

(2017) 08 TP CK 0004
In the Tripura High Court
Case No : 1062 of 2017

Sri Arghyadeep Das & Ors

APPELLANT

Vs

The State of Tripura & Ors

RESPONDENT

Date of Decision : 25-08-2017

Acts Referred:

[Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991](#),
Section 5, Section 5(a)

Citation : (2017) 08 TP CK 0004

Hon'ble Judges : S. Talapatra

Bench : Single Bench

Advocate : A. Bhowmik, BC Das, DC Nath, A. Nandi, CS Sinha, Somik Deb

Judgement

1. Heard Mr. Arijit Bhowmik, learned counsel appearing for the petitioner as well as Mr. BC Das, learned Advocate General assisted by Mr. DC Nath, learned Additional Government Advocate appearing for the respondents-State. Also heard Mr. A. Nandi, learned counsel appearing for the respondent no.4, Mr. CS Sinha, learned counsel appearing for the respondent no. 5 and Mr. Somik Deb, learned counsel appearing for the respondent no.6.

2. Both these writ petitions being WP(C) 1062 of 2017 [Sri Arghyadeep Das vs. The State of Tripura and others] and WP(C) 1063 of 2017 [Smt. Priyanka Das vs. The State of Tripura and others] are consolidated for disposal by a common judgment as the challenge in these petitions are structured on the common grounds and relating to admission in the MBBS course, 2017 in Regional Institute of Medical Sciences (in short the RIMS) by the second counseling held by the Common Counseling Committee, NEET-UG 2017 under the Directorate of Medical Education, Health and Family Welfare Department, Government of Tripura.

3. The petitioners namely Sri Arghadeep Das and Smt. Priyanka Das do belong to Scheduled Caste (in short SC) community and they are respectively holding the All India ranking 110002 and 223247 and they appeared in the counseling for admission against the State (Domicile) seats viz. seats from Agartala

Government Medical College (in short the AGMC), the RIMS, Imphal, Manipur and Tripura Medical College (in short the TMC), Agartala. The respective merit position for the State (Domicile) seats of the writ petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das] and the writ petitioner in WP(C) 1063 of 2017 [Smt. Priyanka Das] are "108" and "267". The seat matrix dated 16.07.2017 for the first round of counseling revealed that 13 MBBS seats were available from the RIMS under the State (Domicile) quota. Out of those seats 7 belonged to UR category, 4 belonged to ST category and 2 belonged to SC category.

4. On completion of the allotment made in the first counseling, it further revealed that 3 seats were available from the RIMS. In order to allot those seats, the seat matrix for the second round of common counseling for the NEET-UG 2017, was declared on 17.08.2017. For the second round of common counseling, the State quota seats for MBBS was as under:

Name of the Institutes

Total No. of Seats

Category Wise Distribution

UR SC ST

RIMS

3 1 2 0

AGMC

13 7 1 5

TMC 18 9 4 5

5. The petitioners were only interested in the MBBS seats from the State (Domicile) quota. The said seat matrix declared on 17.08.2017 was subsequently corrected by the Chairmancum- Counseling committee, NEET-UG 2017 by a corrigendum under No. G.5(6)-DME/UG/Counseling/2017-18/(Sub-I), dated 18.08. 2017. The seat matrix as emerged in terms of the said corrigendum dated 18.08.2017 is as under:

Name of the Institutes

Total No. of Seats

Category Wise Distribution

UR SC ST

RIMS 3 3 0 0

6. It is evident that there was no seat for the SC category candidates in the RIMS. Being aggrieved by the said action of the State-respondents, the petitioners by filing these writ petitions have urged this court this court for the

reliefs as under: (i) to set aside the seat matrix as declared by the corrigendum dated 18.08.2017 and also (ii) to cancel the allotment of the seats to the respondents no. 5 and 6.

7. It is to be noted here that allotment of the seat of the respondent no. 4 against one seat available in the RIMS was challenged even though initially, but later on the said challenge was abandoned inasmuch as availability of seat for UR category in the RIMS was undisputed. Further, it has been urged that the petitioners be considered for admission against 2 seats of MBBS from the RIMS, Imphal as the SC category candidates meaning by treating those 2 MBBS seats from the RIMS as reserved for the SC category candidates.

8. The petitioners have asserted that after the first round of common counseling held on 20.07.2017 and 21.07.2017, 2 SC seats in the RIMS, Imphal was allotted to one Sri Rituraj Sarkar (SC) and another Sri Debapriya Das (SC) who were occupying the merit position of "18" and "37" respectively in the common merit list for the State (Domicile) quota. Thus, they were allotted seats in the AGMC against the UR seats in terms of Section 5 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991. However, they had pressed for the seats in the "preferred" college and institution. Consequently, they were allotted 2 seats, earmarked for SC, in the RIMS. After the allocation of the seats to Sri Rituraj Sarkar and Sri Debapriya Das, those 2 candidates took admission. Within a shortwhile, they surrendered those seats as they availed seats under All India quota. Thus, according to the petitioners, the seats that fell vacant be filled up only by the SC candidates and in the seat matrix declared on 17.08.2017 those 2 seats were rightly shown for SC candidates, but the corrigendum dated 18.08.2017, the said allocation was completely changed by showing all the 3 seats available for the second round of common counseling from the RIMS were for UR category. That action is grossly illegal.

9. There is no dispute that the petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das] and the petitioner in WP(C) 1063 of 2017 [Smt. Priyanka Das] were respectively at serial no. 1 and 3 of the SC waiting list. The petitioners have, therefore, claimed their right to be considered for allotment of those 2 seats as the SC candidates, but for conversion of those 2 seats to UR category by the said corrigendum dated 18.08.2017 both the petitioners have been deprived of such legitimate consideration.

10. The respondents no. 1,2 and 3 by filing their reply, expounded their version stating that 88 medical seats [under the State (Domicile) quota] were initially available to the common counseling committee. Out of 88 seats, 13 seats came from the RIMS, Imphal and 75 seats from AGMC, Agartala. According to the reservation roster, 46 seats were earmarked for UR category, 15 seats for SC category and 27 seats for ST category. From the table, as below, as provided by those respondents, it would be evident how those seats were distributed category wise:

Name of the Institution

Total number of seats

UR SC ST

RIMS 13 7 2 4

AGMC

75

39 (including 1 PH and 1 Ex-Serviceman)

13

23 (including 1 PH and 1 Ex-Serviceman)

11. So far the seats from the RIMS are concerned, out of total 13 seats, as is evident, 7 seats were for UR category, 2 seats for SC category and 4 seats for ST category. Against 7 UR seats in the RIMS, 7 UR category candidates were nominated in the first round of common counseling. Since, in this regard there is no dispute, this court would refrain from making an elaborate exercise in this regard. The respondents no. 1,2 and 3 however have clearly admitted that one Sri Rituraj Sarkar and another Sri Debapriya Das who belonged to SC category were in the common merit position no. "18" and "37", but they could not be accommodated against the UR seats available from the RIMS in terms of Section 5 of the Tripura Scheduled Castes and Scheduled Tribes Act, 1991. They were eligible for getting one UR seat each in terms of their merit position. They were offered the seats in the AGMC, Agartala, but they wanted seats in the preferred college viz. the RIMS, Imphal. As already stated, they could not get their berth against the UR category in the RIMS. They were given 2 seats subsequently in the RIMS, reserved for SC category. But within a few days they surrendered their seats in the RIMS. Those seats have thus been declared to be filled up by UR category candidates though initially by the seat matrix declared on 17.06.2017 both the seats were shown to be filled up by the SC category candidates. The respondents no. 1,2 and 3 in order to explain their position, have stated in their reply as under: "... But afterwards to maintain reservation policy it was observed that already 15 seats (AGMS-13 & RIMS-2) for SC category were allocated at AGMC. These aforementioned 2(two) seats were therefore given to the UR category vide fresh educational notification as corrigendum, uploaded in the website on 18.08.2017 as UR-3 nos. seats (1 seat of RIMS already surrendered on 09.08.2017 and 2 new surrendered seats). In the 2nd round counseling, these seats have been allocated to the respondents no. 4,5 and 6 as UR seats."

12. Mr. A. Bhowmik, learned counsel appearing for the petitioners has criticized the stand taken by the respondents no. 1, 2 and 3. According to him, even though the petitioners participated in the second round of counseling, but they were not allotted the MBBS seats from the RIMS "due to illegal conversion of 2 SC category seats from the Regional Institute of Medical Sciences, Imphal to UR

category MBBS seats". Mr. Bhowmik, learned counsel has further submitted that the stand of those respondents that the reservation is to be counted in totality is flawed. Their stand that in the first round of common counseling 15 MBBS seats were allotted to the SC category candidates and therefore there was no seat available for the SC category candidates for the session 2017-18 in the State (Domicile) quota. Mr. Bhowmik, learned counsel has emphatically submitted that when the State is following the reservation system college/institution wise, the State is not permitted to take such stand, as has been taken in this case. According to Mr. Bhowmik, learned counsel, the reservation layout has to be made institution wise. Therefore, there shall be 2 SC seats in the RIMS. Most illegally the respondents have converted those 2 seats into the UR seats by publishing the corrigendum dated 18.07.2017. To nourish such contention, Mr. Bhowmik, learned counsel has referred the notification dated 06.06.2017. True it is that in the said notification it has been observed as under: "All medical colleges shall have to place the number of seats available for the respective year after proper verification of the 100 point roster of the seats through the Nodal Departments viz. ST, SC & OBC Welfare Department, Social Welfare Department and Directorate of Sainik Welfare preferably by first week of June every year i.e. well ahead of the publication of Notification for counseling to the Director of Medical Education. While verifying the roster by the Nodal Department against the state quota seats, the reservation of the seats of the UR,ST,SC Wards of Ex-servicemen and Physically Handicapped candidates should clearly be mentioned in respect of each institution/college so that notification by the Directorate of Medical Education can be made accordingly. However, isolated individual seat of similar category/nature may be grouped together for the purpose of reservation taking in account of the status as per the State Reservation provision".

[Emphasis added]

In the sequel, Mr. Bhowmik, learned counsel has continued to submit that it is amply clear that all the medical colleges shall have to publish the availability of seats for the respective year after proper verification of 100 point roster through the Nodal Department. While verifying the roster, the Nodal Department against the State (Domicile) quota, shall assert the seats category-wise meaning by distributing the seats amongst UR,SC,ST, Ex-servicemen and the Physically Handicapped. That assortment shall be clearly mentioned in respect of each institution/college. The notification, however, be made by the Directorate of Medical Education in terms of what is decided by the Nodal Department. It is apparent therefore, according to Mr. Bhowmik, learned counsel, the State was not applying the reservation rule in totality, but the college/institution wise. If the said procedure is not followed, the seats for the reserve category candidates may increase or decrease from the seats which they are supposed to get under Section 5 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991. What has exactly happened in the present case in the AGMC, 13 medical seats can be availed by the SC category candidates, but in the year 2017-18 in the AGMC 15 medical seats have been allotted to the SC category candidates,

whereas the seats available for the SC category candidates in the RIMS have been decreased to "Zero", though according to the reservation rule, 2 seats were available for the SC category candidates. This action of the respondents no. 1,2 and 3, according to the petitioners is absolutely untenable and illegal. Mr. Bhowmik, learned counsel has further submitted that even in the Information Booklet for NEET-UG 2017, it has been clearly mentioned as under:

"Chapter-3, Clause-4(b)(ii):- The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States / Union Territory concerned."

Thus, according to Mr. Bhowmik, learned counsel it is apparent that the reservation of the MBBS seats has to be maintained institution/college wise. Further, Mr. Bhowmik, learned counsel has submitted having referred to Section 5 (a) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 that there shall be seventeen percent (17%) reservation for the scheduled castes and thirty one percent (31%) reservation for the scheduled tribes in admission to the educational institutions in selection of candidates and in ? service personnel for higher studies or training. It has been further 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 the clause (a) provided under Section 5 of the said Act. It has been further provided that 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. Mr. Bhowmik, learned counsel has therefore, finally contended that the 2 seats which were part of the second round of common counseling from the RIMS shall be made available to the SC category candidates from the waiting list. Since the person in serial no. 2 in the SC waiting list namely Sri Arup kumar Das has taken admission in the AGMC, Agartala, therefore the petitioners are entitled to get those 2 seats from the RIMS as the petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das] is at serial no. 1 of the SC waiting list and the petitioner in WP(C) 1063 of 2017 [Smt. Priyanka Das] was in serial no. 3 of the SC waiting list.

13. Mr. BC Das, learned Advocate General appearing for the State-respondents has submitted that the preference is allowed to the candidates in respect of a particular college of their choice and as such the State Government has framed a policy in order to make an equitable balance between the preference and the reservation. By the notification under No. F.5(6) DME/PG/ UG/ Counseling/2017-18 (Sub-1)/2252-72 dated 06.06.2017, apart from what has been relied and referred by Mr. Bhowmik, learned counsel, the State Government has provided as under: "A candidate, who surrenders his/her seat offered in the first round of counseling with an intention to avail better seat in the second and subsequent round of counseling, if any takes place by the counseling committee, shall not claim the college of his/her choice as per his/her original rank of the first counseling. He/she will have to accept the seat in the college which is

available during the second counseling or subsequent counseling if it takes place. The same method shall be applied in case of a candidate who sought permission to abstain from first round of counseling for allotment of seat in second round of counseling or subsequent and also for the candidates who does not accept i.e. refuse seat allotted to them in the first round of counseling. For example if a candidate who may have topped the NEET-UG in the first round counseling but surrendered his/her seat with the intention of appearing in the subsequent round then he/she cannot claim in the 2nd counseling that on the basis of rank he/she should be given a college of his/her choice. He/she will now rank with the others who are in the second counseling and if in the second counseling he/she is entitled to a college of his/her choice, he/she may get but not on the basis of the original rank in his/her category. To clarify it further, supposing an unreserved category who is number one in the list could get a college of his/her choice in the first counseling but he/she does not accept the offer and surrenders the seat. In that case, when the second counseling takes place, there is no seat left under the unreserved category in the college of his/her choice. He/she will have to accept the seat in the college which is now offered to him/her in the second counseling and subsequent counseling as per the availability of seats".

It has been further provided that-

"A candidate who opted seat during first round of counseling but subsequently intended for surrendering the seat shall have to apply to the counseling committee or Director of Medical Education for surrendering the seat within 7(seven) days positively excluding the date of receiving of the seat form the counseling".

The writ petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das] has admittedly surrendered his seat allotted to him after the first round of common counseling to have a seat in the preferred college. Mr. Das, learned Advocate General, however, has referred from the procedure of distribution of seats at the counseling which is the part of the notification dated 06.06.2017. The provision as referred by the learned Advocate General appearing for the respondents no. 1,2 and 3 read as follows:

"1. The counseling committee shall call the candidates chronologically in order of merit according to the common merit position of common merit list made by Directorate of Medical Education according to the ranking of NEET UG from candidates who has submitted their registration. This is the candidates shall be called-common merit position1, common merit position 2, common merit position 3, common merit position 4 and so on from the common merit list of NEET UG for State quota.

2. A candidate of UR category will be offered to opt any seat from the available seats meant for UR and he/she can opt any seat of a particular course according to his/her choice from any of the available colleges. Then the counseling committee shall select the candidate for the respective seat of that course that

he/she will opt provided he/she fulfills the other eligibility criteria.

3. If the candidate belongs to ST/SC category, he/she will be selected for a seat of a particular course in any one of the following cases:

(a) A candidate of ST/SC category will be offered to opt any seat from the available seats meant for UR and he/she can opt any seat of a particular course according to his/her choice from any of the available courses meant for UR. In that case the seat which is opted by him/her would be reduced from the seats meant for UR and not from the seat reserved for the ST/SC category. Then the Board shall select the candidate for the respective seat of that course that he/she will opt provided he/she fulfills the other eligibility criteria.

(b) A candidate of ST/SC category will be offered to opt any seat from the available seats meant for UR and he/she can opt any seat of a particular course according to his/her choice from any of the available courses meant for UR. But if he/she finds that seat meant for UR for a particular course of his choice is available in a particular institution which he/she does not prefer, but seat reserved for ST/SC category for that course is available in his/her preferred college/institution, then he/she can opt a seat reserved for ST/SC category in his/her preferred college. In this case, his/her admission should not be counted against the quota reserved for ST/SC category for this particular course is not reduced by for the aforesaid case. Then the Board shall select the candidate for the respective seat of that course which he/she will opt provided he/she fulfills the other eligibility criteria.

(c) If no seat meant for UR is available for a particular course, say MBBS, then a candidate of ST/SC category will be offered to opt any seat from the remaining courses meant for UR and including the seats of MBBS which are available for ST/SC category. The candidate can opt any seat of a particular course according to his/her choice from any of the available courses meant for UR. But if he/she opts a seat of MBBS from the seats reserved for ST/SC, then the seat would be reduced from the seats reserved from ST/SC. Then the Committee shall select the candidate for the respective seat of that course that he/she will opt provided he/she fulfills the other eligibility criteria.

(d) If all seats meant for UR are exhausted then a candidate of ST/SC category will be offered to opt any seat from the available seats reserved for ST/SC and he/she can opt any seat of a particular course according to his/her choice from any of the available courses reserved for ST/SC. Then the counseling committee shall select the candidate for the respective seat of that course that he/she will opt provided he/she fulfills the other eligibility criteria.

(e) If any of the seats in reserved category remain vacant due to non availability of eligible candidate of particular reserved category, say (ST) seat may be opted by the other reserved eligible candidate say SC and this shall be in vice versa OR as per decision made by the SC/ST Department".

[Emphasis added]

Learned Advocate General has quite candidly submitted that there would have been no difficulty in following the provisions of Section 5(a) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1997, but for the preference that is permitted to be exercised, the state has to make the said procedure of distribution of seats at the counseling. It is a fair attempt to balance the factors relating to the reservation and the preference. According to learned Advocate General since the persons (Sri Rituraj Sarkar and Sri Debapriya Das) who were adjusted against the 2 SC category seats in the RIMS, Imphal and who, lateron, surrendered those seats were initially offered seats from the UR category in the AGMC, Agartala. Since, those 2 candidates namely Sri Rituraj Sarkar and Sri Debapriya Das were allotted seats in the first round of common counseling in terms of their merit position of "18" and "37" respectively, when they were adjusted based on their preference against 2 SC seats, those 2 (two) seats which were initially allotted to those candidates in the AGMC were given to 2 (two) SC candidates to adjust the reservation for the preference made by those two candidates (Sri Rituraj Sarkar and Sri Debapriya Das). The said action was taken in terms of the Clause 3(b) of their said notification dated 06.06.2017, as reproduced. The said Clause 3(b) provides inter alia that a candidate of ST/SC category will be offered to opt any seat from the available seats meant for UR and he/she can opt any seat of a particular course according to his/her choice from any of the available courses meant for UR. But if he/she finds that seat means for UR for a particular course of his choice is available in a particular institution which he/she does not prefer, but seat reserved for ST/SC category for that course is available in his/her preferred college/institution, then he/she can opt a seat reserved for ST/SC category in his/her preferred college. In this case, his/her admission should not be counted against the quota reserved for ST/SC category for this particular course. Examples are provided to explain the Clauses of the said notification dated 06.06.2017 in Annexure "A". The relevant illustration according to Mr. Das, learned Advocate General is as under:

Again Debasish Das, a candidate of SC category having common merit position 8 has been called and this moment the available seats are shown below:

Course

Institution

Category

UR ST SC

MBBS

RIMS 00 01 02

AGMC 38 21 13

Debasish claimed a MBBS Seat at RIMS, Imphal. But no seat meant for UR at

RIMS available, in that case he will be allotted a seat at RIMS from the seat meant for SC category. As he is eligible to get a seat from seats meant for UR, a seat reserved for SC category for this particular course is not reduced by any means for the aforesaid case. The available seats are shown below:

Course

Institution

Category

UR ST SC

MBBS

RIMS 00 01 01

AGMC 37 21 14

14. The same principle has been followed in adjusting 2 seats of the SC candidates available in the RIMS. Sri Rituraj Sarkar and Sri Debapriya Das who were eligible to get the UR seats like "Debasish Das" in the example, but they did not accept those UR seats in the AGMC, Agartala. They went for the preferred institution (the RIMS) and got themselves admitted against 2 seats allotted for the SC candidates. Consequent thereupon, the seats were adjusted in the AGMC as shown in the example by reducing 2 seats from the UR category and enhancing 2 seats in the SC category in the AGMC to adjust the said factor of preference made by Sri Rituraj Sarkar and Sri Debapriya Das. Thus, 15 SC candidates were admitted in the AGMC in terms of the first round of common counseling and the seats from these institutions namely the RIMS, Imphal and the AGMC. The total number of seats for the SC candidates against these 2 institutions is "15" only. Therefore, there was no seat available in those colleges for the SC category candidates. Initially, when the seat matrix were declared on 17.08.2017, a mistake crept in the seat matrix which was immediately corrected by the corrigendum dated 18.08.2017 showing the correct position of the reservation. Thus, the petitioners cannot have any grievance whatsoever.

15. The petitioners have not challenged the notification dated 06.06.2017. It is found that the purpose of the said notification is, inter alia, to make an equitable balance of the factors of preference and reservation. The counsel appearing for the remaining respondents have adopted the submission of the learned Advocate General appearing for the respondents no. 1,2 and 3.

16. As already noted, the challenge against the allotment of seat for the respondent no. 4 was not insisted by the petitioner for obvious reason as stated, but so far the nomination of the respondents no. 5 and 6 is concerned, this court finds that there is no illegality or material irregularity and that has been done in full conformity to the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 [Section 5(a)] and the notification dated 06.06.2017. True it is that now the petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das] is almost on the

brink as he did not accept the seat in the AGMC. It has been reported that the petitioner in WP(C) 1063 of 2017 [Smt. Priyanka Das] has already taken admission in the Tripura Medical College.

17. Having observed thus, this court does not find any merit in these writ petitions and accordingly those are dismissed. There shall be no order as to costs.

18. Before parting with the records, it is observed that if any seat during the mopping off counseling is available for the SC candidate that seat shall invariably be offered to the writ petitioner in WP(C) 1062 of 2017 [Sri Arghadeep Das]. Whether the said petitioner would accept the said seat or not, will be subject to his option. A copy of this order be furnished to the learned counsel appearing for the parties for doing their needful.