

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 34861 of 2021

An application under Articles 226 & 227 of Constitution of India.

AFR

**Anaya Priyadarshini Pradhan,
represented though her mother guardian
Subhalaxmi Pradhan**

..... **Petitioner**

-Versus-

**Navodaya Vidyalaya Samiti
& Others**

..... **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner	: M/s. Srinivas Mohanty, K. Patra, B.P. Sharma & R.K. Sahoo, Advocate.
For Opp. Parties	: Mr. P.K. Parhi, Deputy Solicitor General of India with Mr. B.K. Parhi, Central Govt. Counsel [for O.Ps. 1 & 3] M/s. Saroj Kumar Das, J.K. Nanda, B.C. Pradhan & S. Mohanty, Advocate [O.P. No.4]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

19th October, 2022

SASHIKANTA MISHRA, J.

The petitioner being a student of Class-V of Sri Aurobindo Integral Education Center, Laxmidharpur, Dhenkanal had applied for admission to Class-VI in Jawahar Navodaya Vidyalaya (JNV) in the academic session

2021-22. She appeared in the entrance examination conducted pursuant to advertisement issued by Government of India. The petitioner belongs to the Scheduled Tribe (ST) Khairia community. She qualified for admission in the said entrance examination and was declared to have passed in "Rural SC Category". When it was found that she actually belongs to ST category, she was refused admission in JNV. It is stated that the category of the petitioner was wrongly mentioned as 'SC' instead of 'ST' at the time of filling up of the online application. It is further stated that such error was caused because of mistake committed by the Data Entry Operator (DEO). Since the Rules governing the admission to JNVs permits interchangeability of SC and ST candidates, the petitioner contends that she should not have been denied admission. During pendency of the writ application, the academic session 2021-22 having expired, the petitioner amended the writ petition with prayer to direct the authorities to allow her to take admission in Class-VII by treating her admission into Class-VI notionally.

2. A preliminary counter affidavit has been filed on behalf of the JNV, Saranga. It is stated that there is no

vacancy in ST category and that interchangeability is not possible as all ST seats have been filled up. If the petitioner is allowed against SC category, the eligible SC candidates in the available panel will be deprived of their legitimate rights.

3. A further affidavit was filed by the JNV stating that as per the Para-b of the NVS Prospectus, reservation of seats in favour of children belonging to the SC and ST is provided in proportion to their population in the district concerned provided that in no district, such reservation will be less than the national average (15% for SC and 7.5 % for ST) but subject to maximum of 50% for both the categories (SC & ST) taken together. It is further stated that these reservations are interchangeable and over and above the candidates selected under open merit. It is also stated that admission process for JNV Selection Test-2021 has been exhausted upon issue of notification of JNV Selection Test-2022-23.

4. In course of hearing, an additional affidavit has been filed by JNV reiterating the stand taken in the earlier affidavits. It is stated that the petitioner being selected in SC category, failed to produce the relevant caste certificate and

was therefore, rightly denied admission. Presently, no seat is available under ST quota and the petitioner having been selected under the SC category, cannot be adjusted against the SC seat in view of the fact that she belongs to the ST category. It is further stated that out of 80 seats, 79 candidates have already been admitted and promoted to Class-VII w.e.f. 01.05.2022 and one seat is lying vacant because of interim order passed by this Court in the present writ application. On such ground, the claim of the petitioner has been refuted as being without any merit.

5. Counter affidavit has been filed by Sri Aurobindo Integral Education Center (opposite party no.4). It is specifically stated that while studying in the School, the petitioner had submitted her application to take admission in JNV in the district of Dhenkanal through the said School. The Computer Assistant of the School filled up her online application in a DTP Center, where the mistake crept into the record and by mistake the caste of the petitioner was written as 'SC' instead of 'ST' which could not be detected at the relevant time. After coming to know of the mistake, the Principal of the School attempted to convince the Principal

of the JNV, Saranga in his letter dated 04.10.2021.

6. Heard Mr. S. Mohanty, learned counsel for the petitioner; Mr. P.K. Parhi, learned DSGI with Mr. B.K. Parhi, learned CGC for opposite parties no.1 & 3; and Mr. S.K. Das, learned Counsel for opposite party no.4.

7. Mr. S. Mohanty would argue that when it is not disputed that the petitioner had qualified in the written test, she should have been granted admission by opposite party no.3 without harping upon technicalities. Mr. Mohanty further argues that the petitioner being a young student of Class-V at the relevant time had to depend upon the DEO of her School for the purpose of filling up of the online application. Therefore, looking at her age and the fact that her category was inadvertently mentioned as 'SC' instead of 'ST', she should not be denied admission. Mr. Mohanty has also argued that even otherwise as per the Rules of Seat Allocation and Preparation of Select List for JNVST-2021, interchangeability of seats of SC & ST category is permissible. Therefore, notwithstanding the fact of filling up of all the seats for ST candidate, the petitioner can be adjusted against the SC seat as in the process the

requirement of the Rule to maintain the 50% quota of SC +ST reservation can be maintained.

8. Mr. P.K. Padhi, learned DSGI has however, opposed the contentions advanced by Mr. Mohanty by submitting that the interchangeability rule is not applicable to the facts of the present case inasmuch as the same is invoked only when there is shortfall of seats in any category. Such rule is never intended to permit a student of one category to be adjusted against the other category only because the seats of the category to which she belongs have been filled up. Since the petitioner despite being an ST claimed admission as an SC candidate, no relief can be granted to her.

9. Mr. S.K. Das, learned counsel appearing for opposite party no.4 has supported the case of the petitioner by submitting that the mistake in the application form was committed by the staff of the School, for which the petitioner being a young child studying in Class-V cannot be blamed. To prove its bonafide, the Principal of the School wrote to the Principal of the JNV, Saranga stating the circumstances under which the mistake was committed but the same was

not responded.

10. It is not disputed that the petitioner while studying in Class-V of the opposite party no.4-School applied for admission into Class-VI in JNV, Saranga pursuant to advertisement issued by Government of India. In the copy of the application form, enclosed as Annexure-R/1 to the preliminary counter affidavit filed by opposite party no.3, it is observed that a tick mark has been indicated under SC column under the heading 'Category'. The petitioner herself has signed at the bottom of the application form along with her mother. Accordingly, her category was mentioned as 'SC' in the Navodaya Vidyalaya Samiti Registration as also in the Admit Card issued in her favour. The petitioner was one of the selected candidates under the Rural SC quota and her name finds place at serial No.1 under the said category. In the counter affidavit filed by opposite party no.4 it is explained that the mistake was committed by the Computer Assistant of the School, who filled up the form of the petitioner in a DTP Centre. Accordingly, by letter dated 04.10.2021, the Principal of opposite party no.4-School sent a letter to the Principal of

JNV, Saranga admitting the mistake with request to ignore the same and to treat her as ST category candidate. The above facts have not been disputed in any manner by the opposite party no.4 in the counter affidavit filed on its behalf. From the above narration, it appears that in the petitioner's application form, her category was wrongly mentioned as 'SC' instead of 'ST'. Secondly, the petitioner herself being a young child studying in Class-V obviously cannot be blamed for the inadvertent mistake committed by the Computer Assistant of the opposite party no.4 School. Thirdly, and more importantly, it is not disputed that the petitioner was selected for admission basing on her performance in the entrance test and was placed at serial no.1 in the list of Rural SC Category candidates.

11. Though the facts mentioned in the preceding paragraphs have not been disputed as such, yet the claim of the petitioner for admission is opposed on the ground that the same is not permissible under the relevant scheme and Rules. It would therefore, be apposite to refer to the prospectus as well as Rules of seat allocation referred to by opposite party no.3. In the prospectus for JNV Selection

Test-2021 (Navodaya Vidyalaya Scheme) it is mentioned under the heading “ Reservation of Seats’, at Para-b as follows:

“Reservation of seats in favour of children belonging to Schedule Caste and Schedule Tribe is provided in proportion to their population in the district concerned provided that in no district, such reservation will be less than the national average (15% for SC and 7.5% for ST) but subject to maximum of 50% for both the categories (SC & ST) taken together. These reservations are interchangeable and over and above the candidates selected under open merit.”

12. Rule-2.6 of the Rules of Seat Allocation and Preparation of Select List for JNVST-2021 also provides more or less the same thing and reads as follows:

“In case the requisite number of qualified candidates are not available in either of the categories SC or ST then the seats of one category will be converted to the other category to ensure the minimum (22 ½) or the requisite number of seats (more than 22 ½) subject to maximum of 50% of two categories combined (SC+ST). Thus SC and ST seats are convertible for the purpose of filling up the quota of reservations of seats in these two categories.”

13. Both sides have relied upon this provision in support of their cases. It has been argued by Mr. P.K. Parhi that the said Rule is applicable only if the requisite number of qualified candidates are not available in either of the categories SC or ST. Mr. Mohanty, on the other hand has

argued that so long as the total percentage of reservation does not exceed 50%, interchangeability of SC and ST candidates can be allowed.

14. From a bare reading of the aforequoted rule, it is ex-facie evident that the same applies in case the requisite numbers of qualified candidates are not available in either of the categories. If a strict interpretation is made then all the ST seats having been filled up, the claim for interchangeability would have no legs to stand but in the latter part of the said Rule, it is provided that conversion of seats from one category to another shall be subject to maximum of 50% of the two categories combined. Coming to the facts of the case in hand, it is admitted by opposite party no.3 that one seat in the category of SC Rural still exist by virtue of the interim order passed by this Court in the present writ application. Though it is stated that if the petitioner is allowed to be admitted against the said vacant seat, it would cause prejudice to other qualified candidates, the same is not tenable having regard to the fact that the petitioner is placed at serial no.1 in the SC category. Therefore, notwithstanding the fact that she actually

belongs to ST category, her absorption against the vacant SC category shall hardly cause prejudice to any candidate.

15. The matter can also be viewed from another angle. The dispute has arisen entirely because of fault of the Computer Assistant of opposite party no.4 School. The petitioner being a small child, no blame can be attributed to her. She is otherwise found meritorious having been successful in the entrance test. Except for the hypothetical argument that adjustment of the petitioner against the available SC seat would cause prejudice to other qualified candidates, the opposite party no.3 has not come forward to show as to if any other claimant vying for the said seat is actually available. In the absence of such contention, coupled with the fact that the petitioner is placed at serial no.1 of the SC category, there is no reason as to why she cannot be adjusted against the said vacancy. Significantly, making such an adjustment would not militate against the requirement of maintaining 50% reservation for SC/ST in the overall strength of students.

16. For the forgoing reasons therefore, this Court is of

the considered view that the petitioner deserves to be adjusted against the vacant seat under the SC Rural category. In the meantime however, academic session having expired and the new session have begun with the petitioner being promoted to Class-VII, she can only be admitted notionally against the vacancy for Class-VI but actually join classes of JNV, Saranga from Class-VII.

17. In the result, the writ petition is allowed. The opposite parties no. 1, 2 and 3 are directed to take necessary steps to adjust the petitioner notionally against the vacant seat under Rural SC Category for Class-VI in JNV, Saranga and to allow her to prosecute her studies in the said institution from Class-VII without any further delay. Necessary orders in this regard shall be passed by the authorities within a period of four weeks.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 19th October, 2022/ A.K. Rana, P.A.