

Orissa High Court

Dr. Arjun Chandra Naik vs The State Of Orissa And Ors. on 16 August, 1985

Equivalent citations: AIR 1985 Ori 300

Author: K Mohapatra

Bench: J Mohanty, K Mohapatra

JUDGMENT K.P. Mohapatra, J.

1. The petitioner serves as Divisional Medical Officer in a senior Class I post of the Central Government. At present he is posted at Khurda Road Division of the South-Eastern Railways. He claims to belong to the Scheduled Tribes. Having already completed service for over five years under the Central Government including rural service, he applied for admission to the Post-Graduate Course ('P. G. Course' for short) in general medicine In one of the three Medical Colleges in Orissa for the academic session 1983-84. Although he was eligible for selection in all respects, he was not selected. He again applied for admission for the academic session 1984-85 for the same course. Although he was eligible for selection for one of the seats reserved for Scheduled Tribes candidates and some seats are still vacant, he was wrongly refused admission on the ground that there was no reservation for Medical Officers serving under the Central Government belonging to Scheduled Castes and Scheduled Tribes. Such refusal was on account of paragraph 5.5 of the Prospectus for the session 1984-85. The petitioner has accordingly prayed for striking down the said paragraph of the Prospectus being ultra vires Article 15(4) of the Constitution of India and for admission to the P. G. Course in general medicine.

2. Opposite party No. 1 alone has filed counter and has opposed the petition. It is stated therein that seats were reserved for Post-Graduate Courses of the three Medical Colleges for inservice Medical Officers of the State belonging to Scheduled Castes and Scheduled Tribes. As a special concession some seats were reserved for Medical Officers serving under the Central Government to be selected strictly in accordance with merit The petitioner, according to his own admission, was an applicant sponsored by the Central Government for admission to the P. G. Course in general medicine during the academic session 1983-84, as well as, during the session 1984-85. He did not produce any certificate from the competent authority that he belonged to the Scheduled Tribes. His application was considered in the category of Medical Officers belonging to the Central Government and on consideration of merit it was not possible to admit him to P. G. Course in general medicine. Paragraph 5.5 of the Prospectus is not ultra vires Article 15(4) of the Constitution of India and accordingly the petitioner is not entitled to admission.

3. In order to appreciate the contentions raised, it is necessary to quote the following paragraphs from the prospectus for selection to Resident House Staff and admission to Post-Graduate Courses in the three Medical Colleges of Orissa for the session 1984-85.

"5.2.15 per cent of the seats are reserved in R. H. S. and P. G. Courses for Scheduled Castes candidates and 5 per cent for Scheduled Tribes candidates. The number of seats to be allotted in each subject and for each category shall be determined by the P. G. Selection Committee. The subjects in which percentage of reservation cannot be calculated due to less number of seats, a group of allied subjects may be taken together for the purpose.

5.5. 3(Three) seats in P. G. course are reserved from the inservice quota for armed forces and ex-armed forces personnel who are permanent residents of State of Orissa at the time of application. Competition for these reserved seats will be among the applicants belonging to this reserved category strictly on the basis of their relative merit as reflected by the marks secured by them in the M. B. B. S. Examination with due weightage for rural service as in the case of inservice doctors working under the Government of Orissa. A separate merit list will be drawn up from among the applicants belonging to this category. They will be required to appear in person before the R. H. S./P.G. Selection Committee for allotment of subjects and admission on the basis of their position in the merit list:

Provided that not more than one seat will be allowed to this reserved category of candidates in each of the subjects of General Surgery, General Medicine, Obstetrics and Gynaecology, Paediatrics, Anaesthesiology and no seats will be allowed to them in any other subject.

5.4. 2(Two) seats are reserved for Medical Officers serving in Public Sector Undertakings and other organisations of Government of Orissa and 3(three) seats for Medical Officers serving under Government of India/their Public Sector Undertakings. Competition for these reserved seats will be among the applicants belonging to the respective reserved categories strictly on the basis of their relative merit as reflected by the marks secured by them in the M. B. B. S. Examination with due weightage for rural service as in the case of inservice doctors working under the Government of Orissa. A separate merit list will be drawn up from among the applicants belonging to this category. They will be required to appear in person before the R. H. S./P.G. Selection Committee for allotment of subjects and admission on the basis of their position in the merit list:

Provided that not more than one seat will be allowed to each of these reserved categories in each of the subjects of General Surgery, General Medicine, Obstetrics and Gynaecology, Paediatrics and Anaesthesiology and no seat will be allowed to them in any other subjects.

5.5. The candidates seeking admission under Paras 5.3 and 5.4 cannot claim admission against seats reserved in Para 5.2 of the Prospectus.

5.4. (5.6?) Candidates sponsored by Government of India and other Organisations of the Government of India and Government of Orissa will only be considered for admission under Para 5.4. Such selected candidates will not be paid any financial/stipendiary benefits by the State Government (A sponsoring/ forwarding letter of the competent authority should accompany the application)."

4. The admission to the academic session 1983-84 is no more open. Although the petitioner has made copious reference in the writ petition claiming eligibility for admission during that session, it is for all purposes, impracticable and impossible at this belated stage to consider his case with reference to the session 1983-84. Therefore, the case of the petitioner for the session 1984-85 has now to be considered and it is not out of place to mention that by order dated 16-1-1985 direction was given to keep a seat vacant in general medicine and we were informed by the learned Additional Standing Counsel at the time of bearing that a seat has been kept vacant in the session 1984-85.

5. In the academic session 1984-85 out of 38 seats in P. G. Course in General Medicine only 19 seats were reserved for inservice candidates according to paragraph 5 of the Prospectus. According to paragraph 5.2 thereof, 15 per cent of the total seats in R. H. S. and P. G. Courses were reserved for Scheduled Castes candidates and 5 per cent for Scheduled Tribes candidates. According to paragraph 5.3 of the Prospectus, 3 seats in P. G. Courses were reserved for inservice Medical Officers of armed forces and ex-armed forces personnel who were permanent residents of the State of Orissa at the time of application. According to paragraph 5.4 of the Prospectus, 2 seats were reserved for Medical Officers of Public Sector Undertakings and other organisations of the State of Orissa and 3 seats were reserved for Medical Officers serving under the Government of India and their Public Sector Undertakings. It was specifically provided in paragraphs 5.3 and 5.4 that the selection was to be made strictly on the basis of the relative merit of the candidates as reflected by the marks secured by them in the M. B. B. S. examination with due weightage for rural service. In para 5.5 a restriction was imposed to the effect that candidates seeking admission under paragraphs 5.3 and 5.4 could not claim admission against seats reserved under paragraph 5.2 of the Prospectus. According to Mr. Dora, learned counsel appearing for the petitioner, the restriction imposed by paragraph 5.5 is ultra vires Article 15(4) of the Constitution inasmuch as the petitioner belonging to the Scheduled Tribes was entitled to be considered for admission according to paragraph 5.2. Learned Additional Standing Counsel, on the other hand, urged that reservation was made for Scheduled Castes and Scheduled Tribes candidates and so the directives of the Constitution relating to reservation for Scheduled Castes and Scheduled Tribes in educational institutions have been strictly adhered to. The reservation of seats for different categories of inservice candidates was based on reasonable classification. The case of the petitioner was covered by paragraph 5.4 as he was a sponsored candidate of the Central Government and so by virtue of the restriction imposed in paragraph 5.5 he was not eligible for consideration under paragraph 5.3, Therefore, paragraph 5.5 cannot be struck down.

6. The three Medical Colleges in the State of Orissa imparting Post-Graduate medical education are maintained from the State exchequer. They are meant to train medical graduates of the State including inservice Medical Officers for higher training and research in different faculties and specialities of medical science. Naturally, therefore, all the seats in R. H. S. and P. G. courses were meant for medical graduates including inservice candidates of Orissa. None of the Medical Colleges is a Central Government organisation meant to cater to the needs of inservice candidates of Central Government or their Public Sector Undertakings. None is also meant for inservice Medical Officers of armed forces. In order that candidates belonging to Scheduled Castes and Scheduled Tribes shall receive the facility of post-graduate studies, and in keeping with the directives of the Constitution, reservation was made for such categories of candidates in paragraph 5.2. Therefore, it cannot be said that Scheduled Castes and Scheduled Tribes candidates were completely ignored for admission into the P. G. Courses. Thus the mandate of the Constitution relating to such categories of candidates was fulfilled.

7. Even though the three Medical Colleges of Orissa are regional institutions and are meant for regional candidates, yet with due regard to the provisions enshrined in Articles 15 and 29 of the Constitution prohibiting discrimination between citizen and citizen on grounds of religion, race, caste, sex and place of birth and in keeping with the lofty doctrines of national integration, social

justice and equal educational opportunity, 3 seats were reserved for inservice quota of armed forces and ex-armed forces personnel and 3 seats were reserved for Medical Officers serving under the Government of India and their Public Sector Undertakings. Such reservation was made to give opportunity to those classes of candidates for post-graduate studies in the State. Therefore, it was not obligatory on the part of the State to make further reservation for Scheduled Castes and Scheduled Tribes candidates belonging to the above categories.

8. If out of 3 seats reserved for Medical Officers serving under the Central Government and their Public Sector Undertakings, 1 seat, which is the minimum, is reserved for a Scheduled Tribes candidate, the claim of Scheduled Castes candidates for reservation cannot be resisted. So at least 1 seat must have to be reserved for Scheduled Castes candidates. If, out of 3 seats, 2 seats are reserved for Scheduled Castes and Scheduled Tribes candidates, then the reservation shall be much in excess of 50 per cent and only 1 seat will be available for general candidates. Such a policy will not only create discrimination, but also create dissatisfaction amongst general candidates whose number at any given point of time must necessarily be higher than Scheduled Castes and Scheduled Tribes candidates. If such reservation is made in respect of Medical Officers of the Central Government, there shall be similar claims for reservation in respect of the inservice quota of armed forces and ex-armed forces personnel, as well as, Medical Officers serving in Public Sector Undertakings and other organisations of the Government of Orissa. In respect of the 3 seats for the inservice quota of armed forces and ex-armed forces personnel the same difficulty as in the case of seats reserved for Medical Officers under the Central Government shall arise. The situation in respect of the 2 seats reserved for Medical Officers serving in Public Sector Undertakings and other organisations of Government of Orissa is still worse. Both the seats will go away to Scheduled Castes and Scheduled Tribes candidates leaving nothing for general candidates of this category. If, out of 8 seats reserved for the aforesaid categories of candidates, 6 seats are further reserved for Scheduled Castes and Scheduled Tribes candidates, then the reservation will be about 75 per cent. It is needless to say that such reservation will be highly discriminatory and being much in excess of 50 per cent shall be open to objection.

In this connection reference to what Gajendragadkar, J. (as his Lordship then was) said with regard to reservation on behalf of the Court in AIR 1963 SC 649, *M. R. Balaji v. State of Mysore*, is most appropriate. His Lordship said :

".....In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case."

The above view has governed the field so far as would appear from subsequent decisions of the Supreme Court see AIR 1971 SC 1762, *D. N. Chanchala v. State of Mysore* and AIR 1981 SC 588, *S. S. Sharma v. Union of India*.

9. In this case the petitioner claimed a seat reserved under paragraph 5.4 of the Prospectus failing which he claims a seat reserved for the inservice Medical Officers of the State under the provisions

of paragraph 5.2. Firstly, according to the conditions prescribed in the Prospectus, he is not entitled to claim a seat in more than one category. Secondly, if a seat is made available to him which is reserved under paragraph 5.2 for the Scheduled Castes and Scheduled Tribes candidates belonging to the State, then one seat will be lost by the State candidates of the above category which will itself be discriminatory.

10. Article 15(4) of the Constitution of India has to be read as a proviso or exception to Articles 15(1) and 29(2) of the Constitution (see AIR 1963 SC 649) (supra). Although, according to Article 15(1) of the Constitution, the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them, according to Article 15(4) the State can make any special provision for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. If such provision is made, there shall be no violation of Article 15(1) or 29(2) of the Constitution. By making a reservation of 15 per cent of the seats for R. H. S. and P. G. Courses for Scheduled Castes candidates and 5 per cent for Scheduled Tribes candidates as in paragraph 5.2 of the Prospectus, provisions of Article 15(4) of the Constitution have been complied with rather than violated.

11. It is open to the State Government financing the three Medical Colleges to lay down conditions for admission to the P. G. Courses keeping in view the requirements of the provisions made in different articles of the Constitution as to reservation for Scheduled Castes, Scheduled Tribes and backward classes. The State Government in paragraph 5.5 of the Prospectus specified that candidates seeking admission under paragraphs 5.3 and 5.4 cannot claim admission against seats reserved under paragraph 5.2 of the Prospectus. As has been discussed above, the exclusion provided in paragraph 5.5 is not discriminatory. On the other hand, if this paragraph is struck down and omitted from the prospectus, then there will be discrimination. So while making provisions for reservation of different categories of candidates, a reasonable classification was made based on intelligible differentia.

12. Mr. Dora contended that because of comparatively low marks secured by the petitioner in the M.B.B.S. examination he will not be able to compete with other candidates for one of the three seats reserved for Medical Officers serving under the Government of India and their Public Sector Undertakings. Therefore, if his case is not considered for one of the seats reserved in para 5.2, he will be excluded from consideration in either of the categories. The argument has an inherent fallacy. Paragraph 5.4 of the Prospectus entitled him to apply for admission. If for reason of low marks he cannot secure admission compared to other candidates with higher marks in the M.B.B.S. examination, it is not the fault of the State Government Assuming that he is entitled to be considered for a seat reserved in paragraph 5.2, he may suffer from the same disability of low marks and may not be able to compete with other candidates with higher marks. We, therefore, fail to see how denial of double advantage to the petitioner will amount to discrimination. On the other hand, a candidate in the matter of selection for specialised higher courses of training in post-graduate studies cannot, as a matter of right, claim double advantage which is not permissible by the prospectus.

13. Viewed from any angle, we do not find adequate grounds to hold that paragraph 5.5 of the Prospectus is discriminatory, arbitrary and violative of Article 15(4) of the Constitution.

14. It is our duty to make it clear that while rendering his judgment with specific views expressed therein, we have not lost sight of the epoch making decisions reported in AIR 1984 SC 1420, Dr. Pradeep Jain v. Union of India and AIR 1985 SC 1059, Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad with regard to admission in Medical Colleges both in the degree and Post-Graduate degree courses based on All India Entrance Examination. We have dealt with the case of the petitioner as stated by him with reference to the prospectus for the academic session, 1984-85 as brought out by opposite parties.

15. Mr. Dora pointed out that the petitioner is a permanent resident of the State of Orissa. He passed out his M.B.B.S. examination from one of the three Medical Colleges in Orissa and has rendered rural service for about five years. He belongs to the Scheduled Tribes. A seat in the general medicine has been kept vacant according to the orders of the Court. Therefore, it would be proper that he is given admission in the subject. We may have absolutely no objection if the opposite parties in consideration of the above facts consider the case of the petitioner with sympathy for admission because, a seat in general medicine is vacant.

16. For the reasons stated above and subject to the observation made, the writ petition is dismissed. There shall be no order as to costs.

J.K. Mohanty, J.

17. I agree.