

(1979) 09 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2015 of 1979

Kahkashan Parveen Shahabuddin

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1980 Patna 215

Hon'ble Judges : P.S. Sahay, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : S. Shahabuddin and Raghib Ahsan, for the Appellant; Chunni Lall, Govt. Pleader No. 5, S.K.P. Sinha, Jr. Counsel to Govt. Pleader No. 5 and Tara Kant Jha, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—The petitioner in this writ application has questioned the validity of a direction issued by the State Government in the Department of Health that five seats in each of the four Medical Colleges at Patna, Darbhanga, Ranchi and Jamshed-pur should be reserved for admission of students who had been taken in custody or had been injured during the agitation (Andolan) between the period March, 1974 to March, 1977. According to the petitioner, the said decision of the State Government is arbitrary and ultra vires.

2. The petitioner after having passed the Intermediate in Science appeared at a competitive examination held on 16-9-1978 known as Pre-Medical and Dental Test, 1978. She secured 73 marks out of 120. During the session commencing from 1978 there were total 670 seats in the different Government Medical Colleges of the State for which the said competitive test had been held. Out of these 670 seats, 20 per cent seats are reserved for girl candidates. Some of these seats are also reserved for members of Scheduled Castes, Scheduled Tribes and other weaker section of the society. After the 20 per cent seats were filled up by the girl candidates in accordance with merit, the petitioner was first

on the waiting list amongst the girl candidates. A letter dated 8-12-1978 was issued by the State Government, Department of Personnel, saying that the State Government had taken a decision that for persons (Yuwak Yuvtiyan) who were taken in custody or were injured during the agitation (Andolan) between 18-3-1974 to March, 1977, five extra seats in every institution be created and they should be admitted against those seats. A copy of that communication is Annexure B to the counter-affidavit filed on behalf of the State. Thereafter, another communication, dated 26-2-1979 was issued by the Department of Health to the Principals of Medical Colleges at Patna, Darbhanga, Ranchi and Jamshedpur saying that the State Government has taken a decision to create five extra seats in the First Year of the aforesaid four Medical Colleges for such youth who had been taken in custody or were injured during the agitation between the period 18-3-1974 to March, 1977. A copy of this communication is Annexure A to the counter-affidavit filed on behalf of the State.

3. On behalf of the petitioner it was submitted that the 20 extra seats having been created by the State Government, they have to be filled up by candidates according to merit or from amongst the special category/class of candidates whose categorisation or classification has a rational basis. The question of admission in the Medical Colleges has been source of controversy from time to time in different States as well as in this State. The State Government taking into consideration the requirements of the society have been framing rules for admission to these colleges. Generally, by these rules some seats are reserved for special categories of students who require special treatment and protection. While doing so, it indirectly affects the merit test inasmuch as persons having better merit are deprived of the admission in these colleges. But, on many occasions, courts have upheld such an attempt keeping the larger interest of the society in view. While upholding such reservations, the courts have to be satisfied that the provisions concerned are reasonable and have a rational basis although they encroach the fundamental right of other candidates under Article 14 of the Constitution. Whenever such attempts are found to have travelled beyond the reasonable limits, courts are left with no option but to hold them as ultra vires.

4. Learned counsel appearing for the petitioner submitted that the impugned action and direction of the State Government regarding the mode of filling the newly created 20 seats not only infringes the rights of the meritorious students but has neither any intelligible differentia, nor any nexus with the object to be achieved. It was urged on behalf of the petitioner that there cannot be any justification for treating persons who had gone in jail or were injured during the agitation between March, 1974 to March, 1977 as a special class and to discriminate the petitioner and others possessing better merit.

5. In the aforesaid two communications dated 8-12-1978 (Annexure B) and dated 26-2-1979 (Annexure A) which have been produced on behalf of the State, no details of the agitation in question have been given. There is nothing in the

impugned order as to what agitation the State Government had in mind. Learned Government Pleader appearing on behalf of the respondent-State submitted that these seats have been reserved for persons who had participated in the "J. P. Movement". However, he was not in a position, on the basis of the pleadings in this case, to say as to what was this "J. P. Movement". In support of his contention that such reservation can be made, he placed reliance on the judgment of the Supreme Court in the case of D.N. Chanchala Ors. Vs. The State of Mysore and Others, . There a rule framed for admission in the medical colleges of Mysore was being challenged. Some of the seats had been reserved for the "children of political sufferers". It was urged before the Supreme Court that the aforesaid expression was ambiguous and to reserve seats for children of the political sufferers had no rationale behind it so as to fulfil the test of reasonableness. The Supreme Court while repelling this argument pointed out in the said judgment that the words "political sufferers" have been fully defined in the Rules concerned to mean such persons who on account of participation in the national movement for the emancipation of India had suffered imprisonment or were detained for a period of at least six months or had been awarded capital punishment or had died while undergoing imprisonment or detention or had been killed or detained or became permanently incapacitated by police or military firing or lost their jobs, property or other means of livelihood. As such the definition was couched in clear and unambiguous language besides containing sufficient details so as to distinctively identify the persons who would fall within it. It was further observed :

"These should have been the consequences of his having participated in the national movement for the emancipation of India. The "national movement" must obviously mean the late struggle for the freedom of the country from the alien British Rule."

Reserving seats for such class or category of persons was also considered to be reasonable saying :--

"..... to extend that principle to the children of political sufferers who in consequence of their participation in the emancipation struggle became unsettled in life; in some cases economically ruined, and were, therefore, not in a position to make available to their children that class of education which would place them in fair competition with the children of those who did not suffer from that disadvantage,."

In my view, students or persons taking part in an agitation, details whereof have not been mentioned, cannot be treated at par with those political sufferers, who had participated in the movement for emancipation of the nation itself. Any agitation which facilitates a party to come in power or to get the demand, cannot be equated with an agitation which ultimately brought freedom to the nation itself from an alien rule.

6. The purpose of introducing a competitive examination for admission to these

medical colleges is to select the most meritorious amongst the candidates for admission . The State Government which bears the financial burden of running these colleges is entitled to lay down criteria for admission in such colleges, but the criteria should be reasonable one and not arbitrary. So long as there is no discrimination within each of different sources, the validity of the rules laying down the procedure for admission cannot be successfully challenged, but if once the merit basis is ignored and a class is allowed to be admitted which has no rational basis, the Courts are left with no option but to hold that it amounts to infringement of fundamental rights of other candidates. A Full Bench of this Court in the case of Umesh Chandra Sinha Vs. V.N. Singh and Others, considered an Ordinance by which seats had been reserved for the sons and daughters of the employees of the University. It was held that there was no reasonable nexus between the principle governing the admission to colleges on the one hand and reserving the seats for the sons and daughters of the employees of the University on the other because preferential treatment to the children of its employees would amount to favouritism and patronage. In the case of State of Kerala and Another Vs. R. Jacob Mathew and Others, reservation of few seats for the children of Registered Medical Practitioners was held to have no rational basis.

7. I have already pointed out, so far as the present case is concerned no details of the agitation between March, 1974 to March, 1977 has been mentioned. Nothing has been said as to what type of agitation it was and how it was rational to reserve seats for them, and to ignore the claims of students having better merit pr of those belonging to weaker sections of the society having constitutional protection. The matter would have been different if the age bar, if any, for appearing at the competitive examination had been relaxed in favour of such students who had taken part in any such agitation. In such a situation, I am left with no option but to hold that the order and direction of the State Government reserving five seats in each of the four medical colleges of the State, infringes the fundamental right of the petitioner inasmuch as she is being discriminated without any rational or reasonable basis.

8. Accordingly, I allow this writ application and quash the decision of the State Government reserving five seats in each of the four medical colleges for persons who had taken part in the agitation between March, 1974 to March, 1977. Now it will be open to the State Government to fill up those 20 seats which have been created for the session 1978-79 only, in accordance with law. In the circumstances of the case, however, there will be no order as to costs.

P.S. Sahay, J.

I agree.