

(2003) 08 DEL CK 0014
In the Delhi High Court
Case No : CW 5184 of 2003

Chhavi Raj and Others

APPELLANT

Vs

The Vice Chancellor and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2003) 8 AD 501

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Santosh Kumar, for the Appellant; A. Mariapurtham, Maninder Singh and Abhinav Mukerji, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.

1.The challenge in this Writ Petition concerns the admission to the MBBS/BDS Courses-2003 for the Academic Year 2003-2004, and in particular to the failure of the Petitioners to grant admittance to the Petitioners in said course under the CWAPP Category.

2. A total of 20 seats are available under this Category, as is evident from the following Table:

Table Statement showing tentative number of seats in Under- Graduate course for the session 2003: . _____

_____ Name of Seats to be filled in by Medical University of Delhi. D.G.H.S. College GEN PH SC ST CWAPP
NGOI 15%Quota Seats Total MBBS Course HMC 44 1 19 10 6 30 20 130
MAMC 95 2 27 14 9 6 27 180 CMS 57 1 15 7 5 Nil 15 100 Total 196 4 61 31 20
36 62 410 BDS Course MAMC 12 3 2 Nil Nil 3 20 .

2. The Bulletin of Information published by the University of Delhi (Faculty of

Medical Sciences) from which the Table reproduced above has been extracted prescribes the following `Reservation"

""2.23. Candidates belonging to children and Widows of Armed and Para Military Personnel (CWAPP) category:

2.2.3.1 Under this category the seats will be filled in the following priority:

(i) The cases of Children/Widows of Armed Personnel killed/disabled in action during wars from 1947-48 onwards or those who died/disabled on duty will be considered first for admission to MBBS Course.

(ii) In case any seat remains vacant after admission of the candidates under category mentioned above, the cases of Children and Widows of Para-Military Personnel who died/disabled on duty will be considered.

(iii) In case some seats remain unfilled in this category, these will be filled up from non-reserved (General) category candidates.

2.2.3.2. In order to become eligible for the above concessions, the Children/Widows/Wives of the Officers and Jawans etc. will be required to submit the certificate from any one of the following authorities.

(i) Secretary, Kendriya Sainik Board, Delhi.

(ii) Secretary, Rajya/Zila Sainik Board.

(iii) Officer-in-Charge, Record Office.

2.4. Requirement of admission to MBBS/BDS courses.

2.4.2 Candidates, who have passed 12th class examination under 10+2 system conducted by the C.B.S.E./Council of the Indian School Certificate Examination/ Jamia Milia Islamia, New Delhi (except Patrachar Vidyalaya and Open School) with required subjects i.e. Physics, Chemistry, Biology, and English (Core) securing minimum 50% marks in aggregate (40% marks in aggregate for SC/ST category and PH category) in these subjects from the recognized schools conducting regular classes situated within the National Capital Territory of Delhi only, will be eligible for admission. The candidate must have studied 11th and 12th classes regularly from a recognized school within the National Capital Territory of Delhi.

2.4.7. The candidates should have secured minimum of 50% marks (40% marks in case of SC/ST category and PH category) in the DUMET."".

3.It appears that four candidates have been granted admission in this category of which only one has secured above 50% in the qualifying examination and the remaining have obtained marks which vary between 35% and 50%. All the Petitioners have obtained marks below 35%. They, however, contend that since 20 seats have been set apart for students falling under the CWAPP Category, and since they are placed in the first 16 short-listed candidates, admission ought to

have been granted to them regardless of their percentages. It is further argued that the percentage obtained by the Petitioners has no nexus or equation with the CWAPP Category and Therefore, reference to the percentage of marks obtained is wholly irrelevant. It is also contended that if the percentage of marks is to be taken into consideration it would defeat the reservation carved out under the said category. The submission is that the need to carve out reservations is directly attributable to the fact that children or widows of deceased/ disabled armed forces personnel palpably suffer from a disadvantage and Therefore, the existence of a minimum percentage runs counter to the rationale for the reservation and renders it otiose. This is highlighted in the present case by demonstrating the only four students have succeeded in this category and that the remaining 16 seats will revert to the General category.

4. The relevant Regulations of the Graduate Medical Education, 1997 promulgated by the Medical Council of India (MCI) reads as follows:

""5. Procedure of selection to MBBS course shall be as follows:-

(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above; (ii) In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfills the eligibility criteria under regulation 4.""

5. Mr. Mariapurtham, learned counsel appearing for the Delhi University had very candidly conceded that it is arguable that in granting a 10% remission of marks

to the Physically Handicapped Category, the Delhi University has unwittingly committed an irregularity. There is substance in this submission. However, Mr.Santosh Kumar, learned counsel for the Petitioners has very fairly not joined issue on this point. Since this remission of marks does not arise in the present Petition, no further consideration or reference thereto is warranted.

6.In this Petition it has been prayed that the Court issues a writ of mandamus directing the Respondents to admit the Petitioners to the medical colleges affiliated to the University of Delhi. The Rules and Regulations of the Respondents have not been challenged. This being the position the threshold objection of the non-maintainability of the Writ Petition is irresistible. In Union of India (UOI) Vs. Joginder Sharma, the Apex Court was concerned with a prayer for compassionate appointment to the family of employees who had died while in harness. The prayer was rejected; and the extracted observations are apposite to the case before me.

""Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxation, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India v. Asha Ramachandra Ambekar held that the courts cannot direct appointments uncompassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refused to the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.""

7.Even if the preliminary objection is ignored, the Petition is devoid of merit. It should be recalled that one of the requirements for admission to the above courses is that all aspirants falling with the CWAPP Category should have obtained 50% marks in aggregate. These are the standards established by the

Medical Council of India. A composite and complete answer is available from a reading of State of Madhya Pradesh and Ors. Versus Gopal D.Tirthani and Ors., wherein his Lordship Justice R.C.Lahoti, speaking for the Court has observed in his judgment dated July 28, 2003 as follows:

""In the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , the Constitution Bench has expressly discarded the submission that there need not be any qualifying marks prescribed for the common entrance examination. The Medical Council of India, as an expert body, is the repository of the nation's faith for laying down the extent of reservations, if any and the lowering of qualifying marks consistent with the broader public interest in having the most competent people for specialized training and the competing public interest in securing social justice and equality. Even when it is permissible to prescribe lesser qualifying marks for a reserved category (not a mere separate channel of entry of candidates) and the general category of candidates at the post-graduate level, there cannot be a big disparity between the two. The level of disparity in qualifying marks subjects to its being permitted by the expert body, must be minimal so that the candidates seeking admission into Post graduation can put up to a certain level of excellence. Referring to Ajay Kumar Singh and Others Vs. State of Bihar and Others, , State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, and Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., , the Constitution Bench observed that it is true that in spite of having been admitted through any channel or may be by reservation, merely because everybody has to take the same post-graduation examination to qualify for a postgraduate degree, it is not a guarantee of quality. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum marks and a person who qualifies with high marks. If excellence is to be promoted at the post-graduate level, the candidates qualifying should be able to secure good marks while qualifying. Attaining minimum qualifying marks has a direct relation with the standards of education. Qualifying marks is an assessment of the caliber of students chosen for admission. If the students are of a high caliber, training programmers can be suitably molded so that they can receive the maximum benefit out of a high level of teaching. If the caliber of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. The assemblage of students in a particular class should be within a reasonable range of variable caliber and intelligence, else the students will not be able to move along with each other as a common class. Hence, the need for a common entrance test and minimum qualifying marks as determined by experts in the field of medical education.

That minimum qualifying marks cannot be done away with is also the view taken by this Court in Dr. Sadhna Devi and others Vs. State of U.P. and others, . In Pre-

P.G. Medical Sangarsh Committee and Another Vs. Dr. Bajarang Soni and Others, , classification of in-service candidates as a distinct class by themselves was upheld. Relaxation of minimum qualifying marks for them to 33% as against 50% for others was upheld because at that period of time there was no stipulation to the contrary made by Medical Council of India. Dr.Bajrang Soni's case was decided on August 14, 2001 (though reported later); the same Bench of two learned Judges delivered the judgment in State of Punjab Vs. Dayanand Medical College and Hospital and Others,

, on October 11, 2001. By this time the Medical Council of India had framed the Regulations and Regulation 9 reproduced in the earlier part of this judgment was noticed by the Court. Preeti Srivastava's case (supra) too was considered. Then the court held-

"".....it is not open to the university or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this court to be the repository of the power to prescribe standards in postgraduate studies subjects, of course, to the control of the Central Government as envisaged in the Act Constituting the Council.""

The Court struck down the selecting of students who had secured marks less than the minimum prescribed by the MCI Regulations. The prescription made by the State reducing the minimum marks in the entrance examination for considering the eligibility of the candidates for admission to post graduate medical courses below the minimum prescribed by the Regulations framed by the Medical Council of India was directed to be ignored.""

8.With this Restatement of the law no room for any controversy remains. In the above passage His Lordship has drawn the distinction between permissible reservation under the Constitution, and a ""separate channel of entry of candidates"". In so far as the Scheduled Caste/Tribe candidates are concerned, the reservation is permissible under Article 16 of the Constitution; any category not falling within that Article may not be eligible for any reservation in the classical sense or a remission in minimum qualifications. Preferential treatment to categories other than Scheduled Castes and Scheduled Tribes can only be protected through the devise or stratagem of a ""separate channel of entry of candidates"". Therefore the Petitioners cannot claim exemption from fulfilling the minimum criteria set down by the Medical Council of India.

9.One question needs to be addressed immediately and it is this - if standards have been lowered to 40% for the Physically Handicapped candidates and if candidates 2 to 4 in the category of CWAPP have been granted admittance despite their not have secured 50% marks, should similar allowances be also

granted to the present Petitioners. In this regard two decisions of the Apex Court immediately come to mind, to the effect that one illegality ought not beget another. Hon''ble Mr. Justice B.P. Jeevan Redy, speaking for the Bench, made the following observations in Chandigarh Administration and another Vs. Jagjit Singh and another, :

""8. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favor of the petitioner on the plea of discrimination. The order in favor of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favor of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat the illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law -- indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law -- but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of the rule of law. Of course, if in case the order in favor of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitling of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course -- barring exceptional situations -- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the

authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (what is the position in the case or orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)""

10. On this very issue another decision of the Apex Court, viz. Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, is indeed relevant. Hon''ble Mr. Justice N.P. Singh, speaking for the Bench, made the following observations:-

""9. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen of court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favor of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favor of person who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favor or principle of equality before law. Neither Article 14 of the constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to other. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall-holders was impleaded a party to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favor of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of license fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution"".

11. In this analysis there are no grounds justifying the issuance of the writ of mandamus as prayed for in this petition. The Petitioners cannot contend that the Court should exercise its extraordinary powers to place them in the same category as SC/ST candidates. There is also no merit in the submission that since the CWAPP Category has been shown in the above Table in juxtaposition with Scheduled Castes, Scheduled Tribes and Physically Handicapped categories,

similar treatment should be accorded to them. The argument that if minimum standards/percentage are to be compulsorily adhered to, the bounty which is sought to be granted to persons falling within the CWAPP Category would be rendered or illusory, is not logical. The reality is that a student who has obtained only 50% marks in the qualifying test stands virtually no change when thrown into the competition in the General category. The culling out of a 'separate channel of entry' for such candidates is of undeniable and invaluable advantage as is manifest in the present case itself inasmuch as the first four candidates who have gained admittance to the post would have no semblance of a chance had the category not been carved out. The argument that the original certificates of the Petitioners have been retained by the Respondents and Therefore, estoppel should apply in favor of the Petitioners has to be rejected no sooner than it is stated. I had specifically queried Mr. Santosh Kumar as to whether any of the Petitioners had requested for the return of their certificates and the answer was in the negative.

12. Finally there is also no substance in the contention that these seats would revert to the General category. In *Dr. Sadhna Devi and others Vs. State of U.P. and others*, the Hon'ble Supreme Court issued a direction to the effect that "if the seats reserved for SC/St/OBC candidates cannot be filled up on account of failure of the candidates belonging to these categories to obtain the minimum qualifying marks, then such seats should be made available to the candidates belonging to the general category." This direction applies a fortiori to the CWAPP Category which is at best a separate channel of entry of candidates, in contradistinction to candidates enjoying a Constitutional reservation.

13. For these reasons the Petition is dismissed, but there shall be no Order as to cost.