

(1992) 09 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Petition No. 1766 of 1992

Aman Deep Singh Chopra

APPELLANT

Vs

Delhi University and Another

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Citation : AIR 1993 Delhi 102 : (1993) 1 ILR Delhi 238 : (1992) RLR 468

Hon'ble Judges : Sunanda Bhandare, J;A.D. Singh, J

Bench : Division Bench

Advocate : R.K. Khanna and S.K. Kaul, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) Faculty of Management Studies, University of Delhi, issued an advertisement in The Hindustan Times calling for applications for M.B.A. (Full-Time) Programmes beginning from July 1992. Candidates who had degree in Arts, Commerce or Social Science, Science., Maths, Statistics or Operations Research, Medicine or Engg. & Technology with minimum percentage of marks given in the said advertisement as per details below were eligible to apply.

Bachelors Degree in 10+2+3 Schemes other than 10+2+3 Arts, Commerce or Social Science 50% 55% Science 55% 60% Maths, Statistics or operations Research 60% 65% Medicine or Engg. & Technology 60% 60% or Post Graduate or 2nd Degree examination securing at least 60% marks.

(2) The advertisement indicates that 22.5% seats are reserved for Scheduled Caste & Scheduled Tribe candidates and 5% seats are reserved for children / widows of armed personnel killed "disabled in action during the hostilities. A further 5% concession of marks was allowed to the above categories of candidates for the purpose of determining their eligibility. All the eligible candidates who applied pursuant to the advertisement were required to appear in the admission test in the first instance and thereafter if successful they were to be called for interview. The petitioner applied for admission to the M.B.A.

course and vide letter dated 28-10-1991 sought educational concession provided by the University of Delhi in the reserved quota of wards of armed personnel disabled in action. He enclosed the Battle Casually Certificate of his father. Respondent no. 2 required the petitioner to appear for the written test which was held on 19-1-1992 at 2 P.M. and the petitioner was allotted Test Roll No, 7176. The petitioner appeared in the admission .test Along with other eligible candidates and thereafter the respondents published a list declaring the result of the admission test. The petitioner approached the office of respondent no. 2 when he was informed that he was the only person who had applied against 5% quota reserved for children /widows of armed personnel killed/disabled in action during the hostilities. However the petitioner was not called for interview. He, Therefore, made a representation to the respondents and in response to that representation, the petitioner was informed that "only 5%- relaxation in the eligibility was available to the petitioner and even after giving him 5% relaxation he did not become eligible to get admission and, Therefore, he was not called for the interview. The petitioner feeling aggrieved by the refusal of the respondents to give admission to the M.B.A. course has filed the present writ petition under Article 226 of the Constitution of India.

(3) It was submitted by the learned counsel for the petitioner that the petitioner was entitled to be considered in the "5% reserved quota for the children \\\nwidows of armed personnel killed^ disabled in action during the hostilities and the refusal of admission by the respondents, though he was the only candidate in the reserved category, was unjustified. It was submitted that according to the Delhi University Rules the respondent was required to prepare separate merit list of the result of the written test/ screening test for each reserved category and the method of applying the reservation adopted by the respondents was contrary to the said rules. It was further submitted that 5% relaxation in the eligibility .criteria was over and above the concession of reserved seats and thus the petitioner was entitled to admission in the 5% reserved quota.

(4) In reply to the show cause notice the respondents admitted that a common merit list of candidates was prepared which included the candidates who had applied in the reserved category for Scheduled Castes and Scheduled Tribes as well as the reserved category for children widows of armed personnel killed/ disabled in action during the hostilities. It was however submitted that apart from giving 5% relaxation in the eligibility criteria, further 5% relaxation was given after the admission test. It was submitted that there are 90 seats for the Mba Course and 450 candidates in the order of merit in respect of the written test held were called for interview i.e. the number of candidates called for the interview were "n the ratio of 1:5 in respect of the total seats available for the course. Marks are allotted to the candidates in the interview and after adding the interview and written test marks the final merit list is drawn up. In order to maintain high standard of proficiency required for the course in drawing up the list of candidates who are successful in admission test to qualify in the personal interview no reservation is made because it is felt that the candidates in the

reserved category should have a minimum level of proficiency. Counsel submitted that the candidates called for interview are five times the number of seats available and all the reserved quota candidates who were in first 450 in the merit list were called for the interview and selected. In other words, if a candidate who had applied in the reserved category was at S. No. 450 in the merit list of the written test he was called for interview though he had less marks than other candidates and given admission. Further he was given 5% relaxation in marks even in the written admission test. Since the petitioner was not in the first 450 candidates in the merit list even after he was given 5% concession in the marks in the written admission test, he was not called for the interview and thus not selected. Learned counsel submitted that in order to get the best talent, no minimum qualifying marks were fixed. It was submitted that in view of the specialised nature of the course it was considered inexpedient to have a separate merit list turn the two reserved categories, learned counsel further submitted that the Mba Course is a professional degree course requiring a minimum level of proficiency and intellect and the court would not interfere with the standard of proficiency fixed by the University for admission of students to the said course.

(5) The petitioner is admittedly a ward of a disabled army officer and is thus eligible for educational concession offered by the Delhi University for the Mba Course. He is a Science Graduate having done his B.Sc. (Gen.) from St. Stephen College, Delhi securing 63.4 % marks. Admittedly, he was the only candidate in the reserved category meant for children/widows of armed personnel killed/disabled in action in 1971 Indo Pak War. The petitioner appeared in the written admission test but was not in the first 450 candidates out of the total candidates who had appeared in the test. Since the respondents had not fixed the minimum percentage of marks qualifying the written test, though the petitioner had obtained 141.09 marks out of 400 marks in the said test he was not called for the interview. As such though he was the only candidate in the reserved category for children/widows of armed personnel killed/disabled in action during the hostilities, he was not given admission to the Mba course.

(6) In our view, the method adopted by the respondents in working out the quota is not correct. Though the respondent had not fixed the minimum marks for qualifying the written test, the respondents could not mix the reserved category candidates and general category candidates. The purpose of providing reservation is to equalise the persons who are otherwise unequal by providing reservation for them thereby making them equal to others. Thus by mixing the list of general category candidates as well as the reserved category candidates, the reservation was completely watered down thereby depriving the candidates who were entitled to admission in the reserved categories because they were made to compete with candidates in the general category. It appears that in the process the respondents completely by-passed the reservation." We asked the learned counsel for the respondent to furnish information giving the particulars of marks of the candidate who was at S.No. 450 in the written test and the marks obtained by the petitioner and also the number of Scheduled Caste and

Scheduled Tribe candidates called for interview. We find that the marks obtained by the candidate at S.No. 450 were 190 out of 400 whereas the marks obtained by the petitioner were 141.09 out of 400. The number of Scheduled Caste and Scheduled Tribe candidates who appeared in the written test Were 394 out of which only one candidate in the Scheduled Caste and Scheduled Tribe category was called for interview and he had obtained 203.42 marks out of 400 and the lowest marks obtained by Scheduled Caste and Scheduled Tribe candidate were 21.46 out of 400. By adopting the method the respondents completely eliminated all the candidates excepting one from the Scheduled Caste and Scheduled Tribe category and also deprived the only candidate from the category of children/widows of armed personnel killed /disabled in action during the hostilities from getting admission to the course.

(7) As observed hereinabove 22.5% seats are reserved for Scheduled Caste and Scheduled Tribe candidates and 5% seats are reserved for children /widows of armed personnel killed / disabled in action during the hostilities. None of them was successful in getting the admission. The relevant portion of the advertisement reads as follows :

"RESERVED seats : (i) 22.5% seats are reserved for Scheduled Caste/Tribe Candidates, (ii) 5% seats are reserved for children/widow of armed personnel killed/disabled in action during the hostilities. Note : 5 %. concession of marks is allowed to the above category of candidates for the purpose of determining their eligibility."

From the advertisement it is clear that 5% concession of marks is allowed to the reserved category candidates for the purpose of determining their eligibility.- That means : "If a candidate from general category was required to get minimum 50% marks in Arts, Commerce, Social Science in the 10+2+3 Scheme, a candidate from the reserved categories would be eligible to apply even if he had obtained 45% marks in the said course. 5% concession of marks is not meant to be given in the Entrance Admission Test. Admission test and interview is prescribed because larger number of candidates apply for fewer seats and the University must give preference to the best of those who have applied. Thus, if there are more number of Scheduled Caste and Scheduled Tribe candidates who have applied for admission in the reserved category meant for them, out of these Scheduled Caste and Scheduled Tribe candidates the best have to be selected and similarly for the children/widows of armed personnel killed [disabled in action during the hostilities and general category. In fact, this question was considered by the Academic Council in its meeting held on 14-6-1983 regarding reservation of seats for Scheduled Caste and Scheduled Tribe candidates and the relevant portion of the resolution reads as follows :

"(3)Where the admission is based on screening/written test, both for undergraduate and Post-graduate course the Scheduled Caste/ Scheduled Tribe candidates would also be required to the same but their merit list drawn separately and operated as per the reservation quota."

(8) It appears that in the present case the respondents did not follow the resolution of the Academic Council and a Common merit list was prepared for the reserved and general category of candidates. The normal course which is followed in admission test is that minimum qualifying marks are fixed and the list of candidates who qualify the test by getting the minimum qualifying marks is prepared separately for general category and for reserved category. The best from each category is taken according to the availability of seats for that particular category. If sufficient number of candidates are not available from a reserved category because they have not got the minimum qualifying marks, then the seat may be offered to a candidate from the general category, according to his position in the merit list. "I he respondents failed to follow this procedure. Thus, the petitioner though was the only candidate in his category was deprived of admission.

(9) The Supreme Court in *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, while dealing with admission to medical college observed :

".. . .As the number of candidates seeking admission to Medical Colleges largely exceed the number of the vacancies available to such candidates for admission, some kind of procedure has to be evolved for such selection. The process of selection of candidates for admission to a medical college out of the candidates eligible for admission for filling up the limited vacancies has no real bearing on the question of eligibility or qualification for admission or on the standard of medical education. The standard of medical education really comes into the picture in the course of studies in the medical colleges or institutions after the selection and admission of candidates into medical colleges and institutions. . . . "

(10) The Supreme Court in *Aarti Gupta and Others Vs. State of Punjab and Others*, , expressed a similar view and held that if on account of non-availability of successful candidates for seats reserved for SC/ST candidates minimum pass marks for such candidates is reduced the Government's action is not arbitrary.

(11) The Supreme Court in *Atul Khullar and others vs. State of Jammu & Kashmir and others* 1986 Supp CC 225 has even approved the decision of the J&K University not to fix qualifying minimum marks for the reserved category and held that -the absence of minimum qualifying standard does not render the selection of candidates from reserved categories arbitrary and invalid. Thus, even when a candidate from the reserved category was not required to get the minimum qualifying marks, the Supreme Court approved .that procedure and observed as follows :

"13.A complaint, has been made by the petitioners that in the case of candidates from reserved area categories no qualifying minimum has been prescribed and, Therefore, no matter what the marks attained by him the candidate has to be regarded as entitled to selection. It is contended that the absence of a minimum qualifying standards renders the selection of candidates from reserved area

categories arbitrary and invalid. The contention must fail. In the first place, the advertisement calling for applications for admission to the Medical Colleges clearly prescribes the minimum percentage of marks required in the specified examinations as a condition of eligibility. While a minimum percentage of marks has been prescribed for candidates generally, a lower minimum percentage has been laid down for candidates belonging to the categories of Scheduled Castes, gajjars, backwards and candidates hailing from the districts of Leh and Kargil. That ensures that candidates with a sufficiently suitable academic level are alone permitted to apply. It can be expected that having regard to the minimum qualifying percentage applied as a condition of eligibility for the purpose of submitting applications, the minimum percentage of marks attained by candidates from the several categories in the entrance examination will not fall below a reasonable level. There is no doubt that no minimum has been prescribed as the bottom line for selecting candidates from the reserved categories, but no such minimum has been prescribed for selecting candidates from the general category either. There is a limited number of seats, and the allocation of those seats between candidates from the general category and candidates from the reserved categories has been fixed. The rule must be that candidates are selected for admission from the different categories according to the order of merit."

(12) The Supreme Court in *N. Subhadra Amma Vs. State of Kerala and others* 1986 SUPP 672 SCC 4 in somewhat similar facts held that the decision of the High Court not to recommend the name of the appellant in that case because she was not in the first 14 candidates selected by the High Court was not correct. If the candidate belonged to Scheduled Caste because she would be entitled to be considered for appointment to fill up vacancy reserved for scheduled caste and she was the first in that reserved category.

(13) This court ordinarily does not interfere with academic selection and does not decide what the standard of proficiency should be for a particular course. There can also be no doubt that high standard of proficiency must be maintained in national interest. However, if there is no relaxation in standard of education or curriculum of studies for the candidates after their admission for the course and the standard of examination in curriculum remains the same for all there can be no drop in standard of proficiency provided the candidates who seek admission in the reserved category possess the minimum qualification and are eligible to seek admission to the course. The State is required to provide opportunity to the candidates belonging to the depressed classes and for that the State is entitled to make reservations for them in the matters of admission to various courses. It may be that some of them ultimately do not qualify but what is important is to provide an opportunity to get over a handicap.

(14) Thus the implementation should be such which will make the reservation effective and ensure that it benefits the candidates belonging to these categories for whose benefit and welfare the reservations have been made. Modifications

and variations in conditions regarding selection for admission must be such that the purpose for which the reservation has been made is achieved. We are of the view that if the procedure adopted for working out the quota is wrong, this court can certainly strike down the selections to ensure that the candidates from all categories get their rightful due. Thus once reservation of seats "or depressed class is announced the implementation must be strictly according to law.

(15) We are informed that the Course has commenced from the last week of July and if fresh selections are to be made several of the candidates who have got admission will have to be disturbed. These candidates are not parties to the writ petition. We find that none of the Scheduled Caste and Scheduled Tribe candidate who appeared in the written test have agitated against the process of selection by the respondent and only the present petitioner who is the lone candidate from the category for children/widows of armed personnel killed/ disabled in action during the hostilities has filed the present writ petition. He filed the petition before the Course began. In the circumstances, though we disapprove the procedure" followed by the University we do not wish to disturb the students who have already commenced studies in the course. However, we direct the respondent that so long as the present policy stands, separate merit list for each reserved category and general category shall be maintained in the future. We further direct the University to accommodate the petitioner in the Mba full time course, if necessary, by creating an additional seat so that he can pursue his Course for the academic year 1992. Rule is made absolute. The writ petition is allowed with costs.