

(1997) 12 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 25474 (W) of 1997

Dr. Buddhadeb Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Cal 200

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Tulsi Das Ray, for the Appellant; Dipankar Datta, for the University, for the Respondent

Final Decision : Partly Allowed

Judgement

Basudeva Panigrahi, J.—In this writ petition, petitioners sought a writ of mandamus against respondent commanding them to fill up the vacancy from the Scheduled Castes and Scheduled Tribes quota and seats meant for such candidates should not be filled up by the general candidates. The petitioners after completion of their studies in B.A.M.S. Ayurvedacharya from Calcutta University sought admission in M.D. (Ayurveda) Degree for Academic Session commencing from the year, 1997. It has been published by the Calcutta University in Clause 30 that 22% and 6% of the seats shall be kept reserved for Scheduled Castes and Scheduled Tribes candidates respectively. Two seats have been reserved for the scheduled Castes only in "Kayachikitsa Course" for the year 1997. But no reservation has been made in other three different faculties namely (i) Samhka-Sharir (ii) Dravyaguna-Vijnan (iii) Roga-Vijnan & Vikritivijnan.

2. The petitioners have further claimed that they are eligible for admission since they secured the requisite marks. Clause 4 of the brochure is quoted below :--

"The examination will consist of written test, Viva-Voce examination and the assessment of past career including training as houseman ship. Break-up of

marks for admission test for M.D. (Ay.) courses are shown below :--

(i) Written test 130 marks (ii) Viva-Voce examination 20 " (iii) Performance during houseman ship 5 " (one year houseman ship is essential, which will carry 2½ and Vi marks will be increased for every six months of houseman ship till five marks) (iv) Assessment of past career 40 "

(percentage of total marks obtained in the past examination should be divided by two and a half and added to the aggregate for assessment).

(v) Five marks weightage will be given to the candidates rendering services for continuously at least three years as Pravin Kaviraj (S.A.M.O.) provided the candidate obtains minimum qualifying marks. But in no case double benefit will be given to the candidate.

(vi) For written test, there will be one common question paper for all degree courses of Ayurveda It has, Fundamental principle of Ayurveda. Rasasastra Drabyaguna, Swasthavritta Agadhatantra Group "B" will coverall the Clinical subjects-Kayachikitsa, Shalyatantra, Shalakyantra, Byutavidya, Koumaravritya, Prasutitantra. One hundred thirty (130) objective type questions each bearing one mark are to be answered in 1 ½ hours (90 minutes) provided that for each incorrect answer there will be deduction of ½ mark as negative marking."

3. In Clause 5 it has been indicated as follows :--

"Eligibility marks for the purpose of selection in the M.D. (Ay.) course be fixed 50% in each of the category mentioned in Clause No. 4."

4. Petitioners have, inter alia, stated that the Government of West Bengal in its Notification Vide No. 905-TW/EC dt. 12-9-95 has prescribed that 22% and 6% of the seats shall be kept reserved for the Scheduled Castes and Scheduled Tribes categories respectively in all educational institutions including the other institutions mentioned in the said Notification. It was indicated that such reservation shall be maintained in all Universities, it was described in the above Notification that the candidates belonging to Scheduled Castes and Scheduled Tribes even possessing 25% less marks than the last candidate of the general category, they shall also be eligible for admission. In case, seats for the Scheduled Castes remain unfulfilled even after strictly following the guidelines, those seats may be filled up by the Scheduled Tribes candidates and vice versa.

5. The petitioners having appeared in M.D. (Ayurveda) Admission Test were expecting to be selected against those reserved seats but unfortunately the University authority did not inform the petitioners regarding their admission. Thus, they filed the present writ petition for an appropriate direction against the respondent, Calcutta University to provide the petitioners' seats in M. D. Course for the academic session, 1997.

6. Mr. Das Ray, the learned Advocate appearing for the writ petitioners has invited my attention that the petitioners had performed well in their written test

and therefore, they were all along expecting to get admission in M.D. (Ay.) Course but to their utter dismay no information came from the University regarding their admission till date. Mr. Das Ray has relied upon a Notification

905-TW/EC No.----- the 12th September, SC/O/MR-i/95(I) 1995. In the said Notification 22% and 6% of the seats has been shown to be reserved for the Scheduled Castes and Scheduled Tribes candidates in all educational institutions including the Ayurveda Colleges. In Clause 2(b) of the Notification it has been stated as follows :--

"For admission to the courses, B.A. (Hons.) B.Sc. (Hons.), M.A., M.Sc., M.Com., B.Tech., M.Sc. (Tech.), B.Ed., M.Ed., L.L.B., L.L.M., B.Lib, Sc. M.Lib. Sc. Master's Degree courses in Engineering and Architecture, Master of Business Management/ Master of Business Administration, M.Phil., and the like in different subjects, an SC to ST candidate getting admission should have in the previous examination qualifying marks which are not lower by more than 25% from the marks obtained by the last candidate of the general category, however, in any case, such a candidate obtaining marks lower than the marks as prescribed by the regulations of the University for admission to the relevant course will not be eligible for admission. The candidates included in the general merit list will not be counted towards these reserved quota."

7. Mr. Dipankar Datta, the learned Advocate appearing for the Calcutta University has strongly urged that these petitioners having not been qualified in the admission test, therefore, the Calcutta University has rightly filled up seats from the general category and in support of his submission he produced mark sheet obtained by the petitioners in the written test. On perusal of the mark sheet it was seen that the petitioner No. 1 has secured 60 marks out of 130. But in so far as the marks for the viva voce examination, performance of houseman ship and assessment of past career is concerned no marks sheet was produced by the University at the time of hearing. Candidates admission to P.G. Course must have undergone the same course of study and the same standard. A Scheduled Caste candidate who would pass P.G. Course on par with the general candidates is also expected to have the same degree of excellence. put they deserve some allowance at the time of admission.

8. The apex Court in Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., has held as follows (para 25 of AIR) :

"As stated earlier, the benefit of reservation docs not necessarily imply downgrading the excellence. Every student after admission into the postgraduate speciality or superspeciality is required to undergo the same course of study, same standard and higher performance for qualifying the courses for conferment of the degrees in the respective specialities or superspeciality or technical subjects. In that regard, there is no relaxation given to the candidates belonging to reserved categories. A student who would pass post graduation on par with the general candidates is also expected to have the same degree of excellence on

par with the general candidate, with a lesser benefit of marks only for admission into the course of study by relaxing the same standard of marks. Securing marks is not the sure proof of higher proficiency, efficiency or excellence. These are matters of acquired ability by studious application of mind, skills in performance by the candidate concerned, be it general candidate or reserved candidate. It is a matter of application of the mind, constant assiduity to improve skills, capabilities and capacities and excellence in the subject or the field of action chosen by the candidate. In that behalf, it is common knowledge that marks would be secured in diverse modes. It is no indicia that particular percentage of the marks secured is an index of the proficiency, efficiency excellence. They are awarded in internal examinations on the basis of caste, creed, colour, religion etc. It is the constitutional imperative of the executive to provide opportunities and facilities to the handicapped to acquire the degree in specialities, superspecialities or technical posts. Denial thereof, is a total denial of right to enjoy equality. It is well-settled legal position that fundamental rights are to be interpreted broadly to enable the citizens to enjoy the rights enshrined in Parts III and IV of the Constitution (Vide The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, ; Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, and Ashok Kumar Gupta and Another Vs. State of U.P. and Others,

9. Therefore, keeping the rationale of the above judgment into consideration if the contentions of the Parties are examined, then the petition creven though secured slightly less marks deserved to be admitted. But hereafter the University authority keeping in view of the guideline of the Government should lay down their rule giving some margin to the SC/ST candidates. But the other candidates who have secured miserably low marks cannot be given admission for this academic session. But it is however, made clear that the University authority shall carefully consider the Government Notification and if possible may give some margin of marks to the Schedule Castes and Scheduled Tribes candidates for the post Graduate studies in M. D. (Ayurveda) Course.

10. If a SC/ST candidate gets selected for admission to a course or appointment to a post, on the basis of merit as general candidate, he should not be treated as a reserved candidate. Only one who does get admission or appointment by virtue of relaxation of eligible criteria should be treated as reserved candidate. Therefore, I hereby direct the University authorities to admit petitioner No. 1 in three-year M.D. (Ayurveda) Courses for the Academic Session, 1997.

11. In the result, the writ petition is partly allowed but in the circumstances without costs. The other seat may be filled up from the general quota.