

(2002) 02 PAT CK 0136

Patna High Court

Case No: C.W.J.C. No. 14543 of 2001

Priyanka Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Feb. 13, 2002

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Narayan Roy, J.

Heard Mr. Ganesh Prasad Singh, learned senior counsel for the Petitioner, Mr. P.K. Shahi, learned Counsel for Respondent Nos. 3 and 4 and JC to AAG 2 for Respondent Nos. 1 and 2.

2. By this writ application, the Petitioner has prayed for issuance of a direction upon the Respondents to admit her in MBBS course from Bihar Combined Competitive Examination, 2001 (hereinafter to be referred to as "Board") against the seat reserved for girls (hereinafter to be referred to as "RCG").

3. The Petitioner pursuant to the advertisement for admission into various medical courses including other allied courses applied for the examination of the year 2001. to be conducted by the Board. At the time of filling up the form, the Petitioner claimed her admission under RCG category, as she belongs to backward category. After conducting the examination, the Board published the result, where this Petitioner was one of the successful candidates in the result of the second phase and, accordingly, she was intimated about her result, where her position was shown at serial No. 578 as per the merit list in general category, 257 in BC category and RCG 79 in RCG category and she was called for counseling on 20.10.2001, but she was not given a seat in medical course in either of the medical colleges. It further appears that as per the prospectus, issued by the Board, there were altogether 390 seats in medical course, out of which 309 seats were meant for State seats and out of 309 seats 155 seats were of general category, 7 of RCG category, 44 of EBC

category, 30 of BC category, 42 of SC category and 31 of ST category.

4. Learned Counsel appearing on behalf of the Petitioner submitted that the result of RCG category was published merit wise and 89 candidates were selected. Out of them, 54 candidates, who opted for RCG and BC categories, were counted as general category and 13 candidates, who were also of RCG category, got admission of their choice as against the other vacancies and 8 candidates out of RCG category also got admission in the institutions of their choice in EBC category. Thus, RCG category candidates, who were up to serial No. 75, were admitted either in general category or in BC category or in EBC category. However, the authorities were obliged to treat the remaining candidates of RCG category in merit right from 76 onwards and their seats cannot be filled up by taking a fresh candidate. Learned Counsel further submitted that the authorities, however, treating the vacancies again sent an intimation to the Petitioner for her counseling on 22.12.2001. However, the Petitioner could not appear for counseling on the date fixed, as she was ill though a prayer was made before the authority by the Petitioner to extend the date of counseling, but, somehow or the other, she was not called for again for counseling.

5. A counter affidavit has been filed on behalf of Respondent Nos. 3 and 4 stating therein that the Petitioner did not compete in general and BC category, as her merit position was at serial No. 578 in general category and 257 in BC category, which were much below the last candidate called in those categories for counseling. However, she was called for counseling in RCG category, as her merit serial RCG 79 in RCG category was higher than the last candidate called for counseling in RCG category. The counseling was conducted on merit-cum-choice category and all the seats in MBBS course for RCG were filled up on merit-cum-choice basis by RCG candidates of higher merit than that of the Petitioner, and, in that view of the matter, the Petitioner did not get MBBS seat because of her lower merit position in general, BC as well as in RCG category and as such, This writ application is liable to be dismissed.

6. Mr. P.K. Shahi, learned Counsel appearing on behalf of Respondent Nos. 3 and 4, submitted that all 89 RCG candidates having merit serials RCG-1 to RCG-89 in PCB groups were included under RCG category in the result of 2001 examination and 7 RCG quota in MBBS seats were filled up by following the prescribed procedure allotting these seats on merit-cum-choice basis to the RCG candidates of higher merit than that of the Petitioner. Learned Counsel further submitted that all the RCG candidates competing in general or in any reserved category and opting RCG seats for better choice of institution in any course, equal number of seats in the same course were allotted to RCG candidates of lower merit and thus, equitable treatment was given to the candidates to RCG category. Learned Counsel further submitted that all the seven (7) MBBS seats of RCG quota were allotted to RCG candidates having higher merit than that of the Petitioner. Learned Counsel also submitted that

the candidates, who secured their merit either in general category or BC category or EBC category, were 75 in numbers from RCG merit 1 to 75 and rest RCG merit 76 to 89 had competed in RCG category only and they were not in the merit list of General/BC/EBC and the Petitioner being at serial No. 79 of RCG category was not entitled to get a seat in the medical course.

7. From the pleadings of the parties and the submissions made at the bar, it appears that the authorities have followed the procedure sanctioned by law. It further appears that all the seven MBBS RCG quota were allotted to the RCG candidates having higher merit than that of the Petitioner and the candidates from serial Nos. 76 to 89 since have competed in RCG category only and were not in the merit list of General/BC/EBC, they were not entitled to get seats as against the seven vacancies of MBBS seat of RCG quota. Consequently thereof, the Petitioner being at serial No. 79 of RCG category was not entitled for it.

8. Lastly, learned Counsel appearing on behalf of the Petitioner precisely tried to impress upon the, Court by propounding a question that the percentage of reservation fixed for RCG category should not be allowed to be diluted and all the seats reserved for RCG category should be filled up from amongst the RCG seats, who competed for MBBS course only on the basis of merit and placement in the RCG category.

9. This question, however, has been set at rest by the Supreme Court in [Ritesh R. Sah Vs. Dr. Y.L. Yamul and others](#), [State of Bihar and Others Vs. M. Neethi Chandra and Others](#), and in case of [Vikash Priyadarshi and Ors. v. State of Bihar and Ors.](#) 1998 (2) APLR 107. In [Ritesh R. Sah](#) (supra), the Supreme Court held:

... 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 of 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.

10. In the case of State of Bihar and Ors. v. M. Neethi Chandra and Ors. (supra) the Supreme Court has reiterated the same legal principles as held in Ritesh R. Sah (supra) and this Court in case of Vikash Priyadarshi and Ors. (supra) basing its finding on the principles laid down by the Apex Court in Ritesh R. Sah (supra) and M. Neethi Chandra and Ors. (supra) held that the procedure followed by authorities in the matter of grant of admission to MBBS/BDS course in different medical colleges of Bihar, was legal and warranted no interference.

11. For the reasons aforementioned and in view of the legal propositions, as noticed above, no relief can be granted to the Petitioner.

12. Apart from these questions, learned Counsel appearing on behalf of the Petitioner has lastly contended that the Petitioner was asked to appear by the Board before it for counseling on 22.12.2001, which, obviously, shows that some seats were still available in MBBS course to be filled up from amongst the candidates of RCG category.

13. From the affidavit filed by the Petitioner, in this regard, it appears that on the date fixed for her counseling, she did not appear and she prayed before the authority to extend the date as she was ill. In such a situation, it would be difficult to hold that all the seats meant for RCG category were not filled up and moreso, when the Petitioner had not appeared for counseling, she would not be entitled for the reliefs sought for by her.

14. In the result, I do not find any merit in this writ application. It is, accordingly, dismissed.