

(1998) 11 AHC CK 0100

In the Allahabad High Court

Case No : Special Appeal No's. 632 of 1997 and 98 of 1998

Banaras Hindu University and another	APPELLANT
Vs	
Dr. Deepak Kumar Singh and another	RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1999 All 179 : (1998) 4 AWC 152 : (1998) AWC 152 : (1999) 1 UPLBEC 148

Hon'ble Judges : D.P. Mohapatra, C.J;G.P. Mathur, J

Bench : Division Bench

Advocate : V.K. Upadhyay, Pankaj Naqvi and Yogeshwar Prasad, for the Appellant; Fauzdar Rai, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—Special Appeal No. 632 of 1997 has been filed by Banaras Hindu University and two others against the judgment and order dated 29.5.1997 of a learned single Judge in Writ Petition No. 24962 of 1996. Special Appeal No. 98 of 1998 has been filed by Medical Students Association, Institute of Medical Science. Banaras Hindu University and another against the same judgment and order. Since both the appeals are directed against the same judgment and order, they are being disposed of by a common order.

2. Writ Petition No. 24962 of 1996 was filed by Dr. Deepak Kumar Singh and Dr. Rakesh Ranjan impleading (1) The Vice Chancellor, Banaras Hindu University, (2) The Banaras Hindu University through its Registrar and (3) The Director, Institute of Medical Sciences. Banaras Hindu University, praying that a writ of mandamus be issued commanding the respondents to grant them admission in Post Graduate Course (M.D./M.S.) on the basis of entrance examination on All India basis and for a writ of prohibition restraining the respondents to grant admission to the internal candidates belonging to the Institute of Medical Sciences, Banaras Hindu University on the basis of the mark-sheet.

3. The facts which emerge out of the affidavit filed by the parties are that the petitioner No. 1 passed M.B.B.S. from Patna Medical College and appeared in July, 1994 in the entrance examination held by B.H.U. for admission to Post Graduate Course. He, however, could not get the subject of his choice and was given admission in M.D. in Bio-Physics. The petitioner No. 2 also appeared in the same entrance examination but was unsuccessful in getting admission to a Post Graduate Course. Writ petitioners contend that the rule of reservation in the Institute of Medical Sciences of Banaras Hindu University is ultra vires the Constitution and it is on account of the aforesaid rule that the Writ Petitioner No. 1 could not get admission in a subject of his choice and Writ Petitioner No. 2 was denied admission. In the counter-affidavit filed on behalf of the University, it is averred that there are fifty seats in the M.B.B.S. Course in the Institute of Medical Sciences of Banaras Hindu University, admission to which is made on the basis of an All India Competition. There is no reservation regional or State-wise in the M.B.B.S. Course and admission is made purely on the basis of merit. There are 84 seats in the Post Graduate Courses in the Institute of Medical Sciences out of which 25 per cent seats are filled in through a competitive test conducted by the D.G.H.M.S., Government of India. The remaining 75 per cent seats are left to be filled in on merit, by the internal candidates having qualified at the Institute of Medical Sciences of Banaras Hindu University. For filling in these 75 per cent seats, no competition is held and admission is granted on the basis of the marks secured by the internal candidates in the M.B.B.S. examination. Since there are 84 seats in the Post Graduate Courses. 21 seats are ear-marked for All India admission through the competitive test conducted by the D.G.H.M.S., Government of India and the remaining 63 seats are filled in by the internal candidates. The effect of this policy of reserving 75 per cent seats for the internal candidates is that there are more seats than the number of candidates who have passed M.B.B.S. examination from the Institute. Since there are only 50 seats in the M.B.B.S. Course, all those who pass the aforesaid course are automatically assured of getting admission in a Post Graduate Course. The left out unfilled seats from within the 75 per cent Post Graduate seats are then filled in by an All India Competition conducted by the Banaras Hindu University.

4. The learned single Judge did not grant any effective relief to the writ petitioners as they had challenged the admission made in the year 1994 and by the time the writ petition was decided on 29.5.97. the Writ Petitioner No. 1 had almost completed the course which he had joined. The Writ Petitioner No. 2 was also denied any relief as a long period had elapsed and the session was coming to an end. The main finding recorded by the learned single Judge by which the appellants feel aggrieved is reproduced below :

"In view of the discussions made above, the reservation of seventy five per cent of seats to the Post Graduate Course in Institute of Medical Sciences, Banaras Hindu University, Varanasi, are held as invalid. The reservation can be only to the extent of fifty per cent of the students who had passed M.B.B.S. Course and the proportion of the reservation should be fixed accordingly to the Post Graduate

Course in the University. As regards super speciality courses, the Banaras Hindu University should not give institutional preference to any one."

5. We have heard Sri V. K. Upadhyay in Special Appeal No. 632 of 1997 and Sri Yogeshwar Prasad, Senior Advocate in Special Appeal No. 98 of 1998 and Sri Fauzdar Rai for the respondents (writ petitioners) at considerable length and have examined the record. The main question to be considered is whether the reservation policy of the Institute of Medical Sciences, B.H.U., whereby 75 per cent of the seats in Post Graduate Courses is reserved for the internal candidates, namely the students who have passed M.B.B.S. Course from the Institute is constitutionally valid and can be sustained in law.

6. The question of college-wise or institutional preference in the matter of admission to Post Graduate Courses has been considered in several decisions of the Supreme Court. In *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, , it was held as follows :

"Rule 4 (A) framed by Bombay Municipal Corporation and Rule 5 framed under the Maharashtra Government Resolution dated 18.6.1971 providing for college-wise institutional preference for admission to Post Graduate Degree and Diploma Courses in Medical Science is discriminatory and violative of Article 14. By the impugned rules, a classification has been sought to be made with the students of each particular college passing their M.B.B.S Examination from that college to the exclusion of all the students obtaining their M.B.B.S. Degree from other colleges. In order that a Classification is a permissible one within the meaning of Article 14 of the Constitution two tests are to be satisfied. namely. (1) that there is an intelligible differentia which distinguishes persons grouped together from those who are left out of the group ; and (2) that there is a rational nexus to the object sought to be achieved by the impugned rules. The object sought to be achieved by the impugned rules is obviously to prefer merit for the Post Graduate Course and to exclude less meritorious candidates. However by application of such rule of college based preference many meritorious students would be denied admission even though they had secured higher marks than those admitted in the Post Graduate Medical Courses by virtue of the impugned rules. Further there is no intelligible differentia for the classification by way of college-wise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification or college-wise institutional preference, merit has been sacrificed, far less it has been preferred So far as educational institutions are concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the test of Article 14 of the Constitution. The impugned rules are therefore, discriminatory and do not satisfy the tests of reasonable classification."

In *State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others*, , the Ordinance of University of Rajasthan which provided for uniform addition of five per cent marks to the students applying for admission to the Post Graduate

Courses in any one of the Five Medical Colleges, provided the student had passed his final M.B.B.S. examination from the college to which admission in Post Graduate Course was sought, was under challenge. After examining the effect of such addition of five per cent marks, the Court ruled as follows :

"This analysis exposes the extremely unfair and unjust impact of the impugned rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of It the Impugned rule appears to extend or accord equal treatment of 5% weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of "apparent" equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive "reality". Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Article 14 of the Constitution of India."

In P.K. Goel and others Vs. U.P. Medical Council and others, , the guidelines issued by the University of Lucknow for the Post Graduate Medical Entrance Examination held on 12.1.1992 providing for a merit list for each college out of the institutional candidates of that college was challenged. The relevant clause G (ii) read as follows :

"Based on the marks obtained at the competitive entrance examination and the candidates choice of the course a merit list shall be prepared for each college out of the Institutional candidates of that college.

.....

" "Institutional candidate" shall mean a student who has obtained M.B.B.S./M.D.S. degree of that University/Institution.

"Institutional seats" shall mean 75% of total seats available for Post Graduate Degree Diploma Courses in an Institution after excluding 25% seats to be filled by the All India Competition called the All India M.D./M.S./Diploma/M.D.S. Entrance Examination."

7. The Court after referring to the earlier decisions in State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, and Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, allowed the writ petition and struck down the Impugned Rule G (ii) laying down the provision for preparing a merit list for each college out of the institutional candidates of that college. It was reiterated that there Is no intelligible differentia for the classification by way of college wise Institutional preference as provided by the impugned rule distinguishing the preferred candidates in respect of each college from those excluded from such classification.

8. An Identical question has been examined In considerable detail in Dr. Chanemouga Soundaram C. and others v. All India Institute of Medical Sciences AIR 1996 Del 291. The subject-matter of challenge in this case was the 33 per

cent reservation for the M.B.B.S. Graduates of the All India Institute of Medical Sciences in Post Graduate Courses in the same Institute. Jagannadha Rao, C. J. (as his Lordship then was), after considering all the earlier Supreme Court decisions, held as follows :

"The All India Character of A.I.I.M.S. as per the Act, together with the fact that in M.B.B.S, the 40-45 students who join A.I.I.M.S. after a common examination, are themselves drawn from all over India, shows that the 33% reservation for A.I.I.M.S. students at Post Graduate level cannot be justified on a regional requirement basis. Nor is it a case of Post Graduate students from A.I.I.M.S. being expected to settle down in Delhi. It might be that A.I.I.M.S.. treated as an institution which confers degrees, could be treated as on par with a University but even so because of the object and purposes for which it is established and particularly that it is to be a high model institution for education, teaching and research for the entire country, there can be no reservation of seats on a University based preference, catering to regional needs."

On facts, there does not appear to be any difference between the case in hand and that of All India Institute of Medical Sciences except that in the Institute of Medical Sciences, B.H.U. 75% of the seats in Post Graduate Courses are reserved for internal candidates whereas in All India Institute of Medical Sciences, the reservation for the internal candidates was only 33%. The principle on which the reservation of thirty three per cent seats in All India Institute of Medical Sciences was struck down would apply with greater force in the present case.

9. Learned counsel for the appellants have referred to a large number of decisions in support of their submissions that the reservation of 75% seats for the internal candidates is valid. Strong reliance has been placed on Dr. Jagdish Saran and Others Vs. Union of India (UOI), ; Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; Nidha Marti Mahesh v. State of Maharashtra AIR 1986SC 1362; Sanjay Ahlawat v. Maharishi Dayanand University. 1995(2) SCC 762 and Dr. Dinesh Kumar v. Motilal Nehru Medical College AIR 1986 SC 1877. In our opinion, the cases cited are clearly distinguishable on facts. In Dr. Pradeep v. Union of India, the reservation policy was upheld on regional, consideration. This will be clear from the following observation made in para 19 page 1439 ;

"We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the P.U.C. or Pre-medical examination of the same University or clearing the qualifying examination from the school system of the educational hinterland of the Medical Colleges in the State."

Similarly, in Nidha Marti (supra). It was observed as follows :

"However, it would not be unconstitutional for the State Government to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality."

10. In *Sanjay Ahlawat*, the rule was that the Graduates of Medical College, Rohtak will be allotted ten additional marks in the selection test. There was no reservation of seats college-wise or University-wise but some preference was given to candidates based on domicile in Haryana. The factual position was that there is no other Medical College in the State of Haryana except the one at Rohtak. Therefore, the addition of ten marks was upheld on the ground that the extra marks awarded to the local medical graduates was for the purpose of ensuring that medical facility in the State is not impaired in any way because of dearth of doctors. It was expected that residents of Haryana, after obtaining medical degrees, will remain in Haryana and their services will be available to the people of the State.

11. Learned counsel for the appellants have laid great emphasis on college-wise institutional preference: However. In *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, and *P.K. Goel and others Vs. U.P. Medical Council and others*, , it was held to be unconstitutional and invalid. The principle of institutional continuity cannot, therefore, be accepted.

12. As mentioned earlier, there are only fifty seats in the M.B.B.S. Course and eighty four seats in Post Graduate Courses in the Institute of Medical Sciences, B.H.U. There is seventy five per cent reservation for the internal candidates which means sixty three seats are reserved for those students who pass M.B.B.S. from the Institute. The effect of such a reservation is that any one who passes M.B.B.S. examination from the Institute is automatically assured of a seat in the Post Graduate Courses. In the writ petition, a list has been given containing the names of the students and the marks secured by them in the M.B.B.S. examination. The candidate at Sl. No. 61 had failed in seventeen subjects, the candidate at Sl. No. 60 had failed in thirteen subjects and the candidate at Sl. No. 56 had failed in twelve subjects but they have all been given admission in the Post Graduate Courses. The M.B.B.S. Course is of four and half years duration. After getting admission In M.B.B.S., a student may not take the study seriously and may pass the course after failing for several limes, yet he will get admission in the Post Graduate Course on account of the 75% reservation of seats. The spirit of competition is completely lost. After getting admission In M.B.B.S. Course, all that a student has to do is to any how pass the said examination and after he passes the said examination, he is assured of admission in Post Graduate Course. To get a prized subject, all that a student is required to do is to give a better performance only amongst the fifty students who have initially got admission in the M.B.B.S. Course. This is bound to

generate a feeling of complacency. If there is no reservation or the reservation is a limited one, the student is bound to work hard as he will have to compete with all other medical graduates who will appear in the competition held for the purpose of selecting students for the Post Graduate Courses. Thus, the reservation policy of the Institute is wholly arbitrary and unconstitutional.

13. The learned single Judge has observed that institutional preference can be given only to the extent of fifty per cent of the successful students of the M.B.B.S. Course and this should be further reduced with the passage of time as observed In Pradeep Jain's case. He has also observed that an expert committee may be appointed by the University and after every three years, it may examine as to what extent it can reduce the percentage of reservation. The learned single Judge has further observed that there is no justification for giving any institutional preference to any student In super speciality courses as best talent should be produced by holding an open competition at the national level. We are In complete agreement with the view taken by the learned single Judge.

14. For the reasons mentioned above, we find no merit in these special appeals which are hereby dismissed. It is, however, made clear that all such students who had been granted provisional admission on the basis of the interim orders passed on 5.3.1998 and 27.3.1998 will be allowed to complete their courses in accordance with the rules and the judgment rendered in the writ petition and in the Special Appeals will not come in their way.