

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12116 of 2017

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Neha Kumari, Daughter of Sri Binod Kumar, Resident of Village - Bairiya, P.S. -
Gopalpur, District - Patna.

.... *Petitioner/s*

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Secretary, Bihar Combined Entrance Competitive Examination Board I.A.S.
Bhawan, Patna.
4. The Controller of Examination, Bihar Combined Entrance Competitive
Examination Board, I.A.S. Bhawan, Patna.
5. Meghavi Sinha, B.C. Rank 170 through Controller of Examination, Bihar
Combined Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.
6. Ritika Sinha, B.C. Rank 207, through Controller of Examination, Bihar
Combined Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.
7. Shalini Sinha, B.C. Rang 207, through Controller of Examination, Bihar
Combined Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.
8. Alka Priyadarshani, B.C. Rank 216, through Controller of Examination, Bihar
Combined Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.
9. Panvee Narayan, B.C. Rank 219 through Controller of Examination, Bihar
Combined Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.
10. Ritika Raj, B.C. Rank 221 through Controller of Examination, Bihar Combined
Entrance Competitive Examination Board, I.A.S. Bhawan, Patna.

.... *Respondent/s*

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Adv.
For the State : JC to PAAG-4
For the BCECEB : Mr. Prasoon Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 31-10-2017

The matter relates to admission to MBBS course for the *Academic Session* 2017-18, on the basis of counselling done by the Bihar Combined Entrance Competitive Examination Board, Patna (*in short 'the BCECEB'*). In view of the statutory cut-off date, prescribed for such admission, and repeated directions of the Supreme Court in this regard, though relief, as sought in the present writ application, cannot be entertained, yet I have considered it appropriate to answer the question of law, which has been raised by the learned counsel appearing on behalf of the petitioner.

2. In order to appreciate the submission advanced on behalf of the petitioner, the Court must take note of first, the resolution of the Health Department of the State Government of Bihar, dated 11.07.2017, brought on record by way of Annexure 3 to this writ application. The said resolution prescribes reservation of 50% of seats in the following manner:-

- | | |
|-------------------------------|-----------|
| (A.) Scheduled Caste | - 16% |
| (B.) Scheduled Tribes | - 1% |
| (C.) Extremely Backward Class | - 18% |
| (D.) Backward Class | - 12% and |



(E.) Reserved Category Girls - 3%

3. The petitioner belongs to Backward Class category and she is a female. She was apparently, therefore, entitled to be considered against the seats reserved for Backward Class category candidates and Reserved Category Girls (*in short* '**RCG**') candidates. This is to be noticed and there is no dispute over the fact that a female candidate belonging to either of the reserved categories, as indicated above from (A.) to (D.), is to be considered as RCG candidate.

4. The petitioner has a grievance that some of the female candidates, who could have been given admission on the basis of their position in the list prepared for Backward Class (BC) category, opted to be treated as RCG candidates, for the purpose of getting the course and institution of their choice. It is the main plea of the petitioner, relying on Supreme Court's decision in case of **Ritesh R. Sah Vs. Dr. Y.L. Yamul & Ors.**, reported in **(1996) 3 SCC 253**, that those seats reserved for Backward Class category should be allowed to be filled-up by the Backward Class candidates, like the petitioner. It is his contention that the petitioner's case is squarely covered by Full Bench decision of this Court in case of **The Controller of Examination, Bihar Combined Entrance Competitive Examination Vs. Nidhi Sinha &**



Anr., reported in **2016 (3) PLJR 273**, with special reference to paragraph 22 thereof.

5. It is the plea of the petitioner that had that been done, the petitioner would have been given an MBBS seat.

6. There is another ground taken on behalf of the petitioner to assail admissions of respondent Nos. 5 to 10, who have been given admissions to MBBS course, treating them as RCG candidates, which, though of not much significance, shall be dealt with later.

7. I will first deal with the contention on behalf of the petitioner of consequence of a female candidate belonging to Backward Class category, who, for the purpose of getting course and institution of her choice, offers to be treated as RCG candidate.

8. The answer to the question lies direct in the Full Bench decision of this Court, in case of ***The Controller of Examination, Bihar Combined Entrance Competitive Examination*** (*supra*). To appreciate this aspect, one has to keep in mind the distinction between the social reservation, as contemplated under Article 16 (4) of the Constitution of India, and special reservation, allowed to other categories, namely, physically challenged, women etc., as contemplated under Article 15 (3) of the Constitution of India. This clear distinction had been noticed by the Supreme Court in case of



Indra Sawhney & Ors. Vs. Union of India & Ors.,
reported in **1992 Supp. (3) SCC 217**,_relevant portion of
which paragraph 812 reads thus:-

“**812.** We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a



reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

9. The Supreme Court, thus, in clear terms held that while the former type of reservation is vertical reservation, the latter is horizontal reservation, which cuts across the vertical reservation. The Supreme Court in subsequent decision in case of **Anil Kumar Gupta & Ors. Vs. State of U.P. & Ors.**, reported in **(1995) 5 SCC 173**, has succinctly but clearly explained the method of implementing special reservation which is horizontal



reservation. The correct procedure to fill-up the seats would be that open competitions seats are filled-up first on the basis of merit only and then seats, reserved for social reservation quotas, namely, SC, ST, BC and OBC, are filled. The next step would be to ascertain the number of candidates belonging to special reservations already selected in the process. If the quota fixed for horizontal reservations is already satisfied, no further question would arise, but if not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting corresponding number of candidates therefrom. This is what has been clearly laid down by the Supreme Court in case of **Anil Kumar Gupta & Ors.** (*supra*).

10. In subsequent decision in case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission**, reported in **AIR 2007 SC 3127**, the Supreme Court again explained the distinction between special provision for women, made under Article 15 (3) of the Constitution of India, in respect of special reservation and social reservation, under Article 16 (4) of the Constitution of India. In paragraphs 7 and 8 of the said decision, in case of **Rajesh Kumar Daria** (*supra*), the Supreme Court, in most unambiguous terms, has held that the decision in case of



Ritesh R. Sah (*supra*) shall not apply to horizontal (special reservation).

11. On close reading of the Supreme Court's decision, in case of **Rajesh Kumar Daria** (*supra*), I am of the view that the plea on behalf of the petitioner is absolutely misconceived. Article 15 (3) of the Constitution of India is the enabling provision, which allows the State, by executive or legislative action, to provide for reservation in employment for women. The said reservation, as has been clearly held by the Supreme Court, is horizontal. In that view of the matter, the plea of the petitioner that applying the principle laid down in case of **Ritesh R. Sah** (*supra*), the petitioner ought to have been adjusted against the seats reserved for Backward Class because of migration of Backward Class female candidates to RCG is unfounded. As a matter of fact, there is no migration of Backward Class female candidates, which took place in the process of counselling. The female candidates, having qualified in either of the reserved categories, if they filled-up the quota of 3%, as prescribed in the resolution itself, no shifting of such candidates took place unlike the meritorious reserved candidates, migrating to reserved categories for the purpose of getting course/institutions of their own choice.

12. Reliance placed on behalf of the petitioner on paragraph 22 of the Full Bench decision of this Court, in case



of ***The Controller of Examination, Bihar Combined Entrance Competitive Examination*** (*supra*), is completely misconceived for the reason that in the said paragraph, the decision of the learned Single Judge has been noticed and quoted and the reasoning assigned by the learned Single Judge has been held to be not correct, in view of various Supreme Court's decisions. The illustration given by the Supreme Court, in case of ***Rajesh Kumar Daria*** (*supra*), has been taken note of in the Full Bench decision of this Court, in case of ***The Controller of Examination, Bihar Combined Entrance Competitive Examination*** (*supra*), paragraphs 23 to 25 of the said decision, being relevant, are being reproduced hereinbelow:-

"**23.** I am afraid the reasoning assigned by the learned single Judge can (*sic* cannot) be upheld, in the light of law laid down by Supreme Court's decision in case of ***Rajesh Kumar Daria V. Rajasthan Public Service Commission (AIR 2007 SC 3127)***. The Supreme Court referring to decisions in case of ***Indra Sawhney V. Union of India (AIR 1993 SC 477)***, ***R.K. Sabharwal V. State of Punjab (1995) 2 SCC 745***, ***Union of India Vs. Virpal Singh***



Chauvan (1995) 6 SCC 684) and Ritesh R. Sah V. Dr. Y.L. Yamul (1996) 3 SCC 253), held that those cases relate to vertical reservation, i.e. reservation in favour of Scheduled caste and Scheduled Tribe and other backward classes under Article 16(4) of the Constitution of India, whereas special reservation in favour of physically handicapped, women etc under Article 15(3) of the Constitution of India are horizontal reservation. In case of vertical reservation contemplated under Article 16(4) of the Constitution of India, the candidates belonging to such backward classes may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. The Supreme Court clearly laid down in paragraph 7 of the said decision that principle laid down in case of Ritesh R. Sah (supra), applicable to vertical (social) reservations will not apply to horizontal (special) reservations. The Supreme Court in the said



case held that where a special reservation for women is provided within the social reservation for Backward class, the proper procedure would be to first fill up the quota for the backward class in order of merit and then find out the number of candidates among them who belong to the special reservation group of backward class-women. It further laid down that if the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Backward class/Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to the concerned backward class/Scheduled Caste and Scheduled Tribe.

(emphasis mine)

24. The Supreme Court, in case of ***Rajesh Kumar Daria*** (supra), held that to this extent, the horizontal (special) reservation differs from vertical (social) reservation. The Supreme



Court specifically held that women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

25. The Supreme Court, by way of illustrations, gave an example which clinches the issue involved:-

"If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC women candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be



deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidate. (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of Patna High Court LPA No.433 of 2000 29/30 deleting the excess women candidate on the ground that 'SC women' have been selected in excess of the prescribed internal quota of four)."

13. Situated thus, in my view, the plea which has been taken on behalf of the petitioner, as noticed above, cannot be sustained.

14. Another plea which has been taken on behalf of the petitioner is that Clause 12 of the Notice for counselling, issued by the BCECEB, required that once a course/institution is opted at the time of his/her counselling and the same allotted to him/her, no subsequent request for change of course and/or institution was required to be entertained.

15. It is the petitioner's case that respondent



Nos. 5 to 10 had appeared for counselling on 23.07.2017 and they were allotted seats on that day itself. However, they were allowed to participate in the counselling again on the subsequent date, whereafter, they were allotted seats reserved for RCG candidates.

16. This submission is fit to be rejected, since there is nothing on record to show that they were ever allotted any seat on 23.07.2017 inasmuch as no letter of allotment was issued in their favour.

17. For the aforesaid reasons, this application has no merit and is, accordingly, dismissed, but without costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.11.2017
Transmission Date	N/A

