
(2000) 03 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 9200 of 1999

Miss Priyanka Prasad

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 1 BLJR 71 : (2000) 2 PLJR 398

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—This writ application under Article 226 of the Constitution of India has been filed by a student who took the Combined Engineering Competitive Examination, 1999 (hereinafter referred to as the Examination 1999) conducted by respondent No. 2 on 4-7-99. Results have been published on 14-8-99 and the petitioner by virtue of her position on merit has been admitted to one of the engineering courses in the Bihar College of Engineering, Patna. The grievance of the petitioner is that Respondents have not prepared the result and offered admission to the students of Patna University on a preferential basis as per institutional preference provided by Clause-14.4 of the Prospectus published by the Respondent for the examination of 1999, a copy whereof is Annexure-1 to the writ application. According to petitioner Clause-14.4. of the prospectus if implemented by the respondents may enable her to get admission into a course or branch of Engineering of her choice. Accordingly, prayer has been made in the writ petition to direct the respondents to republish results and grant admission afresh by giving institutional preference to the students of Patna University against fifty percent seats in the Bihar College of Engineering, Patna.

2. Although processes of Counselling for admission into Bihar College of Engineering was not stayed by this Court but by order dated 29-10-1999, this Court observed that the Counselling was going on but the same will be subject to

result of the writ petition. Admittedly, Counselling stage is over and the students have been admitted on all the seats in Bihar College of Engineering as per decision of the respondents, that is on the basis of merit-cum-choice without providing for institutional reservation as mentioned in Clause 14.4 of the prospectus.

3. The facts of the case do not require any discussion because the issue arising in this case is mainly one of law that is whether the respondents could have ignored the provision in the prospectus with regard to institutional preference for the student of Patna University in the matter of admission into Bihar College of Engineering, Patna pursuant to an executive decision which has admittedly been taken after results of the Examination of 1999 had already been published.

4. The respondents do not dispute the fact that a similar provision for institutional preference was there in the prospectus for the examination of 1998 and the same was acted upon the respondents. Their stand in the counter-affidavit is that they got realisation, after the publication of results that such a provision for institutional preference is against mandate of equality contained in the Constitution of India and may also be against the provisions of reservation to Scheduled Castes and Scheduled Tribes, Backward Categories and other categories of persons permitted by reservation policy of the State of Bihar. Only on this plea, the respondents admittedly did not implement Clause 14.4 of the Prospectus of that although a decision to effect either of the Controller of the Examination or by the Board (the position has not been made clear as no orders have been annexed to the counter-affidavit) was taken after the results had been published on 14-8-99. In my view, it is well settled in law that an executive decision cannot operate retrospectively so as to affect the rights of persons who are entitled to such rights by virtue of earlier policy decisions as reflected in this case by Clause-14.4. of the Prospectus contained in Annexure-1. Hence, I have no hesitation to hold that Clause-14.4 of the prospectus for the Examination of 1999 was to be applied in the matter of Publication of result and in the matter of grant of admission to eligible students in the Bihar College of Engineering, Patna.

5. The aforesaid position in law is not in serious dispute but on behalf of respondents, it has further been submitted that the provision for institutional preference contained in Clause-14.4 of the Prospectus is against law or policy of reservation in the State of Bihar which permits reservation only in favour of specified castes or persons and further such a provision in the Prospectus is also in the teeth of Article 14 of the Constitution and hence this Court should not exercise its writ jurisdiction to issue any mandamus or direction which may have the effect of perpetuating an illegality.

6. The aforesaid argument is quite attractive on its face but for reasons to be indicated hereinafter, the same is, in my view, not tenable. The matter of reservation on the basis of caste or class is quite different from the issue of institutional reservation in favour of students of particular University. Further, Article-14 does not prohibit reasonable classification and no law or even the

judgment of Apex Court was cited before me to show that institutional Preference of the kind mentioned in Clause-14. 4 is bad in law or impermissible in view of Article 14 of the Constitution. In this writ application, there is no direct challenge to the provisions of the prospectus nor can respondents be permitted to seek such a declaration with regard to Clause-14.4 of the prospectus when the same contains their own policy decision. On this issue, learned Counsel for the petitioner has rightly placed reliance upon the judgment of the Apex Court in the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . In that case departmental authorities sought to assail decision of the State on the ground that the same was beyond the powers of the State and the Apex Court observed as follows:

We totally fail to see how Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either.

7. In my view, the principle relied upon by the respondents that the writ Court should not issue any order or direction to perpetuate an illegality has limited application. It can apply only in such cases where illegality is apparent on the face of the record or issue of illegality already stands decided. In this case it would not be proper or fair to declare a provision in prospectus or policy decision to be illegal or unconstitutional on the request of respondents when the affected parties may not be fully represented or the pleadings may not be sufficient. In this case, at the instance of respondents, I am not persuaded to hold Clause 14.4 of the Prospectus to be either illegal or unconstitutional and hence, in my view, the petitioner has made out a case for interference with the impugned actions of the respondents.

8. However, the next question which arises in this case is as to what extent the petitioner should be granted appropriate relief. Admittedly, a large number of students have already taken admission against the seats available in Bihar College of Engineering, Patna. Process of admission has begun in the month of October or November 1999 and the last counselling also appears to have concluded. The admitted students have been admitted on their merits and they have perused their studies for two to three months at the minimum, and hence in my view, it is not an appropriate case where this Court in exercise of the power conferred under Article 226 of the Constitution of India, should interfere with the entire result and admissions made pursuant thereto, However, the petitioner who has already been admitted into the Bihar College of Engineering, Patna on her merit deserves to get the benefit on the ground that contentions raised on behalf of the petitioner in this case have been accepted in Principle. 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 respondents concerned 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 respondents concerned 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.