
Dr. Basanta Kumar Behera and Others Vs State of Orissa and Others

O.J.C. No. 2784 of 1986

Court: Orissa High Court

Date of Decision: Dec. 24, 1987

Acts Referred:

Constitution of India, 1950 – Article 14, 226#Evidence Act, 1872 – Section 57

Citation: AIR 1988 Ori 124 : (1988) 65 CLT 113

Hon'ble Judges: H.L. Agrawal, C.J; R.C. Patnaik, J; D.P. Mohapatra, J

Bench: Full Bench

Advocate: S.K. Das and S.B. Jena, for the Appellant; R.K. Patro, Additional Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Mohapatra, J.

The petitioners, medical graduates, intending to join postgraduate courses in different specialities in the Government

Medical Colleges in the State during the year 1986-87, filed this writ petition praying to quash Clauses 2, 6,4,5 and 7.2 of the prospectus issued

by the State Govt. and for further direction to the authorities to accept their applications and to permit them to sit at the entrance examination.

2. The essence of the grievance of the petitioners was that the aforementioned clauses in the prospectus wherein the applicants were required to

fulfil the eligibility requirements by 30th June of the year of admission was fixed arbitrarily and since the petitioners could not fulfil the said

requirements due to reasons completely beyond their control, they were deprived of the opportunity to appear at the entrance examination for

selection for admission to post-graduate courses.

3. The facts relevant for the purpose of disposal of the case may be shortly stated thus :

The final M.B.B.S, Examination, 1985, which was to be held in April of that year, was held in the month of August. The petitioners appeared in the

said Examination. The result were published in November, 1985 immediately whereafter the petitioners joined the course of Compulsory Rotating

Housemanship. The period of housemanship was one year. It appears from the prospectus for the year 1986-87 that it was approved by the State

Govt. in the Department of Health and Family Welfare on 8-8-86 and was issued in October, 1986. Therefore, the statement contained in Clause

2 of the prospectus that the academic session commenced from July and that the candidates were required to fulfil the eligibility requirements by

the 30th June of the year of admission, were apparently incorrect. In Clause 6.4.5 of the prospectus it was stated that those who had completed

compulsory rotating housemanship or five years of service by the 30th June of the year of admission should furnish a certificate from the competent

authority evidencing that fact and in Clause 7.2 that the candidate must have satisfactorily completed the Compulsory Rotating

Internship/Housemanship training in a hospital recognised for this purpose by the 30th June of the year of admission. These requirements,

according to the petitioners, were impossible to be fulfilled by them and all other medical graduates of the year 1985. It was the contention of the

petitioners that arbitrary fixing of the cut-off date as 30th June of the year of admission prejudicially affected their career and future life. On account

of the artificial cut-off date they were unnecessarily made to lose more than a year before getting a chance to get admission into the postgraduate

courses and higher specialities. It was the further case of the petitioners that during the last three to four years the academic session for these

courses never commenced before October and November of the year in question. Therefore, fixing 30th June as the cut-off date on the

assumption that the academic session commenced from July was done without due application of the mind by the authority concerned and hence

arbitrary.

4. The opp. parties, that is, the State Govt. in its Health Department, Director of Medical Education and Training, Orissa, and the Principals of the

three Medical Colleges in the State, while trying to justify the cut-off date, took the stand, inter alia, that the date was fixed taking into

consideration the commencement of the academic sessions under the Statutes of the three Universities, Utkal University, Berhampur University and

Sambalpur University to which the medical colleges are affiliated. Since the exact date when each of the Universities would hold the M.B.B.S.

Examination could not be ascertained by the opposite parties, the cut-off date had to be fixed as aforesaid. The opp. parties have not denied the

allegation that fixing the date made it impossible for the petitioners and the other candidates who has passed the M.B.B.S. Examination in 1985 to

apply for admission to the post-graduate courses.

5. At the commencement of hearing the learned Addl. Govt. Advocate appearing for the opp. parties submitted that no effective relief can be

granted to the petitioners since the year 1986-87 for which the impugned prospectus was published is over. But, on an analysis of the matter, the

learned counsel was constrained to admit that the controversy centering round fixing 30th June of the year of admission as cut-off date has

persisted since long and that in view of some decisions of this Court holding that fixing that date was valid (See Dr. Sanjukta Panda and Others Vs.

State of Orissa and Others, Dr. Leena Das and Others Vs. State of Orissa and Others, and Dr. Chitta Prasad Das Vs. State of Orissa and

Others, while another decision taking a contrary view that the date was arbitrary (See O.J.C. No. 1902 of 1984 (reported in AIR 1985 NOC

242) (Bibhuti Bhusan Mishra v. State of Orissa) the position should be resolved by decision of the larger Bench. The learned counsel for the

parties in course of their submissions reiterated the stand of their respective clients as indicated earlier.

6. At the outset, it has to be stated that the prospectus for selection of candidates for R.H.S. assignment, post-graduate courses and higher

specialities in the three Medical Colleges of Orissa is issued every year after it is approved by the State Govt. in the Health Department. It would

therefore be reasonable to expect that while finalising the contents of the prospectus the authorities would take into consideration the facts and

circumstances prevailing during the year in question. In fixing the cut-off date same relevant facts to be taken into consideration will be the date

when the M.B.B.S. Examination was held, the date when the candidates who successfully completed it would complete their internship/

housemanship and be eligible to apply for admission to the post-graduate courses and the date when the post-graduate courses for the year in

question is likely to commence. Care should be taken to see that the field of selection is as broad based as possible and large number of

candidates are not kept out from the arena by picking up an artificial cutoff date. This will enable the authorities to make proper selection of

meritorious candidates; the foremost consideration in the matter of selection to post-graduate medical studies.

7. During the year in question, i.e. 1986-87, the authorities while finalising the prospectus in August, 1986 were fully aware that the M.B.B.S.

Examination which was scheduled to be held in the month of April, 1985 was held in the month of August and the results were published in

November that year. They were also aware that the courses of studies could never commence before November, 1986 even making conservative

estimate of the time taken for finalising the list of candidates.

8. In view of the aforesaid circumstances, fixing 30th June as the cut-off date for 1986-87 can neither be said to be reasonable nor germane. In my

view, it would, on the other hand, give an impression as if a date has been picked up out of the hat by completely ignoring the relevant factual

positions prevailing then. As noticed earlier, the stand taken by the opposite parties is that the date has been selected considering the provision in

the University Statutes that the academic year is to commence from the first day of June of the year and close on the 31st of May of the succeeding

year. At the outset I may observe that no material has been placed to show on what basis these dates are fixed for the academic year in the

Statutes. No material is also produced to show that the academic year is fixed by the authorities in the University considering the relevant facts

from time to time. It is common knowledge and judicial notice can be taken of the fact that the aforesaid description of the academic year in the

University Statutes is followed more in its breach. Schedules for University Examinations are very often changed, inordinately long time is taken for

declaration of results and there is a good bit of uncertainty about commencement and close of the academic session in the Universities. However, I

need not delve further into the matter since that is not the question for consideration in the instant case. Suffice it to say, that picking up the cutoff

date for the purpose of admission to the post-graduate medical courses on the basis of the academic session stated in the University Statutes

ignoring the facts prevailing during the year in question would, in my opinion, be unreasonable and arbitrary. Such action would result, as it did

during the year 1986-87, in keeping out a large number of candidates from the field of selection. This strikes at the very purpose of any process of

selection, particularly for higher technical education like medical sciences. In course of his submissions, the learned Addl. Govt. Advocate posed a

difficulty said to be faced by the authorities while framing the prospectus. He submitted that it is not possible for the authorities to know the exact

date on which the three Universities will hold the M.B.B.S. Examinations conducted by them. That was not the difficulty faced during the year

1986-87 since admittedly the result of the 1985 M.B.B.S. Examination was declared in November, 1985 and the prospectus was finalised in

August, 1986. However, that difficulty may not also arise if a date like the first day of the month during which the prospectus is issued is taken as

the cut-off date. We were informed at the Bar that this is the practice followed in All India Institute of Medical Sciences, New Delhi. Here I may

notice that the Supreme Court in the case of Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad reported in AIR 1986 SC 1877

examining the scheme for holding entrance examination for M.B.B.S./B.D.S. courses and post-graduate medical courses submitted before the

Court by the Government of India held as follows :

Thirdly, so far as the All India Entrance Examination for the Post-Graduate courses is concerned we are of the view that there should be only one

examination in a year as suggested by the Government of India in the Scheme submitted by it. But we are of the view that it would not be right to

insist that a student should not be eligible for appearing at this examination unless he has completed compulsory rotating internship practical training

programme and obtained registration from the Medical Council of India or any of the State Medical Councils. That would greatly inconvenience

the students. The final M.B.B.S. Examination is normally held in October/November each year and therefore every student has to undergo

compulsory rotating internship practical training for a period of one year and then only he can be awarded M.B.B.S. Degree and he can obtain

registration from the Medical Council of India or a State Medical Council. If therefore it is provided that a student shall be eligible to appear at the

All India Entrance Examination only after he was (has ?) acquired M.B.B.S. Degree and obtained registration, it would mean that he would be able

to appear at such Examination only after a lapse of about one year from the date of his passing M.B.B.S. Examination..... It would be better in our

view if a student is allowed to appear at the All India Entrance Examination after the result of the M.B.B.S. Examination is announced and he is

declared to have passed M.B.B.S. Examination, because at that date the theoretical part of the syllabus would be fresh in his mind and it would

save him the trouble of reading the entire course over again after a period of one year.....

However, it is for the authorities in charge of medical education in the State to consider all relevant aspects and formulate an appropriate Scheme

for admission to postgraduate medical courses and higher specialities. The position is that the particular cut-off date specified in the prospectus for

the year depends to a great extent on the facts and circumstances prevailing during the period. Therefore, it cannot be said with finality that 30th

June could never be a reasonable and proper cut-off date. It might have been so during the year in question if the M.B.B.S. Examinations were

held in April, 1985 as scheduled and the results were declared by the end of June that year. But as discussed earlier, the factual position during the

year 1986-87 was very much different and that was not taken into account by the authorities in fixing the cut-off date. As noticed earlier, this Court

in the cases of Dr. Leena Das and Others Vs. State of Orissa and Others, upheld 30th June as the cut-off date holding that since it was based on

the academic year described in the University Statutes it was not arbitrary. These decisions for the reasons stated in the foregoing paragraphs must

be held to be incorrect.

9. The question that remains for consideration is the relief to be granted to the petitioners. The year for which the impugned prospectus was issued

is over. The petitioners did not appear in the entrance test held for admission to the post-graduate courses that year. Nearly one year of the three

years course is going to be completed. In these circumstances, I cannot persuade myself to accept the contention raised by the learned counsel for

the petitioners that a direction should be issued to the authorities to make special arrangements for admission of the petitioners to the post-graduate

courses which commenced in the year 1986-87. For the succeeding year the bar of eligibility would not operate so far as the petitioners are

concerned. Therefore, in my view, the petitioners are not entitled to any relief on the writ application. However, the decision in this case regarding

fixation of the cut-off date and the observations made in this judgment shall be borne in mind while framing prospectus during the coming years. As

noticed earlier, we decided to consider the question of fixation of the cut-off date because the problem has been a recurring one since several

years in the past and apparently divergent views had been expressed by different Division Benches of this Court.

10. In the result, (for) the facts and circumstances discussed in the foregoing paragraphs and for the reasons set out therein, the petitioners are not

entitled to any relief in the writ application. Accordingly, it is dismissed subject to the observation made in the preceding paragraphs. There will be

no order for costs of this proceeding.

Agrawal, C.J.

11. I agree.

R.C. Patnaik, J.

12. I agree.