

(2007) 12 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 12884 of 2007

Jayanti Prabha Bharti

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Citation : (2007) 12 PAT CK 0034

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : P.K. Sahi, General, Rajendra Prasad Singh and Pramod Kumar, for the Appellant; Nirmal Kumar, G.P.-IV and R. Ranjan, J.C. to G.P.-IV, for the Respondent

Judgement

V.N. Sinha, J.—Petitioner who is Back Ward Class Girl appeared in the Bihar Combined Entrance Competitive Examination (B.C.E.C.E.) 2007 (hereinafter referred to as "the examination") and was placed at merit serial general 1647, Backward Class 811 and Reserved Category Girl (hereinafter referred to as "R.C.G.") 180 of the Physics, Chemistry, Mathematics (PCM) group, as is evident from letter of the Controller of Examination of the Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as "the Board") bearing No. 1502 of 2007 dated 16.8.2007, Annexure-6, whereunder she was asked to appear for counseling in the R.C.G. category on 19.9.2007 at 9 A.M.

2. It is submitted on her behalf that when she appeared for counseling on the date fixed she was offered admission in M.I.T., Muzaffarpur Leather Technology Branch which offer according to the petitioner is contrary to the provisions contained in Sub-clause (Kha)(i) of Clause 14.4 of the prospectus issued for the said examination by the Board extract whereof is contained in Annexure-5 to this application. According to the counsel for the petitioner all the seats in the category of R.C.G. ought to have been filled up on the date which was notified for counseling of the R.C.G. category i.e. on 19.9.2007 and as on 19.9.2007 only one seat was available for R.C.G. category, according to the counsel for the

petitioner, the seats meant for R.C.G. category has been offered to other categories which is contrary to Sub-clause (Kha)(i) of Clause 14.4 of the prospectus which inter alia provides that 3 per cent of the total seats in each college and in each discipline be offered for R.C.G. Category. In view of the aforesaid clause according to the petitioner 20 seats meant for R.C.G. category ought to have been filled up on or after 19.9.2007 and not before the said date as has been done in the present case depriving the petitioner the benefit of the seats reserved for R.C.G. category which seats according to the petitioner have been filled up by persons of the other category thereby depriving petitioner of the seat reserved for R.C.G. category. In this connection learned Counsel for the petitioner has relied on the judgment of this Court in the case of Nidhi Sinha Vs. The State of Bihar and Others, whereunder this Court has held that those girl students who have also competed in the B.C. category on account of better merit must not be included in the R.C.G. category for the purpose of computation of percentage of reservation for the R.C.G. category.

3. Learned Counsel for the Board with reference to the counter affidavit and supplementary counter affidavit filed on behalf of Respondent Nos. 4 to 6 submitted that petitioner in view of her merit position in the category of R.C.G. was offered admission in Leather Technology at M.I.T., Muzaffarpur but she declined to avail the offer and the prayer made in the writ petition is absolutely misconceived as no candidate either in the Backward Class category or the R.C.G. Category below to the petitioner in the merit position has been offered admission and in view of such fact the writ petition be dismissed. In this connection learned Counsel for the Board has referred to the averments made in paragraphs 3, 4, 5, 6 and 7 of the supplementary counter affidavit filed on behalf of the Board which has been affirmed on 18.12.2007 and with reference to those statements submitted that 20 seats were available for the R.C.G. category out of which one seat was required to be filled up from a disabled R.C.G. He also submitted that seven R.C.G. candidates who appeared for counseling with the General Category candidates but preferred to opt R.C.G. seats instead of general seat's offered to them during the counseling were allowed to jump over and take admission against R.C.G. category allotted seat and seven number of seats from among the last vacant seats of general category were blocked as compensation for allotting to R.C.G. candidates of lower merit so that the required percentage of reservation for R.C.G. candidates remains unchanged. It was also pointed out with reference to statement made in paragraphs 5 and 6 of the said supplementary counter affidavit that 19 R.C.G. candidates who have been admitted against 19 number of R.C.G. seats have superior merit as would appear from Tabl-3 and 4 of the said counter affidavit and there has been no injustice done to the petitioner.

4. Counsel for the petitioner in rejoinder has pointed that since the seven candidates whose details have been given in Table-2 were allowed to prefer R.C.G. category seats disclaiming the general seats whereafter seven seats from amongst the last vacant seats of general category was blocked as compensation

for allotment to R.C.G. candidates of lower merit so that the required percentage of reservation for R.C.G. candidates remains unchanged, however, no such exercise as regards R.C.G. seats opted by the B.C. category or any other reserved category candidate was carried out contrary to the stipulations made in Sub-clause (Kha)(i) of Clause 14.4 of the prospectus, Annexure-5 as also the direction of this Court in paragraph 8 of the judgment in the case of Nidhi Sinha v. The State of Bihar and Ors. (Supra). According to the counsel for the petitioner had such exercise been carried out petitioner would have been given a better choice for admission in other courses as well.

5. Having heard counsel for the parties and having perused the pleadings filed by them including the pleadings made in the supplementary counter affidavit affirmed on 18.12.2007, I am of the view that from the pleadings made on behalf of the Board it does not appear as to how many Backward Class girl or any other reserved category girl candidates were allowed to opt for R.C.G. quota seats and as such figure is not available it is difficult for this Court to know whether such seats in the concerned reserved category was blocked for compensating R.C.G. category which is required to be compensated and was actually compensated by blocking seven general category seats. In the circumstances, I direct the Board to identify the number of the Backward Class or any other reserved category class candidate who had opted against R.C.G. seats and thereafter to compensate such number of seats for being offered to R.C.G. category candidate including the petitioner as was directed in paragraphs 8 of the case of Nidhi Sinha v. The State of Bihar and Ors. (Supra). Exercise in terms of this order be made as early as possible in any case within a period of one month from the date of receipt/production of a copy of this order.

This writ application is, accordingly, disposed of.