ORISSA HIGH COURT: CUTTACK

W. P.(C) NO. 10312 OF 2009

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

Sudeep Panigrahi ..... Petitioner

-Versus-

Chairman, Joint Entrance Examination and others. ..... Opp. Parties

For Petitioner : M/s. P.K.Ray, B.P.Tripathy, P.K. Pani, R. Acharya, S.K. Parija and T.Barik.

For Opp. Parties : M/s.R.K.Dash, P.K.Tripathy & S.Pattnaik. (For O.P. no.1.)

M/s. S. Ch. Samantaray, S.Nanda, U.K. Sahoo, A.Mohapatra, M.Banerjee & N.C. Sahoo. (For O.P.No.3)

Decided on 14.09. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J. The petitioner in the present writ petition has sought for issuance of writ of mandamus/direction directing the opp. parties 1 and 2 to allow him to take admission in the

BDS Course in S.C.B. Medical College and Hospital, Cuttack for the session 2009-2010.

2. The petitioner after completing his 10+2 Science Examination, 2005 appeared in the Joint Entrance Examination, 2009 intending to take admission in the medical stream and being successful in the said examination secured the rank 458 in the general category and 99 in the green card category in the merit list for medical and dental streams. He attended the counselling on 18.7.2009 at Bhubaneswar. During the counselling, candidates were given admission according to their position in the merit list, both in the general category as well as under various reserved categories like Scheduled Caste, Scheduled Tribe, Physically Handicapped, children of green card holders etc. when their respective turn came. The petitioner produced all the certificates as required during the counselling. On verification of his documents, he could ascertain that he would be eligible to take admission in the BDS Course in S.C.B. Medical & Hospital, Cuttack, as a candidate under the reserved category for "Green Card" according to his rank. However, the Admission Committee refused to accept the green card produced by the petitioner on the ground that the

same is defective and disallowed the petitioner to take admission for the said seat.

It is alleged in the writ petition that the petitioner was compelled to write a declaration that he refuses to take admission and the petitioner was also asked that if he does not give such a declaration, his original documents will not be returned. Being compelled, he gave the declaration as directed as the original documents along with a draft of Rs. 16,000/- were denied to be returned to him. The green card produced by the petitioner was held to be defective as there were some over writing over the name of the petitioner and as his exact date of birth was not mentioned there. The petitioner also states that he produced his birth certificate along with High School Certificate in which his date of birth was mentioned. He also clarified that the over writing which appears in the green card in respect of his name has been made by the authority issuing the said green card and the authority has also put his initial.

3. In the counter affidavit filed on behalf of the Chairman, J.E.E. as well as the additional affidavit filed by him, it has been admitted that the petitioner was placed at serial no. 99 in the merit list under green card category. After

the increase of 37 numbers of M.B.B.S. seats in V.S.S. Medical College, Burla, a counselling was conducted on 18.7.2009 and on that date, all the M.B.B.S. and BDS seats of the three Government Medical Colleges of the State were filled up except one P.H. reserved seat in M.B.B.S. in V.S.S. Medical College as per order of this Court passed in another writ petition. It has been further stated that the total 19 seats meant for the green card category for M.B.B.S. stream were filled up by such candidates in the three Government Medical colleges as per the merit list. But so far as the BDS wing in S.C.B. Medical College, Cuttack is concerned, as per Clause – 2.1.3 of the information brochure, J.E.E., 2009, out of 42 seats available for BDS course, 5% seats were ear-marked under the green card category, i.e. 2 (two) seats. After non-acceptance of the green card produced by the petitioner, the said two seats were filled up by the candidates having merit rank 111 and 114 respectively. It has been, therefore, stated that all the BDS seats under green card quota in S.C.B. Medical College, Cuttack were filled up on 18.7.2009, though the petitioner's rank in the merit list was 99 under green card category. He was denied admission due to the defective green card. According to the Chairman, J.E.E., Compliance of

Clause-2.1.3. of the information brochure is mandatory in nature and has been applied equally in respect of all similarly situated candidates and, therefore, the deviation therefrom disqualifies a candidate to avail a seat under the reserved category of green card.

4. The last candidate M.Bibhudutta, who secured rank 114 in the merit list and was given admission to the BDS seats at S.C.B. Medical College, Cuttack has been added as opp. party no. 3 in this writ petition.

5. A counter affidavit has been filed on behalf of the opp. party no. 3, inter alia, stating that he attended the counselling on 18.7.2009 and he was offered a seat in BDS Course in S.C.B. Medical College, Cuttack. During the counselling he took admission to the said seat and has been attending the classes since 1.8.2009. He has thereby relinquished the Engineering seat and B. Pharma seat in National Institute for the Orthopedically Handicapped (NIOH) and he will suffer from hardship and irreparable injury if his admission is affected for no fault of his. He also pleaded that having taken admission, he has a legitimate expectation to continue in the BDS course in the S.C.B. Medical College, Cuttack. In substance, the opp. party no. 3 has pleaded that

the J.E.E. Committee is estopped from cancelling his admission to the seat in BDS Course for the session 2009-2010 at S.C.B. Medical College, Cuttack, even if, the petitioner succeeds in this writ petition.

6. Clause – 2.1.3 of the information brochure of J.E.E. 2009 runs as follows:-

> "5% of seats are reserved for children of Green Card holders. Candidates applying under Green card category shall furnish the Green card of their parents issued by family Welfare Department, Government of Orissa/any other appropriate authority, in original at the time of counselling. The name, date of birth of candidates and name of parents should be identical to that of 10th pass certificate".
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> (Emphasis supplied)

7. Mr. P.K. Ray, learned counsel for the petitioner contended that the last sentence in the aforesaid clause clearly implies that the J.E.E. Committee wanted to verify the correctness of the date of birth of a candidate seeking admission under green card category including the name of parents which should match with the 10th pass certificate. This, according to Mr. Ray, is a procedure subservient to substance and not superior to the essence. The intention being to verify the genuinity of the date of birth and the names of the parents by cross checking the same with the 10th pass certificate, it is a handmaid, but not the

mistress. He further submitted that it is no one's case that the petitioner's parents are not green card holder and the green card issued to them has been annexed as Annexure-1 series, which shows that an endorsement has been made therein that the children of the holder of the green card are entitled to be considered for 5% of the seats reserved for such candidates. The defects pointed out by the J.E.E. authorities cannot be treated to be a handle to discard the parents of the petitioner as a green card holder. The right, which has accrued in favour of the petitioner being the child of parents holding a green card, cannot be taken away merely on technical grounds.

8. Mr. R.K. Dash, learned counsel for the opp. party no. 1 – Chairman, J.E.E. relying upon the counter affidavit filed, vehemently argued that as the green card produced by the petitioner during the counselling did not mention the date of birth and there was a correction in the name of the petitioner in the said green card, the J.E.E. Committee rightly refused to accept the said green card and rejected the candidature of the petitioner for taking admission to the seat in BDS Course in the S.C.B. Medical

College, Cuttack, as it did not comply with the requirements of Clause 2.1.3 of the information brochure.

9. Mr. S.C. Samantray, learned counsel for the opp. party no. 3 relying upon a decision of this Court in the case of ***Pratima Das v. State of Orissa and others,*** AIR 1975 Orissa, 155 strenuously urged that this Court in the said case while considering the case of the petitioner therein, who left her B.Sc. course and was admitted to the Medical College and some time thereafter, her admission was cancelled, as it was found that in the entrance examination, she had, in fact, secured lessor marks then some other candidates, who were not selected, held that the petitioner had all the qualifications prescribed for selection. Apart from the heavy financial loss, which the petitioner therein had suffered for the negligence of the authorities, it was not possible for the petitioner to go back to her former college and pursue her studies there. Hence, it was held that the plea of estoppel was attracted and the order cancelling the admission was liable to be quashed.

10. Drawing analogy from the above decision, Mr. Samantaray submitted that the opp. party no. 3, who was selected in other entrance examination and could have taken

admission to any of such courses, forsook those seats as he was offered a seat in BDS Course in the S.C.B. Medical College, Cuttack. He having changed his position, his admission to BDS Course cannot be interfered with to his disadvantage and the law of estoppel will squarely apply to the facts of the present case.

11. Mr. P.K. Ray, learned counsel for the petitioner, on the contrary, relying upon the decision in the case of Dolly ***Chhanda v. Chairman, JEE and others,*** 2004 (II) OLR (SC) 532 submitted that in the said case, the Supreme Court has clearly laid down that depending upon the facts of the case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Any infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

12. Examining the facts of the present case, it is amply clear that it is not disputed that the green card produced by the petitioner was issued to his parents. It is also not the case of the parties that the green card produced by the petitioner was either forged or a fabricated one.

13. A perusal of the said green card clearly discloses that the names of the two children of the parents of the petitioner were mentioned in the said green card, but as one name was repeated twice, the petitioner, being the second child, his name was corrected by the authority issuing the green card, who has put his initial therein. In the column meant for mentioning the date of birth, the authority has mentioned only the year of birth. Along with other documents, a birth certificate of the petitioner and an affidavit sworn to by the father of the petitioner was also produced before the J.E.E. Committee during the counselling of the petitioner. The petitioner has also produced a certificate granted by the S.D.M. of Patnagarh certifying that the mother of the petitioner underwent a family planning operation on 20.9.1988 with two living children and she was issued an authentic and genuine green card bearing No. 115213 (number of the green card was produced by the petitioner before the J.E.E. Committee).

14. In the case of Dolly Chhanda (supra), the Supreme Court was examining the legality of the order dated 31.10.2003 of this Court passed in W.P. (C) No. 11248 of 2003. In the said case, the appellant before the Supreme

Court appeared in J.E.E. 2003 under the reserved M.I. category meant for children of Ex.-serviceman. Her rank in the J.E.E. was 20 and, accordingly, she was called for counselling for admission to a medical college on 7.7.2003. During the course of scrutiny of papers, it was revealed that in the certificate issued to her father by the Zilla Sainik Board, the words "not eligible" were written. As the aforesaid certificate did not satisfy the requirements of the reserved M.I. category, her candidature was rejected. The candidates, who secured ranks below the appellant before the Supreme Court, in the aforesaid category, were given admission. The disputed certificate was returned as per the requirements of Clause - 2.1.4 of the information brochure. Thereafter, on the request of the father of the appellant, the Zilla Sainik Board, Sambalpur rectified the mistake and the appellant produced the rectified certificate during the second counselling on 29.10.2003. Nevertheless, the same was not accepted and the candidates, who were much below in the appellant merit list, available on the said date of counselling, were given admission. The appellant challenged the same before this Court in the aforesaid writ petition, but the said writ petition was dismissed by this Court on the ground that at the time of

counselling on 7.7.2003, the certificate furnished by the appellant did not bear any testimony that her father being a army/para military forces of Orissa had been disabled in action and consequently in terms of Clause 2.1.4 of the information brochure , her claim that she belongs to the reserved M.I. category had not been established.

15. While deciding the said appeal, the Supreme Court relied upon the principle, which was explained and applied in the case of ***Charles K. Skaria and others v. Dr. C. Mathew and others,*** 1980 (2) SCC 752 and held in paragraph-7 of the judgment in Dolly Chhanda (supra) as follows:-

> " The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard, i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark-sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of

> procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature".

Holding thus, the Supreme Court concluded that the appellant had qualified in the J.E.E. 2003. But the said academic year is already over. However, for the situation, the fault lies with the respondent who adopted highly technical and rigid attitude with the admission. The Supreme Court, thereafter, directed that the appellant should be given admission in MBBS Course in any of the State Medical Colleges in the current academic year. (Emphasis supplied)

16. In the case of Charles K. Skaria and others (supra), the controversy before the Supreme Court was relating to admission to a P.G. Course in Medicine. The relevant rules provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-speciality and this benefit was to be given if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such

candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. Krishna Iyer, J. (as he then was) reversed the judgment of the High Court and held that the admission of the candidates had rightly been given as they had, in fact, passed the diploma before the date fixed. In paragraphs 20 and 24 of the said judgment, it has been held thus:-

> **"**20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? This is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor……Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic

> decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence."
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> **"**24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative judicial and even legislative process in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from Courts and government orders from public offices……."
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> **(**Emphasis supplied)

17. In the case at hand, as none of the opposite parties have made out a case that the green card issued to the parents of the petitioner was either forged or manufactured one, applying the ratio in the case of Dolly

Chhanda (supra) and Charles K. Skaria and others (supra) to the facts of the present case, the irresistible conclusion would be that compliance of Clause 2.1.4 with regard to mentioning of the names of the two children, parents and the dates of birth in the green card cannot be construed to be mandatory. As has been held in the case of Charles K. Skaria and others (supra), the same was a matter of procedure and by holding that non-mention of date of birth in the green card would dis-entitle a candidate from being considered under the reserved category for green card holders would amount to making the procedure not being handmaid but the mistress and form not as a subservient to substance but as superior to the essence. Thus, on the above conclusion, the petitioner is bound to succeed as the action of the Chairman, J.E.E./ J.E.E. Committee, 2009 in refusing to accept the green card produced by the petitioner amounts to an arbitrary action by which the petitioner has been deprived from being given admission to a seat in BDS Course, 2009 in the S.C.B. Medical College, Cuttack. However, considering the case of the opp. party no. 3 in the touchstone of the principle of estoppel, it is also evident that the said opp. party no. 3 being offered to take admission in a seat in BDS Course in the

S.C.B. Medical College and Hospital, Cuttack and he having taken admission to such seat, he has forgone the seats in different courses for which he was also selected which is to his disadvantage. His admission, therefore, cannot be treated to be cancelled as the authorities are estopped from cancelling the same even though the writ petitioner is entitled to be admitted to one such seats.

18. In such complex situation of the case, it would be apt that the petitioner should be directed to be given admission to a seat in BDS Course, 2009 in the S.C.B. Medical College and Hospital, Cuttack, while not disturbing the admission already given to the opp. party no.3. Hence, this Court directs that the opp. parties 1 and 2 shall create a supernumerary seat in BDS Course , 2009-2010 in the S.C.B. Medical College and Hospital, Cuttack and give admission to the petitioner to the said seat, who shall continue to prosecute the said BDS Course. Such creation of seat shall be approved by the Medical Council of India. The petitioner shall be given admission to such seat in BDS Course in the S.C.B. Medical College and Hospital, Cuttack within a period of two weeks from the date of production of the certified copy of this judgment before the opp. party no.2

– Principal, S.C.B. Medical College and Hospital, Cuttack by the petitioner.

19. In the result, the writ petition is allowed. There shall be no order as to costs.

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M.M. Das, J.

Orissa High Court, Cuttack.
September 14th , 2009/Biswal.