
(1988) 12 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6613 of 1988

Dr. Nirmal Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-12-1988

Acts Referred:

Constitution of India, 1950 — Article 16(2)

Citation : AIR 1989 P&H 210

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, for the Appellant; J.L. Gupta Jaswant Singh, Arun Katpalia, Tejinder Singh Dhindsa, Tejinder Singh Bagga and R.N. Lohan and B.S. Malik, A.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.—This judgment of mine will dispose of CWP Nos. 6613, 7492, 7525, 8903, 6402 and 8519 of 1988 as in all the five cases identical questions of law and facts are involved. The arguments were advanced in Civil Writ Petition No. 6613 of 1988 by Shri Rajiv Atma Ram which were followed by the other learned counsel appearing in other cases. Mr. J. C. Verma, learned counsel, had advanced additional argument in CWP No. 6402 of 1988. The main judgment is handed down in CWP No. 6613 of 1988 filed by Dr. Nirmal Kumar.

2. The case of the petitioner is that he passed the MBBS Examination in the year 1980. Thereafter, the petitioner did his two house-jobs in the speciality of general medicine from July 1981 to June 1982. From 1982 to 1985 the petitioner did rural service. Thereafter the petitioner is practising at Sonapat (Haryana). Respondent 2, i.e. M. D. University, Rohtak advertised seats for Post-Graduate Degree Courses of M.D./M.S. at the Medical College, Rohtak -- respondent 3. The total number of seats was 95. Out of these 95 seats, twenty seats were reserved for candidates going from the Haryana Civil Medical Services. Out of the remaining 75 seats, 30 per cent (24 seats) were reserved to be filled up on the

basis of All India Basis Competition and the remaining 51 seats were left to be filled up from the candidates in open merit. The petitioner claims that he was eligible for admission to M.D./M.S. Courses at the respondent college. He applied for admission to M.D./M.S. Courses for the sessions 1988-89 against open category of seats. He also appeared for the written test and on the basis of criteria laid down, was placed in the waiting list at serial 3. He is now at serial 1 of the waiting list as persons at serial 1 and 2 have already been admitted. The respondents 1 to 3, instead of granting admission to him, have granted admission to the M.D./M.S. Courses to respondent 4. Feeling aggrieved, the petitioner has filed the present petition.

3. The petitioner has averred that out of 24 seats reserved for being filled on the basis of All India Competitive Examination, only 8 were actually utilised and as such the remaining 16 seats had become available to the candidates from the general category. The case of the petitioner further is that these 16 seats had to be filled up from the general category candidates and that the respondents have wrongly reserved 4 out of these 16 seats for H.C.M.S. doctors. He claims that the reservation of 4 seats for candidates belonging to the Haryana Civil Medical Service was illegal. He has claimed that the admission of respondent 4 belonging to the Haryana Civil Medical Service is illegal and he is entitled to be admitted against the resultant seat. In support of his case the petitioner has referred to the judgment of Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, and *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, . It has been suggested that the college had reserved 30% seats out of the 75 seats for being filled up on the basis of the All India competition.

4. Though the respondents in the written statement have not disputed the facts so far as they relate to the petitioner, the case of the respondents is that according to the directions of the Supreme Court, the University had to reserve 25% of the total numbers of seats in each medical college or institution. It is further stated that it was in accordance with the direction of DGHS vide his letter dated 16-6-1988 that out of a total of 95 seats, the University has reserved 24 seats for being filled up on the basis of All India competition. In the written statement it is further stated that the remaining 71 seats were distributed between the two categories of candidates viz. members of HCMS and those belonging to category of open merit candidates. 16 seats which became available on account of non-availability of candidates who had competed for admission in All India Competitive Examination, were rightly divided between the members of HCMS and the open merit candidates. Allocation of four seats out of 16 seats to the candidates belonging to HCMS cannot be termed as illegal, in any manner.

5. Mr. Rajiv Atma Ram, learned counsel for the petitioner has contended that the University had wrongly reserved 24 seats on the basis of All India competition. In fact only 18 seats could have been reserved and the remaining 6 seats had to be filled up from amongst the candidates belonging to the general category. If this

had been done all the petitioners who belong to the general category would have been admitted in their respective specialities. He further contended that in any case, the University could have reserved 24 seats, the action in admitting 4 candidates belonging to the HCMS was illegal and the seats should have been given to the candidates belonging to the general category. The admission of the candidates belonging to the HCMS is in violation of the procedure prescribed in the prospectus. The merits of the HCMS candidates had, not been determined in accordance with the method of selection laid down in Appendix "A". The learned counsel further argued that the action appears to have been taken in pursuance to the suggestion made by the Government, vide their letter Annexure Rule 1 which did not authorise the diversion of seats of the category of members of H.C.M.S.

6. Mr. J. L. Gupta, Sr. Advocate, learned counsel for respondent-M. D. University contends that according to the direction of the Supreme Court, the University had to reserve 25% of the total seats without taking into consideration any reservation and the action in reserving 24 seats out of 95 seats not on the basis of AD India Competition is wrong. He further contends that out of 75 seats. 20 seats had been reserved for the members of the HCMS and the remaining 51 had been allocated to the candidates belonging to open merit. He submits that when 16 seats out of 24 reserved for being filled up on the basis of All India Competition became available, the University was entitled to and rightly allocated 4 seats to the candidates belonging to the HCMS. It was further contended that the University according to the prospectus itself is entitled to vary the criteria for selection and that the admission of the candidates belonging to HCMS without their being required to appear in the written test was valid. The counsel further argued that the action of the University was in strict conformity with the stipulation made and the power reserved in the prospectus.

7. I have heard the learned counsel for the parties and gone through the paper book and the prospectus issued by the University.

8. In the college prospectus it has been incorporated that the number of seats is liable to be increased or decreased by the Government of Haryana University. In Chapter II of the prospectus the conditions of eligibility have been prescribed. Chapter III lays down the criterion for obtaining benefit of Haryana Residence/ Domicile. In Appendix "A" method for determination of merit has been laid down. Note I which is of significant relevance is as under : --

"The following scheme is given only for the guidance of candidate(s) subject to the condition that the same is only provisional and can be changed at the discretion of the Vice Chancellor without intimation to the candidate."

9. The contention of the counsel for the petitioners that the respondents had to reserve 25% of the seats after excluding those reserved for members of HCMS is, in my opinion, of no consequence and contrary to the directions of the Supreme Court. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and

Others, it was held as under : --

"We are, therefore, of the view that so far as admission to Post-Graduate Courses, such as M.S. & M.D. and the like are concerned, it . would be eminently desirable not to provide for any reservation based on residence requirement within the State or on Institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to the Post-Graduate Courses, a certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. 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."

This was followed by the decision in Dr. Dinesh Kumar.v. Motilal Nehru Medical College, Allahabad. AIR 1965 SC 1059. In para 5, of this judgment, it was observed as under:--

"We would also like to clear up one misunderstanding which seems to prevail with some State Governments and Universities in regard to the true import of our judgment dt. 22nd June. 1984. They have misinterpreted our judgment to mean that 30% of the total number of seats available for admission to M.B.B.S. course in a medical college should be kept free from reservation on the basis of residence requirement or institutional preference. That is a total misreading of our judgment. What we have said in our judgment is that after providing for reservation validly made, whatever seats remain available for non-reserved categories, 10% of such seats at the least, should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or University and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our judgment. 30% of 70 seats, that is 21, seats out of 70 and not 30% of the total number of 100 seats, namely 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference."

Subsequently, the Supreme Court in Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad AIR 1986 SC 1877, in para No. 6 of the judgment observed as under : -

"We do not think that it would be right for us to limit the reservations which can be validly made by a State Government in the matter of admission to the MBBS/

BDS Course and the Post-Graduate Course to 50% of the total number of seats. There are some States like Tamil Nadu and Karnataka which have reservations far exceeding 50% in admissions to MBBS/BDS course and we do not propose to restrict such reservations to 30%. When we say that we do not propose to limit the percentage of reservations to 50 as suggested by the Government of India we should not be understood as laying down that the State Government may make reservations to any extent it likes or that the percentage of reservations can validly exceed 50 without violating any constitutional guarantees."

10. From the above observations of the Hon^{ble} Supreme Court it would be seen that the Supreme Court had issued direction after accepting the suggestions made in this scheme by the Government of India that not less than 25% of the total number of seats, in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All India Entrance Examination. The Supreme Court made applicable the same formula to admission to Post-Graduate Courses and instead of making available for admission on All India Basis 30% of the open seats after taking into account reservations validly made. It was clearly held that not less than 25% of the total number of seats without taking into account any reservations shall be made available for being filled on the basis of All India Entrance Examination. It is thus quite clear that 25% of the total seats without taking into account any reservation were to be filled on All India Basis. Out of 24 seats only 8 seats could be filled and the 16 seats were to be filled by local candidates as per instructions from the Director General of Health Services (Medical F & S) section, New Delhi vide his letter dt. 16-6-1988. Accordingly, these 16 seats were distributed proportionately among the reserved category and open category. I find no infirmity in the distribution of seats and according to me it is fair and equitable. I, therefore, hold that the claim of the petitioners that only 18 seats viz. 25 per cent of 75 seats (after excluding 20 reserved for members of HCMS) could be reserved for being filled on the basis of All India Entrance Examination, is wholly untenable and I have no hesitation in rejecting it.

11. It was further contended by the counsel for the petitioner that the action of the University in diverting 4 out of the 16 seats to the category of HCMS was an infraction of the petitioner's rights. I find no justification in that contention of the learned counsel for the petitioner. It is the admitted case that only 8 candidates have become available against the seats reserved for being filled up on the basis of All India Entrance Examination. 16 seats had thus become available, which could not be filled due to the non-availability of the candidates from the category of All India basis. Director General Health Services vide its letter dated 16-6-1988 suggested that the vacant seats of All India quota may be filled by the local candidates. 4 seats, one each in the department of Medicine, Pathology, Surgery and ophthalmology were allotted to the candidates from HCMS cadre. These HCMS category candidates were given the same proportion from the total seats. One seat remained for open merit candidate. One seat was transferred to this course from the vacant seats of basic departments, thereby making total

seats to be filled up against open category as two. These two seats were filled up from the waiting list in order of merit. The petitioner was at serial No. 3 in the waiting list and due to this he was not given admission. I am of the opinion that the seats have been distributed in an equitable manner and no arbitrariness has been exercised in any manner, and that there was no infirmity in the action of the respondent allotting four of the seats to the members of the HCMS. I am further of the opinion that the reservation of seats for members of the HCMS has all sanction of law. There could be no doubt that those in service of the State are already serving the community and any effort to improve their qualifications would promote general good. It helps the State to improve its services. In view of this, I find that there is no substance in the arguments of petitioner's counsel that seats could not be reserved for HCMS doctors.

12. Mr. Rajiv Atma Ram, learned counsel for the petitioner, has also contended that the prospectus makes it mandatory for the candidates to appear in a test and the final merit could be determined only on a cumulative consideration of the performance in the test and the marks secured under various other heads. The case of the petitioner is that the persons belonging to the category of HCMS did not appear in the test and as such the admission was wholly illegal.

13. Mr. J. L. Gupta, learned counsel for the University has drawn this court's attention to the fact that it had been decided to admit the members of the HCMS who had applied for admission on the basis of an interview. This according to the learned counsel was within the powers of the University inasmuch as the criterion as stipulated in Appendix "A" was only provisional and could be changed as deemed fit. In the written statement filed by the official respondent it has been stated that the Vice Chancellor, the Commissioner & Secretary to Government, the Director & Principal and the Registrar of the University had met and it was decided to consider the members of the HCMS on the basis of an interview. In my view, members of Haryana Civil Medical Service, are a distinct cadre. Even the petitioners have acknowledged this fact and no challenge has been levelled to the reservation of seats in their favour. The petitioners cannot challenge the criterion adopted by the University in the allotment of seats to the HCMS members as they were not competing for the seats reserved for the members of the HCMS. It appears to me that before a person can lay a valid challenge to the admission of a particular candidate he must establish that he is similarly situated and that the differential treatment has infringed his right. I find that the seats had been validly reserved for the members of HCMS and consequently the petitioners who were in no way competing with them have no locus standi to challenge the method adopted by the University in selecting candidates from this category.

14. Mr. Rajiv Atma Ram had also contended that the prospectus is a charter of rights and could not be changed. I am of the view that this argument is also of no avail. The prospectus issued by the college is undoubtedly the notice to the prospective candidates. Yet anyone who finds any infirmity therein and is

desirous of invoking the jurisdiction of the Court must do so at the earliest opportunity. The process of selection is not only expensive but even involves time and human effort. The uncertainties of a selection must end at the earliest possible so that those making the selection can proceed confidently and those selected can pursue the courses of study without fear lurking in their minds. The petitioners in the present case did not represent either against the allocation of the seats or even against the professional nature of the criteria of the selection. The petitioner cannot be permitted to do so at this belated stage.

15. In my view, the Government spends substantial amount of money in running the medical colleges. Undoubtedly, the Government is the primary judge of the needs of the society. It is also better equipped to assess the requirements of the public. If, on a consideration of these factors, the Government allocates seats to well defined classes, the burden lies heavily on those who challenge it to prove that the action is, in any way, unfair or violative of a constitutional or legal guarantee. In the present case, the petitioner has failed to discharge this burden.

16. Mr. J. C. Verma, learned counsel for the petitioner, in CWP No. 6402 of 1988 has contended that there were two seats in the T. B. speciality, out of which one was reserved for HCMS and the other was for open category candidate. No reservation in a speciality can be made. This argument of the learned counsel for the petitioner is of no consequence. The petitioner was an open category candidate and had rubbed shoulders with others. He cannot challenge the reservation of seats for HCMS doctors for which he was not a candidate.

17. Before parting, I would like to suggest that the authorities at the time of making admission should constitute a grievances committee which could hear the grievances of the candidates regarding admission matters etc. The procedure adopted by such committee should not be a cumbersome one and the grievances be decided expeditiously. In case the aggrieved candidates remain unsatisfied, only then they can have a course to legal remedy.

18. In view of my foregoing discussion, I find no force in these petitions and the same are hereby dismissed with no order as to costs.