

(2007) 09 GAU CK 0011
In the Gauhati High Court

Sanglakpam Haripriya Devi	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Citation : (2007) 4 GLT 412

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Judgement

T. Vaiphei, J.—The prayer of the petitioner in this writ petition is basically for directing the state-respondents to nominate her for undergoing MBBS course in the Medical college of her choice for the year 2007-2008 as a nominee of the State of Manipur on the basis of the qualifying marks secured by her in the Qualifying Examination held on 10.6.2007.

2. For better appreciation of the controversy involved in the case, suffice it to reproduce only the relevant facts as pleaded by the parties. For nomination of a candidate to undergo MBBS/BDS Courses in various medical colleges as the nominee for the State of Manipur, there is a set of rules framed by the Government of Manipur known as "the Manipur MBBS/BDS Entrance Examination (Selection of Candidates for Nomination) Rules, 2004 ("the Rules" for short). Under the Rules, the candidates for nomination are selected by the Selection Board on the basis of the written test of all the eligible candidates. The State Government, in turn, makes the nomination for the said Courses on the basis of the Select Lists prepared by the said Selection Board from various categories of candidates, viz. General, OBC, SC, ST, Ex-Servicemen, etc. The petitioner admittedly belongs to the OBC ("Other Backward Class") category and, having passed the Class 12th Examination conducted by the Council of Higher Secondary Education, Manipur, was eligible to appear in the said Examination. She accordingly sat for the said examination as a candidate against the seats reserved for OBC under Roll No. 1985. The result of the examination (the qualifying Test) was declared on 11.6.2007 in which she found a place at Sl. No.

30 of the combined merit list published by the Selection Board by scoring 364 marks out of 400 marks.

3. It would appear that based on the aforesaid combined merit list, the Select List of candidates belonging to General category, OBC, Scheduled Tribes, Scheduled Castes, etc. were separately prepared by the Selection Board, which were thereafter published on 31.7.2007 in accordance with the provisions of Rule 17(5) of the Rules and were then submitted to the State Government. There is no dispute at the bar that the petitioner was initially placed at Sl. No. 30 of the merit list, but when she was found to be in tie with two other candidates, their ranking was determined in order of the marks obtained by them in the qualifying examination whereupon she came to be placed at Sl. No. 31 in the merit list. It, however, appears that the petitioner along with six other candidates belonging to OBC category, who secured higher marks than the petitioner, were placed in the merit list of the unreserved category. According to the State respondents, since the seats for unreserved category were open to all, the names of the reserved category candidates like the petitioner and the six other OBC candidates were accordingly placed above the reserved candidates in order of merit and, as such, her name could not be included in the list of OBC candidates. It may at this stage be noted that the other six candidates belonging to the OBC category, who secured higher marks than the petitioner, were apparently accommodated against the vacancies for unreserved category as per the reservation policy.

4. The admitted position of the parties is that apart from the six other OBC candidates referred to above, the petitioner obtained higher marks than the respondents Nos. 4, 5, 6, 7, 8, 9, 10, 11 and 12, who are also OBC candidates, and who were eventually nominated by State-respondents and have now been admitted to the respective colleges as the nominees of the State of Manipur. The case of the petitioner is that when she made inquiries about her non-inclusion in the select list for unreserved category and her inclusion in the select list prepared for OBCs despite her having obtained higher marks than the respondents Nos. 4 to 12, the Medical Directorate informed her that she had been included in the General Category because of her position in the merit list and that her right vis-a-vis the other candidates included in the Select List of OBCs would be fully protected. According to the petitioner, she was further given to understand at the time of Counseling that even if her name had been included in the select list of the unreserved category and not in the select list of the OBCs, she would still be given preference. It is the further case of the petitioner that on 06.8.2007, she was informed at the time of Counseling that there was no more MBBS seat for the unreserved category and that she could be accommodated against BDS seat from the unreserved quota. According to the petitioner, when she pointed out that other OBC candidates included in the Select List for OBCs, who were obtaining less marks than her, were allotted MBBS seats, she was informed that those seats were reserved for OBCs, and not for her who was included in the Select List of unreserved candidates and that she could not be, ipso facto, allotted the seats reserved for OBCs. It is contended by the petitioner

that this anomalous position has been created by the State-respondents by wrongly placing her in the Select List of the unreserved candidates. While denying the statements and contentions of the petitioner, the State-respondents take the stands that by the time the turn of the petitioner for Counseling came, there was no more seats of MBBS earmarked for unreserved category candidates and that when she was offered one seat for BDS in the K.G. Medical College (Dental Wing), Lucknow, U.P., against the quota for unreserved category, she readily accepted the offer, which she has not surrendered till date. It is the contention of the State-respondents that as per the Rules, once a candidate has opted for a particular course/seat, she cannot change her chosen course/seat.

5. It is submitted by Mr. N. Kotiswar, the learned Counsel for the petitioner, that the petitioner has been penalized for having obtained higher marks than the respondent Nos. 4 to 12 and that by placing her in the Select List of the unreserved category, she has now been left in the lurch; this could not have been the real intention of the State-respondents while implementing the reservation policy. In other words, it is the contention of the learned Counsel for the petitioner that OBC candidates like the petitioner, who were selected on merit and accordingly placed in the list of open category candidates could still be allotted the slot reserved for OBCs if they could not be accommodated against unreserved quota. Strong reliance is placed by him upon the decisions of the Apex Court in *Union of India and Anr. v. Satya Prakash and Ors.* 2006 (3) S C 453 and *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, . As for the case of the State-respondents that the petitioner was offered BDS seat since she readily accepted the offer, the learned Counsel for the petitioner contends that the petitioner had to put her signature on the nomination paper for BDS seat as directed by the Counselor warning her that failure to do so would entail forgoing any opportunity for allotment to any MBBS seat if the same became available subsequently. According to the learned Counsel, the petitioner was terribly misled by the Counselor and the fact that she was misguided is evident from her letter addressed to the respondent No. 1 immediately the following day (Annexure-A/7). Mr. R.S. Reisang, learned State Counsel, referring to the affidavit-in-opposition of the State-respondents, justifies the action of the State-respondents in not nominating the petitioner for the MBBS course, which, according to him, does not suffer from any infirmity. Moreover, he contends that all the private respondents have now been admitted to the respective Medical Colleges allocated to them and are now already pursuing their course and any interference by this Court at this stage will amount to unsettling a settled position. Mr. N. Jotendro, the learned Counsel for the private respondents, makes submissions along the lines adopted by the State Counsel. He further submits that the petitioner has failed to point out any illegality or arbitrariness warranting the interference of this Court.

6. The law is now well-settled that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue

of reservation) shall not be counted as reserved category candidates. Though the aforesaid legal proposition was laid down in the context of posts reserved for Scheduled Tribes and Scheduled Castes in public employment, I do not find any reason for not extending the principles to OBC candidates when posts in public employment and seats in educational/medical institutions are reserved for them. This is evident from the decision of the Apex Court in Ritesh R. Sah case (supra), a case cited by the learned Counsel for the petitioner, which are as follows:

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less, meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

7. The Apex Court in Satya Prakash case (supra) in a recent case quoted with approval the aforesaid observations. By using the device of placing the petitioner in the Select List of the unreserved category in purported implementation of the reservation policy, the petitioner has already been denied of MBBS seat on the ground that seats for unreserved category had been exhausted. It is also interesting to note that she has at the same time also been denied of MBBS seat reserved for OBCs as she was placed in the Select List for unreserved category! The petitioner is now neither here nor there. She has indeed been penalized for her obtaining higher marks than the private respondents. It is as if a deliberate attempt was systematically being made to somehow deny her MBBS seat. If she could not be accommodated against the seat earmarked for general category candidate, she ought to have been offered the seat reserved for OBCs, to which she admittedly belongs. This would have been in consonance with the ratio laid down by the Apex Court in the decisions already adverted to earlier. The device adopted by the State-respondents purportedly by carrying out the policy of reservation has, in fact, worked to the disadvantage of the petitioner. In that process, she has been left in the lurch. Her right to be accommodated against the seats reserved for OBCs is set at naught by the action of the State-respondent by placing her name in the merit list of the unreserved category,

which cannot be justified in law, particularly, when her right to be nominated against the seat reserved for OBCs stood wiped out.

8. The next question to be determined then is whether the petitioner has waived her right to be accommodated against the seats reserved for OBCs by virtue of her opting for BDS seat as claimed by the State-respondents. Relying heavily on Annexure-C/1, Mr. R.S. Reisang, the learned State Counsel submits that the petitioner cannot now turn around and says that she is not satisfied with BDS seat and should be allotted MBBS seat. This contention cannot be accepted for more than one reason. In the first place, the petitioner could not have consciously opted for BDS seat if there was a chance for her to be accommodated against the MBBS seat reserved for OBCs. It must be a remarkable person to prefer a less prestigious course when she knew that she was entitled to be accommodated against the MBBS seat reserved for OBCs. The fact that she never consciously opted for BDS course is evident from her letter at Annexure-A/7 addressed to the respondent No. 1 on the next day itself. This coupled with the surrounding circumstances lend credence to the case of the petitioner that she was misled by the Counselor at the time of Counseling. Secondly, the file produced by the learned State Counsel does not show that the petitioner ever made/exercised such an option in accordance with Annexure-VI prescribed by Rule 18 (iv) of the Rules as amended in 2007. Nor is there any indication to that effect in Annexure-C/1. Consequently, in my judgment, the petitioner cannot be said to have actually accepted the offer of BDS seat as claimed by the State-respondents. In that view of the matter, the principles of waiver and/or estoppel have no application.

9. Faced with this situation, both the Counsel appearing for the respondents submit that any interference by this court at this stage i.e., when the private respondents have already been admitted to the Medical Colleges allocated to them and are now pursuing the course, will amount to unsettling a settled position. Though accepting the argument of convenience/fait accompli will have the effect of perpetuating an illegality, this court cannot, nevertheless, be oblivious of the ground realities. Mr. R.S. Reisang fairly suggests that this Court may explore some via media to put quietus to this unhappy litigation.

10. Keeping in mind this suggestion, this Court in the course of hearing had asked the learned Counsel for the petitioner as to whether the petitioner could accept MBBS seat at the college of her choice for the next academic session commencing from June-July, 2008. After consulting his client, who was present in Court, the learned Counsel for the petitioner informed this Court that the suggestion was acceptable to her. Mr. R.S. Reisang, the learned Counsel for the State-respondents, also stated that the course of action proposed by this Court would be acceptable to the State-respondents. I must record my appreciation for reasonableness shown by the learned Counsel for the petitioner and the learned State Counsel for making my task easier.

11. For what has been stated in the forgoing, I hold that the refusal/omission of

the State-respondents to nominate the petitioner for MBBS seat against the seat reserved for OBCs as State nominee is illegal and arbitrary but for the reasons already indicated earlier, the nomination of the private respondents need not be interfered with at this stage. Instead, the State respondents are directed to nominate the petitioner to MBBS course as State nominee against OBCs quota at the medical college of her choice for the session 2008 without her having to go through the entrance examination. The State-respondents shall reserve one such seat for the petitioner and shall not make any hindrance, directly or indirectly, for her admission in the medical college of her choice in time. The writ petition accordingly stands disposed of, but with-out any order as to costs.