

(2005) 06 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29555 of 2004

Anju Nagar

APPELLANT

Vs

Chairman Counseling Board - C.P.M.T.-2004/Mahanideshak
Chikitsa Shiksha Evam Prashikshan, Chairman C.P.M.T.-2004/
Vice Chancellor Chaudhary Charan Singh University, Shri
Satya Kant Tiwari and Shri Pradip Khariya

RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Citation : (2005) 4 AWC 3868

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Mool Behari Saxena and P.N. Tripathi, for the Appellant; Mahendra Pratap, Anurag Khanna, Indra Raj Singh and R.P. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri P.N. Tripathi on behalf of the petitioner, Sri Mahendra Pratap on behalf of respondent No. 1, Sri Anurag Khanna on behalf of respondent No. 2, Sri Indra Raj Singh on behalf of respondent No. 3 and Sri R.P. Tiwari on behalf of respondent No. 4.

2. Petitioner Anju Nagar had appeared as a candidate in the U.P. Combined Pre-Medical Test held in the year, 2004 with Roll No. 1601597. The petitioner is physically handicapped and a member of Other Backward Classes. According to petitioner 27% of the seats are reserved for Other Backward Classes, while a reservation of 3% has been provided for physically handicapped category.

3. The result of the said entrance examination was declared in the month of June, 2004. The petitioner secured 1544 over all rank in Other Backward Classes category and 25 rank in physically handicapped category.

4. According to schedule published by the respondents, she reported for counseling on 16th July, 2004 before the Counseling Board. On 16th July, 2004

she was informed by the Counseling Board that no seat under the category of physically handicapped female candidate belonging to Other Backward Classes is available as all such reserved M.B.B.S. seats have already been fulfilled by the candidates of same category with higher merit.

5. According to petitioner the respondents granted admission to physically handicapped category candidates under the General category with lower in over all merit than the petitioner and therefore she has approached this Court by means of the present writ petition.

6. A counter affidavit has been filed by the Chairman, Counseling Board/Director General, Medical Health and Training U.P., Lucknow and the fact as stated by the petitioner in his writ petition, so far as the merit secured by her in entrance examination are concerned, has not been disputed. The relevant paragraph Nos. 4, 5, 6 and 7 of the counter affidavit read as follows:

"4. That in pith and substance the petitioner wants her admission in M.B.B.S./B.D.S. course in pursuance the result of C.P.M.T.-2004.

5. That the total seats for M.B.B.S. course are 629. As per reservation policy the vertical reservation is as follows:-

(i) 50% = General category. (ii) 27% = Other Backward Class Category, (iii) 21% = Scheduled Caste Category. (iv) 2% = Scheduled Tribes Category

There is also horizontal reservation, which are given as follows:-

(i) 3% = Physically Handicapped. (ii) 2% = Dependent of Freedom fighters. (iii) 2% = Dependent of War victims. (iv) 20% = Female candidates.

It has also been made dear that horizontal reservation could be compartmentalized. The petitioner has filed relevant extract of Brochure.

6. That out of 629 seats for M.B.B.S. course, 169 seats are reserved for Other Backward Class category. 3% seats for handicapped, from 169 seats, come as 5 seats. Following are candidates and their rank, who have been admitted for M.B.B.S. course:-

(i) Rajesh Kr. Singh = P.H. Rank-3 (ii) Ranjeet Singh = P.H. Rank-5 (iii) Hari Kishan Yadav = P.H. Rank-8 (iv) Rajan = P.H. Rank-10 (v) Deepak Kr. Jaiswal = P.H. Rank-13

That rank of petitioner Anju Nagar is P.H. Rank-25. In this way the petitioner has not been admitted for M.B.B.S. course and she appeared in the counseling, but has not opted the seat, which were available for P.H. Rank-25.

7. That for general category, out of 314, 3% come as 10 seats. The name and rank of the candidate who have been admitted for M.B.B.S. Course are as follows:-

(1) Shekhar Puri = P.H. Rank-2 (2) Javed Akhtar = P.H. Rank-5 (3) Suresh Narain

Singh = P.H. Rank-7 (4) Mohd. Jafar = P.H. Rank-9 (5) Vivek Maheshwari = P.H. Rank-11 (6) Hari Om Nigam = P.H. Rank-15 (7) Ruchi Gupta = P.H. Rank-17 (8) Reena Singh = P.H. Rank-21 (9) S.K. Tiwari = P.H. Rank-26 ----- (10) Pradeep Kharya = P.H. Rank-27 -----

7. In this way Pradeep Kharya P.H. Rank- 27 has been admitted for M.B.B.S. course.

8. From the facts, which have been stated in the counter affidavit, it is apparently clear that the candidates belonging to physically handicapped category of General category namely Sri S.K. Tiwari and Pradeep Kharia, who were lower in merit than petitioner in physically handicapped category having secured rank 26 and 27 in the said category (Physically Handicapped), have been granted admission in the M.B.B.S. Course.

9. The explanation furnished for grant of admission to the members of the General category lower in merit than the petitioner in physically handicapped category has been stated to be based on the fact that the petitioner being a member of Other Backward Classes category was entitled to be considered within 3% quota of physically handicapped in the said reserved category alone, namely that the petitioner was entitled to be considered against the 3% seats reserved for physically handicapped within 27% quota of Other Backward Classes category (i.e. 5 sets of OBC Category).

10. The said stand has been taken on the basis of compartmentalization of the horizontal and vertical reservation in respect of the members of the Other Backward Classes category and in light of the conditions mentioned in the brochure for the C.P.M.T. Entrance Examination-2004, copy whereof has been enclosed as Annexure-4 to the counter affidavit filed by Sri Pradeep Kharya, which reads as follows:-

? ----- mi;qZDr gkfj;ksUVy vkj{k.k ds vk/khu vkus okys vH;fFkZ;ksa ls ;g Hkh visf{kr gS fd os viuh vkjf{kr Js.kh ls lacaf/kr izek.k&i= ds lkFk&lkFk ;fn vU; fiNMs oxZ] vuqlwpfr tkfr vFkok vuqlwpfr tutkfr ds gSa rkd blls lacaf/kr fooj.k iqfLrdk esa fu/kkZfjr izek.k&i= Hkh vo"; HkjsaA mi;qZDr gkfjtkUVy vkj{k.k ? lEcU/kr dEikVZesUVykbTM? gksxkA mi;qZDr izR;sd Js.kh esa eSfjV ds vk/kkj ij p;fur vH;fFkZ;ksa dks vuqlwpfr tkfr@vuqlwpfr tutkfr@vU; fiNM+s oxZ@lkekU; Jsf.k;kss esa ls ml Js.kh esa j[kk tk;sxk ftlls og lacaf/kr gS A mnkgj.kkFkZ ;fn Lora=rk laxzke lsukuh ds vkfJrksa dk izn?k vkj{k.k ds vUrxZr p;fur dksbZ vH;FkhZ lhVksa esa lek;ksftr fd;k tk;sxk A fodykax vH;fFkZ;ksa dh fodykaxrk bl lhek rd u gksxh fd fpdfRlk fpdfRlk esa ck/kd gksA ?

11. In view of the aforesaid, it is contended on behalf of the respondent that since compartment providing for reservation of physically handicapped category within the Other Backward Classes, persons higher in merit than the petitioner have been admitted and thereafter no seat is left within the said compartment for admission being granted to the petitioner in the M.B.B.S. Course. It is

submitted that the petitioner cannot be considered in respect of the seats within the quota of physically handicapped which may be available in General category, although persons lower in merit than the petitioner in the physically handicapped category belonging to General category may have been admitted in the said quota.

12. In the short, the controversy between the parties is as to whether the candidate belonging to Other Backward Classes category, who claims reservation of physically handicapped category is entitled to be admitted in accordance with her over all merit against the seats which are available in the General category for physically handicapped or not

13. On behalf of the respondent Sri Indra Raj Singh has contended that even if the petitioner had any right to be considered for admission against the M.B.B.S. Course, this Court may not pass an order directing the respondents to grant admission to petitioner at such a belated stage in view of the circular of the Medical Council of India, which is statutory in nature, dated 15.9.2004, which in turn is based upon the directions issued by the Hon''ble Supreme Court in the case of Medical Council of India Vs. Madhu Singh and Others, .

14. Sri R.P. Tiwari submits that respondent No. 4 has already been admitted to the M.B.B.S. Course and has completed nearly 8 months of teaching in the said course and, therefore, this Court may not pass orders affecting the academic career or" the respondent Nos. 3 and 4 inasmuch as no fault can be attributed to the said respondents in respect of the admission granted in their favour.

15. I have heard counsel for the parties and have gone through the records of this petition.

16. Petitioner is a member of Other Backward Classes belonging to physically handicapped category. She has secured 25th position in the physically handicapped category pursuant to the entrance examination. The ranking secured by the petitioner and Respondent Nos. 3 and 4, who have been admitted in M.B.B.S Course, is as follows:

Name All over ranking rank in P.M. category 1. Anju Nagar (petitioner) 1544 25
2. Satya Kant Tiwari 3941 26 3. Pradeep Kharia 3980 27

17. It is not in dispute that the persons, who have secured lower overall ranking than the petitioner in physically handicapped category, namely Satyakant Tiwari and Pradeep Kharia have been granted admission in the M.B.B.S. Course under the physically handicapped category against the seats within the open category. The petitioner, although higher in overall ranking in the physically handicapped category than the aforesaid two persons, has been denied admission against the open category seats on the ground that the petitioner being a member of Backward Classes is entitled to be admitted in the compartment worked out after vertical and horizontal reservation belonging to O.B.C. category only. It is submitted that the persons higher in the merit than the petitioner have been

adjusted in the said compartment. The petitioner has no right to be admitted against the general category seats reserved: for Physically handicapped. The aforesaid contention of the respondents has been supported on the strength of the conditions as mentioned in the brochure published for the C.P.M.T. Examination-2004, referred to above.

18. In the opinion of the Court, the aforesaid stand taken by the respondents is patently illegal and based on the complete misreading of the conditions of the brochure. It may be pointed out that the compartmentalization is provided for only in respect of Backward Classes category seats, Scheduled Caste category seats and Scheduled Tribe category seats only. There can be no compartment so far as the open category seats are concerned as the open category seats cannot be said to be vertically reserved for general category of persons to the exclusion of other persons belonging to the reserved category and therefore the issue of any compartment being formed in respect of the said open category does not arise. The aforesaid circular has to be read in a manner to make it in conformity with the judgment of Hon''ble Supreme Court reported in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, wherein it has been held that if a reserved category candidate is selected or admitted on the basis of overall merit, it cannot be said that the quota reserved for the said category has been occupied. Meaning thereby the candidate belonging to Scheduled Castes/ Scheduled Tribes and Other Backward Classes continue to be a member of the open category and if they enter into the list of meritorious candidates on the basis of their overall merit in the said open category, his right for admission against the said open category seats cannot be denied on the ground that he is member of Scheduled Castes/Scheduled Tribes or Other Backward Classes. As a matter of fact the nomenclature given to the general category is in itself incorrect, it would be more appropriate to name the same as open category where all category of persons name general, reserved can complete and are to be admitted as their overall ranking.

19. In such circumstances, this Court has no hesitation to hold that the condition mentioned in the brochure has been misread by the respondents and the right of the petitioner to be admitted in the open category seats, reserved for physically handicapped candidates, has been illegally denied.

20. The purpose of reservation in favour of Scheduled Caste/Scheduled Tribe and Other Backward Classes category students cannot be used as a toll to oust the claim of candidates of physically handicapped category who compete with the open category belonging to said category and have secured more merit than the candidates, who have been offered admission in the open category.

21. The contention of the respondents that in view of the judgment of the Hon''ble Supreme Court in the case of *Medical Council of India Vs. Madhu Singh and Others*, read with the circular of the Medical Council of India dated 15.9.2004 the admission cannot be granted to the petitioner after expiry of cut of date, has to be read with the latest judgment of the Hon''ble Supreme Court

reported in 2004 (23) All Ind Cas 96; Dolly Chhanda v. Chairman, JEE and Ors., wherein in practically similar circumstances the Hon"ble Supreme Court in para 10 has provided as follows:

"The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic years."

22. Applying the principle so provided for by the Hon"ble Supreme Court, in the facts of the case, the petitioner had qualified JEE 2004. The fault for her being not admitted lies with the respondents, who had adopted an illegal and unsustainable approach to the matter and since the said academic year has already commenced, it would be fair to direct that the petitioner should be given admission in the M.B.B.S. Course in any of the State medical colleges in the current academic session.

23. The writ petition is accordingly allowed with costs. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filled up. one extra seat shall be created for her.