

(1970) 07 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1135 of 1969

Shiva Shankar Jha

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 21-07-1970

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1971 Patna 374 : (1971) 4 PLJR 9

Hon'ble Judges : N.L. Untwalia, J;B.P. Sinha, J

Bench : Division Bench

Advocate : Awadh Kishore Prasad, Basudeva Prasad, Ravinandan Sahay, Narendra Prasad, Radhamohan Prasad and Sudharani Jaiswal, for the Appellant; R.P. Katriar, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, J.—The petitioner in this writ case is a minor student, who has presented this application through his father Shree Diwakar Jha, posted as Assistant Director of Agriculture at Netarhat Farm, Netarhat Police Station Mahuadaor, in the District of Palamau.

2. The case of the petitioner is that there is a Government School, called Netarhat Residential School, located at Netarhat, where students are taught up to the higher secondary standard. It appears the School is financed and managed under the Government of Bihar. Hence, the State of Bihar through the Secretary to the Government of Bihar in the Education Department is Respondent No. 1 and Respondent No. 2 in the application is the Principal of the school. The petitioner's father was transferred on the 16th October, 1968, from Barharwa in the District of Santal Parganas to Netarhat as Assistant Director of Agriculture. His case is that for the people residing in Netarhat, the only high school, within the radius of 20 miles is the school in question. If admission is refused in this school, it becomes impossible for the guardian of the child to arrange prosecution of his studies for the high school standard. The petitioner's father made an

application to Respondent No. 2 for the admission of the petitioner, who was aged 14 years, in class X of the school. It may be stated here that there are only six classes in the school, the sixth and the highest class being class XI. equivalent to higher secondary and class X spoken of in paragraph 5 of the application would be next to the highest class.

3. The petitioner's case further is that having failed to secure his admission, his father approached the Commissioner of the Division for reservation of some seats for the children of the employees of the Government. The Commissioner also tried in the matter. Upon this the Education Department of the Government of Bihar invited comments from Respondent No. 2, who gave favourable comments for reservation of seats in the school for the children of other Government employees. There are 72 reserved seats in all the six classes of the school for the sons and daughters of the employees of the school -- employees of all kinds, members of the teaching staff, the clerical staff and the staff of the lower grades. The Principal, however, could not admit the petitioner as the Government order was not received for admission of the ward of any other Government employee. The petitioner's case is that Respondent No. 2 has acted in violation of Article 14 of the Constitution, of India, inasmuch as he is implementing the Government instruction No. 2892 dated the 12th August, 1965, which is referred to in his letter to the Education Department, a copy of which is Annexure "2" to the writ application, and which instruction of the Government is being attacked as violative of Article 14. With these statements, the prayer on behalf of the petitioner is to declare the Government instruction No. 2892 dated the 12th August, 1965 as ultra vires, void and illegal and to issue a writ of mandamus directing Respondent No. 2 to fill up the so-called reserved seats either by admitting the petitioner straightway or by admission taken on merits of the applicants.

4. In the application it was stated that out of the 72 reserved seats only 26 had been filled up. The writ application had been filed on the 18th September, 1969. A supplementary affidavit was filed on the 3rd December, 1969, stating therein that ten more seats out of the remaining 46 reserved seats had been filled up by admitting children of the staff of the Netarhat School, on the basis of the impugned circular dated 12th August, 1965.

5. A counter-affidavit has been filed on behalf of the State. It is stated in the counter-affidavit that a residential school at Netarhat was established by the Government in the year 1954 on the model of public schools. It is entirely managed and financed by the State Government. The success of the School depends largely on teachers of outstanding ability and experience and in order to secure the services of such teachers, certain facilities have been sanctioned to the teaching staff from time to time. One of such facilities is that the education of the children of the teachers of the school will be without payment of tuition fee. Some other charges, of course, have got to be paid. The school is situated in a remote corner and there is no high or higher secondary school in its

neighbourhood in which the children of the teachers could be admitted. From time to time, therefore, facilities to the staff of the school have been extended and lastly such facilities were extended to the Bursar of the School, P. A. to the Principal and the third and fourth grade staff of the school, in Government order No. 2892 dated the 12th August, 1965. The facility was extended on the condition that the admission of such day scholars in a year should not exceed 72 in all and that priority should be given in admission to the children of the teachers. The further case in the counter-affidavit is that 60 students are selected every year as a result of competitive test examination for admission into the lowest class. Admission is made strictly on the basis of merit. In addition to these sixty seats, which are meant for residential boarders of the school, facility has been granted for admission of the children of the employees of the School, as the arrangement does not practically entail any extra expenditure to the Government, This facility has not been extended to all the Government employees posted at Netarhat, but extending these facilities for education of the children of the employees of the school cannot be said to be unconstitutional, ultra vires, void or illegal. The general question of extending the facility of admission to the children of all Government servants posted at Netarhat was under consideration of the State Government, but it was not possible to admit the petitioner before such a decision was taken by the Government. It is further stated in the counter-affidavit that admission to the Netarhat school is made in the lowest class, as a result of a competitive test examination and there is no system of admitting students in higher classes on the basis of transfer certificates. The petitioner wanted admission on such a basis.

6. An affidavit in reply, sworn by a friend of the petitioner's father, was filed on the 29th January, 1970. In this affidavit in reply, the fact that admission in the Netarhat school is made by competitive test examination in the lowest class is not denied. It is merely stated in paragraph 5 of the affidavit in reply that the contention of the respondent in paragraph 2 (G) of the counter-affidavit is wholly untenable.

7. One Shree Ram Krishna Bhatnagar filed an application in this writ case on the 16th February, 1970. to allow him an opportunity of being heard, as he being a teacher of the school will be affected by any adverse decision, if the reservation for admission as day scholars of the wards of the school employees is struck down by this Court as unconstitutional. Mr. Awadh Kishore Prasad has appeared for him at the time of the hearing of the application. We have permitted him to address us on his behalf without adding him as a party to the writ application. It has been so done in accordance with the proviso to Rule 5 o? Chapter XXI-C of the Patna High Court Rules.

8. A few more facts may be stated before discussing the points at issue. In the Netarhat School no day-scholars are admitted. The school is primarily meant for resident boarders, residing in the hostels of the school. The number of seats in each class is sixty, total being 360 in the six classes. Certain facilities have been

extended to the employees of the school in order to attract good teachers for the efficient working of the school. When teachers join this school, their wards are permitted to be admitted as day-scholars and are not asked to sit at the competitive test examination meant for admission to the sixty seats in each class. No other day-scholar is admitted in the school. The question for consideration, therefore, is whether the petitioner is entitled to ask this Court to direct the State Government to include his case for admission into school as a day-scholar in one of the 72 seats for admission of the day-scholars, the sons and daughters of the school employees. I see no justification for giving any such direction to the State Government. The posts of the employees of the school, as stated in the counter-affidavit are not transferable, while the employees in the other departments of the Government are posted at Netarhat on transfer and are liable to be transferred generally in about three years' time, as is the case in Government service. If other residents of Netarhat cannot have the facility of admission of their wards as day-scholar in the school, it is difficult to accept the argument put forward on behalf of the petitioner that such a facility, by our direction, should be extended for the wards of the Government employees only. To me it appears that asking the Government to do something like this would, undoubtedly, bring about an infringement of Article 14 of the Constitution.

9. I think, on the facts and in the circumstances of this particular case, there is another difficulty in the way of the petitioner in succeeding in this writ application. His case in the writ application is that he wanted admission in Class X of the school, that means the fifth class of the school, as against the system prevailing in the school that all students, whether as resident boarders, or, being the wards of the employees of the School, as day-scholars, are admitted in the very first class. They are not admitted in any other higher class. From Annexures 2 and 3 as also from Annexure 6. to which our attention was drawn, it would appear that while recommending the case for admission of the wards of the Government employees, naturally, it was recommended that they may be admitted in different classes, but, there is nothing to indicate that the Government acceded to such recommendations. The petitioner's father, in his letter dated the 27th January, 1969, a copy of which is Annexure 5 to the writ application, requested the Principal of the School that his son may be admitted in any class. Upon this, his learned Counsel argued that the request to the Principal was to admit the petitioner even in the lowest class, as was the system prevalent in the school. But this is not correct, as after the phrase, "He may kindly be admitted in any class, the phrase which occurs is "he is suo-posed to be fit." Reading this letter in the light of the definite case of the petitioner that he wanted admission in the tenth class, it cannot be assumed that he was prepared to take his admission in the first class of the school.

10. The petitioner wanted us to knock down the reservation in favour of the employees of the school. On the facts of this case. I do not think that at his instance it can be so done. I shall, however, briefly indicate my view in this regard and show that such a reservation is not violative of Article 14 of the

Constitution of India and is not fit to be knocked down.

11. In the case of Umesh Chandra Sinha Vs. V.N. Singh and Others, it has been held by a Full Bench of this Court that reservation of seats for children of the University employees on grounds of their extreme pecuniary difficulty and for rendering meritorious services to the University by the impugned Ordinance was discriminatory, as there was no reasonable nexus between the object intended to be achieved by the Ordinance on the one hand and the principle on which the children of the University employees were selected for preferential treatment on the other. This decision has been distinguished in a recent decision of the Supreme Court in the case of Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, , where reservation of seats for various categories of persons in the Maulana Azad Medical College was upheld. On a careful perusal of the two decisions aforesaid, it would be abundantly clear that reservation of seats for the Government employees posted at Netarhat will be violative of Article 14 of the Constitution, as there will be no rational nexus between the securing of admission of the candidates to the school on the one hand and the conferring of special concession or benefit on the Government employees on the other. The question in the present discussion, however, is whether the Full Bench decision of this Court in Umesh Chandra's case makes the facility given to the school employees also violative of Article 14 of the Constitution.

12. To sustain the validity of the impugned ordinance in Umesh Chandra's case AIR 1963 Pat 3 (FB) when it was argued before the Full Bench that the efficient performance of the functions by the University depended on the meritorious service rendered by its employees and with a view to encourage such meritorious services it could reserve in the Ordinance seats for children of such employees, the argument was rejected as wholly untenable, but then it was pointed out in paragraph 19 (at page 10 of the report), while rejecting the argument that "If the impugned law dealt with the conditions of service of the employees of the University, there may be some support for the view that in such a statutory provision special facilities and concessions may be given to those employees who have rendered meritorious service." But it was pointed out that the sole object of the impugned provision in the Ordinance was to provide for admission of the students to the medical course. In the instance case, however, certain facilities have been extended to the employees of the school to attract efficient teachers for the efficient running of the school. The school is situated, as already stated, in a remote corner, where facilities for the wards of the employees even upto the secondary or higher secondary standard are not available. To reserve seats in colleges for the University education and specially in technical lines cannot be equated with giving of facilities for school education to the children of the employees of the school. On the facts stated in the counter-affidavit, without affecting the accommodation of sixty seats in each class, and without incurring any extra expenditure, the Government has extended the facility to the employees of the school, strictly speaking, not by increasing the number of seats in the school or in the boarding house, but by allowing admission of day-scholars

to the maximum limits of twelve in each class, of students who are the wards of the school employees. It is not that twelve seats have been increased in a particular class, it is just by way of special facility that it has been decided by the Government that children of the school employees, formerly the number fixed was two for each employees, which has been made three now, can be admitted into the school and the extent of such facility has been fixed at twelve in each class. The very fact that only 26, out of the total 72 seats which recently made the figure 36, were filled up, shows that it was not a case of increasing seats in the school, but it was a case of giving special facilities by way of service condition to the employees of the school. The petitioner's stand that if all the seats in a particular class were not so filled up he should be given one such seat, is not tenable, as, in my opinion, it is not correct to say on the facts of this case, that the number of seats increased by the Government in a particular class is from sixty to seventy two. I do not think, therefore, that the reservation of seats for the children of the school employees can or should not be knocked down as being violative of Article 14 of the Constitution. In any view, it cannot be so done at the instance of the petitioner, for the reasons already stated above

13. For the reasons stated above, the application fails and is dismissed, but I shall make no order as to costs.

B.P. Sinha, J.

14. I agree.