
(2010) 09 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 322 of 2010

Shri Rabishankar Debnath	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1991 — Section 2, 5, 7

Citation : (2012) 1 GLD 223

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : G.S. Bhattacharjee and Mr. Dipak Biswas, for the Appellant; N.C. Pal, G.A. Tripura for the respondent Nos. 1, 2 and 3, Mr. T.D. Majumder, for the respondent No. 4 and Mr. S. Talapatra and Mr. B. Banerjee, for the respondent No. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—I have heard Mr. D. Biswas, and Mr. G.S. Bhattacharjee, learned counsel for the petitioner, and Mr. N.C. Pal, learned Senior Government counsel for the respondent Nos. 1, 2 and 3. I have learned also Mr. S. Talapatra, learned senior counsel, assisted by Mr. B. Banerjee, for the respondents No. 5, and Mr. T.D. Majumder, learned counsel, for the respondent No. 4. Pursuant to the Education Notification published, on 16.7.2010, by the Director of Health, Services and Medical Education, Government of Tripura, inviting applications for MBBS Entrance Examination Test for the Session 2010-11, the petitioner herein along with respondent No. 5 and many others applied and participated in the selection process. In the select list, the petitioner, who is, otherwise, a candidate belonging in to the unreserved category, did not figure.

2. On the ground, however, that the petitioner's father was an ex-serviceman and that the petitioner, by virtue of the fact i.e. his father was in Ex-serviceman, is entitled to be admitted to the MBBS course, but the same had been illegally

and unjustly denied to him by the State respondents, although similarly situated person, namely, respondent No. 5 herein had been granted admission, because he was ward of an Ex-serviceman, this writ petition has been filed by the petitioner, under Article 226 of the Constitution of India, seeking, inter alia, directions to be issued to consider the petitioner for admission in MBBS course, the petitioner having secured No. 1 position in the wait list in terms of merit, under the quota meant for the wards of Ex-servicemen in Tripura Schedule Caste and Scheduled Tribe Reservation Act, 1991 (hereinafter referred to as "the Reservation Act, 1991") provides for reservation, in higher educational institutions, in respect of wards of ex-serviceman.

3. On the last date, i.e., 22.9.2010, when this writ petition was taken up for consideration, it was pointed out, on behalf of the State respondents, that the Reservation Act, 1991, does not provide for reservation of seats, in higher educational and/or academic institutions, for the wards of ex-serviceman and that the reservation, in higher educational and academic institutions, have been provided under the Reservation Act, 1991, for the candidates of Scheduled Caste and Scheduled Tribe only and it is, in fact, under the State Government's Notification, dated 29.11.2007, that seats have been, for the first time, made available, by way of reservation, to the wards of ex-servicemen and this reservation has been provided only in those institutions, which have been earmarked in the said Notification. The said Notification also lays down the number of seats, which would be reserved for the wards of Ex-servicemen in each of the institutions, which are covered by the said Notification. It was further pointed out, on behalf of the State respondents, that the Notification, dated 29.11.2007, aforementioned does not include Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, and as the petitioner is an applicant, for admission, to Tripura Medical College and Dr. B.R. Ambedkar Memorial Technical Hospital, he is not entitled to any reservation for admission to the MBBS course, in Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, on the basis of any reservation on the ground that he is ward of an Ex-servicemen.

4. In substance, what had been contended, on behalf of the State respondents, on the last date, i.e., 22.9.2010, is that as far as Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, is concerned, there is no statute, rule or executive instructions, which provide for reservation of seat(s) to the wards of Ex-servicemen in MBBS course.

5. In the light of submissions, as noted above, this Court, having found that respondent No. 5 had been granted admission by virtue of the fact that he was ward of an Ex-serviceman, directed that the respondent No. 5 be impleaded as party along with the Principal of the said College. The persons aforementioned were accordingly impleaded as parties. The relevant submissions made by the State respondents, the observations of this Court, and the directions given in the order, dated 22.9.2010, read as under.

Heard Mr. D.K. Biswas, learned counsel for the petitioner, and Mr. N.C. Pal, learned senior Government Advocate, appearing on behalf of respondent Nos. 1, 2 and 3. I have also heard Mr. T.D. Majumder, learned counsel, appearing on behalf of respondent No. 4.

It is submitted, on behalf of the respondents, that the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, does not provide for reservation of seats in higher education and/or academic institutions for the wards of Ex-servicemen and that the reservations, in higher education and/or academic institutions, have been provided, under the said Act, for the candidates of Scheduled Castes and Scheduled Tribes only.

Referring to the Government Notification, dated 29.11.2007, learned counsel for the respondents submits that it is under this Notification, dated 29.11.2007, that, for the first time, seats were made available, by way of reservation, to the wards of Ex-servicemen and these reservations were made only in those institutions, which were earmarked, in the said. Notification, along with the seats to be reserved in the respective institutions. It is further pointed out, on behalf of the respondents, that as far as Tripura Medical College is concerned, the same is not covered by the list of educational national or academic institutions in respect whereof, the Notification, dated 29.11.2007, stands issued.

In substance, what is contended, on behalf of the respondents, is that as far as Tripura Medical College is concerned, there, is neither any enactment, nor is there any statutory rules, executive instruction, etc., which provide for reservation of seats for the wards of Ex-servicemen.

When questioned, as to how, pursuant to the same selection process, which covered the case of the present petitioner, seat has been allotted to one Sri Indranil Nandi (Roll No. TMC/CET/095) in the MBBS course as a ward of an Ex-serviceman, by the letter, dated 29.7.2010 (Annexure R/II to the writ petition), issued by the Principal, Tripura Medical College, the learned counsel for the respondents concede that the said allotment of seat, in favour of said Indranil Nandi, is beyond the powers of the Government and the Tripura Medical College.

Considering the fact that it is based on the allotment of seat, by way of reservation, in favour of said Indranil Nandi, by, the Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West Tripura, that the writ petitioner has substantially developed his case, this Court is of the view that in the facts and attending circumstances of the present case, the allotment of seat, in favour of said Indranil Nandi, is, unless shown otherwise, prima facie illegal and without jurisdiction. Consequently, if the petitioner cannot be provided with a seat, as has been sought for by him, the question of allowing the said Indranil Nandi to pursue the course of MBBS, by virtue of the allotment of seat in his favour, as has been done in the present case, does not arise and such an action of the respondents and, in particular, of the Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West

Tripura, cannot be permitted to stand good on record.

Situated thus, it is hereby directed that the said Indranil Nandi be impleaded, in this case, as party-respondent No. 5 and let notice be accordingly served on him through respondent No. 4, namely, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West Tripura. This Court is also of the view that the Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West Tripura, Agartala, needs to be added, as a party respondent, in this writ petition, in person, and also as the Principal of the Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, so that effective legally permissible orders can be passed in the event this Court finds that the action of the Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, is ex facie illegal or motivated.

It is, therefore, ordered that the Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West Tripura, and Dr. Purnima Saumandal, MBBS, MD, Principal, Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, Hapania, West Tripura, be impleaded as party respondent Nos. 6 and 7, respectively, in this writ petition.

In the backdrop of the facts and circumstances, as indicated above, this Court is of the considered view that when it is the case of the respondents themselves that the admission of the said Indranil Nandi is illegal, there shall be appropriate interim order suspending his admission into the MBBS course, in question.

In view of the above and in the interest of justice, it is hereby directed that notice be accordingly issued to the persons, who have been directed to be impleaded as respondents in this writ petition, making the same returnable on 28.9.2010. It is further directed, as an interim measure, that, until further order, the admission of the said Indranil Nandi into the MBBS course, in question, for the session 2010-2011, in the Tripura Medical College & Dr. B.R. Ambedkar Memorial Teaching Hospital, shall remain suspended. The respondents are left at liberty to move this Court for modification/alteration/vacation of this interim order.

6. In compliance with the directions given by the order, dated 22.9.2010, aforementioned, respondent No. 5 has, now, appeared and it transpire that though he had been admitted on the ground that he was ward of Ex-serviceman, his position, in the merit list, as a member of unreserved category, is 10 and even if he had been considered on merit, he would have, admittedly, received the admission in the MBBS course.

7. In the face of what has been noted above, it is no longer necessary for us to deny to the respondent No. 5 admission into the MBBS course in the said College or to restrain him from pursuing the MBBS course except making it clear that his admission shall be treated to have been made as against the candidates of unreserved category in terms of the merit list.

8. Drawing attention of this Court to the Preamble to the Reservation Act, 1991, and Para 14, 15 and 16 of the Schedule to the Reservation Act, 1991, it has been submitted, on behalf of the petitioner, that according to the Paragraph 16 of the Schedule to the Reservation Act, 1991, reservation, for the un-reserved category of physically handicapped and serviceman, shall be governed by the executive instructions to be issued by the Government and not according to the provisions of the Reservation Act, 1991, and, hence, by virtue of the provisions of Para 16, the petitioner is entitled to claim admission, in the said course, under the reservation provided to the ward of ex-serviceman.

9. The moot question, therefore, which falls for consideration is this: Whether the Reservation Act, 1991, provides reservation to the wards of Ex-servicemen for the purpose of admission into educational institutions, in General, and Tripura Medical College and Dr. B.R. Ambedkar Memorial Technical Hospital, in particular?

10. For the sake of clarity, the relevant part of the Preamble, as the same existed, on the date of coming into force of the Reservation Act, 1991, is reproduced below :-

An Act to provide for reservation of vacancies in services and post for the member of the Scheduled Castes and the Scheduled Tribes.

Whereas the members of the Scheduled Castes and the Scheduled Tribes who are Backward classes of citizens are not adequately represented in the services and posts under the State of Tripura.

And whereas it is expedient to provide for the reservation of vacancies in services and posts for them.

11. From, a bare reading of what can be clearly noticed from the Reservation Act, 1991, as the same stood at its introductory stage, is that the Reservation Act, 1991, was intended to provide for reservation only in the services and posts under the State of Tripura in respect of Members of the Scheduled Castes and Scheduled Tribes.

12. By the Second Amendment Act, 2005, the Preamble of the Reservation Act, 1991, came to be amended and the amended preamble reads as under :

An Act to provide for reservation of vacancies in services and posts for the members of the Scheduled Castes and the Scheduled Tribes.

Whereas the Scheduled Castes and the Scheduled Tribes who are under privileged section of the society are not adequately represented in the services and posts under the State of Tripura and it is expedient to provide reservation for them in the services and posts under the State of Tripura;

AND

Whereas adequate number of qualified and eligible Schedule Caste and Scheduled Tribe candidates for appointment to various services and posts under

the state are not available and it is expedient to provide for them reservation of seats in educational institutions, higher studies and training to make qualified and eligible Schedule Caste and Scheduled Tribe candidates available for appointment to various services and posts and for their educational advancement;

AND

Whereas it is expedient to regulate the issuance and cancellation of community certificates and check false claims to belong to the Scheduled Castes or Scheduled Tribes and prescribe punishment for those who obtain or have obtained one community certificates and matters connected therewith or incidental thereto.

AND

"Whereas it is necessary to amend some of the existing provisions of the Tripura Scheduled Castes and the Tripura Scheduled Tribes "(Reservation of vacancies in services and posts) Act, 1991" to bring it in conformity with the various court rulings.

13. From a close reading of the amended Preamble of the Reservation Act, 1991, as what becomes transparent clear is that the Reservation Act, 1991, however, provides for reservation for the Scheduled Castes and Scheduled Tribes not only in the services and posts under the State of Tripura, but also in Educational Institutions, Higher Studies and Training. No wonder, therefore, that the definition of "Educational Institutions" came to introduced in to the Reservation Act, 1991, by the Second Amendment Act, 2005. The Educational Institutions, as defined by Section 2(d) of 1991, means any School, College, Polytechnic Industrial Training Institute, Institute for Nursing or Midwifery or any other institute for imparting education or training under the control of any Board or University established by an Act of the Parliament or State Legislature and is owned or aided by the State Government.

14. What follows from the above discussion is that the Reservation Act, 1991, as originally conceived, had not included reservation, in educational institutions, even for the members of the Scheduled Castes and Scheduled Tribes. The educational institutions have come to be included in the Reservation Act, 1991, by the Second Amendment Act, 2005, and the definition of the "Educational Institution" had to be, therefore, incorporated in the Reservation Act, 1991, by the Second Amendment Act, 2005.

15. In tune with the newly amended Preamble of the Reservation Act, 1991, the Reservation Act, 1991, was amended by the Second Amendment Act, 2005, to provide for reservation of seats, in educational institutions, for the members of the Scheduled Castes and Scheduled Tribes. This becomes clear if one reads Section 5, which states as under :

5. Reservation for Scheduled Castes and Scheduled Tribes in educational

Institutions, in selection of students for higher studies and in selection of candidates and in-service personnel for higher studies and training :

(a) There shall be seventeen percent reservation for the Scheduled Castes and thirty-one percent reservation for the Scheduled Tribes in admission of students to educational institutions, in selection of candidates and in-service personnel for higher studies or training;

Provided that the State Government may, from time to time, review the implementation of the reservation policy and take adequate measures including increase of percentage of reservation as mentioned in sub-section (a) above;

(b) The candidates belonging to the Scheduled Castes and the Scheduled Tribes who qualify for selection on merit shall be included in the general list and not against the reserved quota.

16. In fact, it is u/s 5 and Section 7 of Reservation Act, 1991, stand amended today, that reservation of seats, in favour of the candidates belonging to Scheduled Castes and Scheduled Tribes, has been provided in educational institutions.

17. The Reservation Act, 1991, is, thus, clearly meant to provide reservation for the members of the Scheduled Castes and Scheduled Tribes for their recruitment and appointment to the various services and posts in the State Government and also for making to them avail seats, in Educational Institutions, by way of reservation as indicated hereinabove.

18. As far as Physically Handicapped persons and Ex-servicemen are concerned, provisions for reservation have been made in paragraph 14 of the Reservation Act, 1991, which lays down inter alia, that there shall be 3% reservation for the physical handicapped and 2% reservation for the Ex-servicemen only in "direct recruitment". Paragraph 14 does not apply to, and bring within its fold, the ward of Ex-servicemen. The reservation provided, in paragraph 14, is person specific inasmuch as it is not applicable to off springs and heirs of an Ex-serviceman, but to the Ex-serviceman himself. This apart, this reservation is provided only in respect of "direct recruitment" and not in respect of educational institutions.

19. By no cannons of interpretation, therefore, paragraph 16 to the Schedule can be read to have provided for reservation of seats, in Educational Institutions, in favour of the physically handicapped person and/or ward of Ex-serviceman. Contrary to what has been contended on behalf of the petitioner, even paragraph 16 to Schedule does not include, within its fold, persons other than a physically handicapped person or an Ex-serviceman himself and that too, for the purpose of their "direct recruitment" to the services and posts under the State Government and not for admission in educational institutions.

20. Situated thus, this Court finds considerable force in the submissions made, on behalf of the State-respondents, that the Reservation Act, 1991, does not provide for reservation of seats, in educational institutions, in favour of ward of

Ex-serviceman and that the reservation, in this regard, has been provided by Notification, dated 29.11.2007, issued by the Government of Tripura Education (Higher) Department. The Notification reads as under :-

Subject Provision of higher education facility to wards of the Ex-servicemen.

The Governor of Tripura has been pleased to order that as a part of welfare measure of the Ex-servicemen of the State, certain number of seats in the Institutes for Higher Education shall be earmarked for the wards of the Ex-servicemen as per details enclosed subject to the following conditions.

- i. The number of seats as indicated shall be earmarked for wards of the Ex-servicemen of the State as per the certificate to be issued by the Rajya Sainik Board;
- ii. In order to get the benefit, the wards shall have to fulfill other conditions as laid down by the concerned Institute;
- iii. In the event of suitable wards of the Ex-servicemen of the State being not available for any of the earmarked seats in a particular academic year, other candidates shall be taken in the same seats and the vacancy will not be carried over to the next academic year;
- iv. This is issued in supersession of all previous orders issued on the subject and shall have effect from the academic year 2008-09.

21. From the above notification, it be-comes clear that as a welfare measure for the Ex-servicemen of the State, the State Government, in Tripura, has provided for reservation of seats, in the institutions for Higher Education, in respect of the wards of Ex-servicemen and the institutions to which this Notification applies are 10 in number and these educational institutions do not include Tripura Medical College and Dr. B.R. Ambedkar Medical Teaching Hospital, Hapania.

22. Thus, the reservation, if any, in MBBS course, in Tripura, is provided by the Notification, dated 29.11.2007, to the institutions/colleges, which stand mentioned in the said Notification, and the said Notification, having not included Tripura Medical College and Dr. B.R. Ambedkar Memorial Technical Hospital, the said Notification has no application to the facts of present case. This being the position, the petitioner cannot claim any reservation of seats, in his favour, on the basis of the Notification, dated 29.11.2007, while seeking admission, in the MBBS course, in Tripura Medical College and Dr. B.R. Ambedkar Memorial Technical Hospital. More so, when the Notification aforementioned not merely mentions the educational institutions, which are covered by the Notification, but also the number of seats, which have been reserved against each of the education institutions, mentioned in the Notification, in favour of the wards of ex-serviceman. I may pause here to point out, in this regard, that the Notification, dated 29.11.2007, is not under challenge.

23. Situated thus, it is clear that no right or interest stands vested in the writ

petitioner and by the selection of candidates made by the State respondents, no fundamental or other right of the petitioner has been infringed.

24. Because of what have been discussed and pointed out above, this Court does not find that the petitioner has been able to make out any case warranting interference, by invoking extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, with the selection of candidates made by the State respondents in the present case.

25. In the result, and for the reasons discussed above, this writ petition fails, the same is not admitted and shall accordingly stand dismissed.

27. No order as to costs. Furnish a copy of this order to the learned Government Advocate.