

ORISSA HIGH COURT : CUTTACK

W. P.(C) NO. 8880 OF 2009

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Dr. Sunita Mohanty and 3 others Petitioners

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s. Dillip Mohapatra &
A. Sahoo.

For Opp. Parties : Addl. Govt. Advocate
(For O.Ps 1 to 4)

Mr. Rajani Ch. Mohanty
(For O.P. 5)

M/s. D. Mund & A.Sahoo
(For intervenors)

Decided on 22 .09. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

This writ petition has been filed by four doctors, who appeared in the Post Graduate entrance test for getting admission to P.G.(Medical) Courses, 2009 and were duly selected, but could not get seats according to their merit list.

2. The grievance of the petitioners in this writ petition is that though there were vacant seats available, the opp. parties 3 and 4 did not extend the counselling which was held on 17.6.2009 for filling up the remaining vacant seats by selected in-

service candidates including the present petitioners. The petitioners were allotted with ranks, i.e. 50, 32, 53 and 55 respectively in the general category. According to the petitioners, a good number of seats in different subjects are lying vacant and the authorities, particularly, the opp. parties 3 and 4 are still sitting over the matter for taking necessary steps to fill up the vacant seats by the selected candidates including the present petitioners in accordance with their merit , thereby not only the State will lose a number of specialist doctors but also a good number of meritorious students will be deprived of from prosecuting their higher studies due to such inaction.

3. In W.P. (C) No. 1986 of 2009, by an interim order, this Court stayed the counselling of candidates for taking admission to P.G. (Medical) Courses, 2009 as in-service candidates. The said interim order was vacated on 20.5.2009 and taking the delay caused due to pendency of the writ petition, this Court extended the counselling period up to 30.6.2009. The first counselling for giving admission in the aforesaid courses to in-service candidates was held on 28.5.2009, but the petitioners could not get admission due to non-availability of seats. After the interim order passed by this Court was vacated, a second round counselling was done on 17.6.2009. This Court, while vacating the interim order of stay, directed as follows:-

“In view of the discussion made above, this Court is not inclined to interfere in the matter and all the writ petitions are dismissed being devoid of merit. The interim order passed earlier with regard to stay of counselling stands vacated and the opposite parties are directed to complete the entire exercise so as to admit the students preferably within time schedule, latest by 30.6.2009 as the matter has been delayed due to pendency of these writ petitions. The Medical Council of India shall accord permission for admission accordingly.

4. A counter affidavit has been filed on behalf of the opp. party no. 4, inter alia, stating that the extended counselling was held on 17.6.2009 for filling up the remaining vacant seats by the selected in-service candidates and all the available vacant seats were filled up on 17.6.2009 except one seat in M.S. (General Surgery) State quota in V.S.S. Medical College, Burla under the in-service category, which was kept vacant in accordance with the order passed in W.P. (C) No. 8670 of 2009 by this Court. The Supreme Court in Writ Petition (Civil) No. 216 of 2009 (***Smitha Nath v. Union of India and others***) directed to complete the second round of counselling of all seats before 20.6.2009 and, accordingly, the date was fixed to 17.6.2009 so that all the vacant All India quota seats and Orissa seats available on that date, could be filled up and to enable the admitted candidates, who were under Government service to get themselves relieved by 19.6.2009 and join the respective course and college by 20.6.2009. The Supreme Court in the case of *Smitha Nath* (supra) has passed the following order:-

“The application for impleadment is allowed.

Heard learned counsel for the parties.

On 13.1.2009, examination was conducted by AIIMS for 50% post graduate medical seats for all Government/Municipal Colleges in India (except for the Government Medical Colleges in the States of Andhra Pradesh and Jammu and Kashmir). The First round of counselling for these seats ended on 16.3.2009, which was conducted by Director General of Health Services (DGHS). Thereafter, the States and U.Ts commenced their first round of counselling which was to be completed by 10.4.2009.

However, most States did not complete their first round of counselling in time. The 2nd round of All India Counselling by DGHS was conducted between 22.4.2009 and 8.5.2009. This, however, was incomplete since all the States/UTs did not report the correct number of All India vacant seats after the first round of State counselling in time.

We have perused the order dated 2.5.2008 passed by this Court in the case of Dr. Amit Gupta and others v. Union of India and others, in I.A. No. 17 of 2008 in W.P. (C) No. 157 of 2005, where in similar circumstances, this Court had directed an extended 2nd round of All India Counselling to fill up those seats which could not be included in the original 2nd round of counselling.

In such circumstances, we direct that an extended 2nd round of counselling be conducted to fill up the seats which could not be filled up in the Original 2nd round of counselling due to incomplete information furnished by the State at the time when the 2nd round of counselling was conducted. All the States and U.Ts shall abide by the following schedule for the extended 2nd round of counselling:-

<u>Date</u>	<u>Particulars.</u>
27 th May, 2009.	Counselling schedule to be Notified by DGHS.
28 th May, 2009.	All States must report updated number of vacancies resuming from non-joining, resigning and

	surrender of seats in All India Quota to the DGHS by 5. P.M. on 29 th May, 2009.
30 th May, 2009	Total number of vacancies to be notified by DGHS.
31 st May, 2009 to 08 th June, 2009.	Extended 2 nd round of counselling to be conducted by DGHS at Delhi Centre.
13 th June, 2009	Students to join allotted college within 5 days of allotment (i.e.) last date for students to join allotted college is 13 th June, 2009.
14 th June, 2009	Vacant All India Quota seats may be deemed to be surrendered to the States on 14 th June, 2009.
20 th June, 2009.	Final deadline for students to join allotted course. Before this date, all States should complete their 2 nd round of counselling.

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It has been further mentioned in the counter affidavit that on 20.6.2009, office of the opp. party no. 4 received a FAX Message from the Principal, V.S.S. Medical College, Burla that two seats under All India Quota, 2009, one in General Medicine and one in Ophthalmology have fallen vacant owing to resignation of the admitted candidates. Though the opp. party no. 4 received the information on 20.6.2009, but due to the fact that no time was left to intimate all the qualified candidates for another extended counselling within the stipulated dates, those two seats are lying

vacant. It has been denied that six P.G. seats in General Medicine, Obstetrics and Gynecology and General Surgery are lying vacant. It has been further averred in the counter affidavit that the students after joining the P.G.MD/MS courses are resigning their courses on personal grounds but there is no scope left with the selection committee to fill such vacant seats after the completion of counselling and admission process and also beyond the stipulated time period as prescribed by the Medical Council of India duly approved by the Hon'ble Supreme Court of India. Moreover, such vacancies are not only occurred in Orissa State, but in other States also. To avoid such vacancies, restrictions have been imposed in the Orissa P.G. (Medical) Prospectus under Clause-5.7 that:

“Candidates who have taken admission to P.G. Medical Course in any of the three Medical Colleges of Orissa, but have not joined/discontinued after joining or undergoing P.G. course shall not be eligible to apply for P.G. (Medical) Course in subsequent three years”.

Such restriction is not applicable to the candidates of other States admitted under All India Quota seats.

6.. A rejoinder affidavit has been filed by the petitioners in response to the counter affidavit filed by the opp. party no. 4 referring to the judgment of the Supreme Court in the case of ***Ajay Pradhan v. State of Madhya Pradesh and others***, AIR 1988 SC 1875, where the Supreme Court held that

as and when the vacancy arose in the Medical College, the State Government/Agencies should act with due promptitude and should not by their lethargy or inaction deprive an otherwise meritorious candidate to admission to such higher course of studies. The Supreme Court further held that there is no legal bar in not admitting any eligible candidates by 1/2 days of the cut-off date of admission and a meritorious candidate should not suffer due to laches of the authorities. Several other decisions of the Apex Court have been referred to in the rejoinder affidavit. The petitioners have also stated that as it is admitted that two seats are vacant, the authorities should have made all endeavour in promptitude to fill up the said seats immediately after 17.6.2009.

7. Learned counsel for the opp. party no. 4 vehemently argued that the Supreme Court in no uncertain term has fixed 20.6.2009 as final deadline for students to join allotted course and before the said date, all States were directed to complete their second round of counselling. Therefore, according to the learned counsel for opp. party no. 4, no fault can be found with the opp. parties in not filling up the said two vacant seats.

8. Mr. R.C. Mohanty, learned counsel appearing for the Medical Council of India filed a written submission indicating the judgment of the Supreme Court where the Supreme Court

consistently has held that to maintain excellence, the courses have to be commenced on schedule and be completed within the schedule, so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the midstream would disturb the courses and also work as a handicap to the candidates themselves to achieve excellence.

9. Mr. Mohapatra, learned counsel for the petitioners contended that the order passed by the Supreme Court in the case of *Smitha Nath* (supra) was on a different set of facts, where, the Supreme Court was considering the completion of counselling in respect of All India Quota for which the Supreme Court observed that most of the States did not complete their first round of counselling in time and the second round of All India counselling by the Director General of Health Services was conducted in between 22.4.2009 and 8.5.2009, which was not complete since all the States/U.Ts did not report the correct number of All India vacant seats after the first round of State counselling in time. Considering such aspects of the State, the Supreme Court observed that in such circumstances, it is directed that the extended second round of counselling shall be conducted to fill up the seats, which could not be filled up in the original second round of counselling due to incomplete

information furnished by the States. In the schedule framed by the Supreme Court, it has been mentioned that by 14.6.2009, all vacant All India Quota seats must be deemed to be surrendered to the States on the said date. Considering such surrendered seats, it was stipulated that before 20.6.2009 all States should complete their second round of counselling. He, therefore, contended that the opp. parties should be gathered information regarding all vacant seats of All India Quota immediately after 14.6.2009 in order to fill up the said seats by 20.6.2009. In the instant case, however, the opp. parties did not ascertain the number of vacant seats as on 14.6.2009 during the second counselling done on 17.6.2009 and for such laches on the part of the opp. parties, the meritorious candidates should not be deprived of admission. He also relied upon the decision in the case of **Amit Vikram Raina and another v. Dr. B. R. Ambedkar Medical College and others**, 2004 (6) Kar. L.J. 590 of the Karnataka High Court, where, Justice R.V. Raveendran, (as His Lordship then was) making a distinction between the facts of the said case and the case of **Medical Council of India v. Madhu Singh and others**, AIR 2002 SC 3230, coming to a finding that the delay in Madhu Singh's case was by 18 months and in the facts of the said case, it was about one month, directed the Medical Council of India and the college to treat the

admission of the petitioners therein, who were illegally admitted for the academic year 2002-2003 as continued and counted against 2003-04 intake. While directing thus, the principle that no act of the Court shall prejudice a litigant and a man should not suffer because of the fault of the Court or delay in procedure so highlighted. Mr. Mohapatra also relied upon the decision in the case of **Harish Verma and others v. Ajay Srivastava and another**, AIR 2003 SC 3371, wherein the Supreme Court was considering the admission to P.G. Medical Courses and has held in the facts of the said as follows:

“.....The counselling shall have to be done afresh to the extent necessary., We are conscious of the fact that there would be some delay in commencement of post-graduation studies and to some extent the 2002 and 2003 batches would overlap. However, that is a situation which cannot be avoided.....”

10. In the case of **Dr. Vinay Rampal v. State of Jammu and Kashmir and others**, AIR 1983 SC 1199. The Supreme Court in the said **case** was also in the seisin of a matter relating to admission to P.G. Medical Courses, where it has been held as follows:-

“The sands of time have run out which is inevitable in judicial process. What relief can the Court grant to person unjustifiably refused admission. Post Graduate qualification in medical discipline is highly coveted.”

Mr. Mohapatra, learned counsel for the petitioners also contended that even if the time for admission has expired as there was a stay order passed by this Court in the previous writ petition staying counselling, the delay having occurred during pendency of a judicial proceeding, a student, who has been denied admission, is entitled to be admitted in the current academic year without any further test and the petition will not become infructuous on account of passage of time.

To the submission made by the learned counsel for the opp. parties that directing a further counselling to fill up the vacant seats would lead to a consequences where all the candidates who have taken admission and all the candidates who have been left out, have to be notified for further counselling, which would consume considerable time and as the courses have already commenced, such a direction is not called for in the facts of the present case. Mr. Mohapatra, however, contended that the relief should be restricted to the petitioners and cannot be extended to any other candidates. In support of the above contention, he relied upon the decision in the case of ***Minor A. Peeriakaruppan and Sobha Joseph v. State of Tamil Nadu and others***, AIR 1971 SC 2303, wherein the Supreme Court held that other non-selected candidates have evinced no interest in challenging the selection made and under such circumstances, it

is reasonable to assume that they have abandoned their claim and it is too late for them to press their claim. Observing as above, the Supreme Court restricted the selection to only the candidates, who were shown in the waiting list, the person, who unsuccessfully moved the High Court of Madras and the two petitioners before the Supreme Court. Mr. Mohapatra also submitted that, as a matter of fact, though candidates have been admitted to P.G. (Medical) Courses, 2009, but the classes have not commenced in effect and the courses being for duration of three years, no prejudice would be caused to the candidates, who can be admitted to the two seats which are admitted to be vacant.

11. For the reasons indicated above, this writ petition is allowed in part directing the opp. parties 3 and 4 to conduct counselling of the four petitioners and the two intervenors in this writ petition only for filling the two vacant seats in P.G. (Medical) Courses, 2009 in General Medicine and Ophthalmology at V.S.S. Medical College, Burla and complete the process of admission by 30.10.2009. There shall be no order as to costs.

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M.M. Das, J.

*Orissa High Court, Cuttack.
 September 22nd, 2009/Biswal.*
