

GAHC010000662023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/26/2023

JENIFER SATHOULIU RIAMEI
D/O- OBED RAIMEI,
R/O- VILLAGE- RAMGAIZANG,
P.O. AND P.S. JIRIGHAT,
DISTRICT- CACHAR, ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA,
THE MINISTRY OF HUMAN RESOURCES DEVELOPMENT,
NEW DELHI.

2:THE NATIONAL TESTING (NEET UG 2022) AGENCY
REPRESENTED BY ITS CHAIRMAN

C/O- MINISTRY OF HUMAN RESOURCES DEVELOPMENT
NEW DELHI.

3:THE STATE OF ASSAM
THROUGH THE SECRETARY OF THE GOVT. OF ASSAM

THE HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR-6.

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
KHANAPARA
GUWAHATI-22.

5:THE PRINCIPAL
LAKHIMPUR MEDICAL COLLEGE
NORTH LAKHIMPUR

DISTRICT- LAKHIMPUR

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 15.06.2023

Heard Mr. R.P.Sarmah, learned senior counsel assisted by Mr. D.Doley, learned counsel for the petitioner. Also heard Mr. K.Gogoi, learned CGC for the respondent Nos. 1 and 2 and Mr. B.Gogoi, learned standing counsel, Health Department for the respondent Nos. 3 and 4.

2. The petitioner belongs to the Rongmei (Naga) tribe of Assam which is a recognized Scheduled Tribe (Hills) of the State of Assam and is a resident of Ramgaizang, Jirighat in the District of Cachar.

3. The petitioner appeared in the National Eligibility cum Entrance Test (NEET) Examination, 2022 and passed the same by obtaining the State rank of 5356 and was called for the first round on-line counseling vide admission notice dated 11.10.2022, issued by the Director of Medical Education, Assam. In the first round counseling, petitioner was provisionally selected for taking admission to the 1st year MBBS Course at Lakhimpur Medical College for the Session 2022-

23. Thereafter, on the basis of the provisional admission certificate, she approached the Principal of Lakhimpur Medical College on 01.11.2022 for taking admission to the 1st year MBBS Course at Lakhimpur Medical College for the Session 2022-23. Despite her provisional selection, the Principal of Lakhimpur Medical College refused to give her admission in the said college after verification of her testimonials by involving Rule 3(1) (c) of the Medical Colleges and Dental Colleges of Assam, (Regulation of Admission into 1st year MBBS/BDS Courses) Rules, 2017 (Rules of 2017 in short). The said refusal for giving admission to the petitioner by the Principal of Lakhimpur Medical College in terms of Rule 3(1) (c) of the Rules of 2017 was on the ground that the petitioner did not study from Class-VII to Class-X in the State of Assam and she was advised to approach the Director of Medical Education, Assam.

4. Accordingly, the petitioner made a representation before the Director of Medical Education, Assam on 04.11.2022 to consider her case for admission in the 1st year MBBS Course for the Session 2022-23. However, as the said representation was yet to be considered, she preferred a writ petition before this Court being WP(C)/7523/2022. The said writ petition was disposed of by an order dated 19.12.2022 with the following observations and directions:

“16) After hearing the learned counsels for the parties and considering the entire aspect of the matter, the respondents in the Health and Family Welfare Department of the State including the Director of Medical Education, Assam are directed to consider the case of the petitioner for her admission in the 1st year MBBS Course in the Lakhimpur Government Medical College of Assam for the Session of 2022-2023 as per her selection under the Schedule Tribe (Hills) reserved quota forthwith exercising the power under Rule 19 of the the Medical Colleges and Dental Colleges of Assam (Regulations of Admission into 1 st year

MBBS/BDS Courses) Rules, 2017 as amended in 2022 and by passing/issuing necessary order in that respect, in accordance with law.

17) Till such consideration of the case of the petitioner and their decision in that regard, as directed above, the respondent authorities in the Health and Family Welfare Department as well as the Director of Medical Education, Assam shall not fill up one seat of MBBS Course in the Government Lakhimpur Medical College of Assam for the Session of 2022-2023, in terms of the order dated 13.12.2022 passed earlier in the present case."

5. Pursuant to the order dated 19.12.2022, passed by this Court in WP(C)/7523/2022, the Director of Medical Education, Assam/respondent No.4 passed the order dated 21.12.2022, rejecting the claim of the petitioner as she was found not eligible under Rule 3(1) (c) of the Rules of 2017. Being aggrieved, the present writ petition.

6. Mr. R.P.Sarmah, learned senior counsel for the petitioner submits that, the place where the petitioner resides, namely, Ramgaizang, Jirighat in the district of Cachar is on the border of the State of Assam and Manipur and as there is no proper English medium Government or provincialised School near the vicinity of Ramgaizang, Jirighat recognized by the Board of Secondary Education, Assam, the petitioner having no choice had to study in Gourachand High school, Champanagar, Jiribam from Class-VII to Class-X which is the nearest High School situated on the other side of river Jiri. However, the said School is in the State of Manipur which is recognized by the Board of Secondary Education, Manipur. It is submitted that the petitioner passed her HSLC (Class-X) Examination in the year 2018 from the said Gourachand High School, Champanagar, Jiribam. Thereafter, she studied in the Aryan Junior College at

Jirighat in the State of Assam which is duly recognized by the Assam Higher Secondary Education Council and from the said college she passed her Class 10+2, Higher Secondary Examination in the year 2020. It is also submitted that on being qualified in the NEET Examination, 2022-23, the petitioner applied for admission in the MBBS Course under the Assam State quota.

7. Further submission is made that as the petitioner is permanent resident of the State of Assam, a Permanent Resident Certificate (PRC) has been issued by the Office of the Deputy Commissioner, Cachar, Assam. Drawing the attention of this Court to a communication dated 12.12.2022, written by the Inspector of Schools, Cachar District Circle, Cachar which was referred by this Court in WP(C)/7523/2022, the learned senior counsel for the petitioner submits that the Inspector of Schools, Cachar District Circle had stated that there is a provincialised High School in Jirighat, named S.K.P. Deb Public High School which was established in the year 1975 and provincialised in the year 1991, which is located about 6 kms away from the village Ramgaizang, Jirighat, Cachar. He submits that the young girl of about 13 to 14 years is not expected to travel for about 6 kms in the middle of a jungle to pursue her studies in the said S.K.P. Deb Public High School and therefore, taking into consideration her safety, she was admitted in the Gourachand High school, Champanagar, Jiribam to pursue her studies from Class-VII to Class-X. It is also submitted that the petitioner however completed her Class-XI and XII from the State of Assam. In that view of the matter, the learned senior counsel for the petitioner submits that as the petitioner has a PRC and the only impediment on the part of the petitioner was that she studied her Class-VII to X in the border district of Jiribam at Manipur, the respondents could have resorted to Rule 19 of the Rules

of 2017 which is a relaxation clause. However, the petitioner has been deprived of her admission to the 1st year MBBS Course for the Session 2022-23 at Lakhimpur Medical College only because she had studied Class-VII to X in a School bordering Assam and Manipur at Jiribam.

8. The learned senior counsel for the petitioner also submits that the petitioner was given her first counseling through on-line without any objections and it was only after she approached the Principal of Lakhimpur Medical College physically and after getting her provisional admission certificate, her case was rejected applying Rule 3(1) (c) of the Rules of 2017. He therefore submits that the respondents may be directed to invoke Rule 19 of the Rules of 2017 and thereafter, pass an appropriate order in favor of the petitioner.

9. Mr. B.Gogoi, learned standing counsel, Health Department on the other hand submits that Rule 3(1) (c) of the Rules of 2017 makes it crystal clear that unless a candidate studies in all classes from Class-VII to XII in the State of Assam, no admission can be given to the said candidate in any medical colleges under the Assam State quota. Referring to the admission notice dated 11.10.2022, issued by the respondent No.4, he submits that the authorities at that relevant point of time, due to the Covid protocol being imposed, had the first round of counseling through on-line and as such no proper verification of the documents of the petitioner could be done. It was only after she was given the provisional admission certificate and the petitioner approached the Principal of Lakhimpur Medical College physically that her case was rejected. As all the process were done through on-line, it was the Principal of the concerned college

who had the first opportunity for physical verification of the testimonials and other relevant documents of the petitioner and while doing so, the petitioner was found that she had done her schooling from Class-VII to Class-X from a School which is in the State of Manipur and as such she was found not eligible to take admission in the MBBS Course under the Assam State quota as provided under the Rules of 2017, particularly Rule 3(1) (C). He also submits that the Rules of 2017 was published in the Assam Gazette on 11th of July, 2017. He further submits that Rule 3(1) (c) of the Rules of 2017 was put to challenge by some aggrieved parties before the Hon'ble supreme Court in the case of Rajdeep Ghosh Vs. State of Assam and Ors. Reported in 2018 (17) SCC 524. However, the Hon'ble Supreme Court upheld Rule 3(1) (c) of the Rules of 2017 as it was found to be in consonance with the spirit of Article 14 of the Constitution of India.

10. I have considered the submissions made by the learned counsel for the parties.

11. Rule 3 of the Rules of 2017 reads as under:

“3. Eligibility for State Quota Seats:

The following conditions must be fulfilled:

(1) (a) *The candidate must be a citizen of India*

(b) The candidate must be a permanent resident of Assam. The father/mother or the candidate must be residing in the state of Assam continuously for not less than a period of 20 years. (The certificate at Annexure-I in Application Form at Schedule-I of these rules must be submitted if a candidate is called for counseling):

Provided that this shall not be applicable to the sons/daughters of officers of All India Services allotted to Assam (certificate regarding the service of father/mother of the candidate from the concerned authority/Department of Government of Assam must be submitted if a candidate is called for counseling).

(c) The candidate must study in all classes from Class-VII to XII in the State of Assam and must pass the Qualifying Examination or its equivalent examination from any Institute situated in the State of Assam. (Certificate at Annexure-II in Application Form at Schedule-I of these rules must be submitted if a candidate is called for counseling).

Provided that if a candidate studies outside Assam from Class-VII onwards because his/her father/mother is posted outside Assam as a Assam State Government employee or as a Central Government employee or as an employee of a Corporation/ Agency/ instrumentality under Govt. of Assam or Central Govt. whether on deputation or transfer or regular posting, then the period for which the said father/ mother is working outside the State shall be relaxable for such candidate. (Certificate of employment of father/mother outside the state indicating the period of service from the concerned authority must be submitted if a candidate is called for counseling).

(D) Candidate's age should not be below 17 years and above 25 years of age on the 31st day of December of the year in which the admission is sought for:

Provided that the maximum age limit is relaxable by 3 years in case of candidates belonging to the SC/ ST(P)/St(H)/ OBC/ MOBS category."

12. Further, Rule 19 of the Rules of 2017 also reads as under:

“19. Power to relax –

Where the Government is of the opinion that it is necessary or expedient so to do so, it may be order, not inconsistent with the provisions of these rules and for reasons to be recorded in writing, relax any of the provisions of these rules.”

13. It is undisputed that the petitioner belongs to Rongmei (Naga) tribe which is recognized as a Schedule Tribe (Hills) of the State of Assam. It is also not disputed that the petitioner is a permanent resident of Assam and she has been issued a PRC to that effect by the competent authority.

14. Rule 3(1) (c) which has already been quoted herein above clearly indicates that the candidate must study in all classes from Class-VII to Class-XII in the State of Assam and must pass the qualifying examination or its equivalent examination from any institute situated in the State of Assam. The petitioner studied her Class-VII to Class-X in the School in the State of Manipur. The petitioner however studied her Class- XI and XII in a College in the State of Assam. The submission of the learned counsel for the petitioner that the petitioner had to be admitted in a School in Manipur bordering Assam has been taken note by this Court. What is pertinent to be considered in the present writ petition is the issue as to whether the reason given by the learned senior counsel for the petitioner is acceptable to this Court in view of the unambiguous requirement made in Rule 3(1) (c) of the Rules of 2017.

15. At this stage, it is relevant to refer to the case of Rajdeep Ghosh (Supra), wherein, Rule 3(1) (c) of the Rules of 2017 were put to challenge by some aggrieved parties on the ground that though the State can provide for

preference in matter of admission, however, such classifications must be based upon objective criteria and must have a rational nexus with the objective it seeks to achieve. The Hon'ble Supreme Court while dismissing the case made the following observations:

“32. As held in the aforesaid decisions, it is permissible to lay down the essential educational requirements, residential/domicile in a particular State in respect of basic courses of MBBS/BDS/Ayurvedic. The object sought to be achieved is that the incumbent must serve the State concerned and for the emancipation of the educational standards of the people who are residing in a particular State, such reservation has been upheld by this Court for the inhabitants of the State and prescription of the condition of obtaining an education in a State. The only distinction has been made with respect to postgraduate and postdoctoral super specialty course.

33. Rule 3(1)(c) of the Rules of 2017 lays down the requirement of obtaining education in the State and relaxation has been given to the wards of the State Government employees or Central Government employees or to an employee of Corporation/Agency/instrumentality under the Government of Assam or the Central Government, whether on deputation or transfer on regular posting from obtaining education from class VII to XII for the period his/her father or mother is working outside the State. As urged on behalf of the petitioners the employees of other State Government but residents of Assam, similar relaxation ought to have been made cannot be accepted.

Thus, their exclusion cannot be said to be irrational and arbitrary. The wards of the employees in the service of other States like Government employees of Arunachal Pradesh, in our opinion, form a totally different class. When the wards are obtaining education outside and the parents are working in Arunachal Pradesh as Government employee or elsewhere, they are not likely to come back to the State of Assam. As such Government of Assam holds that they should provide preference to State residents/institutional preference cannot be said to unintelligible criteria suffering from vice of arbitrariness in any manner whatsoever, thus, Rule 3(1)(c) framed by the

Government of Assam is based on an intelligible differentia and cannot be said to be discriminatory and in violation of Article 14.

34. With respect to the private employees also, the submission was raised that wards of private employees working outside the State ought to have been placed at the similar footing as that of the wards of the State Government/Central Government employees etc. In our opinion, when once parents have moved outside in a private employment and wards obtaining education outside, they are not likely to come back, thus, their exclusion as afore-stated footing cannot be said to be irrational or illegal.

35. It was urged that some of the students may obtain admission in other States for the purpose of better coaching. Relevant data has not been placed on record by the petitioners that in Assam coaching is not available. Apart from that, when they can afford to obtain coaching in other States, they stand on a different footing, they are the one who belongs to an affluent class who can afford expensive education in other States and it is not necessary that they should be adjusted in State quota seat, they can stake claim for All India Quota Seats for the State of Assam. They can stake their claim with respect to open seats within the State of Assam. The exclusion is not total for them. However, with respect to the State-quota seats, since it is open to the State Government to lay down the educational as well as domicile requirement, incumbents must fulfill the criteria. The criteria so laid down in Rule 3(1)(c) of Rules of 2017, cannot be said to be ultra vires of Article 14 of the Constitution of India.

36. In view of the aforesaid discussion, we find that the writ petitions/SLP are devoid of substance. Rule 3(1)(c) of the Rules of 2017 is in consonance with the spirit of Article 14 of the Constitution of India. The writ petitions/SLP deserve dismissal and the same are hereby dismissed. Parties to bear their own costs."

16. This Court has also taken into consideration the admission notice dated 11.10.2022, issued by the respondent No.4. A perusal of the same clearly indicates that all process for selection by the Selection Board for admission to the 1st year MBBS Course under the Assam State quota was done on-line. The same is obvious in view of the Covid protocol introduced at that relevant point of time. Therefore, this Court appreciates the fact that the Counseling Board could not physically verify the testimonials and other related documents of the petitioner. It was only when the petitioner appeared physically before the Principal, Lakhimpur Medical College that her testimonials were verified and it was found that she had done her schooling from Class-VII to X outside the State of Assam and on that ground her case was rejected.

17. The reason as to why the petitioner had to study in a School in Manipur bordering the State of Assam has been taken note of. However, I am of the considered opinion that such reason cannot be a ground for directing the respondents to invoke Rule 19 of the Rules of 2017, particularly when the Hon'ble Supreme Court has upheld the validity of Rule 3(1) (c) in the case of Rajdeep Ghosh (Supra).

18. In view of the discussions made hereinabove, I find no merit in the present writ petition and the same is accordingly dismissed, however with no order as to costs.

JUDGE

Comparing Assistant