
(2014) 09 PAT CK 0048
In the Patna High Court
Case No : CWJC No. 17022 of 2014

Patanjali Rishi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2014) 4 PLJR 247

Hon'ble Judges : V.N. Sinha, J;A.K. Lal, J

Bench : Division Bench

Advocate : Lalit Kishore, Advocate for the Respondent

Judgement

V.N. Sinha, J.—Heard petitioner in person. Counsel for State of Bihar, Bihar Combined Entrance Competitive Examination Board as also Medical Council of India have been heard. The petitioner is an Advocate practicing in Patna High Court. He has filed this Public Interest Litigation praying, inter alia to direct the respondent-authorities of the State of Bihar to take admission in MBBS Course for the academic session 2014-15 in the light of direction given by this Court in the case of G.V. Nutan Vs. The Bihar Combined Entrance Competitive Examination Board, . In effect petitioner is seeking direction to the authorities to fill up the general seats vacated by the reserved category candidate selected in the general merit and then opting for reserved seat by those who are immediately below in the general merit list, as according to petitioner, candidates of reserved category cannot be allowed to take admission against the seats vacated by the reserved category selected in general merit list and then opting for reserved category seat. According to him, seats in the general category having become vacant is required to be filled up from the candidates who are immediately below in the general merit list, the candidates immediately below may be of general category or of reserved category. He has further prayed that admission process be completed by 30th September, 2014 in the light of the direction of the Hon''ble Supreme Court dated 19.5.2014 passed in Writ Petition (Civil) No. 737 of 2013 (Lipika Gupta & Anr. v. Union of India & Ors.). Petitioner

has further prayed that left over seats in the SC/ST, disabled category which could not be filled up because the candidates of those category could not secure the minimum qualifying marks as fixed by MCI in the light of clause 14.4 (kha) (iii) of the prospectus should be filled up from the general merit list.

2. It is submitted by the petitioner that total number of seats which could not be filled up because of inaction of the State is 152. In this connection, he pointed out that there are 42, 4, 17, in all 63 seats, in the category of SC/ST, disabled and 89 seats are those which have been vacated by the reserved category candidates opting for reserved category seat and thereby 89 seats are required to be filled up from candidates immediately below in the general merit list of any category.

3. Petitioner, in this regard, submitted that public interest is involved in the matter as for the present, the sanctioned strength of the doctors in the Bihar Health Service is more than ten thousand but because of paucity of doctors in the State there are hardly two thousand and odd doctors serving in the health cadre of the State and if these 152 seats are allowed to remain vacant for the academic session 2014-15, the State of Bihar will lose opportunity to produce 152 doctors. In this connection, petitioner pointed out that the shortfall of more than eight thousand doctors in Bihar Health Service cannot be made up overnight, sustained effort is required to be taken every year for filling up the shortfall of the doctors in the State which has arisen in course of time.

4. Petitioner further submitted that mandate of MCI as per its regulation is that the minimum standard fixed by MCI for admitting the candidates in the MBBS course cannot be reduced by the authorities of State Government including the Government itself as according to him MCI having taken into account the requirement of medical education, which is necessary for maintaining standard of medical education, has fixed the minimum qualifying marks required for admission in the MBBS course.

5. Counsel for MCI submits that he is neither opposing nor supporting the petitioner in connection with his prayer No. 1 but then states that State Government is not empowered to reduce the minimum standard fixed by MCI for admission of Scheduled Castes/Scheduled Tribes, disabled candidates, as enumerated in clause 14.4(kha)(iii) of the Prospectus Annexure-1.

6. Counsel for the State and the Board have opposed the prayer. According to them, this Public Interest Litigation by an Advocate of the High Court is not maintainable as the candidates who are affected by the decision of the State Government to file SLP against the judgment of the High Court passed in the case of G.V. Nutan (supra) have not chosen to approach this Court. Until disposal of the SLP by the Hon''ble Supreme Court, Government has decided not to fill up 89 seats in the Medical Colleges of the State which became vacant on account of reserved category candidates selected in the general merit list but opting for admission in the reserved category. Counsel for the State further submitted that

63 seats which remained vacant as SC/ST, disabled candidates have not been able to secure the minimum standard fixed by MCI, another Single Judge of this Court in CWJC No. 16452 of 2014 and two other analogous matters has directed the State Government to reconsider the matter in the light of Clause 14.4(gha), whereunder it has powers to reconsider/reduce the minimum standard fixed for the reserved category and decision in the light of the direction of learned Single Judge in the said case is to be taken by the State Government on 27th September, 2014. Counsel for the State finally submitted that today being 25th September, 2014 only five days are left for admissions to close. It is not possible for the State Government and the Board to complete the admission process for the 152 vacant seats.

7. In view of the rival submissions of the parties, we are of the view that We can take judicial notice of the fact that there is paucity of doctors in the State as against sanctioned post of more than ten thousand doctors in the Bihar Health Service there are hardly around two thousand doctors presently serving in the Bihar Health Cadre. Sanctioned strength of eight thousand doctors cannot be augmented overnight. The strength of doctors in the State Health Service can be increased only by sincerely imparting the MBBS Education in every Medical College of the State by admitting students in every Medical College as per sanctioned strength of the students in the college. In case, 152 students are not allowed to enter the medical college during session 2014-15, those seats will remain vacant and thereby public interest is bound to suffer as 152 seats of medical students is a large number and if in a year such large number of seats is allowed to go waste, it is to affect the public interest. Judgment of this Court in the case of G.V. Nutan (supra) was rendered on 6th May, 2014, i.e., before summer vacation. The State had ample time to assail the said judgment but it took decision to file SLP against the judgment only on 19.8.2014, but till date we are not even informed about the SLP number and thereby the decision of the State Government to block 89 seats vacated by the reserved category candidates is only a ploy to defeat the public interest as by admitting candidates from the general merit list against 89 seats the public interest is not to suffer but is to be upheld as amongst those 89 candidates of general merit list, there may be reserved category candidate(s). By keeping those seats vacant for the academic session 2014-15 the interest of neither reserved category nor of general category nor of the people of Bihar is to be served. In the circumstances, we direct the State of Bihar and its authorities to fill up the eighty-nine seats vacated by the reserved category candidate from amongst the general merit list strictly in order of merit. The candidates may be from general or reserved category as is placed in the general merit list.

8. Now, coming to the sixty-three vacancies for which direction has been given by another Single Judge to reconsider the matter in the light of clause 14.4(gha) the State should take a decision in the matter on 27th September, 2014, as directed by the Single Judge in the aforesaid case but in case it decides not to reduce the qualifying marks fixed by MCI then the State should de-reserve those

seats and take admission against those seats also from amongst the general merit list strictly in the order of merit irrespective of the category of the candidate in the merit list.

9. The Board and the State Government having delayed the matter, it is for them to burn their midnight oil and complete the process before 30th September, 2014 as directed by the Supreme Court in the aforesaid writ petition of Lipika Gupta (supra) but in no case the 152 seats be kept vacant for the academic session 2014-15. The writ petition is allowed with the aforesaid directions.