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STATE OF BIHAR AND ORS.

v.

M. NEETHI CHANDRA, ETC. ETC.

SEPTEMBER 10, 1996

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[A.M. AHMADI, C.J. AND S.C. SEN, J.]

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Education : Higher Education—Admission to professional courses—Medical Colleges—Mode of allotment of seats in various branches of the Post-graduate medical courses—Provisions for reservation of seats for the under-privileged sections—Procedure adopted for allotment challenged—Candidates selected on the basis of merit not to be adjusted against reserved quota—Some candidates in the reserved categories found themselves in a disadvantageous position—Formula devised by Patna H.C. to remove anomalies—The formula, if followed, will result in admission being given to all the students of reserved category who have secured minimum marks, though there may not be adequate number of seats—Hence formula evoked by the H.C. struck down—Constitution of India—Articles 14 and 16.

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The Government of Bihar, Department of Personnel and Administrative Reforms published a resolution, providing for reservation for the under privileged sections in the Professional Training Institutes. Paragraph 6 of the Resolution provided that the candidates selected on the basis of merit for admission into Professional Training Institutes would not be adjusted against the reserved quota. It appears that because of Para 6 of the Resolution, some candidates in the reserved categories found themselves in a disadvantageous position. They approached the High Court by way of writ petitioners. To remove the anomalies, the High Court devised a method of allotment of seats by which the reserved seats would be offered first (i.e. before the general seats are filled) to the candidates of the reserved category on merit, and after all the reserved seats are so filled up, all the other qualifying candidates of the reserved category would be "adjusted" against open seats in the general category along with the general Merit candidates and offered seats on merit-cum-choice basis.

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In appeal to this Court, the State of Bihar contended that if the method suggested by the High Court is followed, all students of reserved category who have secured the minimum marks will have to be admitted

even though there may not be adequate number of vacancies for them. Another grievance against the judgment expressed by the State was that the students placed at the bottom of the respective reserved categories will be placed in the College of last choice and thus all such students will find themselves in one College which will be arbitrary and violative of Articles 14 and 16 of the Constitution.

Disposing of the appeal, this Court

HELD : 1. The High Court did not take note of the eventuality in which the number of reserved category candidates who qualify on the basis of minimum marks may far exceed the number of seats reserved for them.

In a particular year, the number of such candidates may be much larger and thus the method evolved by the High Court may create much hardship. The method will also not be in tune with the principles of equality. Hence the method evolved by the High Court will have to be struck down. [701-B; 702-E-F]

2. The choice of subject as well as college will always be different for different students and this difference will exist even for those at the end of the list and in respect of their last choice. Even if such situation does arise, the same cannot be said to be violative of Articles 14 and 16. The judgment of the High Court is set aside. In any case, the operation of the circular No. 20 does not make the situation any different. [703-C-D]

3. However, the girls qualifying on merit for general candidates be given an option to be treated as general candidates for the purpose of allotment of seat and only if they so opt can the circular No. 20. be given effect to. Further directions, if required, may be obtained from the High Court in the light of the present judgment of this Court. [704-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11826-29 of 1996 Etc.

From the Judgment and Order dated 15.12.94 of the Patna High Court in C.W.J.C. Nos. 911, 933, 1081 and 1140 of 1994.

B.B. Singh for the Appellants.

The Judgment of the Court was delivered by

A **AHMADI, CJ.** *SLP (Civil) Nos. 8175-78 of 1995.*

Special leave granted.

This civil appeal arises out of a common judgment of the High Court of Patna whereby 4 writ petitions before the High Court being civil writ jurisdiction cases 911, 933, 1081 and 1140 of 1994 were disposed of. The question involved in the writ petitions was as to the mode of allotment of seats in the various branches of the post-graduate medical courses in the State of Bihar. The authorities had made provisions for reservation of seats for the underprivileged sections, like the Scheduled Castes, the Scheduled Tribes, the Extremely Backward Class, the Backward Class and Ladies. The procedure adopted for allotment of seats in the post-graduate medical courses led to some dissatisfaction giving rise to the litigation.

The Controller of Examinations, Health Services, Government of Bihar, Patna issue the prospectus for the competitive test for admission to post-graduate courses in Patna Medical College, Patna, Darbhanga Medical College, Laheria Sarai, Rajendra Medical College, Ranchi and Mahatma Gandhi Medical College, Jamshedpur for the year 1992. On the question of reservation the prospectus had the following clause :

"The reservation of seats for various categories shall be as per the decision of the Government. There will be no economic criteria for the reservation.

Scheduled Caste 14%

Scheduled Tribe 10%

Extremely Backwards class 14%

Backward Class 9%

Ladies 3%"

About selection and allotment of seats, the relevant clause in Part VI of the prospectus was as under :

"VI. Selection :

(ii) Merit list will be prepared on the basis of the marks obtained

in the P.G.M.A.T. and the choice of subject/course and institution will be given on merit-cum-choice basis as indicated by the candidate in the Application form provided the candidate fulfil other criteria laid down in the prospectus." A

The qualifying marks for eligibility were 50% in the Post Graduate Medical Admission Test, but for the Scheduled Castes and the Scheduled Tribes, the qualifying marks were only 40%. B

The Government of Bihar, Department of Personnel and Administrative Reforms published a resolution dated 7.2.1992 being No. 11/K1 - 1022/91-K20 (hereinafter referred to as 'resolution No. 20') on the subject titled "provision for reservation for nominating (admission) of Scheduled Class/Tribes/Backward Class/Extremely Backward Class/Female into the Professional Training Institutes". Paragraph 6 of the resolution No. 20 being material for the facts of the case may be reproduced below : C

"As there is provision in direct appointment to the effect that the candidates belonging to reserved classes, who are selected on the basis of merit, would not be adjusted against reserved seats, similarly maintaining the same arrangement here also the candidates selected on the basis of merit for admission into professional training institutes would not be adjusted against the reserved quota for the candidates of reserved classes." D E

It appears that because of para 6 of the resolution quoted above, which was applied in allotment of seats in various branches of the Post Graduate Medical courses in the State of Bihar, some candidates in the reserved categories found themselves in a disadvantageous position. The candidates in various reserved classes who could qualify on merit were treated at par with the general candidates and were allotted branches which would fall to them on merit-cum-choice basis which led to allotment of such courses, which because of their low position in general merit, were not of their choice while the course/college of choice was available to a candidate qualifying for the reserved seat although they were lower in merit position. This led to the filing of various writ petitions before the High Court of Patna which were decided by the impugned judgment. F G

To remove the anomalies, the High Court devised a method of allotment of seats by which the reserved seats are offered first (i.e. before H

A the general seats are filled) to the candidates of the reserved category on merit, and after all the reserved seats are so filled up, all other qualifying candidates of the reserved category are "adjusted" against open seats in the general category along with the general merit candidates and offered seats on merit-cum- choice basis (see para 11 of the judgment). The High Court

B made a further arrangement for the reserved category of girls who could get seats on merits, on their own reservation as girls as well as on reserved seats as Scheduled Castes/Tribes etc. Girls were to be considered first for admission against seats reserved for them. If any girl seeking admission belongs to a Scheduled Casts/Tribe, etc. she may have a choice of one of the two reservations. The girls in excess of the reserved vacancies can seek

C admission on general merit. The High Court held that by this procedure all the anomalies in the procedure for allotment of seats could be removed. A mention is required to be made about a resolution dated 22.3.1994 which according to the Government had removed the anomalies that resulted from the resolution No. 20. The resolution dated 22.3.1994 provides that

D casual vacancies occurring at later stage in the general category or reserved category will be filled from amongst the candidates of the respective category on merit and that in that process no candidate will be allotted college/course below the choice of the college or course already allotted to him. The High Court observed that the resolution takes due care of the grievances of the candidates who by reason of readjustment at the State

E for filling up subsequent vacancies often had to lose the college/course of their choice but it did not address itself to the anomaly that arises when preparing the main merit list according to resolution No. 20. The judgment was to be followed in the future years. As for the year in question i.e., 1992 the guideline laid down could not be followed since by the time the

F judgment was given, i.e., 15.12.1994, the students had covered a substantial part of the course to which they had been admitted. The present judgment will also be for future guidance as the question involved has become infructuous for the candidate involved.

G The State of Bihar contends in the appeal that if the mode and method suggested by the High Court is followed, all students of reserved category who have secured the minimum marks will have to be admitted even through there may not be adequate number of vacancies for them. Another agrievance against the judgment expressed by the State of Bihar is that in the Method suggested by the High Court, the students placed at

H the bottom of the respective reserved categories will be placed in the

college of last choice and thus all such students will find themselves in one college which will be arbitrary and violative of Articles 14 and 16 of the Constitution.

The first apprehension expressed by the appellant appears to be quite genuine. It appears that while laying down the procedure, the High Court did not take note of the eventuality in which the number of reserved category candidates who qualify on the basis of minimum marks may far exceed the number of seats reserved for them. See the following part of paragraph 11 of the impugned judgment :

"(I)f reserve candidates are admitted at the first instance on merit reserved seats in their respective category and those of the same category also qualifying for admission, by virtue of reservation or otherwise, but placed below them are adjusted along with general candidates, according to merit, against open seats in the general category, the anomaly can be fully removed. At first glance it may appear somewhat incongruous but on closer examination would be workable just and proper. If the procedure is changed in the manner that the reserve candidates are first considered and admitted against reserved seats of their respective categories on the basis of the merit they will be able to get the course and college of their choice because seats are already reserved for them in each course or subject. The rest of the candidates of that particular category placed lower than them but qualifying for admission in excess of the seats reserved for them may then be *adjusted* against open seats in the general category along with general candidates on merit. Naturally, they will be placed at the bottom in the general category but coming as they do by virtue of the reservation or less merit, they cannot make a grievance of that. They cannot also make a grievance of the fact that by virtue of their low placement in the merit list of the general category, they are not able to get course/college of their choice. That is how the interest of reserve category candidates can be best served without violating the norm of selection and allotment of course/college on merit-cum-choice basis."

(emphasis added)

The High Court has not clarified its intentions with illustrations. If

A by the word "adjusted", the High Court means that all reserved category candidates qualifying on the criterion for reserved category must necessarily be given admission it will produce anomalous results.

B Let us take a situation in which in a particular reserved category there are x number of seats but the candidates qualifying according to criteria fixed for that category are x+5 with the best among them also qualifying on merit as general candidates. According to the arrangement made by circular No. 20, the first candidate gets a choice along with the general category candidate but being not high enough in the list, gets a choice lesser than what he could secure in the reserved category to which he was entitled. The x number of seats could then be filled up with the four qualifying candidate being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles C 14 and 16 of the Constitution. On the other hand, if the direction of the High Court is followed, the first x number of candidates get seats according to merit against the reserved seats but the remaining 5 will also have to be D 'adjusted' against the open seats of regular candidates. These 5 will be those who are not qualified according to the general merit criteria and so will necessarily displace 5 general candidates who would be entitled to seats on merit.

E In a particular year, the number of such candidates may be much larger and thus the method evolved by the High Court may create much hardship. The method will also not be in tune with the principles of equality. Hence the method evolved by the High Court will have to be struck down.

F If however, the word 'adjusted' is read to mean considered along with other general merit list candidates, it will lose much of its value. As per the above illustration, the 5 candidates qualifying on reserved category criteria having not secured enough marks according to general criteria, cannot, at all, be allotted any seat in the general category.

G At the same time, as pointed out above, all is not well with the Government circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of the circular No. 20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them H are denied the choice college and subject which they could secure under

the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject.

There is no merit in the second ground raised by the appellant. It is alleged that according to the procedure evolved by the High Court, the students at the bottom of the respective reserved category will necessarily be placed in the same college, i.e., college of last choice of the candidates and that therefore this will be violative of Articles 14 and 16. The apprehension of the appellant is totally baseless because the choice of subject as well as college will always be different for different students and this difference will exist even for those at the end of the list and in respect of their last choice. Further, even if such a situation does arise, the same cannot be said to be violative of Articles 14 to 16. In any case, the operation of the circular No. 20 does not make the situation any different.

However, in view of the discussion in the earlier part of the judgment, the impugned judgment will have to be set aside and the operation of the circular No. 20 will have to be given effect subject to the condition mentioned herein above. The appeals are disposed of accordingly. No costs.

SLP (CIVIL) No. 8174 of 1995

Leave granted.

The Civil writ jurisdiction case No. 2586 of 1994 from which this appeal arises was decided on the same day on which the C.W.J.C. No. 911/94 was decided.

This case relates to admission to the M.B.B.S. and B.D.S. Courses in Bihar for the year 1993. The respondent No. 2 Rajashree Sharma was the only interested petitioner in the case since the other petitioners got relief during the pendency of the writ petition. Rajashree sought admission in 'girls' category. She pleaded that as there were 15 vacancies for girls and as her position was 14th and since the circular No. 20 further allowed candidates qualifying on general merit to be admitted along with general candidates, she was entitled to admission. No girl with lesser marks was

A alleged to have been admitted. The High Court expressed grave doubts in this situation if the respondent No. 2 could be admitted to any college. The High Court reiterated the method evolved in the C.W.J.C. No. 911/94 and directed the appellant authorities to consider the case of the respondent No. 2 in the light of those observations and to issue appropriate directions.

B By now the substantial question of admission of respondent No. 2 has become infructuous. However, for future application we may only say that such admission for girls be also done according to the formula suggested by us in the SLP No. 8175-78 of 1995, viz., that the girls qualifying on merit for general candidates be given an option to be treated as general candidates for the purpose of allotment of seat and only if they so opt can the circular No. 20 be given effect. Further directions, if required, may be obtained from the High Court in light of this judgment. The Appeal is disposed of accordingly. No costs.

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S.S.

Appeal disposed of.