
(1992) 10 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8050 of 1992

Namita Jayaswal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Patna University Act, 1976 — Section 37, 38, 4

Citation : (1993) 1 PLJR 391

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sudhir Kumar Katriar in 8050/92, Ananat Bijay Singh and Rakesh Kumar Singh in 8080/92, Yogendra Pd. Sinha, No. I, Nirmal Kr. Sinha, No. 3 and Bindeshwar Pd. Singh in 8164/92, for the Appellant; R.S. Roy, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—All these writ applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. The fact of the matter lies in a very narrow compass.

2. The State has established and manages the affairs of some Engineering Colleges viz. the Bhagalpur College of Engineering, Bhagalpur, Bihar Institute of Technology, Sindri, Muzaffarpur Institute of Technology, Muzaffarpur, Bihar Engineering College. Patna and Regional Institute of Technology, Jamshedpur.

3. Admittedly, the Science and Technology Department of Government of Bihar conducts a written entrance test for admission in the aforementioned Engineering Colleges as also in Engineering Colleges situated outside the State of Bihar and other technical institutes where some seats are reserved for the State of Bihar.

4. The minimum prescribed qualifications for appearance in the said examination are as follows:

(i) The candidates should have passed Intermediate (I. Sc.) or equivalent

examination in Physics, Chemistry and Mathematics.

(ii) The candidates should have been not less than 16 years of age and not more than 22 years of age as on 1.7.1992.

5. The State for the aforementioned purposes has issued a Prospectus for the year 1992-93 which is contained in Annexure-1 to C.W.J.C. No. 8050/1992. Clause 5 of the said Prospectus reads as:

Chhatrayo ko bishes subidha :?

Bihar Rajya me abasthith sansthano me chhatrayo ke namankan hetu bishesh subhidha Rajya Sarkar ne pradan ki hai. Jiske antargat chhatrayo ke medha ka nirdharan unke dwara kul praptank me 30(tis) ank jorkar kiya jayega. Parantu Bihar Rajya ke bahar sthith Regional Engineering College (Bihar quota seat) me chhatrayo ka namankan unke dwara kul bastabik praptank par nirdharit medha suchi ke adbar par kiya jayega.

6. Admittedly, similar provisions had been made by the State of Bihar since 1986 for grant of 30 additional marks to the every girl candidates.

7. In terms of the aforementioned scheme, a combined merit list for the boys and girls is to be prepared upon adding 30 marks to those actually obtained by every girl candidate.

8. The petitioner(s) admittedly appeared at the aforementioned entrance examination. They were also invited for interview by the Interview Board. The State, however, granted the aforementioned 30 marks only to those candidates who sought for or obtained admission in the Bihar Engineering College, Patna, as is evident from the following note appearing in the result sheet (Annexure-1 to C.W. J.C. 8050/92).

Roll numbers with Star mark indicate merit of girl candidates for admission to Bihar College of Engineering, Patna, only, subject to availability of seats.

10. The petitioner(s) have contended that the State is bound by the promises made to the girl candidates and, thus, it has no authority or jurisdiction to resile therefrom. It has further been submitted that the decision of State of Bihar grant benefit of 30 marks only to those girl candidates who sought for admission in Bihar Engineering College, Patna, is wholly irrational and arbitrary.

10. A counter-affidavit has been filed on behalf of the respondents in C.W.J.C. No. 8050 of 1992. It has been admitted in the said counter-affidavit that from the Governor's Secretariat a Notification dated 27.5.1985 was issued whereby provision was made to give weightage to women candidates in the following terms :

Women candidates should be given a weightage of 10% of the aggregate marks, that 10% of the aggregate marks will be added to the total marks obtained by such candidates and their merit will be decided on the basis of this added total.

The respondents, however, have contended that such a practice was in vogue in Bihar Engineering College, Patna, even before the issuance of the said Notification.

11. It has further been contended that on 7.2.92 a resolution was adopted by the Department of Personnel and Administrative Reforms, Govt. of Bihar, whereby and where-under inter alia 3% seats were to be reserved for the women candidates. A copy of the said resolution is contained in Annexure-B to the counter-affidavit.

12. By a letter dated 17.7.92 (Annexure-C to the counter-affidavit) a direction was issued by the Under Secretary, Deptt. of Science and Technology withdrawing the weightage of 10% given by way of extra marks to girl candidates in view of the aforementioned reservation policy of the State of Bihar dated 7.2.92.

13. The State has further contended that to the aforementioned effect an information had also been published in daily newspaper of August 18, 1992, a copy of which is contained in Annexure-H to the counter-affidavit wherein it has been specifically slated that the State intends to follow its reservation policy.

14. Mr. Ram Suresh Roy, Learned Standing Counsel No. 1 submitted that the Notification as contained in Annexure-A to the counter-affidavit had been issued in terms of Sub-section 4 of Section 38 of the Patna University Act and, thus, the advantage of 30 marks to the actual total marks obtained by the girl candidates can only be kept confined to Bihar Engineering College, Patna, an affiliated College of the said University. The Learned Standing Counsel further submitted that in view of the reservation policy adopted by the State of Bihar the same has to be given effect to in preference to the promises made by the State in the Prospectus as contained in Annexure-1 to the writ application.

15. In this case, the following facts are admitted. The total number of seats for admission in all the Engineering Colleges is 1092. Results have been published for 959 candidates. There has been duplication in the merit list so far as of 29 girl candidates are concerned in as much as their names have been shown in both the categories i.e. under the reservation quota as also along with the candidates who had been granted the benefit of addition of 30 marks.

16. Thus, actually the results of only 930 candidates have been published.

17. If the policy decision of the State of Bihar as reflected in its Prospectus as contained in Annexure-1 to the writ application is implemented, 159 girl candidates would be selected for admission in various Engineering Colleges situated in the State of Bihar and/or other Regional Colleges, Institutions outside the State of Bihar. Thus, if the impugned order is allowed to stand keeping in view of the number of seats available for girl candidates at Bihar Engineering College, about 100 girl candidates would be left out of consideration for admission in other Engineering Colleges.

18. In our opinion, the stand taken by the State of Bihar namely, that they are ready and willing to implement Annexure-1 to the writ application but they at the same time intends to give effect to the reservation policy as contained in Annexure-2 to the writ application appear to be inconsistent to and contradictory with each other. So far as Annexure-A to the counter-affidavit is concerned, the same is already purported to have been issued by the Chancellor in terms of Sub-section 4 of the Section 38 of the Patna University Act.

19. Sections 37 and 38 of the Patna University Act read as follows :

Section 37: Ordinance. The Syndicate may, subject to the provisions of this Act and Statutes, make Ordinance to provide for all or any of the following matters, namely :?

- (a) the admission of students to the University and their enrolment as such;
- (b) the conditions of the students of the University, the levying of fees for residence in hostels maintained by or recognised by the University, and the recognition of hostels not maintained by the University, including the suspension or withdrawal of such recognition;
- (c) the fees to be charged for courses of study in the University and for admission to the examination, degrees and diplomas of the University;
- (d) the constitution, powers and duties of the Committees of the University;
- (e) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinance.

Section 38: Ordinance, how made,?(1) An ordinance made by the Syndicate u/s 37 shall be submitted, as soon as may be, to the Senate, and there-upon it shall be the duty of the Senate to consider the Ordinance at its next meeting and the Senate may, by resolution passed by a majority of the member present and voting at such meeting, either reject the Ordinance or approve it with such modifications, if any, and from such date, as it may direct,

(2) Ordinance so approved by the Senate shall be submitted to the Chancellor who shall declare that he assents to the Ordinance.

(3) An Ordinance shall have no validity until it has been assented to by the Chancellor under Sub-section (2),

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), if at any time, except when the Senate is in session, the Syndicate makes an Ordinance and considers its immediate enforcement necessary, the Syndicate may recommend to the Chancellor accordingly and the Chancellor shall there-upon by order published in the official Gazette, direct that the Ordinance shall come into immediate effect, but such Ordinance shall cease to have effect on the expiry of seven days from the date of the next meeting of the Senate unless confirmed by it.

20. From a bare perusal of the aforementioned provisions it would appear that the University as such has no jurisdiction to lay down any criteria relating to the admission of the students in an institution which is not its constituent unit. An Ordinance u/s 37 of the aforementioned Act inter-alia could have been issued only in relation to the admission of students in the University. The Engineering Colleges referred to hereinbefore belong to the State of Bihar and admittedly they are merely affiliated to different Universities and not the constituent units of the Universities.

21. Further, in our opinion, as the State despite its policy decision and reservation interest to give effect to Annexure-A to the counter-affidavit by confining grant of advantage of addition of 30 marks only to those girl candidates who had sought for admission in Bihar College of Engineering, Patna, the same, in our opinion, does not satisfy the test of reasonableness as enshrined under Article 14 of the Constitution of India, particularly in view of the fact that the Patna University has no authority to issue the notification as contained in Annexure-A to the counter-affidavit. Thus, if the said notification as contained in Annexure-A to the counter-affidavit as also the decision of the State of Bihar as reflected in the marks-sheet as contained in Annexure-B to the counter-affidavit are implemented, the same, in our opinion, would per se be discriminatory in nature.

22. It is now well known that the State is bound to give effect to its policy decision. The legality of the policy decision of the State as reflected in Annexure-1 to the writ application namely grant of additional benefit to the girl candidates by adding 30 marks to the total marks obtained by them has not been question-ned before us.

23. In this situation, there is absolutely no reason as to why the said policy decision of the State of Bihar should not be given effect to.

25. In *Anuj Gupta & Others v. State of Himachal Pradesh and others* reported in 1990, Volume 6 Service Law Reporter, page 79 it has been held that when the Prospectus for admission to Engineering Colleges laid down that the admission would be given on the basis of the results of 10+2 examinations, the same method can not subsequently be altered. It was held :

The point arose for consideration before the Supreme Court in a case arising out of the Kerala Education Rules, in *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, . In that case it was held that the applicant who had been granted sanction under Rule 2-A of Chapter 5 of the Kerala Education Rules for the opening of new schools or upgrading of existing schools are entitled to the continuance of the statutory procedural stream and to have their applications considered and dealt with under Rules 9 and 11. Quoting with approval the passage from *Wade* extracted in the earlier part of this judgment the Supreme Court held that having granted sanction to the applicants under Rule 2-A (5) of the Kerala Education Rules, to open/upgrade the schools subject to satisfying the

conditions under Rule 9 and obtaining a clearance under Rule 11, it is not open to the Government to stop the procedure mid-stream and cancel the order of sanction on the ground that there is no need for the establishment of new recognised schools, without giving the applicants an opportunity to put forward their case.

The learned Advocate General submits that the concept of legitimate expectation demands only fairness in action and that is only an aspect of the principles of natural justice and not of promissory estoppel. He further submits that by mere change in the criteria for selection it can not be said that there is change in the policy depriving the petitioners of any of their rights. The petitioners had acquired no right of being selected but have only a right to apply for being selected and under the changed policy, they still have a right to apply and then compete with the other candidates. Even so, the change of policy after the issue of the prospectus was unfair to these candidates and can not be sustained in law.

On the principle laid down in these decisions, we are clearly of the view that the petitioners having secured very high marks in the qualifying examination had a "legitimate expectation" of selection for admission to the Engineering Courses on merit basis as held out in the prospectus issued in that behalf. Merit based on the result of PET cannot, therefore be imposed on them without even giving them an opportunity of sustaining the principle held out in the prospectus. The superimposition of PET after the issue of the prospectus is for that reason unfair and is also unsustainable in law.

25. References in this connection may also be made in the cases reported in 1968 Supreme Court, 718, 1979 Supreme Court, 1628 and 1984 Supreme Court, 362.

26. In this case also the State has carved out a clear cut policy decision with regard to the grant of additional benefits to the girl candidates in the prospectus. The petitioners and other girl candidates similarly situated rely upon the same acted thereupon.

27. It is also admitted that the aforementioned practice had been continuing since 1985. It is also admitted that atleast in one of the Engineering Colleges (possibly when no combined competitive Entrance test in the Engineering Colleges was being held). Such a practice had been prevailing even before issuance of the aforementioned notification as contained in Annexure-A to the counter-affidavit.

28. The State, in our opinion, can not, thus, decline to give effect to this long standing policy decision abruptly, particularly in view of the fact that when its policy decision is also reflected in the prospectus as contained in Annexure-1 to the writ application.

29. From a perusal of the prospectus as contained in Annexure 1 to the writ application, it appears that the State has directed reservation of 3% seats for the

girl candidates in the matter of admission in the Engineering Institutions. Further grant of the same in relation to some girl candidates by way of addition of marks in total marks obtained by them, does not come within the purview of reservation policy of the State. The constitutionality of such question has not been questioned before us. In fact such practice has been continuing since 1985. However, there cannot be any doubt that girl candidates cannot be given both the benefits of addition of 30 marks as also the reservation of 3%. However, in the facts and circumstances of the case, for this year it is not necessary as it appears that so far the reservation of 3% to the girl candidates is concerned, only 24 seats would be available but if 30 marks are added, 159 girl candidates would be selected in various Engineering Colleges. Out of the aforementioned 159 girl candidates as indicated hereinbefore, names of 29 girl candidates have been mentioned twice over. Thus, actually 130 girl candidates are to be admitted in various Engineering Colleges including those situate out side the State of Bihar. In this view of the matter, interest of justice will be served if a combined gradation list is prepared amongst the girl candidates by being 3% as against their quota, who in the facts and circumstances also fulfil the policy decision of the State relating to reservation of 3% quota of the girl candidates. We may further state that the direction with regard to the empanelment of the candidates of the reserve candidate, has been given in C. W. J. C. No. 8212 of 1992 (Sunil Kumar and others v. The State of Bihar & others).

30. For the reasons aforementioned, these writ applications are allowed and the respondents are directed to prepare a panel in terms of its policy decision as contained in Annexure 1 to the writ application and subject to the observation made hereinbefore. In the facts and circumstances of the case, parties shall bear their own costs.

G.C. Bharuka, J.

I agree.