

**(1981) 02 PAT CK 0015**

**In the Patna High Court**

**Case No : Civil Writ Jurn. Case No. 2351 of 1980**

Dr. Anand Kumar Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

**Date of Decision : 10-02-1981**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15(1), 15(4)  
Evidence Act, 1872 — Section 115

**Citation : AIR 1981 Patna 164 : (1981) 29 BLJR 294 : (1981) PLJR 110**

**Hon'ble Judges : M.P. Verma, J;Birendra Prasad Sinha, J**

**Bench : Division Bench**

**Advocate : Balbhadra Pd. Singh, Nagendra Rai, R.P. Sharma and Prashant Kumar, for the Appellant; R.B. Mahto, Addl. Advocate Genreal and R.N. Roy, Jr. Counsel, for the Respondent**

**Final Decision : Allowed**

## Judgement

Birendra Pd. Sinha, J.—The sensitive question as to whether any reservation can be made in favour of the Scheduled Castes and Scheduled Tribes for admission to the post-graduate medical course even at the cost of merit has once again visited this Court. In this writ application, the petitioners originally five in number, have challenged the order of the Government, dated 17th September, 1980, contained in Annexure-4, making reservation of 14 per cent and 9 per cent seats for Scheduled Castes and Scheduled Tribes, respectively, for admission to Degree and Diploma courses. They have also made a prayer for a direction to the respondents to consider the cases of the petitioners on merit in accordance with the marks obtained by them at the competitive test provided for in the prospectus for the year 1980, contained in Annexure 5. At the time of hearing we were informed that petitioner No. 4 Dr. Prabhas Kumar Singh has already been admitted subsequently.

2. There are several medical colleges in the State of Bihar. Students are admitted in post-graduate courses in these medical colleges on the basis of competitive

test. On 22nd of February, 1980, a notice was published in the various newspapers inviting applications from the candidates desirous of taking admission into the post-graduate Degree and Diploma courses in these medical colleges. The last date for receipt of the application was 21st Mar., 1980. Various details were given in the prospectus which could be obtained along with the application form from the Principals of the colleges. According to the prospectus for the year 1980, a candidate could apply for maximum of three subjects in order of preference. The petitioners submitted their application to the authority concerned for appearing at the competitive test and paid Rs. 50/-, each. The examination was held in the last week of April 1980 and the result was published in the newspapers on 26-6-1980 and 24-7-80 by Annexures 2 and 2 (a). In Annexures 2 and 2 (a), the roll numbers of the candidates were published in order of merit determined on the basis of the competitive test. On 29th of July, 1980, a notice was published for holding interview of the first lot of successful candidates from 4th to 6th of August, 1980. The petitioners and other candidates, who were successful at the competitive test, appeared in the said interview. This interview, according to the petitioners, was to be held for the purpose of scrutiny of the original documents and for any other purpose which might arise. The petitioners' case is that after the interview they along with the other candidates were selected for admission to Post-Graduate Medical Degree Course but, before their list could be published, the State Government took a decision to reserve 14 per cent and 9 per cent of seats for the Scheduled Castes and Scheduled Tribes, respectively, vide order contained in Annexure 4 dated 17th September, 1980. This, the petitioners contend, has marred their prospects of being admitted into the Post-Graduate Medical Degree Course.

3. Shri Balbhadra Pd. Singh, learned counsel appearing on behalf of the petitioners, contended that merit has once again been crucified at the altar of reservation made in Annexure 4. According to him, the medical education is controlled by the Medical Council Act, 1956, and the Bihar Inter University Board Ordinance, 1978, and the regulations made thereunder. They provide for entry into these courses strictly on the basis of merit determined on the basis of competitive test. So long as these regulations are in force, the State Government cannot pro tanto modify or repeal these provisions by any administrative fiat. Learned Counsel contended that the order in this respect contained in Annexure 4 is violative of Article 15 of the Constitution. Learned Counsel further contended that, in any view of the matter, there cannot be any reservation for the Scheduled Castes and Scheduled Tribes for the session 1980-82 since the regulation of the Bihar Inter University Board Ordinance and the prospectus for the year 1980 do not provide for any reservation.

4. The Indian Medical Council Act, 1956, provides, inter alia, that the Medical Council of India with the previous sanction of the Central Government may make regulations to carry out the purposes of the Act. The Medical Council of India made certain recommendations relating to post-graduate medical study which was approved by the Government of India in February 1975. It provides that

students for post-graduate training should be selected strictly on merit on the basis of academic records in the under-graduate courses. Supplemental to this regulation, the Bihar Inter University Board, constituted under Ordinance No. 25 of 1978, framed regulation for admission to the combined competitive examination for post-graduate course in the Government Medical Colleges, which ordained that selection shall be made strictly on the basis of merit as determined by the combined competitive examination in each subject. A prospectus for the competitive test leading to admission in the postgraduate courses in the medical colleges for the session 1980-82 was drawn up and published under the signature of the Additional Director of Health Services-cum-Chairman, Board of Post-graduate Medical Admission Test. For being eligible to appear at a competitive test, a candidate must have passed the M. B. B. S. examination from any of the medical colleges of Bihar recognised by the Medical Council of India. There are some other qualifications for being eligible for appearing at the test given in paragraph III of the prospectus with which we are not concerned at the moment. Paragraph IV provides that there will be a common examination for admission into the Degree and Diploma courses for the subject concerned, which may be of two hours' duration. In the subject where the number of applicants for the course does not exceed the number of seats available, there shall be no test. Paragraph VII provides "Selection to the Degree and Diploma courses will be made strictly on the basis of merit as determined by the marks obtained in the test plus additional credits to which a candidate may become eligible" for each completed year of satisfactory rural service in the State Health Service Cadre, for each completed year of satisfactory rural service in Chotanagpur and Santhal Pargannas while in the State Health Service Cadre and each completed year of satisfactory service in Family Welfare or Leprosy Control programme of the State. Various marks have been assigned for this purpose. It also provides that since the result of the competitive test will be published in order of merit, credit under paragraph VII (1), (2) and (3) shall be given only up to the last date fixed for receiving the applications. This prospectus nowhere provides for any reservation in favour of the Scheduled Castes and Scheduled Tribes. On the subject of reservation of seats for Backward Classes for admission into post-graduate courses, the Executive Committee of the Medical Council of India at its meeting held on 1st of July, 1977, reiterated the earlier decision of the Council that "admission to the P. G. medical course should be on the basis of merit and that no reservation of seats of any category of candidate for admission to P. G. medical course is desirable", vide Annexure 6. In its meeting held on 17/18th March, 1978, the Medical Council of India decided that "the minimum marks for admission should not under any circumstances be reduced as it would not be in the public interest to admit to medical courses candidates with lesser marks", vide Annexure 7. In an earlier writ application (C. W. J. C. No. 1835 of 1980) filed by one Radha Krishna Choudhary complaining that no reservation had been made for Scheduled Castes and Scheduled Tribes candidates in the post-graduate medical courses for the years 1980-82 session, the State Government in its counter-affidavit had taken the same stand. On behalf of the State it had

been stated, *inter alia*, that the Medical Council of India does not provide or recommend for any reservation for the students of Scheduled Castes or Scheduled Tribes in the post-graduate medical courses. It had also been stated that the regulation provided for admission on the basis of merit alone and, therefore, the State Government was not in a position to make reservation after reducing the marks for the Scheduled Castes and Scheduled Tribes candidates in the postgraduate medical courses. It was also stated on affidavit that the prospectus for the year 1980 (Annexure 5) did not provide for any reservation for the Scheduled Castes or Scheduled Tribes candidates. Copies of the counter-affidavits filed on behalf of the State in that case have been annexed to this application as Annexures 8 and 8 (a). In the present writ application, however, the learned Additional Advocate General has turned about and taken a contrary stand. He submitted that the basic qualification under the prospectus is M. B. B. S. Degree and the question as regards merit has to be considered separately between the two classes, viz. the general seats and the reserved seats. In other words, the question regarding merit has to be considered *inter se* between the candidates of the Scheduled Castes and Scheduled Tribes in the reserved seats and it has no relation with the merit of the candidates of the general seats which, again, must be considered *inter se* between the candidates for the general seats. In this connection, learned Additional Advocate General drew our attention to Paragraphs XXI, XXIV and XXIX of the prospectus. Paragraph XXI provides that competing on merit at the test will not entitle the candidates for admission without fulfilling other conditions to the satisfaction of the authorities concerned. Paragraph XXIV provides that appearance at the interview does not entitle a candidate to admission. Paragraph XXIX provides that the Board reserves the right not to make any admission in any subject or in any course. Relying upon this, he contended that even after the publication of the result of the competitive test and the interview as contemplated under the prospectus, but before the actual admission, the State Government which is running these institutions can provide for reservation consistent with Article 15(4) and Article 46 of the Constitution in its effort to remove the ugly inferiority complex which has done genetic damage to the Indian polity.

5. Shri Balbhadra Pd. Singh, learned Counsel for the petitioners, did not challenge the State Government's right under Article 15(4) of the Constitution of India to make reservation in favour of the Scheduled Castes and Scheduled Tribes students in the present case. It is, therefore, not necessary to dwell upon this question as to whether or not the State Government has a right to make any reservation for the Scheduled Castes and Scheduled Tribes students for admission to the post-graduate medical courses even in spite of resistance by the Indian Medical Council in this behalf. The question which has been seriously canvassed in this application is that merit cannot be completely crucified as has been done in this case. Time and again this question has received anxious consideration by the apex Court in India as also the various High Courts. It has been consistently held that in making a provision for reservation the Government

should not only take into consideration the claims of the members of the weaker section but also the maintenance of efficiency which is a matter of paramount importance. A reasonable balance must be struck. Article 15(4) of the Constitution is an exception to Clause (1) and cannot be extended so as in effect to destroy the guarantee under Clause (1). Article 15(4) cannot totally destroy Clause (1) of the Article, A Full Bench of this Court to which I was also a member in *Amalendu Kumar Vs. The State of Bihar and Others*, held that the object of selection for admission was to secure the best possible result and the requirement of minimum standard of proficiency was an essential condition for obtaining the dominant objective. It was further held that the minimum qualifying marks even in case of reserved category must be such as would meet the requirement of the dominant objective. The minimum qualifying marks for Scheduled Castes and Scheduled Tribes had been reduced from 55 per cent to 40 per cent and then to 35 per cent in that case. That was held to be violative of Article 15(1) read with Article 14 of the Constitution.

6. The Medical Council of India, as would appear from Annexure 7, is not in favour of reducing the minimum marks for admission under any circumstances as it would not be in the public interest to admit to medical courses candidates with lesser marks. However, the regulation for admission to the combined competitive examination for post-graduate medical courses in the Government Medical Colleges of Bihar adopted by the Inter University Board provides, inter alia, that "subject to conditions, if any, laid down by the Indian Medical Council, a maximum of 10% marks may be allowed as a relaxation for candidates belonging to Scheduled Castes and Scheduled Tribes in the subject concerned". This regulation has also laid emphasis on the selection to be made on the basis of merit as determined by the combined competitive examination. In the case of *Amlendu Kumar (supra)* I had stated that it was understandable that in giving representation to the weaker sections claims of meritorious students could be sacrificed to a certain extent but a total departure even from this rule would be doing a great injustice to the other classes, apart from being harmful to national interests. Assuming that in terms of the regulation mentioned above a relaxation of ten per cent marks could be allowed to the candidates belonging to the Scheduled Castes and Scheduled Tribes, the question for consideration is whether even that has been done in the present case. The order contained in Annexure 4 is completely silent on this question. It makes a blanket reservation of 14 per cent and 9 per cent for the Scheduled Castes and Scheduled Tribes students, respectively, irrespective of merit. Since no reservation had been thought of at the time of issuing the prospectus and inviting applications, the prospectus does not make any provision for it. As will be seen in this case, the result would be disastrous if respondents 4 to 8 and other candidates of the Scheduled Castes and Scheduled Tribes are allowed admission in preference to the petitioners and other meritorious students. A chart showing the position in order of merit in the subjects concerned of the petitioners vis-a-vis respondents Nos. 4 to 8, supplied on behalf of the petitioners is given below:--

Petitioner with Roll No. Subject Total No. of seats in the subject Position in order of merit in the subject Respondant with roll No. Subject Position in order of merit in the subject.-

Petr. No.1 Dr.Anand Kumar Mishra (PW 56) Pathology 38 67 Respd. No.4 Arun Kumar (DAR 86) Paediatrics 134

Medicine 265

Petr. No.2 Dr. Jitendra Pd. Singh (RAN 379) Paediatrics | | | } | | | 19 19 Respd. No.5 Ram Kumar (DAR 156) Paediatrics 156

Petr. No.3 Dr. Prakash kumar Varma (RAN 139) Paediatrics 20 Respd. No.6 Siya Ram (DAB 470) Surgery 249

Anesthesiology 149

Petr. No.4 Dr. Prabhas Kumar Singh (RAN 93) Surgery 48 35 Respd. No.7 Vinod Kumar (DAR 284) Surgery 340

Petr. No.5 Dr. Utpal Kumar Biehwass (RAN 101) Medicine 42 41 Respd. No.8 Dr. Rabindra (DAR 289) Surgery 326

Orthopaedics 147

Radio Diagnosis 95

The position in the merit list has been extracted from the result contained in Annexures 2 and 2 (a) and has not been controverted on behalf of the respondents. This shows that in preference to petitioner No. 2 whose position in the merit list is 19, respondents Nos. 4 and 5 whose position is 134 and 156, respectively, shall be admitted. Similarly, in preference to petitioner No. 5 whose position in the merit list is 41, respondent No. 4 whose position is 265, shall be admitted. This illustrates a big gap between the merit of the petitioners, on the one hand, and respondents Nos. 4 to 8 and others, on the other. It is obviously not consistent with the provision in the Bihar Inter University Board regulation providing for ten per cent relaxation. The argument that merit has to be considered separately for the two categories advanced by the learned Additional Advocate General is, to say the least, devoid of any merit. If that has to be done, even the regulation regarding ten per cent relaxation will become meaningless and in-fructuous. It can then be said that the standard for passing out the medical examination as also the minimum number of qualifying marks should be different for students belonging to the Schedule Castes and Scheduled Tribes. This will be repugnant to the right guaranteed under Article 14 of the Constitution. It would be better, as I had observed in the case of Amalendu Kumar Vs. The State of Bihar and Others, , to produce a fewer number of good doctors than to produce a large number of medicasters. Reservation of seats for the weaker sections does not mean putting a premium on inefficiency since it would be wholly against national interests. One must not forget that populism would not do any good to the cause of medical education as it has not done so

far. Posteriority shall never forgive, such a blind social surgery which is bound to erode the health of the nation.

7. Annexure 4 by which reservation has been sought to be made does not give any guideline. It must conform to the regulations of the Inter University Board. It must be held, therefore, that the same is violative of Article 14 of the Constitution.

8. The order contained in Annexure 4 was passed on 17th of October, 1980, after all formalities were over and only the final list had to be published and the students admitted. The petitioners, respondents Nos. 4 to 8 and all others had applied for admission on the basis of the representation contained in the notice and the prospectus (Annexure 5) that selection of candidates will be done by the Selection Board on the basis of merit determined by the marks obtained by them at the competitive test. No reservation had been made for the Scheduled Castes, Scheduled Tribes at that time. When the final selection was to be made, the Government by the order contained in Annexure 4 purported to change the basis of selection. This was not permissible as it violated Articles 14 and 15(1) of the Constitution. The claim of the petitioners is founded upon equity which arose in their favour as a result of the representations made in the notice and the prospectus as also the action taken by the petitioners acting upon the said representations under the belief that the authorities would carry out the representations made by them or on their behalf. In almost a similar situation, a Bench of the Orissa High Court in *Abodha Kumar Mohapatra and Others Vs. State of Orissa and Others*, held that the principles of legal or equitable estoppel was applicable in the circumstances of the case and the authorities concerned were estopped from issuing such orders. The Government is not exempt from the liability to carry out the representations in the notice and the prospectus as to the basis of merit on the marks obtained at the competitive test for Selection. The impugned Government order contained in Annexure 4 to the extent it makes reservation for the Scheduled Castes and Scheduled Tribes for admission to all the Post-graduate Degree and Diploma courses, must, therefore, be held to be invalid as it violates the provisions of the Constitution and is otherwise illegal.

9. This application accordingly succeeds and the order contained in Annexure 4 to the extent it makes reservation for the Scheduled Castes and Scheduled Tribes for admission to all the Post-graduate Degree and Diploma courses is struck down and quashed. The authorities concerned are directed to proceed with the admission to the post-graduate medical courses strictly in accordance with the merit as provided in the prospectus. There shall be no order as to costs.

M. P. Verma, J.

I agree.