

THE HIGH COURT OF TRIPURA
A G A R T A L A

IN WP(C) NO. 317 OF 2015:

Petitioner :

Sri Bikash Sarkar,
S/O. Sri Binod Sarkar,
Resident of Village & P.O. Maiganga,
P.S. Teliamura, District: Khowai, Tripura.

BY ADVOCATES:

Mr. A.C. Bhowmik, Sr. Advocate,
Mr. A. Bhowmik, Advocate.

– **Versus** –

Respondents :

1. The State of Tripura,
Represented by its Secretary cum
Commissioner to the Department of
Health and Family Welfare,
Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District: – West Tripura.
2. The Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
Represented by its Chief Executive Officer,
P.O. Hapania, P.S. Amtali,
District: - West Tripura.
3. The Principal,
Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
P.O. Hapania, P.S. Amtali,
District: - West Tripura.

BY ADVOCATES:

Mr. T.D. Majumder, G.A.,
Mr. S. Chakraborty, Addl. G.A.

IN WP(C) NO. 344 OF 2015:

Petitioner :

Sri Rahul Sukladas,
S/O. Sri Amrita Sukladas,
Resident of Village Krishnanagar,
P.O. South Krishnanagar,
P.S. Belonia,
District: - South Tripura.

BY ADVOCATES:

Mr. A.C. Bhowmik, Sr. Advocate,
Mr. A. Bhowmik, Advocate.

– **Versus** –

Respondents :

1. The State of Tripura,
Represented by its Secretary cum
Commissioner to the Department of
Health and Family Welfare,
Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District: – West Tripura.
2. The Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
Represented by its Chief Executive Officer,
P.O. Hapania, P.S. Amtali,
District: - West Tripura.
3. The Principal,
The Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
Represented by its Chief Executive Officer,
P.O. Hapania, P.S. Amtali,
District: - West Tripura.

BY ADVOCATE:

Mr. T.D. Majumder, G.A.

IN WP(C) NO. 345 OF 2015:**Petitioner :**

Kumari Diba Mallik,
D/O. Shri Sujit Mallik,
A resident of East Shibnagar,
P.O. Agartala College,
P.S. East Agartala,
District: - West Tripura.

BY ADVOCATES:

Mr. S.M. Chakraborty, Sr. Advocate,
Ms. B. Chakraborty, Advocate.

– **Versus** –

Respondents :

1. The State of Tripura,
Represented by the Commissioner & Secretary,
Department of Health and Family Welfare,
Government of Tripura, Civil Secretariat,

WP(C) 317 OF 2015,
WP(C) 344 OF 2015,
WP(C) 345 OF 2015.

P.O. Agartala Secretariat, West Tripura.

2. The Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
(A Society, registered under Societies Registration
Act, 1860) Hapania,
Represented by its Chairman,
P.O. Agartala ONGC, West Tripura.
3. The Principal,
Tripura Medical College and
Dr. B.R. Ambedkar Memorial Teaching Hospital,
(A Society, registered under Societies
Registration Act, 1860) Hapania,
P.O. Agartala ONGC, West Tripura.

BY ADVOCATE:

Mr. T.D. Majumder, G.A.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA**

Date of hearing and : 20.08.2015.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, CJ)

All the three writ petitions are being disposed of by a common judgment since the following identical question of law is involved in all the three petitions:-

"In case, seats for any particular reserved category [Scheduled Castes (SC) or Scheduled Tribes (ST)] are not filled up due to non availability of sufficient number of eligible candidates in that particular category, should those seats be filled up by applying the exchange method and offering those seats to the other reserved category or should the seats be filled up by treating the

seats to be unreserved seats and then filled up on the basis of merit?”

2. To appreciate the contentions of the parties, reference may be made to the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991. This Act, which was enacted in the year 1991 initially provided for reservation only in services under the State. By the 2nd Amendment Act of 2005, the scope of this Act was enlarged and it also brought into its ambit reservation in educational institutions. Section 5, as amended, reads as follows:-

“5. Reservation for Scheduled Castes and Scheduled Tribes in educational Institutions, in selection of students for higher studies and in selection of candidates and in-service personnel for higher studies and training:

(a) There shall be seventeen percent reservation for the Scheduled Castes and thirty-one percent reservation for the Scheduled Tribes in admission of students to educational institutions, in selection of candidates and in-service personnel for higher studies or training;

Provided that the State Government may, from time to time, review the implementation of the reservation policy and take adequate measures including increase of percentage of reservation as mentioned in Sub-Section (a) above;

(b) The candidates belonging to the Scheduled Castes and the Scheduled Tribes who qualify for selection on merit, shall be included in the general list and not against the reserved quota.”

3. The question is whether Section 5 envisages exchange of seats *inter se* the reserved categories (SC & ST) in case

sufficient number of candidates are not available in a particular reserved category but there are eligible candidates in the other reserved category.

4. The present writ petitions have arisen out of the admission process to the MBBS course in the Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital. From the averments, it is apparent that sufficient number of eligible S.T. candidates were not available to fill up the seats reserved for STs. There were 25 seats reserved for ST candidates. Out of these, only 13 could be filled up and 12 seats are lying vacant. The issue is whether these 12 seats should be filled up by applying the exchange method from amongst the eligible SC candidates or should they be filled up only on the basis of merit.

5. The petitioners rely upon Section 5 quoted hereinabove; and Rule 8(8)(a) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 which reads as follows:-

“8. Direct Recruitment through the Commission/Selection Committee/ Selection Board/ Departmental Promotion Committee etc.

xxx xxx xxx

(8) (a) If it is found that the required number of Scheduled Castes candidates or Scheduled Tribe candidates for filling up reserved vacant posts are not available the appointing authority may initiate a proposal for filling up the reserved vacant posts by exchange method, i.e. for filling up the vacant posts reserved for Scheduled Tribe candidates, by available Scheduled Caste candidates or for filling up the vacant posts reserved for Scheduled Caste

candidates, by available Scheduled Tribe candidates. He shall send the proposal to the Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities and to Tribal Welfare Department for their concurrence. When concurrence is received the appointing authority will make appointment subject to the condition that the vacant posts will be carried forward.”

Sub-rule (9) of Rule 8 provides for dereservation of vacant posts if not filled up from amongst the reserved categories. This has to be done with the approval of the Council of Ministers and the vacancy is to be carried forward.

6. It is contended on behalf of the petitioners that Section 5 makes provisions for reservation in educational institutions for SCs and STs and, therefore, the Act should be applied *mutatis mutandis* even in respect of educational institutions.

7. Mr. S.M. Chakraborty, learned Sr. Counsel and Mr. A. Bhowmik, learned counsel appearing on behalf of the petitioners submit that this Court should read sub-rule (8)(a) of Rule 8 in such a manner that sub-rule (8)(a) of Rule 8 is consistent with Section 5 and the exchange method which applies to filling up posts in Government Service should also be applied for filling up seats in educational institutions.

8. On 10.8.2015 in WP(C) 317 of 2015 this Court had passed the following order:-

“The main question involved in this writ petition is whether Rule 8 and especially Sub Rule (8) thereof of the Tripura Scheduled Castes and

Scheduled Tribes Reservation Rules, 1992 is applicable in case of admission to educational institutions covered by Section 5 of the Tripura Scheduled Castes and Scheduled Tribe Reservation Act, 1991 as amended, in the year 2005.

We direct Mr. S. Chakraborty, learned Addl. G. A to obtain instructions from the Chief Secretary of the State as to what is the stand of the State in this regard.

List on 17th August, 2015 on which date short affidavit may be filed.

Copy of the order be supplied to Mr. Chakraborty, learned Addl. G.A. to do the needful.”

9. Thereafter, the State has filed reply and in the reply filed by the State, the specific stand of the State is that the exchange method will not apply where seats in educational institutions have to be filled up. Mr. Arijit Bhowmik, learned counsel for the petitioner, has drawn our attention to the fact that in an earlier writ petition being **WP(C) 144 of 2011 titled "Shri Suman Kumar Banik vs. the State of Tripura & others"**, the State had taken a totally different stand and in that case the stand of the State was that the exchange method would apply even in educational institutions.

10. It is true that the State had taken the stand but that stand of the State was rejected by the Court which held as follows:-

“45. As regards the learned Advocate General’s contention, that the benefit of the SC and ST Reservation Act cannot be extended to the candidates of the general category, such as, the present petitioners’ children, suffice it to point out

that reservation is an exception to the fundamental right of non-discrimination. Article 14 and 15 of the Constitution, when combined together, guarantee equality of treatment to everyone irrespective of their caste in the matter of admission in educational institutions. However, Article 15(4), read with Article 15(5), empower the State to make special provisions for Scheduled Castes and Scheduled Tribes for their advancement and it is by taking recourse to the Constitutional provisions, enshrined in Article 15(5), that reservations, in favour of Scheduled Castes and the Scheduled Tribes, have been made, in the present case, in the form of SC and ST Reservation Act. Consequently, it is for the State to show that the 'law', which it has made, permits exchange method; or else, the children of the petitioners are, as of right, entitled to claim admission in the schools, in question.

46. *As the respondents failed, and failed miserably, to show that it is permissible, under the scheme of the sovereign legislation, i.e., SC and ST Reservation Act, to resort to exchange method and thereby allow admission of the candidates of Scheduled Castes in the seats, which have been left vacant, from the reserved quota of the Scheduled Tribe candidates, there can be no escape from the conclusion, and this Court unhesitatingly holds, that the children of the writ petitioners are, under the law, entitled to be admitted into the schools, in question, in terms of the prayers made in this regard."*

11. Consequently, the Notifications issued by the State dated 19.03.2011 and 25.04.2011 were set aside. It is not that the State is taking inconsistent stands. The State is now taking a stand which is in consonance with the judgment passed by the Agartala

Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura. We are also in agreement with the reasoning given in the said judgment. The learned Single Judge who delivered the said judgment has made an elaborate discussion and, therefore, we do not want to repeat everything which has been said in the said judgment. However, the learned Single Judge after considering Section 5 and also considering the provisions of Rule 13(5) and Rule 8(8) gave the following findings:-

“35. Contrary to the above scheme of the SC and ST Reservation Act in respect of admission to educational institutions, Rule 13(5) make not only provisions for maintenance of roster, but also makes it clear by the proviso appended thereto that the rule of carrying forward shall not apply to the case of admissions to educational institutions. This apart, Rule 8(8) makes provisions for exchange method to be applied in matters of recruitments; but no such provision has been made as far as admissions to educational institutions are concerned.

36. The scheme of the SC and ST Reservation Act, therefore, is that when the seats, meant to be kept reserved for SC and ST, are left vacant, the same shall have to be filled up irrespective of castes and on the basis of merit alone. When the scheme of the SC and ST Reservation Act is to fill up the vacant seats, on merit, in a case of present nature, there cannot be any policy decision of the State Government, in the form of the memoranda, which the respondents are relying upon, defeating the scheme of the sovereign legislation. If the provisions of the memoranda are given effect to, it would, undoubtedly, negate and defeat the scheme of the sovereign legislation (i.e.,

SC and ST Reservation Act), which is wholly impermissible in law. In a case of the present nature, the reference made by Mr. Deb, learned counsel, to the case of Jagdish Singh v. Punjab Engineering College, reported in (2009) 7 SCC 300, is not wholly misplaced inasmuch as it has observed, in Jagdish Singh (supra), at paragraph 3, as under:

“3. We are told that in many of the Central educational institutions the seats, which are to be filled up by OBC candidates, are still remaining vacant. These institutions may endeavour to fill up these vacant seats by other eligible students at the earliest i.e. at least by the end of October, 2008, observing inter se merit of the candidates. All other rules and regulations regarding admissions shall be strictly followed. The application is disposed of accordingly.””

12. We have also again carefully gone through the provisions of law. As far as Section 5 is concerned, that only provides that there shall be reservation for SC and ST in educational institutions. It further prescribes that there shall be 17% reservation for SC and 31% reservation for ST in admission of students to educational institutions. Sub-section (b) of Section 5 provides that SC and ST candidates who qualify on their own merit without taking benefit of reservation shall be treated as general category. Therefore, meritorious SC and ST candidates who get in on their own steam do not take away any seats from the SC or ST candidates. Section 5 does not in any way envisage any exchange between the seats reserved for SC with seats reserved for ST or vice versa.

13. Learned counsel for the petitioners placed reliance on sub-rule (8)(a) of Rule 8 which provides for exchange but the language of sub-rule (8)(a) makes it more than abundantly clear that sub-rule (8)(a) has been framed in relation to filling up posts in Government Service and has nothing to do with educational institutions. Throughout sub-rule (8)(a) of Rule 8, the words "vacant posts" and "appointing authority" are used. The words "vacant seats" and the words "selecting authority" or "educational institutions" have not been used.

14. It is contended that Section 5 was brought in the year 2005 whereas sub-rule (8)(a) of Rule 8 was existing prior to that and, therefore, sub-rule (8)(a) of Rule 8 should be read in such a manner that it is consistent with Section 5. We are unable to accept this submission. There are two reasons for not accepting this submission. Firstly, when the legislature introduced Section 5 and amended the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and brought in the concept of reservation for SC and ST in educational institutions, the legislature must have been aware what are the rules and accordingly some rules were amended. We also find that in the year 2007, there have been substantive amendments to the rule. Even Rule 8 was the subject matter of amendment and even after amendment in the year 2007, no mention of seats in educational institutions is there in sub-rule (8)(a) of Rule 8.

15. When the language of any statutory Act or Rule is clear, then the Court cannot introduce words into that Act or Rule

to give it a meaning which is totally different from the meaning envisaged by the rule making authority. A bare reading of sub-rule (8)(a) of Rule 8 makes it abundantly clear that this rule is to be read only in the context of filling up vacant posts in Government Service. There is no mention of filling up vacant seats in educational institutions. Therefore, we cannot insert the words “vacant seats in educational institutions” in sub-rule (8)(a).

16. There is another hurdle in the way of the petitioners. Sub-rule (8)(a) of Rule 8 cannot be read in isolation. It has to be read conjointly with sub-rule (9) of Rule 8 and Rule 13 which talk of maintenance of rosters and carrying forward of posts. In educational institutions, there can be no carrying forward of seats and this is clear from the judgment of the Apex Court in ***Faiza Choudhary vs. State of Jammu and Kashmir and another, [(2012) 10 SCC 149]*** wherein the Apex Court held as follows:-

“14. A medical seat has life only in the year it falls, that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry-forward principle is unknown to the professional courses like medical, engineering, dental, etc. No rule or regulation has been brought to our knowledge conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years.”

17. Therefore, also we are of the view that the intention of the legislature was not to provide for exchange of seats *inter se*

Scheduled Castes and Scheduled Tribes categories and the 12 seats which are lying vacant will have to be filled in strictly on the basis of merit. In case, there are any eligible Scheduled Tribes candidates available, they can be offered the seats but rest of the seats will have to be filled up on the basis of merit.

18. All the petitions are disposed of accordingly. No costs.

JUDGE

CHIEF JUSTICE