
(1999) 03 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 7301 of 1998

Dr. Sarwa Mangla

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-03-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 226

Citation : (2000) 1 PLJR 1043

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Panchanand Pandit, for the Appellant; A.K. Singh for the State and M/s Chakradhar Sharan Singh and Rama Sinha, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application to cancel the admission of Respondent no. 5?Dr. Soni in the Post-Graduate Course of Gynaecology and Obstetrics in the Patna Medical College, Patna and for her admission against the seat becoming vacant due to cancellation of her admission. The facts, which are not in dispute, are that the petitioner and respondent no. 5 both passed the M.B.B.S. examination and both of them applied for their admission to Post-Graduate Course in the year 1998, which is known as P.G. Mat. 1998. The examination for admission in the aforesaid course was held on 29.3.1998 and the result whereof was published on 21.4.1998. The petitioner is a most Backward category candidate and her position in the merit list under the aforesaid category is 12th as she has secured 570 marks, Respondent no. 5 is a general category candidate and she has secured 621 marks in the test and her position in the general category candidate is 184. The said fact is borne out by the merit list, a copy of which has been appended as Annexure 1 to the writ application.

2. On 15.5.1998, a notice was issued in the daily newspaper, namely, Hindustan Times, notifying the schedule for verification of the original documents and

counselling. The period fixed was from 25.5.1998 to 27.5.1998. Both the petitioner and respondent no. 5 appeared for their counselling. There are only 22 seats in the category of Obstetrics and Gynaecology, out of which 11 seats are reserved for general category candidates, three for Scheduled Caste candidates, 2 for Scheduled Tribe candidates, 3 for Most Backward Category candidates, 2 for Backward Category candidates and one for girl. The petitioner gave her option for M.S. Obstetrics & Gynaecology and she also gave Patna Medical College, Patna, as first preference, Ranchi Medical College, Ranchi as second preference, Darbhanga Medical College, Darbhanga as third preference and for D.G.O. in Patna Medical College, Patna, as fourth preference.

3. According to the petitioner, she was not selected for admission in the said Course though her position was 12th in the merit list of Most Backward Category candidate. The candidate at serial nos. 7 and 11 under the Most Backward Category were admitted in the said Department in Ranchi Medical College and Darbhanga Medical College, respectively, and in the Patna Medical College, in the said Department, Respondent no. 5 was admitted on the basis of her claim as Most Backward Category candidate. It is asserted that Respondent no. 5 is a general category candidate but she has claimed as Most Backward Category candidate only on the ground that she was married with a boy belonging to Most Backward category caste. The petitioner has challenged her admission on the ground that she being a general category candidate cannot take benefit of reservation provided for Most Backward Category candidate only on the ground of her marriage with a Most Backward Category boy. By virtue of a marriage with a Most Backward category boy, a girl of forward community cannot become a member of the Most Backward community.

4. The stand of Respondent no. 5 is that although she belonged to a forward caste, but by virtue of her marriage with a boy of Most Backward category caste, she has been transferred to the family of her husband and her caste would be that of her husband and as her husband is, admittedly, belonging to Most Backward category caste her admission by treating her of that category is fully justified.

5. Learned counsel for the petitioner submitted that in view of the settled law that a female born in forward caste marrying to a reserved category boy is not entitled to the benefit of reservation as a reserved category candidate and as such the admission of respondent no. 5 should be quashed and a direction be issued for admission of the petitioner as she would be entitled to be admitted in the aforesaid course by virtue of her placement in the merit list of Most Backward category candidates. In support of his submission, he placed reliance on the judgment of the Supreme Court in the case of Mrs. Valsamma Paul Vs. Cochin University and others, and in the case of State of Tripura and Others Vs. Namita Majumdar [Barman] (Smt), .

6. Learned counsel for Respondent no. 5, on the other hand, submitted that by virtue of her marriage, the wife is transferred to the caste of the husband and in

support of his submission, he relied upon the judgment of the Supreme Court in the case of N.E. Horo Vs. Smt. Jahanara Jaipal Singh, . He also submitted that Respondent no. 5, after her admission in May-June, 1998, has read uptill now and in that view of the matter, if at this stage, her admission is cancelled, then she will suffer and even as a general category candidate, despite her marriage with a most backward category boy, she would have been entitled to her admission in some other Degree Courses though not in Obstetrics and Gynaecology.

7. The admitted fact is that Respondent no. 5 belongs to general category. She claims reservation only by virtue of the reason of her marriage with a boy of Most Backward Category. The said question is no longer res Integra as the same has been decided in the said two cases relied upon by the learned counsel for the petitioner. The aforesaid case relied upon by the learned counsel for Respondent no. 5 i.e. N.E. Horo's Case (supra) was considered by the Supreme Court in the said two cases and the same has been held to be not relevant for deciding the question in controversy.

8. In the case of Valsamma Paul (supra), the apex court held that when a member of the forward community is transplanted into the Dalits, Tribes and OBCs, she must of necessity also undergo same handicaps, be subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate, who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign Constitutional policy under Articles 15(4) and 16(4) of the Constitution.

9. The view taken in Valsamma Paul's case (supra) has been followed by the apex court in the case of State of Tripura (supra), wherein it has been held that the female born in a forward caste family marrying a Scheduled Caste is not entitled to benefit of reservation under Articles 15(4) and 16(4) of the Constitution. In the said case, it was submitted before the apex court to reconsider the law laid down in Valsamma Paul's case (supra), but the apex court held that there was no reason to take a different view as had been taken in the aforesaid case.

10. Thus, it is well-settled that no benefit of reservation either for the purpose of admission or employment can be taken by a forward category candidate only by virtue of his/her transplantation into the reserved category family either by marriage or adoption. Therefore, the claim of Respondent no. 5 that she is a Most Backward Category candidate is not tenable in law and her admission as a Most Backward Category candidate is invalid in law.

11. As stated above, it was submitted on behalf of Respondent no. 5 that as she has completed about 9 months of the course in the department concerned, at this stage her admission might not be cancelled. However, stand of the petitioner is that when the petitioner came to know about the admission of respondent no. 5, she filed this writ application in August, 1998 and this court issued notice on 17.9.1998 and the matter was delayed because of non-appearance of Respondent no. 5 and as such she cannot be allowed to take benefit of her own wrong. In my view, learned counsel for the petitioner is right in submitting so. The law was settled by the apex court in the year 1996. Respondent no. 5, inspite of that, claimed herself as a Most Backward Category candidate and got herself admitted in the Post-Graduate Course in the said department on that basis. Her admission, as stated above, is against the Constitutional mandate and as such only because she has studied for some months, on that ground benefit or benevolence cannot be shown to her. If the admission is de hors the Constitutional provision, any direction to allow Respondent no. 5 to continue in the subject will be in the nature of a direction to perpetuate the illegality which cannot be done under Article 226. No benevolence can be shown in such cases for the reason that there is no room for any benevolence under Article 226 of the Constitution. If the court departs from law and enters the arena of benevolence, the perils and pitfalls are too many to recount. There will be no objective standards of judging. Justice becomes personalised. It would vary from Judge to Judge. In the absence of any procedural irregularity, the High Court had no jurisdiction to interfere in the matter. (see Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, .

12. Thus, the petitioner has made out a case for interference. The admission of Respondent no. 5 in Post-Graduate Course of Department of Gynaecology and Obstetrics, Patna Medical College, Patna, as a Most Backward Category candidate is cancelled. However, the case of the petitioner should be considered for admission. As stated above, there were only three seats, for the reserved category of Most Backward Candidates, out of them two reserved category candidates have been admitted and as the admission of Respondent no. 5 has been cancelled, one seat has become vacant. The position of the petitioner in the merit list of the said category is twelfth, whereas, the candidates of merit list at serial nos. 7 and 11 have been admitted in Ranchi and Darbhanga Medical College and as such the case of the petitioner should be considered and if she is eligible for admission in the aforesaid Post-Graduate Course in the aforesaid department, then she should be admitted in a Medical College according to her placement in the merit list. The view of other candidates, admitted in the said Department, who are above the petitioner in the merit list, may be also taken with regard to preference of the Medical Colleges.

13. So far as Respondent no. 5 is concerned, if she is entitled to admission in any course by virtue of her placement in the merit list as a general category candidate, her case should be considered and she should be admitted and any person affected by her admission should be adjusted to other departments in

accordance with his/her position in the merit list. In the result, this writ application is allowed with the aforementioned directions.