

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22274 of 2018

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Gulshan Kumar, Son of Sri Ramanuj Prasad, Resident of Village- Nathu Bigha, Post Office-Alawan, Police Station-Parwalpur (Alawan), District-Nalanda, Pin Code-803114.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Secretariate, Patna.
2. Examination Controller, Bihar Combined Entrance Competitive Examination Board (B.C.E.C.E.B.), I.A.S. Association Bhawan, near Airport Patna-800014.
3. Principal, Bihar College of Engineering, Bhagalpur (Bihar).

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ashok Kumar, Advocate
For the Respondent State:		Mr. Madhaw Pd. Yadaw, GP-23
		Ms. Meera Singh, AC to GP-23
For the BCECEB	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 28-01-2019 The petitioner is seeking following relief in the present writ application under Article 226 of the Constitution of India :-

“To issuance of Writ, Order or Direction in the nature of Certiorari/Mandamus, commanding and directing the respondents to take admission of the petitioner in Bihar College of Engineering (B.C.E.), Bhagalpur, Branch Computer Science & Engineering for the session 2018-19 which as per the rank of B.C.E.C.E.B., bearing rank unreserved (UR)/UR-995, had been upgraded and allotted to the petitioner in second round as several similar situated candidates who passed compartmental examination of Intermediate (X+II) examination in the year 2018, have already been admitted but the petitioner has yet not been allowed to take admission in the above said course.”



Facts are not much in dispute. The Bihar Combined Entrance Competitive Examination Board (BCECEB) had issued a notice inviting applications for selection for admission to technical courses. Passing of Intermediate examination/10+2 examination with Physics, Chemistry and Mathematics (PCM group) or Physics, Chemistry and Biology (PCB group) was indisputably the eligibility condition. However, the candidates appearing in the said qualifying examination were also to be allowed to appear in the competitive examination.

The petitioner applied as a candidate who had appeared in intermediate examination in PCM group. He qualified and was placed at rank 995 (unreserved) and 427 (Backward Class) category. A notice was issued thereafter by the Board for conducting *e-counselling online* of successful candidates.

The notice contemplated step wise procedure for *web-based online* counselling. Step one of the procedure for *web-based online* counselling stipulated that all data provided by the candidate, during submission of application would be displayed and new fields would be asked to be filled up by candidates in case of I.Sc./10+2 as passing status “Appearing”. It clearly mentioned that if a candidate had passed, he had to select



‘passed’ radio button and enter his marks on the screen. If the result status of the candidate was ‘not passed’, he would not be eligible for participating in the *e*-counselling process.

There is no dispute that the petitioner was declared ‘fail’ in the intermediate examination. Regardless of the requirement under the procedure of the *online* counselling, as noted above, the petitioner successfully submitted his *online* application in *e*-counselling and entered his marks of the Annual Intermediate Examination, 2018, though he had failed. The petitioner thereafter went to step two and filled up the column of the institution and branches of his choice on priority basis, before allotment of seats. Despite the fact that the petitioner had failed in Intermediate Examination, he was allotted Computer Science Engineering course in Darbhanga College of Engineering, Darbhanga. The petitioner, however, did not report the allotted college for admission based on first round of counselling, understandably because he had not passed the qualifying examination, then.

It is the case of the petitioner, however, as stated in paragraph 9 of the writ application, that the petitioner could not appear in the first round of counselling because of delayed publication of result. This statement has, however, been recalled



by the petitioner by making statement in a supplementary affidavit filed in this case terming the same to be a bonafide mistake. This is also not in dispute that second counselling was held and in the second counselling, the petitioner was allotted Computer Science in Bhagalpur College of Engineering, Bhagalpur, by way of up-gradation.

Again, the petitioner did not report to allotted college, apparently, for the same reason that he had not passed Intermediate (Science) Examination. Be it noted that Clause 14.4 of the prospectus, issued by the BCECEB issued for the entrance test, specifically required that candidates appearing in current session of Intermediate Examination (2018) might apply for the entrance test, but they must have passed the qualifying examination at the time of interview. This is not in dispute that the petitioner had not passed Intermediate Examination till first round of counselling and second round of counselling were held. The petitioner had appeared for compartmental Intermediate Examination in the meanwhile and he passed. A third round of counselling was held. It is the petitioner's case that the petitioner approached Bhagalpur College of Engineering where his counselling was done and his certificates were verified, but no admission order was, however, issued.



There is a statement made in paragraph 15 of the writ application that the authorities of Bhagalpur College of Engineering informed the petitioner that the BCECEB had cancelled the seat earlier allotted to the petitioner by the BCECEB.

It is the case of the petitioner that one similarly situated person, namely, Rajesh Ranjan, who had also passed the Intermediate Compartmental Examination Science-2018 and whose rank is 4798 (UR) and 1006(BC) has been allowed admission whereas the petitioner has been denied the opportunity, illegally by the respondents.

A counter affidavit has been filed on behalf of the BCECEB.

I have heard Mr. Ashok Kumar, learned counsel for the petitioner and Mr. Prasoon Sinha, learned counsel representing the BCECEB. Ms. Meera Singh, learned A.C. to GP-23 is also in attendance.

There is statement made in the counter affidavit that the petitioner could not have submitted his *online* application form till he had passed the Intermediate Science Examination. It is also the case of the BCECEB that out of inadvertence in the second round of counselling, the petitioner's allotment



institution was upgraded from Darbhanga College of Engineering, Darbhanga to Bhagalpur College of Engineering, Bhagalpur, because the petitioner had not passed the qualifying Intermediate Science Examination by then. Since the course and college were allotted and the petitioner did not report the college, his allotment stood thus cancelled. Reason for him not to report the institution is evident since he had not passed the qualifying examination. It is further stated in the counter affidavit that there was third round of counselling held in which the petitioner did not apply *online* and those candidates, who had applied *online* in third round of counselling after having passed Intermediate Compartmental Examination (Science) have been allotted seats by the BCECEB.

Mr. Prasoon Sinha, learned counsel appearing on behalf of the BCECEB, has submitted that had the petitioner applied *online* in the third round of counselling, he could have been allotted course and college by the BCECEB since by that time he had passed the Intermediate Science Compartmental Examination. He has, thus, controverted the plea of discrimination taken by the petitioner in the writ application.

Learned counsel appearing on behalf of the petitioner has reiterated that since other candidates, who passed



Intermediate Science Examination in the Compartmental Examination held by the BCECEB have been allowed admission, giving similar treatment, the petitioner should also be allowed admission.

The averments made in the counter affidavit filed on behalf of the BCECEB on the point that the petitioner did not apply for the third round of counselling has not been denied. In the first round of counselling, based on petitioner's merit position, on the basis of entrance test, a course and college was allotted, but he did not report the college because he was ineligible. I find mistake on the part of the BCECEB to be bonafide, in upgrading the allotment of the petitioner from Darbhanga College of Engineering, Darbhanga to Bhagalpur College of Engineering, Bhagalpur, as the petitioner had not even passed the qualifying examination by that time. When the petitioner passed the compartmental examination, he claims to have approached Bhagalpur College of Engineering, Bhagalpur, where, according to him, counselling was held. This stand is completely misconceived. There was no question of any counselling to be held by the College, the counselling was being conducted by the BCECEB. The petitioner, admittedly, did not participate in third round of counselling though he had become



eligible by that time. The other candidates, who passed compartmental examination participated in third round of counselling based on which they have been allotted course and seat. The petitioner cannot have a grievance now that though lower in merit, those candidates, based on third round of counselling, have been allowed admission. The petitioner too had the opportunity to avail by participating in third round of counselling, which he missed. In that background, the relief, which the petitioner is seeking, cannot be granted.

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

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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