

# RAJASTHAN HIGH COURT

Sheikh Mohd. Afzal

Vs.

State of Rajasthan

D.B. Civil Special Appeal (Writ) No. 511 of 1996  
(R.M. Lodha, Mr. Shiv Kumar Sharma and Mr. Ashok Parihar, JJ.)

05.10.2007

## ORDER

**R.M. Lodha, J.**

1. (Oral) - The following question has been referred by the Division Bench to the larger bench for consideration:

"Whether admission of a candidate applied for reserved quota and entitled to be admitted in M.B.B.S. Course on the basis of his/her own merit, should be first against the reserved quota or against the general category?"

2. It appears to us that the appellants have lost interest in the matter because of long lapse of time and therefore, appears for them. But absence of the government advocate is not understandable. Be that as it may, since the Full Bench has been constituted to decide the reference, we considered the matter in the light of two decisions of the Supreme Court.

3. Sheikh Mohd. Afzal and Sonika Bahedia (hereinafter referred to by us. 'the petitioners') were not allowed admission in M.B.B.S. Course by the respondents in the year 1995. They filed a writ petition before this Court praying for the following reliefs:

"(i) Declaring the interpretation placed by the respondents and the illustrations quoted below para 2(g) of the Guidelines of 1995 to be illegal and unconstitutional and quashing the same.

(ii) directing the respondents to give admission to the petitioners in the M.B.B.S. study course commencing from the year 1995 against the quota meant for disabled candidate and further declaring the method of computing/filling of

this quota by the respondents to be illegal and unconstitutional;

(iii) any other appropriate order or direction which may deem just and proper in the facts and circumstances of the case may kindly be passed including award of cost of litigation in favor of humble petitioners."

4. The Single Judge (V.K. Singhal, J.) vide his judgment dated 31st January, 1996 dismissed the writ petition. He did not follow the decision of the Division Bench in the case of *Ajay Kumar v. State of Rajasthan*<sup>1</sup> on the ground that some provision of the Ordinance 272 was not considered and, therefore, the decision is per incuriam.

5. The judgment of the Single Judge was challenged before the Division Bench in the special appeal. The Division Bench referred to the decision in *Ajay Kumar* case wherein the following view was taken

"In Pre-Medical Test, four candidates were declared passed as handicapped candidates. Out of the four candidates, candidates having Roll Nos. 8925 and 12107 came in merit, but they were not treated as such, and, they were admitted against the reserved quota of the handicapped candidates. There were only two seats reserved for handicapped candidates. The aforesaid two handicapped candidates have come in merit, should be given admission against the general quota and cannot be treated against the reserved quota for the handicapped candidates."

6. The Division Bench also referred to the two decisions of the Supreme Court, namely; (i) *Ritesh R. Sah v. Dr. Y.L. Yamul & others*<sup>2</sup> and (ii) *State of Bihar and others v. M. Neethi Chandra and others*,<sup>3</sup> and framed the aforementioned question for answer by the larger bench.

7. From the proceedings, we find that the matter was heard by the previous full bench and judgments were concluded on 3rd June, 2004 and the order was reserved. However, the then full bench did not pronounce the order and, accordingly, the Chief Justice reconstituted the full bench and this is how the matter has been posted before us.

8. In view of the decision of the Supreme Court in *Ritesh R. Sah* which has been noticed by the Division Bench in its order dated 5th December, 1997, we are of the view that it was unnecessary to refer the aforesaid question for consideration by the larger bench. The question for consideration before the Supreme Court in the case of *Ritesh R. Sah* was whether a candidate belonging to Scheduled Caste or any other reserved category even if he is entitled to be selected for admission in the open

competition on the basis of his merit, yet can he be counted against the quota meant for reserved category or will he be treated as a open competition candidate ?

9. While dealing with the aforesaid question, the Supreme Court referred to the Rules for selection to M.B.B.S. and B.D.S. Course for the year 1995-96 issued by the Government of Maharashtra in the Department of Medical Education and Drugs. The Supreme Court also referred to its decisions, namely (i) *Indra Sawhney v. Union of India*,<sup>4</sup> (ii) *Ajay Kumar Singh v. State of Bihar*,<sup>5</sup> and (iii) *R.K. Sabharwal v. State of Punjab*,<sup>6</sup> and culled out the legal position thus :

"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 to 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 will 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 to 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 a open category candidate and not as a reserved category candidate."

10. In a recent decision in the case of *Anurag Patel v. U.P. Public Service Commission & Others*,<sup>7</sup> the Supreme Court had an occasion to consider its previous decisions in *Ritesh R. Sah* (supra) and *State of Bihar v. M. Neethi Chandra* (supra) and held thus :

"In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38 and 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected

Backward Class candidates shall be prepared separately including those candidates selected in the general category and, their appointments to the posts shall be made strictly in accordance with merit as per the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

6. Mr. R.N. Trivedi, learned Senior Counsel appearing for the Commission submitted that in case any rearrangement is made, the same persons who had already been appointed are likely to lose their posts. Going by the counterstatement filed by the State in Writ Petition No. 22753 of 1993 it appears that altogether 358 candidates were appointed and 57 posts earmarked for Backward Classes were filled up by the candidate belonging to Backward Classes. Amongst the 358 candidates, those from Backward Classes who secured higher marks than the cut-off mark for the general category also must have got selection in the general category even though they belong to the Backward Classes. If these candidates who got selection in the general category are allowed to exercise preference and then are appointed accordingly the candidates who were appointed in the reserved categories would be pushed down in their posts and the vacancies thus left by the general category candidates belonging to Backward Classes could be filled up by the persons who are really appointed against the quota reserved for Backward Classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates."

11. In view of the law expounded by the Supreme Court in the case of Ritesh R. Sah and Anurag Patel, the view of the Single Judge cannot be said to be correct.

12. We state the legal position thus where a candidate belonging to reserved category gets selected competing with open category candidates on the basis of merit, the selection of such candidate needs to be considered in the general category and cannot be counted against the reserved category since such selection is purely based on merit. However, the constitutional right of such selection of a reserved category is not taken away and such selection of a reserved category candidate on merit in open competition does not put him or her in disadvantageous position than the other less meritorious reserved for that category, be it a preference of subject or institution or place or to such other right to which he/she may be entitled as if he/she were selected in the reserved category. In the case of Ritesh R. Sah and Anurag Patel the Supreme Court has emphasized this position. Obviously, in the matter of admission, the competent

authority has to adhere to and abide by the legal position expounded by the Supreme Court in the case of Ritesh R. Sah and Anurag Patel and noticed by us above.

In view of what we have observed above, the judgment of the Single Judge has to be set aside and we do accordingly. Special appeal is disposed of with no order as to costs.

Order accordingly.

Cases Referred.

1. (D.B. Civil Writ Petition No. 3429/88) decided on 7th November, 1988
2. JT 1996 (2) SC 495: 1996(5) SLR 135 (SC)
3. (1996) 6 SCC 36: 1997(1) SLR 583 (SC)
4. 1992 Supp (3) SCC 210 (SC)
5. (1994) 4 SCC 401: 1994(2) SLR 321 (SC)
6. (1995) 2 SCC 745: 1995(1) SLR 791 (SC)
7. 2005 (9) SCC 742: 2004(8) SLR 642 (SC)