
(2009) 04 DEL CK 0180

In the Delhi High Court

Case No : Writ Petition (C) 8019 of 2009 and CM-4543 of 2009

Deepmala Bhandar and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0180

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Shubhra Goyal, for the Appellant; A. Mariaputham and Anurag Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Heard the learned Counsel for the parties for disposal.

2. The writ petitioners seek an order or direction to the respondents to effectuate the reservation in terms of Clause 2.2 of the Bulletin of Information issued by the Delhi University for admission to the Post Graduate Dental Course (MDS) for the year 2009.

3. The petitioners contend that even though the Bulletin holds out the promise of reservation in Clause 2.2, nevertheless when the detail breakup of the seats available to each stream of the course was indicated in Table-III, no reservation had been provided.

4. The relevant portion of the Bulletin is as follows:

2.2 Reservation for Schedule Caste (SC)/Schedule Tribe (ST) and Other Backward Classes (OBC) category candidates:

A. Reservation for Schedule Caste (SC) and Schedule Tribe (ST) category candidates:

Fifteen percent (15%) seats are reserved for candidates belonging to SC and

seven & half percent (7 1/2 %) seats for ST candidates subject-wise as per the decision of the Academic Council/Executive Council.

The above said reservation would be applied and worked out after excluding All India seats and not against the total number of seats.

Provided that, if any seat (s) reserved for the candidates belonging to SC and ST categories remain unfilled due to non-availability of eligible candidate (s) under the category, shall be filled in the following manner:

(a) Such unfilled seat (s) will be offered to the eligible candidates of the other category i.e. seat (s) of SC category to ST category candidates or vice-versa as the case may be.

(b) If the seat (s) remain unfilled even after applying the above provision, the same shall be offered to the candidates belonging to General category.

(c) In MDS Course since the No. of seats are less than 7 there will be no reservation of SC/ST candidates.

A SC/ST candidate while applying for admission to any of the courses, should enclose a copy of the certificate along with the Application Form to the effect that he/she belongs to Scheduled Caste/Scheduled Tribe Category from any of the competent authorities as listed below without which, concession of Scheduled Caste/Tribune shall not be given:

(i) District Magistrate/Additional District Magistrate/Deputy Commissioner/Collector/Additional Deputy Commissioner/Deputy Collector/1st Class Stipendiary Magistrate/City Magistrate (not below the rank of 1st Class Stipendiary Magistrate/Executive Magistrate/Extra Assistant Commissioner).

(ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.

(iii) Revenue officer not below the rank of Tehsildar.

(iv) Sub-Divisional Officer of the area where the candidate and/or his/her family normally reside.

(v) Administrator/Secretary to Administrator/Development Officer (Laccadive and Minicoy Islands).

5. The Table along with its notes is as follows:

STATEMENT SHOWING TENTATIVE NUMBER OF SEATS IN VARIOUS POST-GRADUATE M.D.S. COURSES FOR THE SESSION 2009. S.NO.

SPECIALTY

TOTAL

MAIDS

1

Prosthodontics and Crown & Bridge

2

2

2

Peridontology

2

2

3

Conservative & Endodontics

2

2

4

Orthodontics & Dentofacial Orthopaedics

2

2

ABBREVIATION USED: MAIDS-Maulana Azad Institute of Dental Sciences.

Note: 1. Seats/Courses/Institutions may be added/deleted depending upon the status of approval from University of Delhi/Dental Council of India/Govt. of India, Ministry of Health and Family Welfare.

2. The above seats are total seats likely to be available in a course/institution and are inclusive of 50% All India Quota and Other reservations.

3. The MDS seats have been recognized by Dental Counsel of India.

6. Learned Counsel submits that the judgment of the Supreme Court in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, is categorical on the subject. It declares that reservations have to be worked out on the total intake of seats available and thereafter the All India Quota should be earmarked. It is submitted that this was affirmed by the Supreme Court in its ruling in Dr. Abhay Nath and Ors. v. University of Delhi and Ors. WP (C) 138/2006, decided on 31.1.2007.

7. Mr. A. Mariaputham, learned Senior counsel appearing on behalf of the Delhi University contends that the Delhi University has resolved that where the number of seats is available to be filled up is seven or less, there would be no reservation. He, however, conceded that after re-examination of the matter, the respondents

have decided in principle that the course of action indicated in Dr. Abhay Nath's case would be followed. It was submitted that stream or category wise reservation would not be possible, since the total seats available to be filled through the admission process undertaken by the Faculty of Management Studies would be only four. Learned Counsel, therefore, submitted that the University would indicate a roster system preferably choosing to adopt the 13 point roster as in the case of recruitment on All India basis by open competition where the reservation is indicated on a point by point basis, for different years. He further submits that subjects, in such circumstance, would be listed in alphabetical order and Table-III would be amended or changed, appropriately.

8. The judgment of the Supreme Court in Dr. Abhay Nath's case had re-collected the previous ruling in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; Dr. Dinesh Kumar (supra); Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , the Constitution Bench judgment in Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, and its previous order in Buddhi Prakash Sharma and Ors. v. Union of India and Ors. WP (C) 18/2005 dated 28.2.2005. The Court recorded the suggestion so far as NCT of Delhi is concerned in the following terms:

The Additional Solicitor General pointed out that in the All India Quota of 50% seats, if 22.5% are reserved for SC/ST students, it would be difficult for the State to give the entire percentage to reservation out of the 50% seats left for them to be filled up. It is equally difficult for the DGHS to have the entire 22.5% reservation out of the 50% of the seats allotted to be admitted in the All India Entrance Examination. Therefore, it is suggested that the Union of India has decided to provide 22.5% reservation for SC/ST candidates in All India Quota from the academic year 2007-08 onwards. The Union of India seeks clarification of the order passed in Buddhi Prakash Sharma v. Union of India passed on 28.2.2005, to the effect that 50% seats for All India Quota shall exclude the reservation. We review that order and make it clear that the 50% of the seats to be filled up by All-India Entrance Examination shall include the reservation to be provided for SC/ST students. To that extent the order passed on 28.2.2005 is clarified.

9. From the above discussion, it is evident that there was clarity in regard to the manner of working out of the reservation in the 50% All India quota for Post Graduate medical and dental seats. The Supreme Court took note of the differing approaches by various states and accordingly settled the issue as is evident from the conjoint reading in Buddhi Prakash Sharma's case and Dr. Abhay Nath's case, finally indicating that reservations should be made in the All India quota.

10. In view of the statement and concessions made today, the petitioner's grievance in the opinion of the Court stands redressed in the sense that the respondents have indicated that reservation would be provided for in respect of the four seats now available for counseling in the MDS course. Similar approach is also necessary in the MDS and other post graduate courses. It is submitted

that the University has already approved a similar proposal for reservations in other post graduate medical courses, where since the seats available are more, the 200 point roster has been adopted and would be put in place. Learned Senior counsel adverted to the proposal approved by the Delhi University on 2.4.2009.

11. In view of the above discussion, the Delhi University is hereby directed to take steps and ensure that all candidates who attend the counseling on the date fixed i.e. 13.4.2009 are suitably informed about the fact that reservations would be permissible as also the extent of such reservation. The criteria for effectuating such reservation, i.e. the roster points shall also be indicated clearly through appropriate means. It is open to the Delhi University to give publicity to this change on its website and communicate it, if feasible, to the individual candidates who are entitled to participate in the counseling. Learned Counsel also has assured the Court that in view of this development, the counseling would be put off by about a week or so, and that the candidates would be informed of this change on the date scheduled i.e. 13.4.2009.

12. Learned Counsel for the petitioners submits that in view of the above order, she would not be pressing the Writ Petition. The same is accordingly dismissed as withdrawn, but in terms of the above directions.

Order dasti under the signatures of Court Master.