

GAHC010228362023



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

Case No. : WA/390/2023

SAHILDEEP HORO
VILL.- MITHAM BANGALI, P.S.- DHEKIAJULI, DIST.- SONITPUR, ASSAM,
PIN- 784110.

VERSUS

THE STATE OF ASSAM AND 8 ORS. B
REP. BY THE THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT
OF ASSAM, DISPUR, GUWAHATI- 781006, ASSAM.

2:THE SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI- 781006.

4:THE DIRECTOR OF MEDICAL EDUCATION
OFFICE OF THE MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA
GUWAHATI- 781022.

5:THE DIRECTOR
TEA TRIBES WELFARE

ASSAM
RUPNAGAR
GUWAHATI- 781022.

6:THE DISTRICT COMMISSIONER
NAGAON
P.O.- DISTRICT- NAGAON
PIN- 782001
ASSAM.

7:THE ADDITINAL DISTRICT COMMISSIONER
NAGAON
ASSAM
PIN- 782001.

8:THE PRINCIPAL

ASSAM MEDICAL COLLEGE AND HOSPITAL
DIBRUGARH
ASSAM
PIN- 782001.

9:THE ASSAM TEA TRIBES STUDENTS ASSOCIATION (CENTRAL
COMMITTEE)
REPRESENTED BY ITS GENERAL SECRETARY
JAGDISH BARIK
ASSAM TEA TRIBE COLLEGE STUDENTS HOSTEL
GANESHGURI CHARIALI
GUWAHATI- 781006
ASSAM

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : GA, ASSAM

Linked Case : WA/393/2023

RANI NAYAK
D/O SRI MOHAN NAYAK
R/O P.W.D. COLONY
DIPHU
P.O.- DIPHU
P.S.- DIPHU
DIST.- KARBI ANGLONG.

VERSUS

THE STATE OF ASSAM AND 8 ORS. B
REP. BY THE THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT
OF ASSAM
DISPUR
GUWAHATI- 781006.
Advocate - GA
ASSAM

2:THE SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI- 781006.

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA
GUWAHATI- 781022.

5:THE DIRECTOR
TEA TRIBES WELFARE
ASSAM
RUPNAGAR
GUWAHATI- 781022.

6:THE DISTRICT COMMISSIONER
KARBI ANGLONG
ASSAM.

7:THE ADDITIONAL DISTRICT COMMISSIONER
KARBI ANGLONG
ASSAM.

8:THE PRINCIPAL

NAGAON MEDICAL COLLEGE AND HOSPITAL
MOHKHULI CHARIALI
DIPHALU
NAGAON
ASSAM
PIN- 782003.
9:NIKITA KANOO

C/O NAGAON MEDICAL COLLEGE AND HOSPITAL
MOHKHULI CHARIALI
DIPHALU
NAGAON
ASSAM
PIN- 782003.

Advocate for : MR B BORA
Advocate for : SC
WPT AND BC appearing for THE STATE OF ASSAM AND 8 ORS. B

Linked Case : WA/394/2023

SMITA KUMARI MAHTO
D/O SHRI. RAM BABU MAHTO
VILL.- CHANDRAPUR
P.O.- CHANDRAPUR
P.S.- PRAGJYOTISHPUR
DIST.- KAMRUP
781150.

VERSUS

THE STATE OF ASSAM AND 9 ORS. A
REP. BY THE THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT
OF ASSAM
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI- 781006.

4:THE DIRECTOR OF MEDICAL EDUCATION
OFFICE OF THE MEDICAL EDUCATION
ASSAM
SIX MILE

KHANAPARA
GUWAHATI- 781022.
5:THE DIRECTOR
TEA TRIBES WELFARE
ASSAM
RUPNAGAR
GUWAHATI- 781022.
6:THE DISTRICT COMMISSIONER
NAGAON
P.O. AND DISTRICT- NAGAON
ASSAM
PIN- 782001.
7:THE ADDITINAL DISTRICT COMMISSIONER
NAGAON
P.O. AND DISTRICT- NAGAON
ASSAM
PIN- 782001.
8:THE PRINCIPAL
DIPHU MEDICAL COLLEGE
DIPHU
ASSAM- 782462.
9:THE ASSAM TEA TRIBES STUDENTS ASSOCIATION (CENTRAL
COMMITTEE)
REPRESENTED BY ITS GENERAL SECRETARY
JAGDISH BARIK
ASSAM TEA TRIBE COLLEGE STUDENTS HOSTEL
GANESHGURI CHARIALI
GUWAHATI- 781006
ASSAM.
10:ROSEMIN KONGARI
C/O THE PRINCIPAL
DHUBRI MEDICAL COLLEGE
NORTH DHUBRI
ASSAM- 783324.

Advocate for : MR. P MAHANTA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 9 ORS. A

Linked Case : WA/401/2023

MANDIRA SATNAMI
W/O SRI RAJU SATNAMI RESIDENT OF VILLAGE NO. 1 KATHIA KUNDA
GAON
PO SAPEKHATI
DIST CHARAIDEO

ASSAM
785690

VERSUS

THE STATE OF ASSAM AND 8 ORS (E)
REPRESENTED BY THE THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM
DISPUR
GUWAHATI- 781006.

2:THE SECRETARY
WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

3:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRMAN CUM SECRETARY

WELFARE OF PLAIN TRIBES AND BACKWARD CASTE DEPARTMENT

GOVERNMENT OF ASSAM

DISPUR
GUWAHATI- 781006.
4:THE DIRECTOR OF MEDICAL EDUCATION
OFFICE OF THE MEDICAL EDUCATION
ASSAM

SIX MILE
KHANAPARA
GUWAHATI- 781022.

5:THE DIRECTOR
TEA TRIBES WELFARE
ASSAM

RUPNAGAR
GUWAHATI- 781032.

6:THE DISTRICT COMMISSIONER
NAGAON
P.O. AND DISTRICT- NAGAON
ASSAM

PIN- 782001.

7:THE ADDITIONAL DISTRICT COMMISSIONER
NAGAON
P.O. AND DISTRICT- NAGAON
ASSAM

PIN- 782001.
8:THE PRINCIPAL
ASSAM MEDICAL COLLEGE AND HOSPITAL
DIBRUGARH
P.O. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 782001.
9:THE ASSAM TEA TRIBES STUDENTS ASSOCIATION (CENTRAL
COMMITTEE)
REPRESENTED BY ITS GENERAL SECRETARY
JAGDISH BARIK

ASSAM TEA TRIBE COLLEGE STUDENTS HOSTEL

GANESHGURI CHARIALI
GUWAHATI- 781006.

Advocate for : MR. B K DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 8 ORS (E)

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 19-10-2023

Heard Mr. R. Boruah, learned counsel representing the appellant in Writ Appeal No.390/2023; Mr. B. Bora, learned counsel representing the appellant in Writ Appeal No.393/2023; Mr. P. Mahanta, learned counsel representing the appellant in Writ Appeal No.394/2023 and Mr. B.K. Das learned counsel representing the appellant in Writ Appeal No.401/2023. Also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. B. Gogoi, learned standing counsel, Health Department and Ms. J. Gogoi, learned standing counsel, Social Justice & Empowerment.

We have also perused the material available on record.

The appellants are all candidates, who after being declared successful in the NEET (UG) Examination, 2023, applied for admission in 1st Year MBBS Course in various Medical Colleges in the State of Assam. The appellants claim to be candidates belonging to OBC, Tea Garden Labourer/Ex-Tea Garden Labourer (TGL/Ex-TGL) category entitled to admission against seats reserved for such category in the subject admission process. It is an admitted position that the appellants were provisionally admitted after various rounds of counselling, after which provisional admission lists dated 04.09.2023; 08.09.2023 and 13.09.2023 were issued.

It is reflected from the record that the provisional admission of one of the candidates, namely, Chaini Bhuyan, was not being confirmed and had been withheld, whereupon she filed a writ petition being WP(C) No.5340/2023, wherein the learned Single Judge passed an order dated 19.09.2023 with a direction to undertake an exercise of verification of caste certificates of all the candidates, who had applied under the TGL/Ex-TGL category, including the appellants herein and the aforesaid Chaini Bhuyan, who had been provisionally admitted into the 1st Year MBBS Course.

In compliance of the said direction of the learned Single Judge, the State Level Caste Scrutiny Committee conducted a truncated exercise of verification/re-verification of the caste certificates of all such candidates and, resultantly, the entire admission process *qua* these reserved category seats turned around on its heel. As a consequence of the almost farcical verification/re-verification exercise, many of the candidates, who had been provisionally admitted, lost their reserved category status and their admissions were cancelled, and in their place other candidates were admitted. The

candidates, whose admissions have been cancelled without being heard in the Single Bench, sought leave and have preferred the instant batch of writ appeals for challenging the orders passed by the learned Single Judge; the report of the State Level Caste Scrutiny Committee and the cancellation of their provisional admission as a result of the above exercise.

By detailed *interim* orders passed in Writ Appeal No.390/2023; Writ Appeal No.393/2023; Writ Appeal No.394/2023 and Writ Appeal No.401/2023 under the following terms, we have already directed that the appellants herein shall be provisionally admitted against a total number of 4(four) seats of which 2(two) were left vacant and 2(two) have been directed to be increased in the light of the Hon'ble Supreme Court judgment in the case of **S. Krishna Sradha -Vs- State of Andhra Pradesh & Ors.**, reported in **(2020) 17 SCC 465**.

“16. Thus, we are convinced by the submission of the learned counsel for the appellants that the direction given by the learned Single Judge in the impugned orders that the verification process shall be undertaken within a short period of about 7(seven) days and that it would essentially involve collecting evidence of the Tea Garden Manager concerned, is in gross disregard and ignorance to the guidelines laid down in **Kumari Madhuri Patil** (supra). The criterion for testing the validity of the certificate/ certificates having been laid down by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil** (supra), the same has to be adhered to in letter and spirit. The judgment in the case of **Kumari Madhuri Patil** (supra) clearly provides that the enquiry has to be conducted within a period not exceeding 2(two) months and the result has to be communicated within 1(one) month from the date of conclusion of the proceedings. Meaning thereby that a window of about 3(three) months has to be provided for conducting such enquiry. In the case at hand, the learned Single Judge, without any justification, directed hastening of the process and curtailed it to mere 7(seven) days in order to meet the deadline of 30th September. Not only this, a new criterion of verification, i.e. to produce evidence from the Tea Garden Management was also introduced, which has led to a travesty of justice being committed. By directing an enquiry in such haste, the candidates already admitted might have been deprived of proper opportunity to place relevant material on record and as a consequence, the truncated enquiry report resulted into loss of seats to 9(nine) candidates, who had already been admitted into the MBBS Course.

We appreciate the assistance provided by learned Advocate General Mr. Saikia, who flagged this patent flaw in the procedure of re-verification of caste certificates by drawing our attention to the relevant excerpts from **Kumari Madhuri Patil's** (supra) judgment.

For the sake of repetition, we may reiterate with a great degree of anguish that one of these disadvantaged candidates, namely, Ritishma Kurmi, was led to such desperation on account of not being able to produce the evidence in terms of the order passed by the learned Single Judge for verification of her caste certificate that the young girl was compelled to take the extreme step of ending her life. Thus, a young life was lost and the tragedy which has befallen upon the family can never be compensated.

17. There cannot be any two views on the aspect that the directions passed by the learned Single Judge, which brought upon the evil consequence upon the appellants of losing admission in the MBBS Course, suffer from manifest illegality of having been rendered without following the cardinal principle of "audi alteram partem". Furthermore, the directions given by the learned Single Judge regarding the duration and manner of conducting caste certificate enquiry are in clear contravention of the Hon'ble Supreme Court judgment in the case of **Kumari Madhuri Patil** (supra) and hence, the same cannot be sustained.

18. We are compelled to note that as a result of the patently invalid and unjust orders of the learned Single Bench and on account of the fresh admission notice dated 30.09.2023 issued in spite of the stay order passed by the Division Bench on 29.09.2023, the scenario has drastically changed and other candidates have been admitted in place of the appellants who have lost their seats because of the manifestly flawed caste certificate verification exercise. However, we are of the firm opinion that the revised admission notice dated 30.09.2023 can still be tested on the anvil of having been issued in gross contravention of the stay order dated 29.09.2023 passed by the Division Bench in Writ Appeal No.380/2023.

19. On a pertinent enquiry being made, learned Advocate General, Assam Mr. D. Saikia makes a statement at bar that 2(two) seats have been left vacant in the current admission process, one being of Scheduled Tribe (Plains) category and the other being of All India category.

As per the Medical Colleges and Dental Colleges of Assam (Regulation of Admission into 1st Year MBBS-BDS Courses) Rules, 2017, only 2(two) certificates, i.e. caste certificate issued by the Deputy Commissioner and Annexure VI Certificate, are required for admission. There is no dispute that both these certificates were submitted by the appellants herein based whereupon they were granted provisional admission and were also allotted the seats in the appropriate Colleges. Hence, we are of the firm opinion that the appellants herein are entitled to the relief claimed for in these appeals, i.e. to hold their admissions in the 1st Year MBBS Course, 2023 as per the earlier admission notice issued by the

Department.

20. The appellants herein are 3(three) in number, 2(two) can be adjusted against the vacant seats referred to (supra) because the seats cannot be carried forward and would remain vacant as the last date for filling the seats being 30.09.2023 has already passed by. As held by the larger Bench of the Hon'ble Supreme Court in the case of **S. Krishna Sradha** (supra), in an appropriate case and in order to grant restorative relief to a deserving and meritorious candidate who has approached the Court in time, the Court can direct admission of the candidate in the same year by directing increase in the seats which would not exceed more than one or two seats. Such admission can be granted within a reasonable time, i.e. within 1(one) month from 30th September, which is the cut off date and under no circumstance, the Court shall order any admission in the same year beyond 30th October.

The relevant guidelines laid down by the Hon'ble Supreme Court in the case of **S. Krishna Sradha** (supra) have already been quoted above.

21. However, at the same time, we are cognizant of the fact that while granting admission to the appellants, the State authorities had kept the final decision pending for verification of the caste certificates held by the appellants based on certain complaints received qua these certificates.

Thus, the Court is inclined to grant provisional admission to the appellants herein against 2(two) vacant seats and by directing increase of 1(one) seat in terms of the judgment of the Hon'ble Supreme Court in the case of **S. Krishna Sradha** (supra), albeit requiring the appellants to furnish an undertaking that in case, after due exercise of verification to be undertaken by the State Level Scrutiny Committee strictly in accordance with the guidelines as laid down in **Kumari Madhuri Patil** (supra), the certificates held by the appellants are found to be invalid, they shall not be entitled to claim a lien on the seats occupied by them and shall forego the right of continuing in the 1st Year MBBS Course under the reserved category of TGL/Ex-TGL.

22. The appellants shall submit undertaking in the above terms to the Director, Medical Education latest by 14.10.2023, whereupon a fresh admission notice shall be issued in their favour by end of office hours on 16.10.2023."

Mr. D. Saikia, learned Advocate General, Assam very fairly submits that pursuant to the direction given by this Court, the appellants herein, whose admission was unjustly cancelled on account of the patently illegal order of the learned Single Judge, have been provisionally re-admitted to the MBBS 1st Year

Course. However, each of the appellants has furnished an undertaking that their caste certificates would be verified by the State Level Caste Scrutiny Committee strictly in accordance with the guidelines laid down by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil & Anr. -Vs- Additional Commissioner, Tribal Development & Ors.***, reported in ***(1994) 6 SCC 241***, and in the event of the certificates not being found valid in the verification/re-verification process undertaken by the State Level Caste Scrutiny Committee, these candidates would stand to lose their seats in the reserved category.

However, we further provide that in such an event, the adversely affected candidates would be entitled to avail suitable legal remedy against the adverse report/opinion of the State Level Caste Scrutiny Committee, if so required.

Looking to the overall picture presented in this case, wherein a huge confusion and controversy has arisen on account of the validity or otherwise of the caste certificates, particularly of the TGL/Ex-TGL category, we would expect that the State Government would formulate a full-proof policy laying down appropriate criterion for issuance of such caste certificates and the verification thereof as and when required. We further direct that henceforth no confusion/uncertainty shall be allowed to prevail in similar admission processes in the matter of last date for filing of the caste certificates, which shall be preferably incorporated in the notice inviting applications keeping in view the law laid down by Hon'ble the Supreme Court in the cases of ***Divya -Vs- Union of India & Ors. [WP(C) No.705/2023 and WP(C) No.764/2023]*** and ***Sakshi Arha -Vs- Rajasthan High Court & Ors.***, reported in ***2023 SCC OnLine SC 662***.

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.

The appeals are allowed accordingly.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant