

(2011) 09 DEL CK 0108

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6654 of 2010

Ankit Abhishek

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 3, 5, 5(1)

Citation : (2011) 09 DEL CK 0108

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : V. Elan Cheliziyan and Javed Hussian Khan, for the Appellant; M.J.S. Rupal, for R1, Rajinder Nischal, for R6 and Neeraj Chaudhari, for UOI, for the Respondent

Judgement

Sanjiv Khanna, J.—This common order will dispose of the above mentioned appeal and the writ petition. Ankit Abhishek and Ashhar Musharib Firdausi belong to Other Backward Classes (OBC, for short) and had secured 92nd & 97th rank in the Delhi University/Dental Entrance Test 2010, having obtained 433 and 429 marks. They were denied admission and accordingly have approached this Court.

2. Ankit Abhishek has filed Writ Petition (Civil) No. 6654/2010. The said writ petition is being decided by the present order.

3. Ashhar Musharib Firdausi had filed Writ Petition (Civil) No. 4378/2010 which has been disposed of vide decision dated 11th August, 2010 by the learned Single Judge. In the said decision, the learned single Judge has examined the Central Educational Institutions (Reservation in Admission) Act, 2006 (Act, for short), and interpreted Sections 3 and 5 thereof. Learned Single Judge has held that 27% reservation for OBCs had come into effect immediately and was not dependent upon increase in seats as per Section 5 of the Act. However, Ashhar Musharib Firdausi was denied admission by the learned Single Judge for the reasons given in paragraph 21, which for the sake of convenience is reproduced

below:

21. The next question however which arises is of the relief to be granted. It is informed that if 27% reservation for OBCs in Maulana Azad Medical College were to be effected, 39 seats would become available and the Petitioner would qualify for admission thereto. However, the fact remains that none other except the Petitioner has approached. The session has already begun. If at all in view of the interpretation followed above, any OBC candidate is to be admitted even against the one seat ordered to be kept vacant under the interim order of this Court, the entitlement thereto is of the OBC candidate next in queue and not of the Petitioner. I, therefore, do not deem it appropriate to grant any relief to the Petitioner. However, with effect from the next academic year, Maulana Azad Medical College & Lady Harding Medical College are directed to carry out the mandate of the Act by reserving 27% of the seats for OBC candidates, irrespective of whether they have complied with Section 5(1) or not.

4. The aforesaid observations as a result of which Ashhar Mursharib Firdausi has been denied his prayer are under challenge in this appeal. Ashhar Musharib Firdausi has prayed that as he has succeed before the single Judge, direction to admit him must be issued. This is the issue in the appeal, LPA 657/2010.

5. By interim order dated 9th September, 2011, this Court had directed that two seats in OBC category will not be filled up without the leave of this Court. Ankit Abhishek and Ashhar Musharib Firdausi had claimed that they should be given admission in this year i.e. 2011 on the basis of their rank secured in 2010 examination.

6. The contention of Ankit Abhishek and Ashhar Musharib Firdausi is that they were wrongly and incorrectly denied admission last year i.e. 2010 and once their right was breached as held by the learned Single Judge, admission must be granted to them this year. Ankit Abhishek and Ashhar Musharib Firdausi have urged that their fundamental right cannot be waived and negated in this manner. Reliance is placed on *Bashesar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, . Reference is also made to *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and it is submitted that consequential relief must be granted once the writ petition is allowed. Reliance is placed on *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, that a seat can be created and a frutified right cannot be denied and benefit of admission must be granted.

7. We have considered the said contentions but for a number of reason, we feel that Ankit Abhishek and Ashhar Musharib Firdausi are not entitled to admission in the academic year 2011.

8. In *Tandan Kumar and Ors. v. University of Delhi and Anr.* W.P. (C) No. 5329/2008 decided on 10th September, 2008, a single Judge of this Court had noticed that the interim orders staying the Act were passed on 29th March, 2007 in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, . Thus, for all

practical purposes, the Act was enforced with effect from 10th April, 2008, except in Central Educational Institutions where OBC candidates might have been admitted in terms of Section 5 of the Act even prior to the order of the Supreme Court on 29th March, 2007. In Tandon Kumar's case (supra), it was noticed that as far as Medical Colleges are concerned, increase in intake capacity requires compliance of Medical Council Act, 1956. Similarly, the seats for SC and ST category are statutorily prescribed and cannot be reduced to accommodate the OBC category candidates. It was held:

12. In view of the aforesaid position, I am of the opinion that the Petitioners are not entitled to the relief prayed for in the present petition. The grant of reservations to the OBC has to be only from out of the additionally created/approved seats. Section 5(1) preserves the number of seats for the general category (unreserved seats) as were existing before the enforcement of the Act. Therefore, reservation for the OBC candidates can not be granted by reserving any seat from the unreserved general category seats. The percentage seats reserved for the Schedule Caste and Schedule Tribe candidates are also statutorily prescribed and cannot be reduced to accommodate the OBC category candidates.

9. Therefore, before the decision of the single Judge in W.P.(C) No. 4378/2010 filed by Ashhar Musharib Firdausi, decided on 11th August, 2011, the Act had been interpreted differently. It was held that 27% reservation for OBCs shall be out of the enhanced or increased seats and not out of the existing seats.

10. University of Delhi had also interpreted and understood that the Act requires creation of further seats and it is out of the new seats which are created, admission is to be granted under the OBC quota. Government of Delhi in their minutes dated 15th July, 2008, had accordingly directed the colleges under them to follow the following prescribed procedure:

On the subject matter mentioned above the Government of National Capital Territory of Delhi has decided as follows:

1) That reservation for OBC to the extent of 5% in the first year, over and above the existing reservation for SCs & STs at 15% and 7.5% respectively, be provided.

2) That reservation for OBCs be provided upto 27% based on actual requirement of OBC students, as may be assessed from time to time and taking into consideration the status of creation of infrastructure to provide for increase in seats on account of OBC reservation.

3) That reservation for OBCs and the corresponding increase in the total number of seats, in diploma, under-graduate and post-graduate seats be rolled out over a 5 year period.

11. As noticed above, Ashhar Musharib Firdausi had secured rank No. 97 and Ankit Abhishek had secured rank No. 92 in Delhi University/Dental Entrance Test,

2010. In view of the aforesaid position as was prevailing and in accordance with the decision in Tandon Kumar (*supra*), first 65 candidates in OBC category were admitted. Candidates who had secured ranks 66 onwards were not admitted. 14 and 34 seats had been reserved for OBC candidates in Lady Hardinge Medical College (which is for women) and U.C.M.S., respectively. No. seats could be added to Maulana Azad Medical College and there was No. reservation for OBC candidates in the said college. For additional seats in a medical college, the procedure prescribed under the Medical Council Act, 1956, has to be strictly followed. This requires decision on enhancement of seats by the Government of India in consultation and with approval of the Medical Council of India. Norms and parameters as stipulated have to be satisfied before enhancement of seats.

12. There are a large number of students who want to take admission in medical colleges but the seats are limited. The competition is intense. In terms of the Supreme Court direction, 15% seats in medical colleges are earmarked for all India quota. The students invariably inspire and seek admission in the most prestigious colleges but in most cases they have to take admission in second or third choice colleges because of the limited seats. A process called counselling is adopted to ensure that the students get admission as per their ranking in a college of their choice. This requires 2nd and 3rd stage counselling.

13. Ankit Abhishek had filed the writ petition on 28th September, 2010. By this time, the counseling process including counseling for the OBC category was already over. Seats had been filled up. The writ petition filed by him is clearly belated and this ground itself justifies denial of any relief. For this reason alone, Ankit Abhishek can be denied his claim for admission in the academic session in 2011.

14. The brochure/prospectus for Delhi colleges for admission in 2010 was published in January, 2010 and in the said brochure it was clearly indicated that 48 seats had been reserved for OBC category but No. seat was reserved for OBC category in the Maulana Azad College. Details of total seats available in the Delhi University Colleges was indicated. Ankit Abhishek and Ashhar Musharib Firdausi did not immediately come to Court and protest that OBC seats were less and the Respondents had wrongly interpreted the Act. Ashhar Musharib Firdausi filed this writ petition on or about 2nd July, 2010. He was obviously aware that the admission process had started. The results had been declared about a month back on 2nd June, 2010. On 5th July, 2010, an interim order was passed in the writ petition filed by Ashhar Musharib Firdausi that one seat be kept vacant if the Petitioner was found entitled. Thereafter, counseling started and admissions were made on 9th July, 2010.

15. There have been cases in which it has been directed that when an authority denies admission ignoring rules of admission, it must be held liable for their lapse and the wrong caused and injustice meted out to a deserving candidate should be addressed with a remedy/relief. Increase in strength is one of the solutions. However, in this case, as noted above, the decision of the Delhi High

Court in Tandon Kumar's case (supra), which was holding the field and the Respondents were acting as per the mandate in the said decision. Subsequently, vide decision dated 11th August, 2010, in Ashhar Musharib Firdausi's case, another single Judge differed with the view expressed in Tandon Kumar's case and held to the contrary. This decision dated 11th August, 2010, is after the admission process for 2010 was over. The said decision dated 11th August, 2010 has been accepted and now holds the field. In case we apply the said decision to students as per their ranks in 2010 exams to grant them admissions in 2011, it will have its own consequences and effect. Ankit Abhishek and Ashhar Musharib Firdausi had secured 92nd and 97th ranks and last selected OBC candidate had secured rank No. 65. Others from rank 66 onwards who were denied admission will also stake their claim and ask for admission in the year 2011. May be their claim as in the present cases would be denied on the ground of delay and laches but it is likely to open a Pandora's box and result in confusion and create problems.

16. In this connection, we may reproduce directions given by the Supreme Court in the recent decision dated 18th August, 2011 in P.V. Indiresan v. Union of India and Ors. Civil Appeal No. 7084/2011. In the said case, dispute had arisen about the term "cut-off marks". The contention examined was whether "cut-off marks" refers to the marks secured by the last general category candidate admitted to a particular course of study or the eligibility mark or minimum qualifying marks. It has been held that "cut off marks" refers to minimum "eligibility marks" or minimum "qualifying marks" if there is an entrance examination, and it does not refer to marks secured by the last General category candidate who has been admitted. After deciding the lis, the appeal was disposed of with the following directions:

41. We therefore, dispose of this appeal, affirming the decision dated 7.9.2010 of the learned Single Judge of the High Court, subject to the clarifications/ observations above, and subject to the following conditions:

(i) In regard to the admissions for 2011-2012, if any Central Educational Institution has already determined the 'cut-off marks' for OBCs with reference to the marks secured by the last candidate in the general category, and has converted the unfilled OBC seats to general category seats and allotted the seats to general category candidates, such admissions shall not be disturbed. But where the process of conversion and allotment is not completed, the OBC seats shall be filled by OBC candidates.

(ii) If in any Central Educational Institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/ qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats.

(iii) If the last date for admissions has expired, the last date for admissions shall

be extended till 31.8.2011 as a special case, to enable admissions to the vacant OBC seats.

17. Thus inspite of decision of the single Judge of this Court being affirmed, the decision of the Supreme Court was not given retrospective effect.

18. In the present case, we have been informed that Ankit Abhishek and Ashhar Musharib Firdausi had appeared in the Entrance Examination for the year 2011, but have not secured good enough ranking to secure admission in the OBC quota. In case direction is given to admit Ankit Abhishek and Ashhar Musharib Firdausi, some other students who have secured higher marks in the 2011 exam have to be denied admission.

19. In view of the aforesaid discussion, we decline and do not grant prayer of Ankit Abhishek and Ashhar Musharib Firdausi that they should be granted admission in the M.B.B.S. course in the academic year 2011 on the basis of their rankings secured by them in the Delhi University/Dental Entrance Test, 2010. The interim order is vacated. The appeal and the writ petition are disposed of. There will be No. orders as to costs.