
(2001) 04 PAT CK 0055
In the Patna High Court
Case No : L.P.A. No. 134 of 2001

Controller of Examination, Bihar Combined Entrance
Competitive Examination Board

APPELLANT

Vs

Priyanka Prasad and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Citation : (2001) 04 PAT CK 0055

Final Decision : Dismissed

Judgement

1. This appeal under Clause 10 of the Letters Patent of the Patna High Court has been preferred against the order dated 10.1.2001, passed by a learned single Judge of this Court, in C.W.J.C. No. 10858 of 2000 Priyanka Prasad v. State of Bihar and Ors. whereby the relief of admission to the branch of choice in the Bihar College of Engineering, Patna, has been granted to the writ Petitioner (Respondent No. 1 herein).

2. The combined Engineering Competitive Examination is held by Appellant No. 1 herein, a statutory body, for admission to the Government Engineering Colleges in the State of Bihar. The Appellant had issued a prospectus with respect to the Combined Engineering Competitive Examination, 1999 (hereinafter referred to as "the 1999 examination"), Clause 14.4 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference:

It is manifest from a plain reading of the aforesaid condition that 50% of the seats of each discipline/branch were reserved for the students of the Patna University. Respondent No. 1 appeared at the 1999 examination conducted by the Appellant on 4.7.99, and the results were published on 14.8.99. After the results were published but before the counselling commenced, the Appellant took the decision not to enforce Clause 14.4 (supra) of the prospectus. In other words, no seat of any discipline/branch was reserved for the students of the Patna University. The Petitioner took admission to one of the engineering courses in the Bihar College of Engineering, Patna, which was not of her choice. She

raised a grievance before the authorities that had Clause 14.4 of the prospectus been implemented, she would have got the discipline of her choice.

3. The Appellant did not grant the relief and, therefore, she preferred C.W.J.C. No. 9200 of 1999 before this Court which was disposed of by a learned single Judge of this Court by order dated 15.3.2000, whereby it was observed that the Petitioner had moved the Court while counselling was going on and the same shall be subject to the result of the writ petition. The executive decision to ignore Clause 14.4 of the prospectus was taken after the results of the 1999 examination had been published. The clause had been implemented in 1998, and it was held that the same was constitutionally valid. It was not possible at that stage to interfere with the entire result and admission made pursuant thereto. However, the writ Petitioner was entitled to the benefit of Clause 14.4 and, therefore, the following directions were passed:

Hence, in my view, facts of this case warrant for following directions:

(i) For the purpose of working out the benefits in the matter of choice of subject or branch in the Bihar College of Engineering, Patna for this Petitioner alone, the concerned Respondents should notionally work out the reservation available to the students of Patna University for different branches in terms of Clause 14.4 of the prospectus contained in Annexure-1.

(ii) If on such notional calculation the Petitioner is found entitled on her merit as well as on the basis of preference available to the student of Patna University to a Branch/Course of her choice then the same should be offered to her in the Bihar College of Engineering, Patna.

(iii) The aforesaid exercise must be completed by the concerned Respondents within a period of three weeks from the date of production/communication of a copy of this judgment/order before Respondent No. 2.

This writ application is allowed to the extent indicated above but without any order as to costs.

4. The aforesaid directions were sought to be implemented by the Appellant on the footing that reservation of 50% seats of the Patna Engineering College for the students of the Patna University was not calculated branch-wise, but after taking into account the branches together. The writ Petitioner's merit position in the general category was 703, and her merit position among the candidates from the Patna University was 60, whereas the reserved seats for the general category inclusive of all the branches was only 50. Therefore, the Petitioner could not be accommodated in any one of the seats reserved for the Patna University candidates of the general category in a discipline of her choice. She was not given the branch of her choice in spite of the terms of Clause 14.4 of the prospectus and the directions in the first writ petition. The Petitioner then filed a Misc. Application in the said C.W.J.C. No. 9200 of 1999, trying to point out the mistakes committed by the authorities in showing her merit position among the

Patna University candidates and making a prayer for modification of the judgment and order passed in that case. This Court did not feel inclined to make any modification in the order passed in the earlier writ petition, but left it open to the Petitioner to make a fresh representation before the authorities and seek her remedy in accordance with law.

5. The Petitioner then moved the authorities who failed to respond which led to the second writ petition namely C.W.J.C. No. 10858 of 2000, giving rise to the present appeal. The same has been disposed of by a learned single Judge by his order dated 10.1.2001, whereby this Court expressed its displeasure for acting in the matter to the harassment of the writ Petitioner requiring her to move this Court over and over again. The learned single Judge has further noted in the judgment that it was manifest from a plain reading of Clause 14.4 of the prospectus that reservation of 50% of the seats for the students of the Patna University was conceived discipline-wise/branch-wise. In that view of the matter, the authorities had clearly made an error in notionally calculating the number of seats reserved for the students of the Patna University, not branch-wise, but by taking into account such seats of all the branches together. The learned single Judge further noted that on account of some seats being still vacant in some of the branches for which the Petitioner had given her preference which had occurred because some candidates had either not joined those courses or had abandoned it after taking admission and, therefore, directed the authorities to allow her change of discipline to one of her preferred courses subject to seats being available in that particular branch, hopefully to be done within one week of the date of receipt/production of a copy of the order before the Principal of the College. Instead of carrying out the order the Board has preferred the present appeal challenging the validity of the aforesaid order dated 10.1.2001, passed in C.W.J.C. No. 10858 of 2000.

6. Learned Counsel for the Appellant has submitted that the order in C.W.J.C. No. 10858 of 2000 exceeds the parameters of the aforesaid order dated 15.3.2000, passed in the earlier writ petition, namely, C.W.J.C. No. 9200 of 1999. He further submits that giving the benefit of Clause 14.4 of the prospectus only to the writ Petitioner to the exclusion of those who were higher in the merit list would be discriminatory.

7. Learned Counsel for Respondent No. 1 (the writ Petitioner) has submitted in opposition that the question whether or not the benefit of Clause 14.4 of the prospectus shall be extended only to the writ Petitioner, or the entire result and admissions made pursuant thereto shall be reopened, is now finally concluded by the order dated 15.3.2000, in C.W.J.C. No. 9200 of 1999. He next submitted that the Petitioner approached this Court promptly. Counselling was going on at the time the Petitioner's application or interim order was considered on 29.10.99, the process of counselling and admission was not stayed and it was instead directed that the same shall be subject to the result of the writ petition. He lastly submitted that it is now admitted position that at least two seats in the branch of

her first choice, namely, Electronics and Communication, are still vacant.

8. Having considered the rival submissions, we are of the view that the appeal ought to be dismissed. The Appellant has failed to realize that it was not open to it to withdraw Clause 14.4 of the prospectus of the 1999 examination. Law is well settled that the terms and conditions of prospectus for admission to an educational institution cannot be altered after the same is issued. Paragraph 25 of Division Bench judgment of this Court reported in *Namita Jayaswal Vs. The State of Bihar and Others*, is relevant in the present context and is set out hereinbelow for the facility of quick reference:

25. In *Anuj Gupta and Ors. v. State of Himachal Pradesh and others* reported in 1990, Volume 6 Service Law Reporter, page 79 it has been held that when the prospectus for admission to Engineering Colleges laid down that the admission would be given on the basis of the results of 10 + 2 examinations, the same method can not subsequently be altered. It was held:

The point arose for consideration before the Supreme Court in a case arising out of the Kerala Education Rules, in *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, in that case it was held that the Applicant who had been granted sanction under Rule 2-A of Chapter 5 of the Kerala Education Rules for the opening of new schools or upgrading of existing schools are entitled to the continuance of the statutory procedural stream and to have their applications considered and dealt with under Rules 9 and 11. Quoting with approval the passage from *Wade* extracted in the earlier part of this judgment the Supreme Court held that having granted sanction to the Applicants under Rule 2-A(5) of the Kerala Education Rules, to open/upgrade the schools subject to satisfying the conditions under Rule 9 and obtaining a clearance under Rule 11, it is not open to the Government to stop the procedure mid-stream and cancel the order of sanction on the ground that there is no need for the establishment of new recognized schools, without giving the Applicants an opportunity to put forward their case.

The learned Advocate General submits that the concept of legitimate expectation demands only fairness in action and that is only an aspect of the principles of natural justice and not of promissory estoppel. He further submits that by mere change in the criteria for selection it can not be said that there is change in the policy depriving the Petitioners of any of their rights. The Petitioners had acquired no right of being selected but have only a right to apply for being selected and under the changed policy, they still have a right to apply and then compete with the other candidates. Even so, the change of policy after the issue of the prospectus was unfair to these candidates and can not be sustained in law.

On the principle laid down in these decisions, we are clearly of the view that the Petitioners having secured very high marks in the qualifying examination had a "legitimate expectation" of selection for admission to the Engineering Courses on merit basis as held out in the prospectus issued in that behalf. Merit based on the

result of PET cannot, therefore be imposed on them without even giving them an opportunity of sustaining the principle held out in the prospectus. The superimposition of PET after the issue of the prospectus is for that reason unfair and is also unsustainable in law.

9. In that view of the matter, it was not open to the Appellant to ignore Clause 14.4 of the prospectus after issuance of the same, and has in the present case been done after the result of 1999 examination was published. It was, therefore, rightly held in C.W.J.C. No. 9200 of 1999 that Clause 14.4 of the prospectus was constitutionally valid, and was illegally ignored with respect to the 1999 examination. We further agree with the observations made in the aforesaid order in C.W.J.C. No. 9200 of 1999 that it was not possible to reopen the entire result and interfere with the admissions with respect to the other candidates. However, relief was granted to the writ Petitioner in C.W.J.C. No. 9200 of 1999, but the Appellant once again made the mistake of not calculating the reservation conceived by Clause 14.4 branch-wise. Clause 14.4 of the prospectus clearly states that reservation for the students of the Patna University to the extent of 50% shall be discipline-wise/branch-wise. At least two seats of the general category of the discipline of Electronics and Communication are still vacant. The Appellant has thus although acted illegally and unreasonably, completely unmindful of the terms and conditions of the prospectus and the directions of this Court. This has resulted in the most avoidable round of litigations.

10. It is manifest from the records that seats of the first choice of the writ Petitioner are vacant in the Patna Engineering College. Hon'ble Single Judge in his order in C.W.J.C. No. 10858 of 2000 has in substance observed to the same effect. We have no manner of doubt that vacancies in the general category of the Department of first choice of Respondent No. 1 is still available.

11. We do not agree with the submissions advanced on behalf of the Appellant that the benefit of Clause 14.4 cannot be extended to Respondent No. 1 alone. We have already dealt with this aspect hereinabove and would like to reiterate that the same has been dealt with by the judgment in C.W.J.C. No. 9200 of 1999, wherein consideration of others was finally closed, the Petitioner alone shall get the benefit, and the same has attained finality. Learned Counsel for Respondent No. 1 is right in submitting that she has approached this Court promptly, and has been continuously pursuing this matter. The results were published on 14.8.99, and counselling and admission started in October or November 1999. C.W.J.C. No. 9200 of 1999 was filed in this Court on 10.9.1999, and interim order was passed on 29.10.99 when the counselling was still going, the writ petition was finally disposed of by order dated 15.3.2000, whereas the admissions were formally closed on 13.5.2000. It is thus manifest that Respondent No. 1 approached this Court with utmost promptitude and is pursuing her legal remedies relentlessly. It has been held by the Supreme Court in its judgment reported in Patel Motibhai Naranbhai and another Vs. Dinubhai Motibhai Patel and others, that any remedy must be sought with reasonable

promptitude. The Supreme Court has held in its judgment reported in Ratan Chandra Sammanta and others Vs. Union of India and others, that delay itself deprives a person of his remedy available in law. It was, inter alia, for this reason that this Court refused to interfere with the result and admissions thereto of persons other than the Petitioner while disposing of C.W.J.C. No. 9200 of 1999.

12. In the result, the appeal is dismissed. The Appellant, as well as Respondent No. 3 (the Principal, Bihar College of Engineering, Patna), are hereby directed to change the discipline/branch of the choice of Respondent No. 1 without further loss of time. In view of the peculiar facts and circumstances of this case, inter alia, that the writ Petitioner alone moved this Court most promptly, and also in view of the position that Clause 14.4 has been omitted from the prospectus of the succeeding years, change of discipline/branch of Respondent No. 1 in the Bihar College of Engineering shall not by itself be treated as a precedent for other cases.

13. In the result, this appeal is dismissed.