
(2002) 05 DEL CK 0117

In the Delhi High Court

Case No : CW No. 2003 of 2002 and CM 3433 of 2002

Dr. (Miss) Manila Gaddh

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Citation : (2002) 5 AD 42 : (2002) 99 DLT 346 : (2002) 63 DRJ 689

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : M.C. Dhingra, for the Appellant; A. Mariaputtam and Anurag Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The question arising for determination in this petition is whether the 22.5% reservation for SC/ST candidates is to be applied on the full 100% seats or on 75% after excluding the 25% seats for which entrance test is conducted by the All India Institute of Medical Sciences?

Petitioner by this writ petition seeks a direction to the University of Delhi to apply the 22.5% reservation for Scheduled Caste (15%) and Scheduled Tribe (7.5%) candidates, on 75% seats i.e. 252 seats for post graduate degree/diploma course for admission to University of Delhi. The examination has been conducted for the Session 2002 and the counselling commenced on 9.4.2002 for SC/ST and on 10.4.2002 for general category candidates.

2. The Case of the petitioner is that University of Delhi has in all 327 seats for Post Graduate Degree course out of which 25% of these seats i.e. 85 seats comprising 60 seats in Post Graduate Degree course and 25 seats in graduate diploma, are filled by the Government of India on the basis of the merit list declared by the AIIMS, which conducts the All India Entrance Examination, Delhi, University of Delhi has no control on the above seats. Learned counsel for the petitioner Therefore urges that the reservation, which is to be applied should be

on remaining seats with Delhi University. In other words, he says that 22.5% is not to be of 100% but of the 75% seats, which are left to the share of University of Delhi.

3. Learned counsel for the petitioner points out that earlier University of Delhi was not having any reservation, but was rather granting weightage of 20 marks to the SC/ST candidates and it is only in the brochure for the session 2002 that it has reserved 15% for SC and 7.5% for ST category. The provision of reservation is contained in bulletin at page 5.

"V. RESERVATION FOR SC/ST CANDIDATES:

Seats in Post-Graduate (Degree/Diploma) Courses for candidates belonging to Scheduled Caste and Scheduled Tribes will be reserved @ 15% & 7 1/2% respectively."

4. Counsel for petitioner urges that the reservation as above is vague in as much as it does not show whether it is reservation on the total number of seats or discipline-wise. Learned counsel further submits that institutions in Rajasthan, Maharashtra, Bihar and medical institute in Hisar have all interpreted the reservation policy in a manner as to apply to the balance remaining seats, after excluding the seats to be filled by the All India Entrance Examination seats.

5. Reference is invited by Mr. Dhingra counsel for petitioner to the application form and prospectus of the Department of Health and Medical Education, Government of Bihar, Patna, to show that the reservations which are provided for different categories are provided independently of the percentage of all India seats reserved on the basis of entrance examination to be conducted by the All India Institute of Medical Sciences. Similarly, he referred to the brochure of the University of Rajasthan, Jaipur to urge that the reservation is applied to the seats after excluding 25% of the total seats as per the allocation of the Director General of Health Services, Government of India on the basis of the result of All India Examination for P.G. Courses and MS etc.

6. Learned counsel for petitioner tracing the judicial decisions on the question of reservation of seats submitted that in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , 50% for Post Graduate and 30% for Under Graduate were kept for being filled up on the basis of All India Entrance Examination. This was varied by Supreme Court in Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , when the percentage was reduced from 50% to 25% for Post Graduate Courses and 30% to 15% for Under Graduates. Counsel submits that Court considered the undesirable consequences that would ensue if the prescribed % to be made available for All India Entrance Examination, was to be given after making reservation for various categories. It could result in different reservations being made leaving the available percentage of All India seats, varying for different States. The Supreme Court then revised the formula adopted in the earlier judgment and directed that the seats for the All India Entrance Exam quota shall not be less than 15% of the total number of

seats of each medical college or institution, on the basis of All India Entrance Examination. The Supreme Court held that the same formula must apply also in accordance with the admissions in the post graduate courses and instead of making available 50% of the seats after taking into account the reservations validly made, it directed that not less than 25% of the total number of seats without taking into account the reservations shall be made available for being filled on the basis of All India Entrance Examination. In nutshell, the submission is that the Supreme Court recognised and noticed that the provision being made for seats for All India Entrance Examination should be exclusive and independent of the reservations, which were to be made by individual States. Learned counsel also relied on the judgment of Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehtar and Others etc., where in while dealing with the Assam Medical College Regulation of Admission to Post Graduate Rules 1944 and the rules there under the Supreme Court observed:

"Following percentages of seats available after excluding the seats reserved as referred to in (i), (ii),)iii) and (iv) above shall be reserved for schedule castes, scheduled tribes and OBC/MOBC candidates. "

7. The seats reserved in sub para (i) referred to the All India quotes of 25% of teh total seats. The reservation by States was to be made after excluding the All India quota of seats.

8. Learned counsel for the respondent Mr. A. Mariaputtham submitted that it was within the competence and domain of the respondent University to determine the percentage of seats that it wishes to reserve for Scheduled Caste and Scheduled Tribe candidates and as also determine the manner of its application. The respondent intended to and has prescribed the reservations for Scheduled Caste and Scheduled Tribe seats as percentage of the total number of seats available including the seats of the All India Entrance Examination conducted by All India Institute of Medical Sciences.

9. Learned counsel for the respondent also distinguished the cases cited and relied on by the petitioner"s counsel and submitted that none of the cases laid down or put a fetter on the right of the respondent to determine the reservations for Scheduled Castes and Scheduled Tribes provided the quota and percentage of the seats on the basis of All India Entrance Examination being conducted by the All India Institute of Medical Sciences was not disturbed. Learned counsel for the respondent also relied on a recent decision of the Supreme Court in Civil Appeal No. 4750/2001 (arising out of SLP (C) No. 17575 of 2001 titled Union of India v. R. Rajeshwaran and Anr. decided on July 27, 2001 to which I shall shortly advert.

10. On a consideration of the matter, I find considerable merit in the submission of learned counsel for the respondent. It would be seen that commencing from Dr. Pradeep Jain and Ors. v. Union of India and Ors. (supra) followed by Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (supra) and other cases, which followed, the rationale and approach adopted by

the Supreme Court was to provide some protection to meritorious students from being excluded and denied admissions to medical colleges on account of the reservations being made by various States for Scheduled Castes and Scheduled Tribes. Initially, the quota of 30% seats for MBBS and 50% for Post Graduates after excluding the reservations validly made by the State Government was provided. This was revised to 25% for Post Graduate and 15% for Under Graduate in *Dr. Dinesh Kumar and Ors. (supra)*. However, in view of different States adopting varying percentage of reservations, it was felt that such a scheme could render ineffective the provision of quota of seats for the All India Entrance Examination. The Supreme Court then revised the formula adopted in the earlier judgments and directed that the seats for All India Entrance Examination quota shall not be less than 15% of the total number of seats of each Medical college or Institutions. The Supreme Court held that the same formula must apply to the admissions in the Post Graduate Courses and instead of making available 50% of the seats. After taking into account the reservations validly made, it directed that not less than 25% of the total number of seats, without taking into account the reservations made, shall be made available for being filled on the basis of All India Entrance Examination.

11. The focus was on protection of the seats based on All India Entrance Examination. In the instant case, the respondent University has prescribed a reservation of 22.5% of the total number of seats. The quota for All India Entrance Examination seats of 15% remains unaffected. However, the petitioner's submission that 22.5% of the reservations should be computed after excluding the 15% seats on All India Examination is contrary to the provision as intended and made by the University of Delhi. The above position finds support from the judgment of the Supreme Court in *Union of India v. R. Rajeshwaran and Anr. (supra)*. The following extract from the judgment of the Supreme Court is relevant and clearly illustrative of the manner in which the reservation is to be implemented:

"In respect of under-graduate course, the scheme works out like this. If a state has a total of 100 seats and in that State 15% of the seats are reserved for scheduled castes and 10% for scheduled Tribes, State will fill up 15% for Scheduled Caste candidates and 10% for Scheduled Tribe candidates, of the remaining 75 seats 60 seats will be filled by the State Government as unreserved and 15% will be earmarked for All India quota."

The above was a case where the petitioner had claimed a reservation even in the 15% quota for all India seats. It would be seen that though the case dealt with Under Graduate seats, the same principle would apply for the Post Graduate Reservations except that the figures would be substituted.

12. From the foregoing, it would be seen that the reservations being computed are against the total seats and not after excluding the All India quota of seats. The stand of the respondents is further fortified from the communication received from the Director General Health Services on the interpretation to be

given to reservations being on the total number of seats and not after excluding the All India quota of seats. The fact that some Institutions in the country have been providing for reservation in a manner where it is to be computed after excluding the quota of the All India Entrance Examination seats cannot be a ground for issuance of writ of mandamus in the instant case, when the reservation intended by the respondent University is on the total number of seats and in conformity with the judgment in *Union of India v. R. Rajeshwaran and Anr.* (supra).

13. In view of the foregoing discussion, I hold that the petitioner is not entitled to the writ of mandamus, as sought. It was within the competence of the respondent University to prescribe percentage of reservation based on the total number of available seats as long as the quota of seats for All India Entrance Examination is not affected.

14. The writ petition has no merit and is dismissed.