

(2008) 08 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) No. 3884 of 2008

DR. Monika Murmu

APPELLANT

Vs

Vice Chancellor, Guru Gobind Singh Indraprastha University
and Others

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0262

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : R. Vasudevan, for the Appellant; Saleem Ahmed, for Respondent Nos. 2, 3 and 6 and G.D. Goel and Sanjiv Goel, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioner belongs to the Scheduled Tribe category. She passed the MBBS examination from Vardhman Mahavir Medical College in the year 2006. Guru Gobind Singh Indraprastha University (GGSI University) i.e. respondent No. 1 invited applications from the candidates possessing MBBS degree recognized by MCI, and who had completed one year compulsory rotating internship for grant of admission to the post graduate medical degree and diploma courses being held in Safdarjung Hospital and Post Graduate Institute of Medical Education & Research (PGMER), Dr. Ram Manohar Lohia Hospital, New Delhi (Dr. RML Hospital).

2. The petitioner applied in response to the said invitation and appeared in the Central Entrance Test (CET) conducted by respondent No. 1. She was ranked 41 in the over all merit and stood first amongst ST candidates. Since the reservation policy laid down by Government of India was to apply to the admission process, which provided 15% reservation for SC candidates and 7.5% for ST candidates, the petitioner was hopeful of getting admission in a post graduate course of her choice. The petitioner was called for counseling on 9.5.2008. The respondent followed the 200 Point Model Roster Selection Scheme sent to it by the Government of India along with their communication dated 8.5.2008. As per the

200 Point Model Roster Selection Scheme the category wise position in respect of the first 17 seats, with which we are concerned, is as follows:

Serial No. Category 1 UR 2 UR 3 UR 4 OBC-1 5 UR 6 UR 7 SC 8 OBC-2 9 UR 10 UR 11 UR 12 OBC-3 13 UR 14 ST-1 15 SC-2 16 OBC-4 17 UR

3. From the aforesaid it is seen that the first reserved seat for the ST candidate falls at serial No. 14 of the Roster Point Selection Scheme. Accordingly, at the time of her counseling the petitioner was the 14th candidate to be called. It is the petitioner's case that at the time when she was called, she was informed of the vacancy position and at that point of time there were two vacant seats in MD (Medicine) in PGMER, Dr. RML Hospital. She opted for one of them. The form that she was provided was accordingly filled up by her, giving her option. When she was about to leave the counseling room, she was called back and informed that she could not be allotted the MD (Medicine) seat at PGMER, Dr. RML Hospital since there were only 7 P.G Degree seats in PGMER, Dr. RML Hospital allotted to the respondent University and hence no seat could be offered to a ST candidate. The petitioner further states that 4 out of the 6 counseling members supported her case by taking the stand that the entire University is to be treated as one unit for providing reservations, and not institution wise. Even the result as declared by the University shows that the intention was to treat the University as one unit. The petitioner pleaded that as per the reservation policy she was entitled to admission to the post graduate degree course in MD (Medicine) in PGMER, Dr. RML Hospital. However, she was forced to change her option and accordingly she changed her option to PG (Diploma) Course in Gynecology against her wish. The petitioner was, at that stage, told that if she insisted on admission to PG Degree course in Medicine at PGMER, Dr. RML Hospital, she might run the risk of losing admission altogether at PGMER, Dr. RML Hospital

4. The case of the petitioner is that of the two vacant seats in MD (Medicine) in PGMER, Dr. RML Hospital, the respondent offered one to Dr. Naveen Kumar who ranked 13 in the general category merit list, but as per the Model Roster Point Selection Scheme, at the time of counseling he was at serial No. 17, i.e., after the petitioner, and the other seat of M.D (Medicine) was offered to one OBC candidate, viz. Dr. Manjeet Singh who ranked 16 in the merit list, and who was called for counseling after the petitioner at serial No. 16.

5. The petitioner has filed this petition to challenge the denial to her of one MD (Medicine) seat at PGMER, Dr. RML Hospital under the ST quota. The submission of the learned Counsel for the petitioner is two-fold. He firstly argues that since the respondent University conducts a Central Entrance Test in respect of the two P.G. institutions, viz. Safdarjung Hospital and PGMER, Dr. RML Hospital and a common merit list is drawn up by it, the seats available in both the institutes should be clubbed to apply the Model Roster Point Selection Scheme at the time of counseling. He submits that since both these institutes are affiliated to the respondent University, it is not permissible to provide for reservation institute wise. The submission of counsel for the petitioner is that at the time of holding

counseling when a candidate is called, he is entitled to opt from amongst all the then available seats in both the institutes put together, and a candidate cannot be told that he cannot opt for a particular seat in a particular institute on the ground that there is no reservation for a category to which he belongs in that particular institute. He further submits that there was no post wise reservation of seats in the two institutes.

6. The alternative submission of learned Counsel for the petitioner is that, in any event, assuming that the reservations could be made institute wise as contended by the respondent University, the fact that there were admittedly 7 seats in PG degree course in PGMER, Dr. RML Hospital leads to the conclusion that one seat ought to have been reserved for a ST category candidate. He submits that 7.5% of 7 comes to 0.525 which has to be round off to 1, upon application of common principles of mathematics. For this submission he relies on a decision of this Court in *Madan Mohan v. Guru Gobind Singh Indraprastha University and Ors.* 2007 (4) SLR 468.

7. Counter affidavits have been filed on behalf of respondent No. 1 GGSIP University, respondent No. 3 Medical Superintendent, Dr. R.M.L. Hospital and respondent No. 6 Union of India, and additional affidavits have been filed by respondent Nos. 1 & 6. In the counter affidavit/short affidavit dated 01.07.2008 filed by respondent No. 1, it was merely stated that admissions have been made by the respondent University on the directions of Government of India. Respondent No. 1 further stated that the Government of India had forwarded the Model 200 Point Roster System for allotment of PG seats vide letter dated 08.05.2008 and by another communication of the same date it was stated that in modification of the first communication, the Model 200 Point Roster System is applicable to PG seats of PGMER, Dr. R.M.L. Hospital only, as per Supreme Court orders in implementation of 27% seats reservation for OBCs. The said respondent also produced the Model 200 Point Roster System, and the details of the candidates admitted in Safdarjung Hospital and PGMER, Dr. R.M.L. Hospital to the various post graduate degree and diploma courses. Respondent No. 3 stated that the aspect of grant of admission to the concerned seats rests with respondent No. 1 and it is for the said respondent to answer the issues raised in the writ petition. Respondent No. 6 Union of India stated that after application of Model 200 Point Roster System, which is based on, inter alia, 7.5% reservation for ST candidates, the petitioner was effectively ranked 14th. Respondent No. 6 also stated that 7 seats falling in the All India quota had remained unfilled and were, accordingly, surrendered to be filled by the respondent No. 1 University as per their rules and regulations for which purpose the Supreme Court had passed an order on 18.07.2008 in IA No. 17/2008 in the case titled *Amit Gupta and Ors. v. Union of India and Ors.* Respondent No. 6 also produced the Model 200 Point Roster System of reservation with reference to posts for direct recruitment on All India basis by open competition. Respondent No. 1 in its additional affidavit dated 08.08.2008, filed in response to the order dated 04.08.2008 passed by this Court, stated in para 7 that the petitioner "was called on the 14th seat

available at Safdarjung Hospital as the STs seats was available in the Roster List of Safdarjung Hospital only and no ST seat was available in Dr. R.M.L.Hospital as per Roster till the point upto which candidates were called to fill up the available seat". It was also admitted that Dr. Navin Kumar who, ranked 13th in the general category merit list was given the opportunity in respect of the seat available at the two hospitals, which were described as "unreserved". Dr. Manjeet Singh was admitted under OBC quota on his own turn. His rank was 16th in order of merit. Respondent No. 6 in its additional affidavit stated that 8 seats i.e. 7 degree and 1 diploma seat at PGMER, Dr. R.M.L. Hospital, New Delhi were surrendered to the respondent University for the session 2008-09 for allotment under State quota. The letters dated 08.05.2008 were written to the respondent University and the respondent University was instructed to follow the 200 Point Model Roster System.

8. From the counter affidavits filed by the respondents on record, it clearly emerges that there is absolutely no denial of the case of the petitioner that she was called as the 14th candidate at the time of counseling upon application of the 200 Point Model Roster System since the 14th position in the said roster is allocated to the First Scheduled Tribe candidate. There is also no dispute that at the time of her counseling the petitioner opted for one MD (Medicines) seat in PGMER, Dr. R.M.L. Hospital and that she was compelled to change her option on the ground that there is no reserved seat for ST category candidates in PGMER, Dr. R.M.L. Hospital, since only 7 post graduate degree course seats are available, and the reservation for the Scheduled Tribe candidates is 7.5%.

9. It, therefore, needs consideration whether the stand of respondent University that there was no reserved seat for the Scheduled Tribe category candidate in PGMER, Dr. R.M.L. Hospital from amongst the 7 post graduate degree course seats is correct or not. It also requires consideration whether reservation was to be provided institution wise as contended by respondent University, or whether the same ought to have been applied in respect of the pool of seats available for admission on the basis of merit in CET, by application of the 200 Point Model Roster Point Selection Scheme.

10. Clause 4.1.1 of the admission brochure-V circulated by the respondent University states that the University offers 8 Post Graduate Medical Degree Programmes and 6 Post Graduate Medical Diploma courses as per the number of seats available at its two affiliated hospitals, viz., Safdarjung Hospital and PGMER, Dr. Ram Manohar Lohia hospital. In the tabulation contained in the brochure being Table-1, under the heading "Specialty of Medical Sciences", in Safdarjung Hospital three vacancies were shown and in PGMER, Ram Manohar Lohia Hospital, two vacancies were shown in the discipline "Medicine". There is a "Note" contained in the brochure which states that the number of seats are provisional and seats/courses/institutions are likely to increase depending upon the approval of MCI/ Government of India/University. The final number of seats/courses will be displayed/notified on the University website www.ipu.ac.in before

commencement of counseling.

The brochure further states that the common entrance test (CET) for only 50% seats as indicated in Table-II will be conducted by GGSIP University for admission to Post Graduate Medical Degree/Diploma courses. For this test, only medical graduates of GGSIP University are eligible. In Table -2, in the Speciality "Medicine", two seats were shown in Safdarjung Hospital and one seat in PGMER, Dr. RML Hospital.

11. In the discipline M.D (Medicine), at the time of counseling, the number of seats in Safdarjung Hospital was notified as one whereas in PGMER, Dr. RML Hospital two vacancies were notified. Clause 4.1.5 states that all admission to post graduate degree/diploma courses will be made only on the basis of merit in CET and reservation/allocation of seats to various category subject wise shall be made as per the Government Rules.

12. Under Clause-6.1, it was stated that 50% of the seats are reserved for All India Quota to be filled up on the basis of All India Entrance Test conducted by AIIMS on behalf of DGHS, Government of India. Clause 6.2 stated that other 50% seats will be reserved for MBBS graduates of GGSIP University. "Reservation will be applicable in these seats as per the policy of Government of India as applicable from time to time for Scheduled Caste (SC) and Scheduled Tribe (ST) candidates. For reservation of Physically Challenged (PC) candidates, guidelines of Medical Council of India will be applicable." Under Clause 6.2.1 it was provided that in case any seats reserved for SC/ST category remain unfilled due to non-availability of the eligible candidates under the said category, then the seat shall be offered to the other category, i.e., seats of SC to ST and vice-versa as the case may be. In case sufficient number of eligible candidates of SC and ST is not available, the seats thus remaining vacant will be treated as unreserved.

13. In Clause 12 under the heading "Selection Procedure" it was, inter alia, stated that separate merit list will be prepared for each category based on the result of Common Entrance Test. The admission would be made strictly on the basis of merit of the eligible candidates determined by marks obtained in CET:PGMC, 2008.

14. Clause 13 dealt with counseling for admission. In Clause 13.4 it was stated that for allotment of seats as per merit, the University shall follow the procedure, viz. that the candidates will be called in the order of merit and shall be offered the seat available at that point of time. In Clause 13.4 (vi) it was provided that admissions will be made strictly on the basis of merit rank wise and counseling/admissions will stop when all the seats get filled up. When a candidate appears for counseling he/she will be informed about the available courses and the institutions in which the courses are available. The candidates were entitled to select any one course.

15. From the admission brochure issued by the respondent University and the tabulations contained therein it appears that there is no material to support the

contention of the respondent University that any particular seat, either in post graduate degree course or in diploma course, was reserved either for the Scheduled Caste or for Schedule Tribe category, or that the same was an unreserved seat. None of the available seats were earmarked as belonging to any reserved category. From Clause 13 of brochure which describes the manner of counseling, read with Clause 12 which states that the admission will be on the basis of the result of the common entrance test and on the basis of merit of the candidates and Clause 6.2 which states that the respondent University shall fill the 50% seats by application of the Government Rules on reservation, i.e., the 200 Point Model Roster Point Selection Scheme, it is clear that the entire pool of seats available to be filled up by the respondent University were to be treated as one, and candidates were required to be called for counseling according to their merit by the application of the 200 Point Model Roster Selection Scheme and to be assigned the seats as per their option on the basis of the availability of seats.

16. Reliance placed by the respondent University on the second communication dated 8.5.2008 whereby the Government of India in partial modification of the first communication of even date stated that the 200 Point Model Roster Point Selection Scheme is applicable to post graduate seats in PGMER, Dr. R.M.L. Hospital only as per the Supreme Court order in implementation of 27% reservation for OBC, has no relevance in the facts of the present case. This is so because reservations for Scheduled Castes and Scheduled Tribes candidates to the extent of 15% and 7.5% respectively have been in existence for many years, and it was only the reservations for OBCs that have been introduced for the first time after the decision of the Supreme Court in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, in the academic session 2008-09. The optimum reservation for OBCs to the extent of 27% is to be achieved over a period of three years in terms of Central Educational Institutions (Reservation in Admission) Act, 2006. However, as aforesaid, reservation for Scheduled Castes and Scheduled Tribes candidates has been in force for a considerable period of time. The said second communication dated 8.5.2008 did not purport to upset the well established reservations for the SC and ST candidates and that communication merely related to grant of reservations to OBC candidates apparently in the light of the scheme for reservations evolved by the aforesaid Act of 2006. The reading of the respondent of the second communication dated 8.5.2008 to mean that reservation has to be provided in PGMER, Dr. R.M.L. Hospital only for the OBC's is, therefore, wholly incorrect and I reject the same.

17. Alternatively, assuming that for the sake of argument, that the stand of the respondent that reservation has to be provided institution wise, and not in respect of the entire pool of seats available in different colleges by treating it as one unit is correct, even then on the application of the decision of this Court in *Madan Mohan (supra)* it is clear that one seat ought to have been reserved for a Scheduled Tribe candidate in PGMER Dr. RML Hospital. This is so because 7.5% of 7 (which is the number of seats for post graduate degree course in Dr. R.M.L. Hospital) comes to 0.525. The same would have to be rounded off to 1 since it is

more than 0.500. Therefore, viewed from either side, it is clear that the petitioner could not have been denied admission to the post graduate M.D. (Medicine) course in PGMER, Dr. R.M.L Hospital when, as a matter of fact, two seats in the said course were available when the petitioner was called for counseling at the 14th position and she had opted for one of those seats. Since Dr. Naveen Kumar (general category) and Dr. Manjeet Singh (OBC category) were both called for counseling after the petitioner, they could not have been granted admission to the M.D.(Medicine) course in preference to the petitioner in PGMER, Dr. R.M.L. Hospital. Accordingly, this writ petition is bound to succeed and the petitioner is declared to be entitled to seek admission in the P.G. M.D. (Medicine) course in PGMER, Dr. R.M.L. Hospital

18. This Court had passed an order on 20.5.2008 directing that respondent No. 3 shall keep one seat in post graduate degree course in Medicine in Dr. R.M.L. Hospital vacant so that the petitioner could be accommodated in case of her success in the writ petition. Learned Counsel for the respondent University has submitted, and this is also evident from the counter affidavit of respondent No. 6, that 7 seats of All India quota were surrendered to be filled up by the respondent University. Mr. Goel, learned Counsel for the respondent University has submitted that the respondent has reserved one of those seats for the petitioner in MD (Medicine) at PGMER, Dr. R.M.L. Hospital. Since, in my view, the petitioner ought to have been granted admission to the said course as per her merit and option, I direct the respondents to forthwith grant admission to the petitioner to M.D. (Medicine) course at PGMER, Dr. R.M.L. Hospital. The petitioner well present herself for seeking admission and completion of formalities on 22.8.2008.

19. The attendance of the petitioner in the post graduate diploma course in gynecology shall be transferred to the M.D. (Medicines) course at Dr. R.M.L. Hospital. The bond and fee deposited by the petitioner while seeking admission to the P.G. Diploma course shall also be adjusted towards the fee and bond for the M.D. (Medicine) seat.

20. With these directions the petition stands disposed of. Dasti to the parties under the signature of Court Master.