

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Mr. Y.S. Mannan

Advocate for the Respondents : Ms. D.D. Barman (res nos. 1, 4 and 5.)
Ms. R. Deka ,(respondent No. 2)
Mr. B. Gogoi (respondent nos. 3 and 6)

Date of Hearing and Judgement : **07.03.2024**

JUDGMENT & ORDER (Oral)

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Ms. D.D. Barman, learned Addl. Senior Govt. Advocate for the respondent nos. 1, 4 and 5, Ms. R. Deka, learned counsel for the respondent no. 2 and Mr. B. Gogoi, learned standing counsel, Health Department, for the respondent nos. 3 and 6.

2. By instituting this writ petition, the petitioner, being aggrieved, is put to challenge the Revised Admission Notices dated 28.09.2023 and 29.09.2023, whereby Admission Notice dated 03.09.2023 of selected candidates belongs to OBC-TGL/Ex-TGL category, in the State of Assam for admission into 1st year MBBS/BDS course for the session-2023 issued by the Director of Medical Education, Assam, has been cancelled.

3. The petitioner, who belongs to OBC Ex-TGL community, a recognized backward community in the State of Assam, was admitted to the 1st year MBBS course at Assam Medical College, Dibrugarh on 07.09.2023 on having scored 417 marks in the National Eligibility cum Entrance Test for undergraduate 2023 (herein after referred to as NEET-UG-2023 in short) and selected pursuant to

the Admission Notice dated 03.09.2023.

4. Pursuant to the order of this Court in earlier writ proceedings instituted by some other candidates including candidates belongs to TGL/Ex-TGL category for admission into 1st year MBBS/BDS courses for the session 2023, the Director of Medical Education, Assam vide revised admission notice No. DME/UG/108/2023/12980 dated 28.09.2023 has cancelled the admission notice dated 03.09.2023 (by which the petitioner was selected for provisional admission in the 1st year MBBS course in Assam Medical College, Dibrugarh). By another admission notice dated 29.09.2023, the Director of Medical Education, Assam, cancelled the earlier notice dated 28.09.2023 whereby, select list of the selected candidates, who belongs to OBC TGL/Ex-TGL category for admission into the 1st year MBBS/BDS courses for the session-2023, is purportedly revised in which the name of the petitioner has been dropped.

5. Being aggrieved of such non inclusion in the revised admission notices dated 28.09.2023 and 29.09.2023, the petitioner approached this Court by filing WP(C) 5941/2023 and the same was disposed of on 12.10.2023, directing the petitioner to appear before the State Level Caste Scrutiny Committee on 16.10.2023 with necessary documents to establish his claim and the State Level Committee was directed to verify and take a decision. It was also made clear that the petitioner's claim of a seat in the 1st year MBBS course in the category of TGL/Ex-TGL would be subject to the decision taken by the State Level Committee. Thereafter, the petitioner appeared before the State Level Scrutiny Committee on 16.10.2023 with required documents. But the State Level Caste Scrutiny Committee did not take any decision consequent to which the petitioner was on the verge of losing his seat in the 1st year MBBS course-2023

in Assam Medical College, Dibrugarh. Hence, this present writ petition.

6. During pendency of the present writ the State Level Caste Scrutiny Committee held its meeting on 29.12.2023 and 30.12.2023 and arrived at the finding that the claim of the petitioner is genuine that he belongs to the OBC Ex-TGL community. In other words, on the basis of the factual verification report, the caste certificate of the petitioner is found to be genuine. The State Level Caste Scrutiny Committee has communicated the same to the Director of Medical Education, Assam, clearly mentioning that on the basis of the factual verification report, the committee has recommended the caste certificate of the petitioner as genuine.

7. The Director of Medical Education, Assam has filed an affidavit and fairly made categorical statements that if Hon'ble High Court directs the grant of admission to the petitioner in the next academic year i.e. 2024-2025 session by issuing appropriate directions by directing to increase in the number of seats, the petitioner will be admitted in the next session i.e. 2024-25 by creating an extra seat as laid down by the Hon'ble Supreme Court of India in the case of **S. Krishna Sradha Vs. State of Andhra Pradesh and Ors.** reported in **(2020) 17 SCC 465.**

8. Mr. Y.S. Mannan, learned counsel for the petitioner submits that petitioner being belongs to Ex-TGL category candidate which has been confirmed by the competent authorities is entitled to continue his MBBS course at Assam Medical college, Dibrugarh. He, however, fairly submits that in view of the law laid down by the Hon'ble Supreme Court in the case of **S. Krishna Sradha** (supra), the petitioner has no other option but to wait for admission in the next session i.e. 2024-25. He submits that the respondent authorities may be directed to grant admission to the petitioner in the next session 2024-2025 by adjusting the

admission fees, which he has deposited at the time of admission in the Assam Medical College, Dibrugarh on his selection and admission dated 03.09.2023 and 07.09.2023.

9. Mr. Y.S. Mannan, learned counsel for the petitioner submits that since the petitioner belongs to Ex-TGL category affirmed by the State Level Caste Scrutiny Committee after proper verification and scored 417 marks in the NEET-UG examination, 2023 on which basis the petitioner was selected and admitted in the Assam Medical College, Dibrugarh in the 1st year MBBS course for session 2023-2024, and has lost one precious year without any fault on his part, the petitioner be extended monetary compensation as may be considered appropriate by this Court.

10. Mr. B. Gogoi, learned Standing Counsel for the Health Department, while referring to the averments made in the affidavit filed on behalf of the Respondent No. 3, submits that in the facts and circumstances of the present case, there is no option left other than to follow the case of **S. Krishna Sradha** (supra). Therefore, this Court may pass an appropriate direction directing to increase in the number of seat so that the petitioner could be admitted in the next session i.e. on 2024-25. Mr. B. Gogoi, learned counsel further submits that the report of the State Level Caste Scrutiny Committee was received on 09.01.2024, by which time, even if authority or one wishes, nothing could be done for admission of the petitioner.

11. As regards to the claim of compensation, Mr. Gogoi, learned Standing counsel, submits that no fault could be attributed to the respondent authorities. The respondents authorities have diligently initiated the actions in pursuant to the order of this Court passed in the batch of writ petitions instituted by the candidates at the relevant point of time. Therefore, the respondents authorities

are not liable to pay any compensation whatsoever to the petitioner

12. Ms. R. Deka, learned counsel for the respondent no. 2, submits that the State Level Caste Scrutiny Committee has diligently taken actions as mandated by the Hon'ble Supreme Court and the orders of this Court passed in a series of writ petitions. After proper verification and consideration of the case of the petitioner, the State Level Caste Scrutiny Committee had come to conclusion that the Caste certificate as OBC Ex-TGL of the petitioner is found to be genuine and thereafter, the same has been communicated to the concerned authority i.e. the Director of Medical Education, Assam vide communication dated 09.01.2024.

13. Due consideration has been extended to the submissions of the learned counsel for the parties and also perused the materials available on record.

14. Uncontrovertibly, the petitioner belongs to OBC Ex-TGL community in the State of Assam and on having scored 417 marks in the NEET-UG examination, 2023 was admitted in the Assam Medical College, Dibrugarh, 0.07.09.2023 pursuant to the admission notice dated 03.09.2023 by depositing the required admission fee(s).

15. It is noticed that on institution of writ proceedings before this Court by candidates belongs to OBC TGL/EX TGL, directions were issued by this Court from time to time. The authorities concerned including the State Level Caste Scrutiny Committee have taken the actions and issued the impugned notices pursuant to the orders of this Court. The proceedings as well as the actions initiated pursuant thereto have been culminated to the order of Division Bench dated 19.10.2023 in Writ Appeal No. 390/2023 (Sahildeep Horo vrs. State of Assam & Ors.) and other batch of Writ appeals, an operative portion of which is

reproduced herein below:-

“Resultantly, the impugned order dated 19.09.2023 passed by the learned Single Judge in WP(C) No.5340/2023; the Admission Cancellation Notice dated 28.09.2023 issued qua appellants are hereby quashed/ reversed. The report of the State Level Caste Scrutiny Committee dated 26.09.2023, as per which the OBC, TGL/Ex-TGL certificates held by the appellants were declared as not verified, is also quashed qua the appellants. The appellants have already been provisionally admitted into the 1st Year MBBS Course by virtue of the interim order dated 11.10.2023 passed in Writ Appeal No.390/2023; Writ Appeal No.393/2023 and Writ Appeal Nos.394/2023 and the interim order dated 18.10.2023 passed in Writ Appeal No.401/2023. These interim orders are made absolute.”

16. The present writ petition has been initiated On 05.12.2023 after the order dated 19.10.2023 of the Division Bench of this Court in Writ Appeal 390/2023 and batch of other writ appeals (supra), since the respondent authorities were not bringing the case of the petitioner to its logical conclusion by deciding the genuineness or otherwise of the caste certificate of the petitioner as directed by this Court vide order dated 12.10.2023 in WP(C) 5941/2023. By now, the State Level Caste Scrutiny Committee has already come to a finding that the caste certificate of the petitioner is genuine and by lapse of time at this stage as well as in view of the observation and the proposition laid down by the Hon'ble Supreme Court, there is no scope left to direct grant of admission to the petitioner for 1st year MBBS course for the session 2023

16. On careful consideration of the prayers made in this writ petition, I find that the prayers have become redundant as some of the relief sought for has been redressed as well as due to passage of time. However, it is not impermissible to mould the relief by this court in an appropriate case like the present one.

17. Having considered above and considering that in the similar matters the Division Bench of this Court in Writ Appeal 390/2023 and other batch of writ appeals (supra) has set aside the impugned order dated 28.09.2023 qua the appellants in those cases, I am of the considered view that the impugned admission notice dated 29.09.2023 by which the name of the petitioner has been dropped is required to be interfered with and accordingly same is interfered with and is hereby set aside and quashed as the caste certificate of the petitioner is found to be genuine by the competent authorities and he being genuinely belongs to Ex-TGL category candidate, his name ought not have been dropped.

18. Taking consideration into attending facts situation in the present case, I am of the view that although, petitioner being a genuine Ex-TGL category candidate, was selected and admitted in the 1st year MBBS course for the session 2023 in Assam Medical College, Dibrugarh, by lapse of time it is not possible to direct grant of admission of the petitioner in the current academic session. Thus, no relief can be granted to the petitioner for admission in the current academic year i.e. 2023-2024, however, the petitioner is entitled to be admitted in the next academic year i.e. 2024-2025 in view of the of observation and the proposition laid down by the Hon'ble Supreme Court.

19. A reference may be made to the case of **S. Krishna Sradha** (supra) wherein the Hon'ble Supreme Court has laid down the law applicable in such circumstances, which is reproduced herein below:-

“13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such

candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of compensation could be an additional remedy but not a substitute for restitutive remedies. Therefore, in an appropriate case the court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year."

20. In light of the discussion made herein above, I am of the considered view that the petitioner has been illegally deprived of his admission in the 1st Year MBBS course in the Assam Medical College, Dibrugarh. However, no relief could be granted to the petitioner for admission in the current academic year i.e. 2023-2024 at this stage as granting such relief would amount to turning the clock back which would be impermissible. But the petitioner is entitled to be admitted in the next academic year i.e. 2024-2025 as per observation and proposition laid down by the Hon'ble Supreme Court as the petitioner is found to be meritorious and entitled to be admitted for MBBS course in the Assam Medical College, Dibrugarh as EX-TGL category candidate.

21. Accordingly, in view of the proposition laid down by the Hon'ble Supreme Court, by way of restitutive remedy, the respondent authorities are directed to grant admission to the petitioner in the next academic year i.e. 2024-2025 by

increasing the number of seats in the Assam Medical College, Dibrugarh. It is further provided that the admission fee (s) deposited by the petitioner at the time of admission vide dated 07.09.2023 be adjusted in the next admission.

22. Regard being had to the claim of compensation, after anxious consideration, this Court is of the considered view that the petitioner is entitled to be compensated as the petitioner has lost one full academic year for no fault on his part. This Court vide Order dated 12.10.2023 in WP(C) 5941/2023 directed the petitioner to appear before the State Level Scrutiny Committee on 16.10.2023 at 10.30 AM on the consent of the parties and the petitioner appeared with all documents. The State Level Scrutiny Committee held its meeting on 29.12.2023 and 30.12.2023 after lapse of 2 and half months and found the caste certificate of the petitioner genuine and communicated its decision on 09.01.2024. Had the decision been taken on 16.10.2023 as directed by this Court, the admission of the petitioner could have been saved.

23. In view of the above, this court deem it appropriate to grant compensation to the petitioner for lost of one precious academic year of 1st year MBBS course for no fault on his part. Accordingly, State respondents are directed to pay an amount of Rs. 100,000/- (Rupees One lakh) only to the petitioner as compensation within 6 weeks from the date of receipt of certified copy of the order.

24. Writ petition stands disposed of in terms of the above observation and directions. No Order as to costs.

JUDGE

Comparing Assistant