

**(2000) 08 GAU CK 0014**

**Gauhati High Court**

**Case No:** Writ Petition (C) No"s. 3250 and 3631 of 1999

Mayuri Sharma and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision:** Aug. 24, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Medical College of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules, 1996 - Rule 4(5), 5

**Citation:** (2000) 3 GLT 79

**Hon'ble Judges:** J.N. Sharma, J

**Bench:** Single Bench

**Advocate:** K. Agarwal, B. Sarma and R. Baruah, for the Appellant; Govt. Advocate and L.P. Sharma, R. Bhattacharjee and N. Borgohain, for the Respondent

**Judgement**

J.N. Sarma, J.

Both the writ applications raise the common question of law and facts and as such they are taken up for hearing together.

2. W.P. (C) 3250/99 has been filed by the Petitioner praying for a direction to admit the Petitioner in the 1st year MBBS/BDS course for the session 1998 and with a further prayer to withdraw, cancel or for bear from giving effect to the illegal admission made or permitted in the 1st year MBBS/BDS course for the session 1998 and also prays for a direction to the authority to admit the Petitioner in the course in view of the merit position in the waiting list prepared and published by the Selection Board (Annexure-4). The Petitioner herein appeared in the Common Entrance Examination of 1998 and the Petitioner secured 103 marks and the name of the Petitioner appeared at S.I. No. 214 of the general category and after interview the name of the Petitioner appeared in the waiting list of general candidates at S.I. No. 25. That is Annexure-4 to the writ application. With regard to waiting list, Rule 4(5) of

the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules, 1996 provides as follows:

Any seat, that is forfeited shall be offered to the candidates from the waiting lists recommended by the Selection Board and while doing so no consideration shall be made of the choice mentioned regarding the college by the candidate who will have either to accept the seat which is available or forego the offer.

3. It is stated in para 9 of the writ application that seats were available from the quota under Rule 5 of the Rules of 1996. 6 seats from general quota remain vacant and around 30 seats out of seats reserved for CBSE candidates remain vacant. It is stated that 36 seats were vacant and it is claimed that the Petitioner is entitled to the offer of a seat in terms of the Rule. Rule 5 of the aforesaid rule provides as follows:

5. EXEMPTION FROM COMMON ENTRANCE EXAMINATION: The following categories of candidates are exempted from appearing in the Common Entrance Examination:

(a) Candidates recommended against 13 seats reserved as follows for different N.E. States, provided they satisfy other conditions and criteria of eligibility; Meghalaya: ten seats, Arunachal Pradesh: one seat, Nagaland: one seat, Mizoram: one seat.

(b) Candidates selected on the basis of the All India Entrance Examination conducted by CBSE for 15% reserved seats.

(c) Candidates recommended by Govt. of India under Central Govt. pool against IS reserved seats.

(d) Candidates securing rank within first ten position in the HSSLC (Science) Examination of the Assam Higher Secondary Education Council having Physics, Chemistry and Biology with not less than 75% marks in aggregate excluding the additional subject in the year in which they seek admission. Such candidates may apply for direct admission within 10 days of publication of their qualifying examination results to the Director of Medical Education, Assam.

Provided that any seat under the aforesaid categories from (a) to (d) which is not filled up for want of candidate shall be filled from amongst the candidates in the waiting list for General/SC/ST categories only.

4. Though the total number of seats available in all the three Medical Colleges were 311, the authority tried to fill up the vacancies without following the mandatory provisions of the aforesaid rule thereby depriving the Petitioner and other candidates whose names appeared in the waiting list. This was also highlighted in the media. That is Annexure-9 to the writ application. It is stated in para 20 that the authority allotted 12 seats to the candidates whose names did not appear neither in the merit list nor in the waiting list and they were given admission by dehors the rule and that is evident from Annexure-10 to the writ application. That is quoted

below:

THE SENTINEL

SATURDAY 19TH JUNE, 1999

Charges of faulty admissions denied by a Staff Reporter

Guwahati, June 18: A senior official of the Directorate of Medical Education has denied allegations that 30 seats of the MBBS first year in the State Medical College were filled up recently without following norms. It may be noted that a section of candidates had alleged that the Director, Medication had filled up the vacancies by taking a huge amount of bribe, and flouting all norms it was also alleged that vacancy seats under quota system have always been filled up belatedly without following the merit list.

However, the medical official denying the charges said that the 30 seats that were vacant in the Medical Colleges, were under the Central quota and a Cabinet meeting was held to sort out the mode in filling them up. It was decided in the meeting that out of the 30 seats, 12 seats would be given to the students from Arunachal Pradesh and the rest would be filled up by adhering to the original merit list. However, the official could not come up with satisfactory evidence to show that the seats in the Arunachal quota were indeed filled up in a transparent manner adhering to all norms.

5. In W.P. (C) 3631/99 other facts are same but the position of the Petitioner was at S.I. No. 22 in the waiting list. From the waiting list admissions were given upto S.I. No. 19, but thereafter no admission was given. But on 4.6.99 the Director of Medical Education forwarded the names of Respondent Nos. 5 to 8 for admitting them in the 1st year MBBS course for the session 1998-99 in Silchar Medical College and they were accordingly admitted in the said college. But all these Respondents 5-8 were not selected nor their names appeared in the provisional select list and/or waiting list so published. Respondent No. 6 failed in the selection test and could obtain only 35 marks in the said test. Thereafter Respondent Nos. 9, 10, 11 were admitted in the month of May, 1999 by the Principal, Assam Medical College at Dibrugarh. These persons were admitted in the name of NEC seats.

6. An affidavit-in-opposition has been filed on behalf of Respondent No. 1, it is stated as follows:

That with regard to the statement made in paragraph 9 to the writ petition the deponent says that the Petitioner's application was not considered due to his lower merit position in the waiting list of General category. (para 4)

7. An additional affidavit was filed on behalf of Petitioner wherein serious allegations were made against the Director as well as Minister. Reply to the same was filed wherein it has been stated as follows:

6. That in fact in my writ petition more particularly in paragraphs 9, 16, 19, 20, 21 and 22, I have narrated the facts as to how the illegality has been committed by the Respondents in the name of Medical Admission. The news item publish further strengthen my contention made in the writ petition. In fact, I contended that the way the admission are going on, it requires a discreet enquiry relating to the admission. I further say that the facts disclose in the news item requires a thorough enquiry by an independent agency so that, the candidates who have taken admission illegally can be debarred from prosecuting further studies and the candidates who have been deprived may be admitted and allowed to prosecute their studies.

8. A bare perusal of the materials on record will show that the authority did not adhere to the rules in filling up the seats. Vacancies were filled up in a most arbitrary manner. Seats of Arunachal Pradesh were distributed to two persons, who even did not qualify in the Entrance Examination. Further they are also not resident of Arunachal Pradesh and they have no connection whatsoever with Arunachal Pradesh. After all in a highly competitive field, the authority is duty bound to adhere to the Rules. It cannot go according to its whims and caprice. That is what has happened in the case in hand. But the question is that whether at this stage any relief can be granted to the Petitioners. Already because of delay in the disposal of this case, the course is in the midstream and at this stage it will not be possible to admit these students in any Medical College. Though the admission of the Respondents as indicated above are without authority of law yet in exercise of my power under Article 226 of the Constitution of India, I do not want to make the things topsy-turvy, but I only hope and trust that the authority in future would be more careful and this sort of procedure is not followed to tarnish its image before the society at large.

9. Learned Counsel for the Petitioner places reliance on the following decisions:

1. Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another,
2. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,
3. Controller of Examinations Vs. Wasim Ashraf and Others,
4. (1995)2 GLR 115 (Dr Sanjeeb Roy Baruah and Ors. v. State of Assam and Ors.)
5. (1992) 2 GLR 313 (Miss Papari Bharali and Ors. v. State of Assam and Ors.)
6. V.R. Potdar Vs. State of Maharashtra and Others,
7. (1990) 2 GLR 64 (Smt Menakshi Sarma and Ors. v. Sri P.R. Deka, Member Secretary and Ors.)
8. Gurdeep Singh Vs. State of Jammu and Kashmir and others,

10. It is not necessary to discuss all the cases in view of the position as stated above. The Petitioners though being successful are not entitled to the relief claimed in the writ application in view of the delay. The Petitioners may seek other remedy by way of damage etc. against the authority if so advised.

Heard Mr. K. Agarwal, learned Counsel for Petitioners Mr. T.C. Chutia, learned G.A. for State-Respondents. None appears for private Respondents. Learned Advocate General, Arunachal Pradesh, who appeared on my request, with his usual fairness and magnanimity submitted that the so-called list submitted by the State of Arunachal Pradesh did not maintain transparency and perhaps it was prepared by the authority in hotchpotch. He has further submitted that sponsoring all these candidates by the State of Arunachal Pradesh has not served the interest of the candidates belonging to State of A.P., but to some other persons who did not deserve it. He assures that in future he will instruct the State Govt. of A.P. to be careful in such a situation.

With the directions and observations as indicated above, these writ applications shall stand disposed of.