
(2000) 02 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 10561 of 1999

Nidihi Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Citation : (2000) 2 PLJR 108

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Awadhesh Prasad Sinha, Shailendra Kumar, in C.W.J.C. No. 10561 of 1999, Sadanand Jha, Hari Narayan Prasad and Pravin Kr. Verma, in C.W.J.C. No. 10587 of 1999, for the Appellant; P.K. Sahi, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. Since both the writ petitions involve common issue of facts and law hence, with the consent of the parties, both have been heard together and are being disposed of by this common order.

3. Nidhi Sinha and Anju Kumari are respectively the Petitioners in CWJC 10561/99 and 10587/99. Both are girl students belonging to backward class (BC) category. Pursuant to an advertisement they applied for taking the Bihar Combined Entrance Competitive Examination 1999 with a view to secure admission into various medical courses including MBBS and other allied courses in various colleges in the State of Bihar. They had offered the subject group of Physics, Chemistry and Biology. The examination was held on 4.7.1999 and result was published on 17.8.1999. The grievance of the Petitioners is that although 9 seats in different medical colleges of Bihar are reserved for the girls of reserved category (RCG) but the Respondents have filled up only 3 seats with girls eligible for admission from RCG and they have wrongly treated 6 RCG seats

to have been filled up with such 6 girl candidates who had competed also in the BC category and were entitled for admission into MBBS courses from the category reserved from backward castes. The Petitioners have shown by reference to their marks and position in the merit list for RCG that if further 6 seats are filled up from the merit list of RCG then they would be entitled for admission in MBBS course and, therefore, they have sought a direction for their admission in any of the medical colleges of the State of Bihar in which they may be placed according to their merit.

4. On 29.10.1999 by an interim order passed in CWJC No. 10587 of 1999 this Court directed to keep 6 seats of RCG category vacant, if not already filled up. Though there is considerable difference between the parties as to whether 6 seats are vacant in the RCG category or in the BC category but it is an admitted fact that pursuant to said interim order 6 seats for MBBS courses have been kept vacant.

5. There is no dispute between the parties that Nidhi Sinha (Petitioner in CWJC 10561/99) is at serial No. 170 under BC category and at serial No. 57 under RCG category. Similarly, Anju Kumari (Petitioner in CWJC No. 10587/99) is at serial No. 161 under BC category and at serial No. 55 in RCG category. It is also admitted that 46 seats are reserved for BC category and 9 for RCG category. There is no dispute that those candidates of reserved categories who have also competed in the general category are required to be treated as candidates of general category and have been admitted as such. The dispute in these cases is with regard to such girl students who have competed in the BC category as well as in the RCG category. According to both the parties, the number of such girls is 6.

6. According to the Petitioners, such 6 girl students as per their merit position in the BC category are at serials 103, 106, 107, 120, 129 and 136 and in the RCG category they are at serials 36, 38, 41, 43 and 45 respectively. It is contended on behalf of the Petitioners that since such 6 girl students have competed on their merit in the BC category hence, they cannot be included in the RCG category only because for the purpose of getting better institutions of their choice they exercised such option as per their merit position in RCG list. In support of this proposition on behalf of the Petitioners reliance was placed on two judgments of the Apex Court reported in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, and State of Bihar and Others Vs. M. Neethi Chandra and Others, and upon a judgment of this Court reported in 1998 (2) All PLR 107 (Vikash Priyadarshi v. State of Bihar). In all the aforesaid cases it was held that candidates belonging to reserved category who could be admitted on the basis of open merit should be treated as open category candidates for the purpose of computing percentage of reservation but they should be given option for admission to course concerned where seats are kept reserved for the reserved category and thereafter the less meritorious reserved category candidates should be considered for admission in whichever colleges reserved seats are available. This was done to preserve the percentage of reservation in the reserved categories by not allowing candidates of reserved category who also competed

on the basis of open merit to be counted against the reserved seats but at the same time in order to promote equity such more meritorious reserved category candidates were allowed to exercise the option for better colleges as would have been available to them as reserved category candidates. In short, the Courts have not permitted any dilution of percentage of reservation for the reserved categories on the ground that more meritorious reserved category candidates have competed on the basis of merit but the choice and option for colleges have been allowed to be shifted in favour of such meritorious reserved category candidates at the expense of option available to less meritorious reserved category candidates who come to occupy the reserved category seats because the more meritorious and reserved category candidates have competed on merit. There is no difficulty in the aforesaid principle.

6. On behalf of the Respondents it was contended that the aforesaid principle is applicable only between open category and reserved category candidates and the same cannot be applied as between BC category and RCG category students. It was next contended on behalf of the Respondents that since no candidate having secured less marks than the Petitioners has been admitted into MBBS course hence, the Petitioners' prayer for admission should not be allowed. For this purpose reliance was placed upon an unreported order of learned single Judge dated 1.11.1999 passed in CWJC No. 926/98. The stand of the Respondents is that since 6 girl students who had also competed in the merit list for BC category, have exercised option for better institution as per their position in the RCG list hence, the Respondents have rightly treated those six seats in the RCG category to have been duly filled up with such 6 girl students and thereafter they have admitted further 3 girls from the RCG list as per their merit position in that list.

7. Keeping in view all the facts and the relevant case law cited on behalf of the Petitioners and on behalf of the Respondents I am of the considered view that the principle laid down by the Apex Court in the case of Ritesh R. Sah (supra) as well as in the case of State of Bihar v. Mr. Neethi Chandra (supra) must be held to be applicable even in the present cases although in these cases the question of adjustment of seats is not between open category and reserved category but between BC category which is a larger reserved category and between yet another smaller reserved category i.e. RCG category which is meant exclusively for reserved category girls. There is no reason as to why the percentage of reservation fixed for RCG category should be allowed to be diluted because some more meritorious girl students have competed on merit in the BC category. For the purpose of choice of better institutions such more meritorious girl students have to be given only the option which would have been available to them according to their position in the RCG list but the Respondents cannot be heard to say that only by giving the options to such more meritorious girl students-they have also maintained the required percentage of reservation meant exclusively for reserved category girls. For this purpose, they must make available all the 9 seats reserved for RCG category to such girl students who compete for MBBS

course only on the basis of their merit and placement in the RCG list. This will satisfy the percentage of reservation for such category as well as equity. Admittedly, on application of aforesaid principle 6 seats meant for RCG category only remain to be filled up. The other contention of the Respondents that no relief should be given to the Petitioners because no person with lesser marks has been admitted to any MBBS course is without any substance because the Petitioners are claiming admission not on the basis of their general merit as per marks but on the basis of their position in the RCG list available as per undisputed policy of reservation. The unreported judgment of learned single Judge in CWJC No. 926/98 (Nandini Kishore v. State of Bihar) has not taken note of any of the judgments cited on behalf of the Petitioners and the issues raised in the present cases were not raised and decided in that case as appears from the judgment itself.

8. For all the aforesaid reasons both the writ petitions are allowed. The Respondents are directed to fill up all the 9 reserved seats for RCG category with such girl students who have competed for admission in MBBS course only from RCG category. Those girl students who have also competed in the BC category on account of better merit must not be included in the RCG category for the purpose of computation of percentage of reservation for the RCG category. The Respondents are further directed to admit the Petitioners and such other girl candidates from RCG category who may be eligible for admission into MBBS course on account of their position in the RCG list as early as possible and preferably within two weeks from the date of production/communication of a copy of this order. It is made clear that right of option available to the RCG candidates will stand reduced to the extent such option was already given to the 6 girl students who have competed for MBBS courses in the BC category.

9. In the facts and circumstances of the case, there shall be no order as to costs.