

(2015) 03 RAJ CK 0240

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1234 of 2013

Kumari Urvashi Gochar

APPELLANT

Vs

Mukesh Kumar and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 3 CDR 1370 : (2015) 4 RLW 3408

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Kamlakar Sharma, Senior Counsel assisted by Jatin Agarwal, for the Appellant; A.K. Sharma, Sr. Counsel assisted by V.K. Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel appearing for the parties. This intra-court appeal is directed against the judgment and order of learned Single Judge dated 16.09.2013, by which he has allowed the writ petition, and has held that the seat could not have been given to Kumari Urvashi Gochar-respondent No. 4, a female Special Backward Class (for short, "SBC") candidate, pursuing her studies on a free seat in Government Medical College, Kota, as Mukesh Kumar-the petitioner was higher in merit, and was entitled to the free seat in Government Medical College, Kota. In the second round of counselling, he was given admission on a paid seat in Jhalawar Medical College. A direction was issued to refund the differential amount, between the paid seat and the free seat, to Shri Mukesh Kumar-the petitioner.

2. The facts, giving rise to the writ petition, were that, for admission in the Government and private Medical Colleges in the State of Rajasthan for the year 2011, for which the Rajasthan University of Health & Sciences had conducted the examination and counsellings, a total number of 936 seats were available, out of which 689 seats were free seats in the Government Medical Colleges in the State of Rajasthan. Both the petitioner (a boy candidate) and respondent No. 4 (a girl

candidate) had applied for admission in the Medical Colleges under the SBC category, for which 1% seats were reserved. In the first round of counselling, Mukesh Kumar-petitioner did not succeed in getting admission on a free seat in a Government Medical College. In the second round of counselling, he was offered a seat in Jhalawar Medical College. He accepted the admission, and thereafter filed the writ petition challenging that for 1% of 689 free seats, i.e. 7 free seats, in the Government Medical Colleges, the reservation for girl candidates was at 25%, and thus only 2 seats could be given to the girl candidates out of 7, whereas 3 free seats were given to the girl candidates in the Government Medical Colleges. The respondent No. 4, in the writ petition, was the third candidate, who should not have been given admission on the free seat, and that, the third free seat should have been offered to him, as he was higher in merit.

3. Learned Single Judge held that out of 689 seats, 1% of comes to 6.89, and if it is rounded off, it becomes 7, being 0.89, greater than 0.5. The respondent No. 4 was the fourth girl candidate in the SBC category, and thus, she should not be admitted to the free seat. The third seat should have been given to a boy candidate, inasmuch as, only two seats could be offered to the girls. Learned Single Judge has relied on judgment of the Apex Court in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others*, AIR 2007 SC 3127 : (2007) 115 FLR 10 : (2007) 10 JT 154 : (2007) 10 SCALE 50 : (2007) 8 SCC 785 : (2007) 8 SCR 972 : (2007) AIRSCW 5650 , in the applicability of horizontal reservation for Girls as special category in the Special Backward Class (SBC), category.

4. Learned Single Judge found that since the petitioner and respondent No. 4 are pursuing studies in the respective colleges, and that, in view of the finding recorded by him that the petitioner was entitled to be given a free seat, since it will be difficult for him to change the Medical College, the entire fee paid by the petitioner should be refunded. The differential amount of the fees should be refunded to the petitioner. The respondent No. 4 will pay this fee, as payable for the seat, even while pursuing the studies in the Medical College, Kota, where such seats may not be available.

5. Learned counsel appearing for Kumari Urvashi, the appellant, who was respondent No. 4 in the writ petition, submits that learned Single Judge has committed patent error, in calculating the number of free seats available for the SBC girl candidates, for admission in the Government Medical College in Rajasthan. He has relied on the counter-affidavit filed on behalf of the Rajasthan University of Health & Sciences in which in paragraph Nos. 7, 8 & 9 of the reply to the writ petition, it is stated as follows:-

"7. That the contents of Para No. 7 of the writ petition are not admitted in the manner stated therein. It is denied there is any mala-fide and arbitrariness in the matter of allotment of free and payment seats to the eligible candidates. It is respectfully submitted that total number of seats in all the Medical Colleges were 936 and out of 936 seats, nine seats were reserved for special backward

category (SBC) as per roster. As per the provisions contained in the Ordinance, horizontal reservation for female candidate in each category should be not less than 25%. Therefore, out of total number of CDC seats, 3 seats were reserved for SBC girls. Distribution of category-wise, category wise seats and seat matrix was prepared by the office the Convener, RPMT-2011 (answering respondent) and it was discussed and approved by the UG Admission Board before the start of first counselling which was held on 21st to 24th July, 2011. The allotment of seats was made strictly as per merit-cum-preference. A copy of the approved seat matrix of RPMT-2011 is annexed herewith as Annexure R/1/1.

It is, respectfully submitted that Government Seat could not be allotted to the petitioner due to non-availability of SBC boy seat at the time of his counselling and as per rules, the seat meant for SBC girls cannot be given to SBC boy. The allotment of payment seat to the petitioner in Jhalawar Medical College, Jhalawar was as per the approved seat matrix and the petitioner cannot challenged to the same at this point of time also allowing by allotment of seat to him due to mala fide and arbitrary, There is no question of mala fide against the petitioner.

8. That the contents of Para No. 8 of the writ petition are not admitted as stated. However, it is submitted that at the time of counselling the petitioner appeared at serial No. 9 in SBC category and the allotment of seats made by the Convener is as follows:--

(i) The candidates appearing at serial No. 1 & 2 opted seats in OBB and GNB quota respectively.

(ii) The candidate appearing at serial No. 3 opted seat in SBC (Girls).

(iii) The candidate appearing at serial No. 5, 6 and 7 opted seats in SBC boys quota.

(iv) When the petitioner appeared before the Board and opted choice not available, all seats of SBC boys in the Government Medical Colleges were filled. And remaining two seats of SBC Girls were opted by candidates at serial No. 20 and 37 i.e. Suman Khatana and Urvashi Gocher respectively has been given admission.

(v) The candidates appearing at serial No. 8 was given the SB Boys in 2nd round of counselling which was vacant because the candidate appearing at serial No. 7 resigned/left his opted seat at the time of 1st counselling. The petitioner has opted paid seat at the time of second counselling.

It is, therefore, thus evident that the allotment of free and paid seats in SBC quota to the SBC boys and girls were fully in accordance with the approved seat matrix and there is no question of any mala fide and arbitrariness.

9. That the contents of the para No. 9 of the writ petition are not admitted as stated in the light of submissions made hereinabove. However, it is submitted

that the allotment of seats to SBC candidates was in accordance with the instructions and policy of the State Government and there is no question of any mala fide and arbitrariness in allotment of seats. Since all the seats of SBC boys in Government Medical Colleges were filled at the time when the petitioner appeared for counselling at his turn, the allotment of payment seat to the petitioner in second counselling was perfectly legal and justified."

6. Learned counsel appearing for the appellant submits that the reservation for SBC category had to be applied to the total number of seats, including free and paid seats, and thus, the reservation for SBC candidates at 1% would come to 9.36, out of total 936 seats. The Instructions for admission to MBBS/BDS Degree Course for the Session 2011-12 published by the Rajasthan University of Health & Sciences, on the basis of the Ordinance of the University in Chapter-XXXV of Examination-Faculty of Medicine & Pharmaceutics Bachelor of Medicine and Bachelor of Surgery, question No. 272(h), provided that the percentage of girl candidates will not fall below 25% of the total seats (State), including the girl candidates admitted as per their merit in the general merit, but including seats reserved under category "a" & "b". The relevant Ordinance is quoted as below:

"272(h). The percentage of girl candidates shall not fall below 25% of the total seats (State) including the girl candidates admitted as per their merit in the general merit, but including seats reserved under category a & b."

7. The category "a" in Ordinance 272(11) included 15% seats, to be reserved for MBBS Course, being filled up by an All India Entrance Examination to be conducted by the Agency of the Government India, whereas category "b" included 24 seats 4 in each State Medical College of Rajasthan for MBBS Course will be reserved for candidates selected under the Central Government pool.

8. It is submitted that in view of the Ordinance 272(h), the percentage of girl candidates was not required to fall below 25% of the total seats, and accordingly, out of 936 seats, the girl candidates were correctly allocated three seats. The first candidate in the merit of SBC category namely, Lado Bai was admitted in the Government Medical College. The second candidate namely, Vipasha Singh did not opt for the Government Medical College. She wanted to study in Jaipur, and was admitted in a private Medical College. The next female candidate, in order of merit, was Suman Khatana. The appellant-Urvashi Gochar was given the third seat on merits, as-per the seat matrix, prepared in the Rajasthan University of Health & Sciences, for the purposes of allocation of seats and counselling.

9. It is submitted that Mukesh Kumar-petitioner was fourth in order of merit as SBC boy candidate, and that, he did not get admission in the first round of counselling, as all the three seats for boys were filled up. In the second round of counselling, he was offered admission in Jhalawar Medical College and accepted it.

10. It is submitted that neither the Ordinance No. 272(h), nor the matrix prepared for counselling was challenged by Mukesh Kumar-petitioner. The entire

basis of his claim was incorrect, inasmuch as, the horizontal reservation for women is not applicable to the candidates, who fall in the same category.

11. Learned counsel appearing for the Rajasthan University of Health & Sciences submits that it was clearly stated in his reply that the reservation was applied to the total number of seats i.e. 936 seats, and that, since the Ordinance 272(h) provided that the percentage of girl candidates shall not fall below 25% of the total seats, including the girl candidates admitted as per their merit in the general merit, the University provided for three free seats for girls in SBC category. Since the third candidate was allocated free seat in the Government Medical College, Kota, the University did not commit any mistake. He has also submitted that since the Ordinance 272(h) and matrix were not challenged, the entire challenge was without any basis.

12. We have considered the submissions, and find that learned Single Judge committed a mistake in calculating the reservation for SBC candidates at 1% out of 689 free seats. The reservation was made applicable to both free and paid seats, and thus, out of total 936 seats, 1% would come to 9.36. Since the Ordinance 272(h) provided that the reservation for girl candidates shall not be less than 25% of the total seats, including the girls admitted as per their merit, the total number of seats for girl candidates would be three. In the first round of counselling, Mukesh Kumar-petitioner was considered amongst boys, against available seats, and was not admitted on the free seat. He was allocated to a paid seat in the Jhalawar Medical College. He accepted the seat without protest, and has filed the writ petition challenging the allocation of the third SBC seat to the girl candidate.

13. We are of the view that the ratio in the *Rajesh Kumar Daria vs. Rajasthan Public Service Commission & Ors.* (supra) was not applicable in the present case, inasmuch as, it was not a case of horizontal reservation in public services. The seats were allocated according to the availability of free and paid seats in the Medical Colleges, in accordance with the Ordinances. The matrix prepared by the Rajasthan University of Health & Sciences for admission, was not challenged, and that, Mukesh Kumar-petitioner, competing amongst boys, was the fourth candidate, who could not get free seat in the first counselling.

14. The reliance placed by learned counsel appearing for the respondent No. 4, on the principles laid down by the Supreme Court in *State of U.P. and Another Vs. Pawan Kumar Tiwari and Others*, AIR 2005 SC 658 : (2005) 1 ESC 96 : (2005) 104 FLR 582 : (2005) 1 JT 150 : (2005) SCC(L&S) 193 : (2005) 2 SCR 21 : (2005) 2 SLJ 386 : (2005) AIRSCW 211 : (2005) 1 Supreme 3, is not applicable to the fact situation, inasmuch as, Ordinance 272(h) clearly provided that percentage of girl candidate shall not fall below 25% of the total seats. Accordingly, in accordance with the Ordinances, the total seats for SBC (Girls) would be three and not two. So far as the allocation of seats for the girls and boys in the SBC category is concerned, since the matrix was not challenged, the allocation could not have been queried by learned Single Judge in allowing the

writ petition. On the aforesaid discussion, the Special Appeal is allowed. The judgment and order of learned Single Judge is set aside.