

(2005) 04 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition No. 297 of 2005

Dr. Mahboob Azam and Another

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Citation : (2005) 3 UC 1635

Hon'ble Judges : Cyriac Joseph, C.J.;B.S. Verma, J

Bench : Division Bench

Advocate : Rajendra Dobhal, for the Appellant; L.P. Naithani a/b., J.P. Joshi, for Respondent Nos. 2 and 3 and K.P. Upadhyaya, Learned Standing Counsel for State of Uttaranchal, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The Petitioners have completed their M.B.B.S. course in the Himalayan Institute of Medical Sciences, Jolly Grant, Dehradun and have passed their final year examination. They applied for admission to Post Graduate Courses in the Himalayan Institute of Medical Sciences as candidates belonging to the Other Backward Classes. They were allowed to appear in the entrance examination and also in the counseling. However, they were not selected for admission in the Other Backward Classes category on the ground that their domicile is not the State of Uttaranchal. Aggrieved by the refusal to give them admission in the post-graduate course in the Himalayan Institute of Medical Sciences in the Other Backward Classes category the Petitioners have filed this writ petition praying for quashing the entire proceedings of counseling held on 07-03-2005 and for a direction to the Respondents to conduct re-counseling after giving to the Petitioners the benefit of reservation as O.B.C. category. They have further prayed for a direction to give institutional preference to the Petitioners over the students who have passed their M.B.B.S. examination from other medical colleges.

2. It is not disputed that the Himalayan Institute of Medical Sciences is situated

within the State of Uttaranchal. It is also not in dispute that the Petitioners belong to Other Backward Classes (O.B.C.) category as the first Petitioner belongs to "Mumin Ansar" caste and the second Petitioner is a "Jar". Both Mumin Ansar and Jat are included among the Other Backward Classes in the State of Uttaranchal. It is also not disputed that the Petitioners were not entitled to admission in the open merit (general) quota. Their claim is that they were entitled to admission in the Other Backward Classes category as they belong to O.B.C. category. They were denied the benefit of reservation available to O.B.C. category only on the ground that their domicile is not State of Uttaranchal, as admittedly, they are residents of Uttar Pradesh. Hence, the question is whether the Respondents were right and justified in denying the benefit of reservation available to the O.B.C. category to the Petitioners on the ground that their domicile is not State of Uttaranchal. Having regard to the principles of reservation under the Constitution of India and rules of reservation, we do not find any illegality or arbitrariness in restricting the benefit of reservation to candidates whose domicile is the State concerned. Reservation based on caste/classes is provided with reference to the particular State concerned. A caste eligible to reservation in one State need not be eligible to reservation in another State. Since the Petitioners have no case that their domicile is State of Uttaranchal, they are not entitled to the benefit of reservation as O.B.C. category for admission to educational institutions within the State of Uttaranchal. Therefore, we do not find any merit in the contention of the Petitioners that they were wrongly and illegally denied admission to the post graduate course in the Himalayan Institute of Medical Sciences in the O.B.C. category.

3. The other grievance of the (Petitioners) is that they were not given institutional preference in the matter of admission to post-graduate course in the Himalayan Institute of Medical Sciences. It is contended by the Petitioners that they were entitled to such institutional preference as they had completed the M.B.B.S. from Himalayan Institute of Medical Sciences itself. According to the Learned Counsel for the Petitioners, the Hon"ble Supreme Court has held that in case of admission to post-graduate course, institutional preference should be given. Learned Counsel referred to the decision of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, . Learned Counsel particularly referred to paragraph 22 of the said judgment to substantiate his contention. We have carefully read the above mentioned judgment of the Hon"ble Supreme Court. What was held by the Supreme Court is that it would be eminently desirable not to provide for any reservation based on residence requirement within the State or institutional preference. However, having regard to broader considerations of equality of opportunity and institutional continuity in education, which has its own importance and value, the Supreme Court directed that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may, in the given circumstances, be reserved on the basis of institutional preference in the sense that a student, who has passed MBBS course from a

medical college or university, may be given preference for admission to the post graduate course in the same medical college or university but such reservation, on the basis of institutional preference, should not in any event exceed 50 per cent of the total number of open seats available for admission to the post graduate course. In other words, the general rule is that there shall be no institutional preference except in special circumstances where a decision is taken to give institutional preference in the given circumstances. Institutional preference is only an exception to the general rule. Thus, there is no direction by the Supreme Court to give institutional preference in the matter of admission to post graduate courses. The Supreme Court only opined that in the given circumstances, institutional preference may be given subject to the condition that it shall not exceed 50 per cent of the total number of open seats available for admission. Hence, we are of the view that this Court cannot compel the Respondents to provide for institutional preference in the matter of admission to post graduate courses if the Respondents have taken a decision not to give such institutional preference.

4. In the above circumstances, we do not find any merit in the petition. The writ petition is dismissed;