

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17056 of 2018

Chandan Kumar Sharma, Son of Raj Kumar Sharma, resident of Village-
Dakshin Maheshwari, Ward No. 18, Police Station- Gojbani, District- Araria.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Health Department, Bihar, Patna.
2. Bihar Combined Entrance Competitive Examination Board I.A.S. Association Building, Patna-4, through its Chairman.
3. The Secretary, Bihar Combined Entrance Competitive Examination Board I.A.S. Association Building, Patna-4.
4. Examination Controller, Bihar Combined Entrance Competitive Examination Board I.A.S. Association Building, Patna-4.
5. Central Board of Secondary Examination, New Delhi through its Secretary.
6. Medical Council of India, New Delhi, through its Secretary.
7. Manish Kumar, Son of Sri Mahendra Paswan, resident of Village- Naula, Police Station- Bhagwanpur, District- Begusarai.
8. Niraj Kumar, Son of Shri Manoj Kumar Paswan, resident of Village- Chauri Rahika, Ward No. 6, Police Station- Rahika, District- Madhubani.
9. Gunjan Kumari, Daughter of Shri Jagdish Rajak, Rajendra Colony, Navgachhia Police Station- Naugachhia, District- Bhagalpur.
10. Ashish Kumar, Son of Shri Mahendra Chaudhary, Resident of Village - Sahmalpur, Police Station- Kajra, District- Lakhisarai.
11. Tejeshwani Bharti, Daughter of Shri Satya Narain Rajak, Mridula Niwas, Sipahi Tola, Baksa Ghat Road, Ward NO. 7, Police Station- Purnea, District- Purnea.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Suraj Narain Yadav, Advocate Mr. Shitanshu Shekhar Mishra, Advocate
For the Respondent State:	:	Mr. Binod Kr.Yadav, SC-18
For the BCECEB	:	Mr. Prasoon Sinha, Advocate
For the MCI	:	Mr. Kumar Brijnandan, Advocate Mr. Tarees Hameed, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 31-08-2018

Heard Mr. Suraj Narain Yadav, learned counsel for
the petitioner and Mr. Prasoon Sinha, learned counsel appearing
on behalf of the Bihar Combined Entrance Competitive



Examination Board. Mr. Binod Kumar Yadav, learned Standing Counsel 18 is also in attendance on behalf of State of Bihar.

The petitioner had participated in the National Eligibility-cum-Entrance Test (NEET) (UG)-2018 for admission in MBBS course as a Scheduled Tribe candidate and has scored 390 out of total 720. NEET All India rank of the petitioner is 85038 with his Scheduled Tribe category rank at 829, which is not in dispute.

This is a matter of common knowledge that based on result of NEET, the process for admission in Government and Private Medical Colleges of respective States are undertaken by the respective States against 85% of State Quota seats. In Bihar, the function of counselling for admission to MBBS and other courses has been assigned to Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as 'the BCECEB'), which is carried out under 'Under Graduate Medical Admission counselling (UGMAC)-2018'.

This is also an admitted fact that 1% of total seats in various courses have been reserved for Scheduled Tribe candidates in terms of the prospectus of UGMAC-2018 issued by the BCECEB. Based on that, seven seats were reserved for Scheduled Tribe candidates for their admission against 85%



State quota in MBBS course in Government Medical Colleges in the State of Bihar.

The petitioner had applied *online* for UGMAC-2018. This is also not in dispute that his Scheduled Tribe category rank in UGMAC-2018 is 28. The petitioner was not invited in the first round of counselling held between 29.06.2018 to 05.07.2018, in view of his merit position. Subsequent thereto, notice was issued on 04.08.2018 by BCECEB for second round of counselling. It is the petitioner's grievance that based on second counselling only one candidate in Scheduled Tribe category has been selected and others, who have been selected against Scheduled Tribe category seats do not belong to the Scheduled Tribe category, rather they belong to Scheduled Caste category, which is evident from the result of the second counselling, which has been brought on record by way of Annexure-3. With the aforesaid grievance that the case of the petitioner belonging to the Scheduled Tribe category has been ignored and without giving him an opportunity of admission against the seats reserved for Scheduled Tribe category, the respondents have given admission to respondent Nos. 7 to 11 herein, who belong to Scheduled Caste category.



Mr. Suraj Narain Yadav, learned counsel appearing on behalf of the petitioner contends that the BCECEB ought to have given opportunity to the candidates belonging to Scheduled Tribe against seats reserved for Scheduled Tribe candidates for counselling and most of the seats have been illegally released in favour of Scheduled Caste candidates by the BCECEB on incorrect basis of non-availability of suitable Scheduled Tribe candidates.

A detailed counter affidavit has been filed on behalf of the BCECEB. Placing reliance on Clause 5 of the prospectus of UGMAC-2018, it has been asserted that total seven seats were reserved for Scheduled Tribe candidates for their admission against 85% State quota in MBBS course. In course of first counselling, five seats were allotted to the candidates of Scheduled Tribe category quota in different colleges as per their merit choice according to their NEET rank as well as Scheduled Tribe category rank, out of whom only four candidates turned up for admission. Thus, 2+1 seats remained vacant against Scheduled Tribe category. Further two seats reserved for Scheduled Tribe category were returned out of All India Quota seats, which had remained unfilled, to be filled by State counselling and thus total five seats of Scheduled Tribe category



had remained vacant for being filled up in the second round of counselling to be conducted by BCECEB. This was the circumstance, in which, for filling up remaining five seats reserved for Scheduled Tribe candidates, six candidates of Scheduled Tribe category, with their ranking ST-10 to ST-17, were called for second counselling, from the merit list of that category, the BCECEB asserts in the counter affidavit.

This is to be noted here that the petitioner's rank is 28 in Scheduled Tribe category. It has been stated in the counter affidavit that one Scheduled Tribe candidate, who was initially allotted admission in Pawapuri Medical College in the first counselling and had also applied for second counselling, opted for another Medical College, i.e. Jawahar Lal Nehru Medical College, Bhagalpur. Three other candidates, belonging to Scheduled Tribe category with their ranks at 11, 15 and 17, remained absent in the second counselling. Another candidate with Scheduled Tribe category with his rank 12 participated in the second counselling and endorsed 'no vacancy of choice'. Other candidates of Scheduled Tribe category with their ranks 13 and 16, did not give options for second counselling. It is the stand of the BCECEB, thus, that in the second round of counselling, since five seats of Scheduled Tribe reserved



category remained vacant, those seats were converted into Scheduled Caste category seats after following the procedure of logarithm for the conversion of seats as prescribed under ***Bihar (Admission in Educational Institutions) Reservation Act, 2003*** (hereinafter referred to as 'the Act') read with the guidelines issued by the Medical counselling Committee in the form of questionnaire No. 37 dealing with the procedure for second round of counselling and accordingly five Scheduled Caste candidates have been admitted on the converted seats during second counselling.

The assertion in the writ petition that there were 15 seats reserved for Scheduled Tribe category has been denied and it has been specifically stated that correct number of total seats for Scheduled Tribe category was seven. It has been reiterated in the counter affidavit that five seats were allotted to Scheduled Tribe category candidates during first round of counselling out of whom only four turned up for admission and one had not taken admission.

Justifying the action of the BCECEB in releasing Scheduled Tribe category seats for Scheduled Caste candidates, Mr. Prasoon Sinha, learned counsel for the BCECEB, has drawn my attention to Section 6 of the Bihar (Admission in Educational



Institutions) Reservation Act, 2003, with particular reference to Section 6(a)(i) thereof, which reads as under: -

“6 (a). After providing the opportunity for admission to the candidates having descending order of merit of Lower qualification as to marks obtained etc. fixed by the concerned educational Institutions, if the reservation percentage of any reserved category is not filled shall be regulated in the following manner:-

(i) Exchange shall be possible between the Scheduled Castes and Scheduled Tribes.”

A plain reading of Section 6 of the Act, as noted above, makes it clear that the provision provides for exchange of seats between the seats reserved for Scheduled Tribe Candidates and Scheduled Tribe Candidates. The said provision permits exchange between the Scheduled Caste and Scheduled Tribe seats, in case, reservation percentage of any reserved category is not filled.

What is not in dispute from the facts available on record that up to the second round of counselling, despite suitable number of candidates of Scheduled Tribe category were invited for counselling, certain seats had remained unfilled and therefore in the second round of counselling, candidates belonging to Scheduled Caste category were offered the seats of



Scheduled Tribe category by applying the Rule of exchange as prescribed under Section 6 of the Act.

I do not find any illegality or irregularity in the procedure adopted by the BCECEB in the matter of offering MBBS seats in favour of respondent Nos. 7 to 11 belonging to Scheduled Caste category. Further, this is also not in dispute that there are several candidates in Scheduled Tribe category who are above the petitioner, who could have a better claim, if any, than the petitioner.

For the reasons noted above, I do not find any reason to interfere with the decision of the BCECEB in the matter of allotment of seats in favour of the said respondents after allowing exchange as contemplated under Section 6 of the Act, as noted above.

I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	01.09.2018
Transmission Date	N/A

