

(2008) 01 DEL CK 0175

In the Delhi High Court

Case No : Writ Petition (C) No's. 5451-55 of 2000 and CM 4017 of 2005 and
W.P. (C) No's. 5117-23 of 2005

Akhil Kumar and Others

APPELLANT

Vs

University of Delhi
 Dr. Ajay Kumar Singh and Others
Vs University of Delhi and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0175

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Deepti Yadav, for the Appellant; Anurag Mathur, for the Respondent

Judgement

Gita Mittal, J.—By these writ petitions, the petitioners have sought a direction to the respondent to offer for admission 25.5% of the post graduate seats for the reserved category candidates for which the Post Graduate Medical Entrance Examination was held by the respondent and not out of the total seats including the seats reserved for All India Quota. As per the scheme of the entrance examination, 50% of the total seats are reserved for the local/state candidates while 50% of the seats are available for admission under what is described as the All India Quota. The petitioners are aggrieved by the failure of the respondent to clearly stipulate as to the manner in which the reservation for the Scheduled Caste/Scheduled Tribes category is concerned.

2. Learned Counsel for the parties have drawn my attention to an order which has been passed by the Apex Court dated 31st January, 2007 in WP (C) No. 138/2008 entitled as Abhay Nath and Ors. v. University of Delhi and Ors. By this order, the Apex Court has authoritatively laid down the manner in which the reservation for the Scheduled Caste/Scheduled Tribes candidates for the post graduate medical courses is to be implemented. This order deserves to be considered in extenso and reads thus:

This Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others,

directed that out of the Post Graduate seats to be filled up by the various colleges in India, 50% of the seats shall be admitted on the basis of All India Entrance Examination. It was directed that out of the total number of seats, 50% of the open seats shall be filled up by All India Entrance Examination. Thereafter in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, , it was explained:

That is a total misreading of our Judgment. What we have said in our Judgment is that after providing for reservation validly made, whatever seats remain available for non-reserved categories, 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for other belonging to non-reserved categories. According to our Judgment, 30% of 70% seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference.

And in *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, , it was clarified:

That not less than 25 per cent of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All India Entrance Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled.

In *Saurabh Chaudri and Ors. v. Union of India* and Ors. 2003 2 SCC 146, the percentage of seats to All-India Entrance Examination was increased to 50%. Another writ petition was filed in this Court in *Buddhi Prakash Sharma v. Union of India*. In this writ petition an order was passed by this Court on 28.2.2005, wherein it was stated that the total number of Post Graduate Seats on All India Basis would be worked out on the basis of 50% of the total number of seats without any exclusion. The order indicated that out of 50% that are allocated are to be admitted by All India Entrance Examination and it was made clear that there shall not be any seats excluded on reservation.

The Additional Solicitor General pointed out that in the All India Quota of 50% seats, if 22.5% are reserved for SC/ST students, it would be difficult for the State to give the entire percentage to reservation out of the 50% seats left for them to be filled up. It is equally difficult for the DGHS to have the entire 22.5% reservation out of the 50% of the seats allotted to be admitted in the All India Entrance Examination. Therefore, it is suggested that the Union of India has decided to provide 22.5% reservation for SC/ST candidates in All India Quota from the academic year 2007-2008 onwards. The Union of India seeks clarification of the order passed in *Buddhi Prakash Sharma v. Union of India*

passed on 28.2.2005, to the effect that 50% seats for All India Quota shall include the reservation. We review that order and make it clear that the 50% of the seats to be filled up by All-India Entrance Examination shall include the reservation to be provided for SC/ST students. To that extent the order passed on 28.2.2005 is clarified.

I.A. No. 7/2007 in WP (C) No. 18/2005 is disposed of accordingly.

3. It has been pointed out by learned Counsel for the parties that this order passed by the Apex Court is required to be implemented.

Learned Counsel for the respondent submits that on some aspects, a clarification has been sought from the Apex Court.

4. There is no dispute that all issues raised in the present matter have been considered by the Apex Court in its authoritative directions in the order dated 31st January, 2007 which binds consideration of the issues raised in these writ petitions. The same would bind the parties before this Court.

Accordingly, these writ petitions and all pending applications are disposed of with the directions to the parties to ensure compliance with the Apex Court's decision in its order dated 31st January, 2007 passed in W.P. (C) No. 138/2008 noticed hereinabove. Needless to say, in case any clarificatory or further directions are issued with regard to any aspect of the matter, the parties shall ensure compliance thereof.

There shall be no orders as to costs.