

(2010) 04 GAU CK 0033
Gauhati High Court (Agartala Bench)
Case No: WA No. 15 of 2010

Sri Somen Baidya

APPELLANT

Vs

State of Tripura and
Others

RESPONDENT

Date of Decision: April 22, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 2 GLD 874

Hon'ble Judges: Iqbal Ahmed Ansari, J; C.R. Sharma, J

Bench: Division Bench

Advocate: S. Talapatra, for the Appellant; B. Datta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

I.A. Ansari, J.

We have heard Mr. S. Talapatra, learned Senior counsel, appearing on behalf of the appellant, and Mr. B. Datta, learned Counsel appearing on behalf of the respondent Nos. 1, 2 and 3. We have also heard Mr. P. Datta, learned Counsel, appearing on behalf of the respondent No. 4.

2. The correct interpretation of the advertisement, dated 5.10.2009, issued by the respondent No. 3, namely, Principal, Regional Institute of Pharmaceutical Science and Technology (in short, RIPSAT), Abhoynagar, Agartala, inviting applications, for lateral admission to the second year (3rd semester) of B.Pharm course, for the academic year 2009-10, is the bone of contention in this appeal.

3. Before proceeding further, it may be noted that the Regional institute of Pharmaceutical Science and Technology (popularly known, and hereinafter referred to, as "RIPSAT") was earlier known as Regional Pharmaceutical Institute and in short,

"RPI". The appellant, who had stood first in the D. Pharma examination, in the year 2006, from RIPSAT, filed a writ petition, under Article 226 of the Constitution of India, which gave rise to W.P. (C) No. 366 of 2009, his case being, in brief, thus: By the said advertisement, applications were invited from not only those, who had obtained diploma in Pharmacy, in the year 2008, from RIPSAT, but also from those candidates, who had obtained diploma in B. Pharma in the years preceding 2008. In terms of the said advertisement, two seats were reserved for admission to the said course in favour of the first and second rank holders in Diploma in Pharmacy, who had obtained diploma in the year 2008, from the RIPSAT and one was reserved for in-service candidate. Out of the said two reserved seats, meant for the first and second rank holders, as mentioned hereinbefore, one of them, namely, the second rank holder, did not apply for admission. The seat, which had been reserved in favour of the second rank holder, as aforementioned, having not been filled up by the said second rank holder, the said seat ought to have been treated as de-reserved and the writ petitioner ought to have been admitted against the said seat inasmuch as the writ petitioner was the next candidate, in order of merit, in the common select list of candidates, including those, who had passed in the year 2008, from the RIPSAT, but the State respondent/authorities concerned illegally allotted the said de-reserved seat in favour of the respondent No. 4, who had secured, in the B. Pharma examination, in the year 2008, lower percentage of marks than that of the writ petitioner. Though the respondent No. 4 was third in order of merit among the examinees, who had passed in the year 2008, yet she, being below the writ petitioner, in the general merit list, ought not to have been allotted the seat by denying rightful claim of the writ petitioner.

4. The respondents herein resisted the writ petition by contending, inter alia, that the said two reserved seats were meant for the first and second rank holders of the diploma course of pharmacy, who had passed, in the year 2008, from RIPSAT and, on the failure of the first and second rank holder of the year 2008 to apply for admission, the said seats were to be given to the next candidate in order of merit from amongst those, who had passed in the year 2008. Consequently, according to the respondents, when the second rank holder of the year 2008 did not apply for admission against the said reserved seat, the writ petitioners could not have been considered against the said reserved seat for the simple reason that he had passed B. Pharma examination as far as back in the year 2006 and respondent No. 4 herein, namely, Smti. Jaya Das, was 3rd rank holder in the D. Pharma examination held in the year 2008, though marks, obtained by her in B. Pharma examination, were lesser than those of the writ petitioner, who had passed the said examination in the year 2006.

5. By judgment and order, dated 28.1.2009, which is under appeal, a learned single Judge of this Court has taken the view that the said two seats were, in the light of the advertisement, meant for the said two rank holders of the year 2008 and since the 2nd rank holder of the year 2008 had not opted for admission, the next rank

holder i.e. respondent No. 4 herein, who was the third rank holder of the year 2008, ought to have been given and has been legally and rightly given admission against the said reserved seat. With the conclusion, so reached, the learned single Judge has dismissed the writ petition. Feeling aggrieved, the writ petitioner is before this Court, now as appellant.

6. In order to set at rest the controversy, we reproduce hereinbelow the relevant portion of the advertisement, in question, which reads as under:

Applications are invited from bona fide residents of Tripura having Diploma in Pharmacy qualification/in-service candidate with Diploma in Pharmacy passed from RPI/RIPSAT for lateral admission to the Second Year Degree in Pharmacy (3rd Semester) at the Regional Institute of Pharmaceutical Science and Technology, Abhoynagar, Agartala for the academic year 2009-2010. The course is of four (4) years duration. Qualifying marks for submission of application is 50% in Diploma in pharmacy and for in-service candidate having at least 5 years of service experience as Pharmacist under Government of Tripura.

Two (2) seats are reserved for serial First and Second ranks holder in Diploma in Pharmacy passed in 2008 from RIPSAT (If they fail to apply within stipulated time, the seats will be filled up from D. Pharma passed candidate of RIPSAT in order of merit and one (1) seat for in-service candidate.

(Emphasis added)

7. The correct interpretation of the expression, "Two (2) seats are reserved for serial First and Second ranks holder in Diploma in Pharmacy passed in 2008 from RIPSAT (If they fail to apply within stipulated time, the seats will be filled up from D. Pharma passed candidate of RIPSAT in order of merit" is the core issue in the present appeal.

8. From a bare reading of the contents of the advertisement, which we have reproduced above, what clearly transpires is that not only the candidates, who had passed B. Pharma examination in the year 2008, were eligible to apply for a lateral admission to the 2nd Year Degree Course in Pharmacy (3rd Semester), but also those candidates were eligible, who had obtained diploma in B. Pharma examination in the years preceding 2008, when the said institute was known as Regional Pharmaceutical Institute (RPI). That apart, even the in-service candidates, who had passed B. Pharma examination before the year 2008, were eligible to apply. No wonder, therefore, that it has not been contended/in the writ proceeding, that none other than those, who had passed D. Pharma examination, in the year 2008, were eligible to apply for admission pursuant to the said advertisement or that none other than those, who had passed in the year 2008, had been given admission.

9. Thus, not only those, who had passed B. Pharma examination in the year 2008, but also those, who had passed the said examination before the year 2008, were, in

terms of the said advertisement, eligible to apply for admission for the academic year 2009-10.

10. In the backdrop of the above admitted position, we are, now, required to interpret as to what meaning shall be attributed to the expression "Two (2) seats are reserved for serial First and Second ranks holder in Diploma in Pharmacy passed in 2008 from RIPSAT (If they fail to apply within stipulated time, the seats will be filled up from D. Pharma passed candidate of RIPSAT in order of merit."

11. A patient reading of the said expression shows that altogether three seats had been reserved under the advertisement. Two of these seats were reserved for first and second rank holders, in diploma in pharmacy, who had passed out, in the year 2008, from RIPSAT. This position is not in dispute. The third reserved seat was for in-service candidate. This position too is not in dispute.

12. Thus, the question, which arose in the writ petition, and which we are, now, required to answer in this appeal too, is this : If both or one of the persons, who had achieved first and second rank amongst the successful examinees of the year 2008, were to choose not to apply for admission, whether the reserved seats were to remain reserved for candidates, who had passed in the year 2008, or the said two seats or the seat, as the case may be, were to become de-reserved and ought to have been given, in terms of the placement of the candidate(s) in the common select list, in order of merit, irrespective of the fact as to whether he/she had passed D. Pharma examination in the year 2008 or prior thereto.

13. The fact that the writ petitioner was eligible to apply for admission to the course, in question, has never been in dispute. The dispute has remained confined only to the question as to whether the seats, which had been kept reserved for the second rank holder of the year 2008, could have been given to the petitioner, when the petitioner was, admittedly, higher in merit amongst all the remaining candidates including respondent No. 4, though the respondent No. 4 had passed B. Pharma examination in the year 2008 and the petitioner-appellant had passed the said examination in the year 2006.

14. To answer the question, posed above, it is worth pointing out that the advertisement, in question, states that if they (first and second rank holders in diploma in pharmacy) who had passed in 2008 from RIPSAT, failed to apply within stipulated time, the seat would be filled up from D. Pharma passed candidates of RIPSAT in order of merit. It was nowhere, stated in the bracketed portion of the advertisement, namely, "(If they fail to apply within stipulated time, the seats will be filled up from D. Pharma passed candidate of RIPSAT in order of merit)" that if both or one of the two rank holders of 2008 did not apply for admission, the seat(s) would still be given, in order of merit, to those, who had passed in the year 2008, no matter as to what his or her merit position in the common selection list of the candidates would be. It is not in dispute that the seat, in question, would have been given to the

petitioner but for the said reservation. He has been denied admission only on the ground that the said reserved seat is meant for the candidate, who had passed in the year 2008 and was next in merit. This proposition can be tested from another angle. If none of the candidates of 2008 were to apply, whether the said reserved seat would have been kept vacant. The answer to this question has to be in the negative. Logically, therefore, on the second rank holder of the year not applied, the said seat could not have remained reserved for those candidates, who had passed in the year 2008.

15. It needs to be noted that on the application having been made for admission, a duty was cast on the respondent No. 3, namely, principal, Regional Institute of Pharmaceutical Science and Technology (RIPSAT), Abhoynagar, Agartala, to prepare a select list and, in this list two seats were to be reserved for the first and second rank holder as aforesaid and the third seat was to be reserved for the in-service candidate. Thus, the expression, "in order of merit", would, in the absence of anything showing to be contradictory, mean, in order of merit, in the common list, which was to be prepared on the basis of the applications received from all the eligible candidates excluding the first and the second rank holder as aforesaid and the one, who was to occupy, in order of merit, first position as in-service candidate. There were two courses of action left open for the authorities concerned. One was to reserve the two seats for the first and second rank holders of the year 2008 making it clear that if the reserved seats were not occupied by the rank holders, then, the seats would nevertheless be filled up from amongst those, who had passed, in the year 2008, in order of merit. It was equally possible for the respondents/authorities concerned to make it clear, in the advertisement, in question, that if the said two reserved seats, meant for the first and second rank holders of the year 2008, were to remain vacant due to the fact that the said rank holders had not applied for admission, then, the seats would be filled up by the candidates, in general, in order of merit.

16. Hence, when it has not been specifically stated, in the said advertisement, that the said reserved seats, meant for the first and second rank holders of the year 2008, would remain reserved for only those, who had passed in the year 2008, it was not possible for the respondent/authorities concerned to insist that they would fill up the said vacant reserved seat by a candidate, who had passed B. Pharma examination in the year 2008. Reservation is an exception and has to be, therefore, narrowly construed. Consequently, the interpretation of the advertisement, in question, as far as the reservation of the seats is concerned, shall have to be narrowly, and not widely, construed. Once, when one of the reserved seats became de-reserved as was the case at hand, it could have been filled up, in order of merit, from amongst all the eligible candidates, who had applied for admission. When the appellant was placed higher than the respondent No. 4 in the common select list, in order of merit, he was the one, who ought to have been given admission against the seat, which had fallen vacant due to the fact that the person, for whom the said seat

had been kept reserved, did not apply. The respondents/authorities concerned, however, denied admission to the with petitioner-appellant and filled up the said vacant seat by respondent No. 4; whereas the advertisement had made no such stipulation.

17. Because of what discussed and pointed out above, we are firmly of the view that admission of the respondent No. 4 to the seat, which was kept reserved, for the second rank holder of the year 2008, was illegal and arbitrary and ought to have been interfered with in the writ petition.

18. Considering however, the fact that the "third semester" would be over soon, we find ourselves constrained from interfering with the selection and admission of respondent No. 4. The right to pursue the course, in question, is a valuable right and when it has been illegally and arbitrarily denied to the appellant, we are of the view that the wrong, which has been done to the appellant, needs to be remedied by invoking this Court's jurisdiction under Article 226 of the Constitution of India, which enables the Court to mould relief as may be suitable in a given case.

19. Situation thus, we are of the view that the interest of justice would be served better if the State respondents/authorities concerned are directed to keep one seat reserved for the next lateral admission to the second year Degree in Pharmacy (3rd Semester) at the RIPSAT.

20. In the result and for the reasons discussed above, while we restrain ourselves from interfering with the admission of respondent No. 4, namely, Smti. Jaya Das, we hereby direct the State respondents/authorities concerned to keep a seat reserved for lateral admission to the 2nd year Degree, in Pharmacy (3rd Semester) at RIPSAT, for the academic year 2010-11 for being filled up by the appellant and this fact shall be indicated in the advertisement, which may be published by the State respondents/authorities concerned, at the time of inviting applications for the academic session 2010-11. If appellant does not apply for admission, the seat, to be so ordered, shall be treated as having become de-reserved and may be filled by the candidate from amongst the candidates, who may figure, in order of merit, in the common merit list and this fact too shall be indicated in the advertisement to be published as directed.

21. With the above observations and directions, this writ appeal shall stand disposed of.

22. No order as to costs.