

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15345 of 2015

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Veterans Forum for Transparency in Public Life through its General Secretary
namely Wing Commander (Retd) Bishwanath Prasad Singh Son of late R.N. Singh
R/o PNT Colony No. 2 Dahiyawan, Chapra, Bihar. Petitioner.

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
 2. The Principal Secretary, Health Department, Government of Bihar.
 3. The Chairman, Bihar Combined Entrance Competitive Exam, IAS Bhawan,
Patna.
 4. The Controller Examination, Bihar Combined Entrance Competitive Exam, IAS
Bhawan, Patna.
 5. The Medical Council of India, New Delhi - 110077 through its Secretary.
.... Respondents.
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Appearance :

For the Petitioner : Mr. Dinu Kumar, Adv.
Mr. Rajesh Kumar Singh, Adv.
For the State : Mr. P.N.Shahi, AAG-X.
For the M.C.I. : Mr. Kumar Brijnandan, Adv.
For the B.C.E.C.E.B. : Mr. Vikash Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-09-2015

Heard the parties and with their consent, this Public
Interest Litigation is being disposed of at this stage itself.

The issue in this case relates to admission in medical
colleges in this State through a common entrance examination.

As per the Bihar Reservation (In Admission in Educational
Institutions) Act, 2003 (hereinafter referred to as the Act) a
provision for reservation has been made in Section-2 and
Section-2 (6) (a) of the Act provides that in case sufficient
number of candidates in the reserved category are not available

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then the categories in the reserved section may be interchanged. Thereafter, Section-2 (6) (b) provides that if after interchanging the reserved category amongst itself, still reserved candidates are not available, then those seats would fall to the general category. This is a complete scheme provided by the Act. Section-6 of the Act empowered State to remove difficulty which clause is often referred to Henry Clause-VIII and is deprecated.

It appears that in the past when candidates of reserved category were not available, a learned Single Judge of this Court directed the State to consider exercising powers under Section-6 of the Act to relax the marks required to be obtained for admission by reserved candidates to 32% from 40%, under power to remove difficulty. The eligibility marks for admission, which is not fixed under this Act, but fixed under the Regulations issued by the Medical Council of India (hereinafter in short M.C.I.), was ordered to be relaxed. Accordingly, the State Government exercised the power and relaxed the eligibility for admission by reducing the marks. In the past, pursuant to direction of the learned Single Judge relaxation having been granted, some students got admitted. They are now completing first year of M.B.B.S. course. We are presently not concerned with them.

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The question which comes to the forefront is, whether the State Government can act in derogation of the M.C.I. Regulation or not. To us, the answer is plain and simple. It is the M.C.I. i.e. the apex body in so far as the professional courses are concerned and no State Government can act in derogation to the M.C.I. regulation. Then, the second more important aspect is the Bihar Reservation Act aforesaid, which talks only of fixing quotas for different classes. Even if the power to remove difficulty under Section-6 of the Act was available, it could be in relation to the quota but not in relation to eligibility condition for admission on merit basis i.e. relaxing the regulations of the M.C.I. It is inconceivable that such a power could be exercised by the State of Bihar, especially in a professional course like medical science.

Apart from this, we would like to observe that the power under Section-6 of the Act can only be exercised when there is difficulty. The question is where is the difficulty? The reserved candidate who is not meritorious is not being admitted because of which seats are left vacant, can this be called a difficulty. We regret it is not. Then the question is, if seats are being left vacant, again can this be called a difficulty? The answer is again no. Section-2 (6) (b) of the Act provides for such

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a contingency, then where is the difficulty?

In our view, there being no difficulty and the Act itself having provided the scheme, it was not open to learned Single Judge to direct the State Government to exercise power under Section-6 of the Act and make persons eligible who were ineligible in merit. If reserved candidates within the minimum eligibility category are not available, then in terms of Section-2 (6) (b) of the Act, the State Government shall be obliged to issue notification de-reserving the vacancies. This is the only action which is authorized by the State Legislature.

With the aforesaid observations and directions, this writ application stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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