which has been quoted in paragraph 11 of the present petition, which runs as follows :

(a) The name of Mannuam Ching (Roll No. 57ST) shall be deleted from the list of Scheduled Tribe candidates out of the 42 selected candidates ;

(b) The name of Pahariya Alok Kumar (Roll No. 115General) would be excluded from the list of general candidates out of the 42 selected candidates ; however, his name is likely to be included in the Final Select list, if his name is at a rightful place in the order of merit ;

(c) Pending further inquiry, selection of two candidates bearing Roll No. 138 (General) Kh. Gojen Singh and Roll No. 105 (ST) Tenleichon Siro shall be suspended and shall not be acted upon ;

(d) Pending further inquiry, the order of deletion of the names of the 3 candidates bearing Roll Nos. 80, 202 and 254 from the select list published by the Government shall continue ; and

(e) Five seats may be kept reserved till the submission of supplementary interim report which will be made immediately after hearing those 5 candidates.

It may be stated that in the present petition, it has been stated that 51 seats are available for admission for MBBS Course, out of which 30 seats in the Regional Medical College, Imphal and 21 seats allotted by the Central Government from the Central pool in the Medical Colleges outside Manipur. It has also been stated in paragraph 13 of the present petition that the academic session 1991-92 for Medical Colleges outside Manipur will be closed within September 1991 "without any prospect for late admission under any circumstances".

5. We have heard the learned counsel for the parties. This matter came up yesterday and in view of the submissions made by Mr. Sahu, learned counsel for the petitioner we granted time to address us today.

6. First point as urged by Mr. Sahu is that in view of the notification by which the Commission of Inquiry has been constituted, as there is no provision for submitting

interim report and as such the above interim report dated 10.9.91 cannot be taken into consideration. In this connection, the learned counsel has produced before us a number of notifications issued by the Government of India, from time to time, appointing such Commissions, wherein there was specific provision for making such interim report; even under the Commission of Inquiry Act, 1952 there is also no provision for giving such report.

7. On the otherhand Mr. Nilamani Singh has urged that from the explanation to subsection (5) of section 3 of Commissions of Inquiry Act, it is clear that the interim report can be given even if it is not mentioned in the notification. That apart the learned counsel has urged that the Commission has got inherent power to give such interim report and in this connection the learned counsel has pointed out that the State Government also approached for such interim report.

8. We are unable to accept the contention of Mr. Sahu and in our opinion and from reading the provisions of the Act, the purpose for which the present Commission of Inquiry was appointed, the Commission of Inquiry has power to give interim report. In the explanation of subsection (5) of section 3, it has been clearly stated that "report" includes an interim report. Considering the time factor involved for the present subject matter, viz admission to Medical College, which is a time bound programme, we are of the opinion that the Commission rightly submitted the interim report and it cannot be faulted on the ground that the Commission has no power to give such interim report.

9. Second contention urged by Mr. Sahu which needs our consideration is that the Commission has no power to prepare a separate select list and it is not within the terms of reference. In reply Mr. Nilamani Singh has drawn our attention to paragraph 11 of the petition and has urged that the Commission has not prepared any select list but directed deletion and suspension of some names.

10. We have already quoted the gist of the interim report and we are unable to accept the contention of the learned counsel Mr. Sahu that the Commission has submitted a fresh list. We therefore, do not find any force in the contention of Mr. Sahu.

11. Mr. Sahu has further urged that as the Commission found some anomalies in the conduct of test, the list of candidates selected should be set aside and fresh test should be ordered. In this connection, the learned counsel has drawn our attention to the decision of the Apex Court in Bihar School Examination Board vs. S. C. Sinha & others, 1970 (1) SCC 648 and Surendra Kumar vs. State of Bihar & others, 1984 (4) SCC 609. In reply Mr. Nilamani Singh has placed reliance on the latest decision of the Apex Court in Maharashtra State Board of Secondary & Higher Secondary Education vs. K.S. Gandhi & others (1991) 2 SCC 716 : 1991 (1) SVLR (C) 361. The learned counsel has drawn our specific attention to the second paragraph of the judgment, wherein it was observed that "The quest for just result to save the precious academic

years to the students while maintaining the unsullied examination process is the core problem which the facts have presented for solution". According to the learned counsel, in the case in hand, the test was conducted according to Rules and as such the result declared which is under scrutiny by the Commission of Inquiry need not be set aside and this Court may not order fresh examination.

12. Two decisions of the Apex Court on which Mr. Sahu has placed reliance is not applicable to the case in hand in view of the facts of these cases. In the present case, the test was conducted under Rules by a Committee and if there is any anomaly in conducting such test the Commission of Inquiry which is headed by a sitting Judge of this Court, is expected to give its recommendation for action by the State Government. We are, therefore, unable to accept the contention of Mr. Sahu. Mr. Sahu has raised another point regarding Rule 4 of Rules. In reply it has been pointed out by Mr. Nilamoni Singh that this Rule has been deleted by Notification No. 2/4/86M dated 26.5.88 and as such the contention of Mr. Sahu need not be considered by us.

13. Mr. Sahu has drawn our attention to the evidence of the Director of Health Services before the Commission, wherein the Director has stated that the Selection Committee was constituted on 29.6.91. According to Mr. Sahu on the next day, test was conducted and as such all actions taken prior to the constitution of Selection Committee, viz. issuance of notice for calling for applications etc. are bad in law. Mr. Nilamoni Singh has rightly pointed out that the amended Rule 3 has clearly laid down the composition of the Committee. In view of this, we reject the contention of Mr. Sahu.

14. Some other points urged by Mr. Sahu are that Rules 15 and 16 and the order issued by the Government dated 27th September, 1983 regarding seats reserved for children of Armed Forces Personnel, and Exservice men for Medical etc. need not be considered at this stage.

15. For what has been stated above, we find that as the interim report has been submitted on the prayer of the State Government by the Commission of Inquiry and accepted by the State Government, our interim stay order dated 17.7.91 and order dated 31.7.91 need modification.

16. Accordingly, we modify the interim orders to the extent that the State Government may implement the interim report submitted by the Commission of Inquiry.

In the result, the present petition is accepted and the State Government is allowed to take action as per interim report.