

Dr. Samir Ranjan and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Dec-19-2003

Judge : Narayan Roy, J.

Acts : Bihar Reservation of Vacancies in Posts and Services for Scheduled Castes and Scheduled Tribes and other Backward Classes (Amendment) Act, 2003 - Sections 3

Appeal No. : CWJC No. 12121 of 2003

Appellant : Dr. Samir Ranjan and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : P.K. Shahi, Adv. for the respondent No. 3 and JC to AAG II

Advocate for Pet/Ap. : S.P. Mukherji, Sr. Adv., Gyanand Roy, Shanti Pratap and Jitendra Mishra, Advs.

Disposition : Application allowed

Prior history : Narayan Roy, J. 1. Heard counsel for the parties. 2. The writ petitioners have prayed for issuance of a writ of mandamus commanding upon the respondents to conduct recounselling of the petitioners afresh for Scheduled Castes/Scheduled Tribes category seats for their admission in Post Graduate Degree/Diploma course in different Government Medical Colleges in the State of Bihar according to merit-cum-choice criteria based on merit list of Post Graduate

Medical Admission Test (hereinafter to be referred to as 'PGMAT')

Judgement :

Narayan Roy, J.

1. Heard counsel for the parties.

2. The writ petitioners have prayed for issuance of a writ of mandamus commanding upon the respondents to conduct recounselling of the petitioners afresh for Scheduled Castes/Scheduled Tribes category seats for their admission in Post Graduate Degree/Diploma course in different Government Medical Colleges in the State of Bihar according to merit-cum-choice criteria based on merit list of Post Graduate Medical Admission Test (hereinafter to be referred to as 'PGMAT' 2003).

3 According to the case of the petitioners, they are permanent residents of the State of Jharkhand, but they passed their MBBS examinations from different Medical Colleges situated in the State of Bihar. Petitioner Nos. 1 to 4 belong to Scheduled Tribes category and petitioner Nos. 5 and 6 belong to Scheduled Castes category and they have completed rotating internship and they have permanently been registered as Medical Petitioners from State Medical Council.

4. In the meantime, the Bihar Combined Entrance Competitive Examination Board (hereinafter to be referred to as 'Board') advertised for admission in Post-Graduate Degree/Diploma course for the academic Session 2003-2004 and the petitioners being eligible for admission in the Post-Graduate/Diploma courses applied pursuant to the advertisement for their admission in a prescribed manner under the reserve quota meant for Scheduled Caste and Scheduled Tribe category candidates.

5. Pursuant to the applications of the petitioners admit cards were issued to them for their appearance in PGMAT, 2003 to be held on 12.10.2003, and, accordingly, the petitioners appeared in the PGMAT. The result was published on 17.10.2003 showing the petitioners successful. Thereafter the Board vide letter No. 1409/2003

dated 18.10.2003 directed the petitioners to appear on 5.11.2003 at 9.00 a.m. In the office of the Board for their counselling, and, accordingly, the petitioners appeared before the Board for counselling on 5.11.2003, but the authorities of the Board did not permit them to opt Post-Graduate Degree/Diploma courses in reserved categories on the ground that they were not residents of the State of Bihar.

6. Mr. S.P. Mukherji, learned Senior Counsel appearing for the petitioners, submitted, that the petitioners passed their MBBS examinations from different Medical Colleges situated in the State of Bihar and petitioner Nos. 1 to 4 belong to Scheduled Tribe category, whereas petitioner Nos. 5 and 6 belong to Schedule Caste category and all through they were found eligible for their admission in Post-Graduate/Diploma courses and only because they belong to the newly created State of Jharkhand, they were not allowed to appear in counselling on 5.11.2003. Mr. Mukherji, therefore, submitted that the action of the authorities of the Board refusing to allow the petitioners in counselling is highly arbitrary, unreasonable and wholly without jurisdiction, inasmuch as that the process of partition of the State of Jharkhand is still continuing and the State of Jharkhand is the newly born State by operation of the Bihar Reorganisation Act, 2000 and merely because the petitioners belong to the newly created State of Jharkhand, they cannot be disallowed to appear in recounselling particularly when the petitioners had taken admission in different Medical Colleges of the State of Bihar prior to 2000 and they passed the MBBS examinations even after creation of the State of Jharkhand from different Medical Colleges of the State of Bihar. It is also submitted by Mr. Mukherji that the prospectus for PGMAT, 2003, was issued on 04.02.2003 and pursuant to the requirements of the prospectus the petitioners filled up the prescribed application forms for their appearance in the examination on 25.08.2003 and the examination was scheduled to be held on 12.10.2003, where, they appeared and passed out the examination and were directed to appear for recounselling to be held on 05.11.2003, whereas the Bihar Reservation of Vacancies in Posts and Services for Scheduled Caste and Scheduled Tribe and other Backward Classes (Amendment) Act, 2003 (hereinafter to be referred to as 'Bihar Act, 2003' came into force with effect from 09.09.2003 and, therefore, the petitioners will be governed by the prospectus issued under the prevailing rules/law of the State of

Bihar and they cannot be excluded by virtue of the new enactment of 2003, which came into effect from 09.09.2003.

7. In support of his contention, Mr. Mukherji, learned counsel appearing for the petitioners, placed reliance upon the cases of Y.V. Rangaiah and Ors. v. J. Sreenivasa Rao and Ors., AIR 1983 SC 852 and A.A. Calton v. The Director of Education and Anr., AIR 1983 SC 1143.

8. Mr. Mukherji, learned counsel, further urged that in view of Clauses 5.3(ii) of the prospectus, wherein it is stipulated that a candidate, who is not a permanent resident of the State of Bihar but has passed MBBS examination from any Government Medical College of the State of Bihar is also eligible, as per the directives of the Hon'ble High Court, Patna, in CWJC No. 3448/2002, the petitioners had applied for their appearance in PGMAT 2003 and virtually they were allowed and passed out the examination and now on technical grounds they should not be debarred from recounselling, as the action of the authorities will be hit by the principles of promissory estoppel. It is further urged that even after creation of the State of Jharkhand, by virtue of the Bihar Reorganisation Act, 2000, students of the State of Bihar are being admitted in different institutions of the State of Jharkhand including the Medical Colleges against the reserved seats meant for Scheduled Castes and Scheduled Tribes.

9. A detailed counter affidavit and also a supplementary counter affidavit have been filed on behalf of respondent No. 3, the Board, and a counter affidavit has also been filed on behalf of the respondent State.

10. According to the facts stated in the counter affidavit of respondent No. 3, the Board, the prayer of the petitioners is being opposed mainly on the ground that the petitioners are members of Scheduled Castes and Scheduled Tribes of the State of Jharkhand and, therefore, in view of the proviso to Section 3 of the Bihar Act, 2003, the petitioners shall not claim for benefits of reservation under this Act in the State of Bihar.

11. Mr. P.K. Shahi, learned counsel appearing on behalf of respondent No. 3, the Board, submitted that after coming into force of the Bihar Act, 2003 the petitioners

cannot be allowed the benefits of reservations in the categories of Scheduled Castes and Scheduled Tribes, as they are members of the Scheduled Castes and Scheduled Tribes of the State of Jharkhand, and by virtue of proviso to Section 3 of the Act, they are completely excluded from availing benefit as claimed by them. Learned counsel further submitted that the question as to whether the members of Scheduled Castes and Scheduled Tribes of a particular State will get the benefit of reservations in that category in another State has been set at rest by a Constitutional Bench of the Apex Court in the case of Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Ors. (1990) 3 SCC 130, and also by subsequent judgments of the Apex Court in the cases of Action Committee on Issue of Cast Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Ors. (1994) 5 SCC 224 and UP. Service Commission, Allahabad v. Sanjay Kumar Singh, (2003) 7 SCC 657.

12. The Constitutional Bench in the case of Marri Chandra Shekhar Rao, (supra) pointed out that 'the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas.'

13. Again the Apex Court in the case of Action Committee, (supra) observed :--'On a plain reading of Clause (1) of Articles 341 and 342, it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under Clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under Clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union. Territory for which it is specified. These are the relevant

provisions with which we shall be concerned while dealing with the grievance made in this petition.'

14. The Apex Court in the case of U.P. Public Service Commission (supra) relying upon the law laid down in the cases of Marri Chandra Shekhar Rao (supra) and Action Committee (supra) held that a person certified as Scheduled Caste/Scheduled Tribe in relation to one State, if migrates to another State would not be entitled to benefits available to Scheduled Caste/Scheduled Tribes in the State in which he migrated unless he belongs to Scheduled Caste/Scheduled Tribe in that State also.

15. It is true that the law on the point has been set at rest, as referred to above, and they are based on sound public policy to ensure that there may not be imbalance in representation of the Scheduled Caste/Scheduled Tribe category persons in a particular State. In the given facts and circumstances of the case, it would be manifest that the newly created State of Jharkhand of which the petitioners are said to be the members of the Scheduled Castes/Scheduled Tribes categories, is the creation of the Bihar Reorganisation Act, 2000 and it is a newly born baby of the parent State of Bihar, where the process of partition of the State is still continuing and the petitioners studied in the different Medical Colleges of the State of Bihar and they also passed out the PGMAT, 2003 pursuant to the prospectus issued by the State of Bihar much before coming into force of the Bihar Act, 2003, therefore, in my opinion, the ratio laid down by the Apex Court, as referred to above, may not apply in *structu sensu* in the peculiar facts and circumstances of the case.

16. The question, which had fallen for consideration before the Supreme Court on the point in issue in the cases, referred to above, though was identical but was with respect to the well established State of the country and there were chances of creating imbalances in representation of the members of the Scheduled Castes/Scheduled Tribes categories. But in the instant case, the facts are dissimilar inasmuch as that though the State of Jharkhand has come into existence, the liabilities of the States are yet to be apportioned and the persons are in the process of rehabilitation in the newly created State.

17. Besides this question, it is borne out from the materials on record that the Bihar Act, 2003 came into effect from 09.09.2003 and the prospectus of PGMAT, 2003 was issued on 04.02.2003 and the petitioners applied for their appearance in the examination aforesaid on 25.08.2003 and the examination commenced on 12.10.2003. In this background, it is, therefore, held that the petitioners will be governed by the prospectus under the prevailing rules/law of the State of Bihar and the Bihar Act, 2003 will have no play in the case of the petitioners.

18. For this proposition, it will be pertinent to notice the law laid down on the point by the Apex Court in the cases of Y.V. Rangaiah and Ors. v. J. Sreenivasa Rao and Ors. AIR 1983 SC 852, and A.A. Calton v. The Director of Education and another, AIR 1983 SC 1143. In the case, of Y.V. Rangaiah, (supra) the Apex Court held :--

'The vacancies which occur prior to the amended rules would be governed by the old rules and not by the amended rules. It is admittedly by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State wide basis and therefore, there was no question of challenging the rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.'

19. Again the case of A.A. Calton (supra) the Apex Court held that since the proceeding of selection of Principal of an intermediate college commenced prior to coming into force of the amendment, the same would not have any effect retrospectively on the said proceedings initiated under the old rules.

20. Admittedly, in this case the process of PGMAT, 2003 started much prior to coming into force of the Bihar Act, 2003, therefore, it is held that the cases of the petitioners must be governed by the rules/law, as prevalent in the State of Bihar at the relevant time and according to the terms and conditions of the prospectus. It is further held that the Bihar Act, 2003 will have no play so far the cases of the petitioners are concerned.

21. Since the petitioners have passed the PGMAT, 2003 and they, were asked for their recounselling, there would be no reason for respondent No. 3 to debar them from appearing in the recounselling.

22. It is stated at the bar that several seats are still available in different Medical Colleges of the State of Bihar for the Scheduled Caste/Scheduled Tribe categories and they are not likely to be filled up as members of SC/ST of the State of Bihar have not yet turned up to claim those seats.

23. The State of Bihar being the parent State should adopt beneficial and liberal policies for nourishment of the newly created State of Jharkhand and also for the inhabitants of the State of Jharkhand.

24. Having heard learned counsel for the parties and considering the facts and circumstances of the case and noticing the legal propositions, as referred to above, I find much force in the submission of Mr. Mukherji, learned counsel appearing on behalf of the petitioners.

25. In the result, this application is allowed and respondent No. 3 is directed to conduct recounselling of the petitioners afresh for Scheduled Castes/Scheduled Tribes category seats for their admission in Post-Graduate Degree/Diploma Courses in different Medical Colleges in the State of Bihar Respondent No. 3 is further directed to fix a date for recounselling of the petitioner with due notice to them forthwith.

26. The petitioners, however, shall not claim seniority over the students already admitted under these categories in the Post-Graduate/Diploma Courses on the basis of merit-cum-choice criteria and they may be accommodated according to the availability of the seats in the aforesaid courses.

27. This order will not be a precedent in future, as this order is being passed in the peculiar facts and circumstances of this case.

28. No order as to costs.