

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 28438 of 2022

Abhisek Bhabani Panda

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Petitioner

Mr. A.K. Pandey, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

Mr. R.C. Mohanty, Adv.

Mr. S. Palit, Sr. Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

02.11.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Pandey, learned counsel appearing for the petitioner; Mr. A.K. Mishra, learned Addl. Government Advocate appearing for opposite party no.1; Mr. S. Palit, learned Senior Counsel appearing along with Mr. A. Kejeriwal, learned counsel for opposite parties no.2 and 3; and Mr. R.C. Mohanty, learned counsel for opposite party no.4.

3. The petitioner, who is a physically challenged candidate, has filed this writ petition seeking direction to the opposite parties to retain the final State merit list for MBBS/BDS admission 2022-23(After the 1st round) prepared pursuant to the Odisha Joint Entrance Examination (OJEE-2022), wherein the name of the petitioner is found place at sl.no.5. But subsequently the same was changed on a revision being made by the authority, by which the petitioner has been aggrieved, as his name has been found place at sl.no.33. Thereby, it causes hardship to the petitioner and if it so happens, he may not be able to get a seat under physically challenged category for admission in MBBS/BDS admission 2022-23 of Odisha Joint Entrance Examination (OJEE-2022) in a Government College.

4. Mr. A.K. Pandey, learned counsel appearing for the petitioner vehemently contended that once the list has been published vide Annexure-5 dated 18.10.2022 placing the petitioner at sl.no.5 and the same being the final merit list, the same should not have been altered without following due procedure and, as such, any change made thereof by the authority, is contrary to the provisions of law. It is further contended that once the rule of game is started, the same cannot be changed at the midst.

5. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for opposite party no.1 contended that since it is a matter between Odisha Joint Entrance Examination (OJEE) and the petitioner, the State has nothing to do in the matter.

6. Pursuant to the notice, Mr. R.C. Mohanty, learned counsel for opposite party no.4 appeared and took the same stand, as taken by the learned State Counsel.

7. Mr. S. Palit, learned Senior Counsel appearing along with Mr. A. Kejeriwal, learned counsel for opposite parties no.2 and 3 though admitted the fact that vide Annexure-5 dated 18.10.2022 final State merit list for MBBS/BDS admission 2022-23(After the 1st round) was published, but it is contended that the same was revised pursuant to change of law vide Annexure-6 dated 19.10.2022 putting the petitioner at sl.no.33. Therefore, the revised final State merit list for MBBS/BDS admission 2022-23(After the 1st round) should have taken into consideration for extending the benefit to the physically challenged candidates. It is thus contended that no illegality or irregularity has been committed by the authorities of Odisha Joint Entrance Examination (OJEE) by revising the final merit list pursuant to the change of law made by the authority, so as to warrant interference

of this Court. Consequentially, he seeks for dismissal of the writ petition.

8. Having heard learned counsel for the parties and after going through the records, this Court finds that a provisional State merit list for MBBS/BDS admission 2022-23(After the 1st round) was prepared by the authority vide Annexure-4 on 15.10.2022 and, thereafter, the final State merit list was published for MBBS/BDS admission 2022-23(After the 1st round) vide Annexure-5 dated 18.10.2022, in which the name of the petitioner was found place at sl.no.5 in the physically challenged category. But when the counselling was going on, vide Annexure-6 dated 19.10.2022, a revised final State merit list for MBBS/BDS admission 2022-23(After the 1st round) was published and, as such, the candidates those who had been selected in the physically challenged category, their position was changed, which should not have been done to the peril of those candidates whose names find place in the final merit list. It is well settled in law that once the rule of game is started, the same cannot be changed at the midst. Therefore, whatever decision the authority has taken and finalized the merit list, which was published vide Annexure-5 dated 18.10.2022, the same should not have been changed by revising the same on 19.10.2022 under Annexure-6, because a right has already been accrued in favour of the candidates whose name finds place in the merit list. More so, the authority cannot unilaterally revise the final merit list without affording opportunity of hearing to the candidates those who are affected by publication of such revised merit list. Needless to say, the final merit list vide Annexure-5 was published by the authorities in consonance with the law and pursuant to the advertisement issued by them as well as the prospectus provided for. But in the name of subsequent change of

law, in the midst publication of revised merit list itself causes great prejudice to the candidates, who had already been selected.

9. In the above view of the matter, this Court is of the considered view that the revised final State merit list for MBBS/BDS admission 2022-23(After the 1st round) of the Odisha Joint Entrance Examination (OJEE-2022) vide Annexure-6 dated 19.10.2022 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. As such, the final merit list prepared by the authority vide Annexure-5 dated 18.10.2022 stands as it is, so far as physically challenged category is concerned. The opposite party nos.2 and 3 are directed to extend the benefit admissible to the physically challenged category candidates, in terms of the final State merit list published for MBBS/BDS admission 2022-23(After the 1st round) of the Odisha Joint Entrance Examination (OJEE-2022) under Annexure-5 dated 18.10.2022. As the counselling is going to expire on 04.11.2022, the petitioner shall be given opportunity to participate in the counselling.

10. The writ petition is accordingly disposed of.

11. Issue urgent certified copy as per rules.

12. A free copy of this order be handed over to Mr. S. Palit, learned Senior Counsel appearing for opposite parties no.2 and 3 for compliance of the same immediately.

(DR. B.R. SARANGI)
JUDGE

Ashok/Kishore

(G. SATAPATHY)
JUDGE