State of Bihar and Others

Vs

M. Neethi Chandra and Others

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Vs

Sunita and Others

Civil Appeals Nos. 11826-29 of 1996 With No. 11897 of 1996

(CJI A. M. Ahmadi, S. C. Sen JJ)

10.09.1996

JUDGMENT

AHMADI, C.J. -

1. Special leave granted.

2. 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 Nos. 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 postgraduate 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 postgraduate medical courses led to some dissatisfaction giving rise to the litigation.

3. The Controller of Examinations, Health Services, Government of Bihar, Patna issued the prospectus for the competitive test for admission to postgraduate courses in Patna Medical College, Patna, Darbhanga Medical College, Laheria Sarai, Rejendra 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 Backward 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 PGMAT 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."

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%.

4. 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 Castes/Tribes/Backward Class/Extremely Backward Class/Females into the Professional Training Institutes". Paragraph 6 of Resolution No. 20 being material for the facts of the case may be reproduced below :

> "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."

5. It appears that because of para 6 of the resolution quoted above, which was applied in allotment of seats in various branches of the postgraduate 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 on a 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.

6. 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 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 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 Caste/Tribe etc. she may have a choice of one of the two reservations. The girls in excess of the reserved vacancies can seek 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 dared 22-3-1994 which according to the Government had removed the anomalies that resulted from Resolution No. 20. The resolution dated 22-3-1994 provides that casual vacancies occurring at a 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 recitation takes due care of the grievances of the candidates who by reason of readjustment at the State 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 guidelines laid down could not be followed since by the time the 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 candidates involved.

7. 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 though there may not be adequate number of vacancies for them. Another grievance against the judgment expressed by the State of Bihar is that in the method suggested by the High Court, 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.

8. 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 against 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."

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

10. 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 candidates being denied admission for want of seats. This would have been harsh for the best candidate as well as violative of Articles 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 'adjusted' against the open seats for 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.

11. 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.

12. 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.

13. 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 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 are denied the choice of 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.

14. There is no meat 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 and 16. In any case, the operation of Circular No. 20 does not make the situation any different.

15. 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 Circular No. 20 will have to be given effect subject to the condition mentioned hereinabove. The appeals are disposed of accordingly. No costs.

SLP (Civil) No. 8174 of 1995

16. Leave granted.

17. The Civil Writ Jurisdiction Case No. 2586 of 1994 from which this appeal arises was decided on the same day on which CWJC No. 911 of 1994 was decided.

18. This case relates to admission to the MBBS and BDS courses in Bihar for the year 1993.

Respondent 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 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 alleged to have been admitted. The High Court expressed grave doubts in this situation if Respondent 2 could be admitted to any college. The High Court reiterated the method evolved in CWJC No. 911 of 1994 and directed the appellant authorities to consider the case of Respondent 2 in the light of those observations and to issue appropriate directions.

19. By now the substantial question of admission of Respondent 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 SLPs Nos. 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 Circular No. 20 be given effect. Further directions, if required, may be obtained from the High Court in the light of this judgment. The appeal is disposed of accordingly. No costs.