

(2006) 09 DEL CK 0111

In the Delhi High Court

Case No : Writ Petition (C) . No. 13035 of 2006

Madan Mohan

APPELLANT

Vs

Guru Gobind Soingh Indraprashtha University and Others

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Citation : (2006) 134 DLT 709

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Jayant Bhushan and R.K. Saini, for the Appellant; G.D. Goel and Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

Rule With the consent of the parties the petition is taken for final disposal

1. The point for consideration in this writ petition is that if the reservation for Scheduled Tribes is 7.5% out of 100 seats whether the action of respondent No.1 in allocating only seven seats is justifiable and in accordance with the policy for reservation.

2. The facts relevant for determination of controversies are that the petitioner belongs to Scheduled Tribe Community. He applied for appearing in Combined Entrance Test MBBS 2006 conducted by respondent No.1. As the petitioner fulfilled all the requirement of educational qualification he was issued an admit card for CET MBBS 2006 and the result of the Combined Entrance Test was declared where the rank of the petitioner was 6250.

3. According to the selection procedure, the Scheduled Caste candidates having more than 40% marks were included in the merit list. The candidates higher in the merit list were to be adjusted against the subsidized seats and thereafter the candidates were to be adjusted against non-subsidized seats.

4. The prospectus contemplated commencing of first counseling on 3rd July, 2006. The detailed schedule was displayed on University's website and University's notice board on 23rd June, 2006 and no separate communication was to be sent.

5. From the vacancies arising due to drop out after first counseling, the vacancies were to be notified on 15th July, 2006 and the second counseling was contemplated for 25th July, 2006.

6. The Admission Brochure III for MBBS Programme Session 2006 incorporated reservation and region wise allocation of seats. According to the reservation, five subsidized seats were allocated for Scheduled Tribe candidates for all India region category and two subsidized seats were allocated for Delhi region category. Clause 4 of the Admission Brochure III is as under:

4. Reservation and Region-Wise Allocation of Seats

Region-wise and Category-wise allocation of seats in Vardhman Mahavir Medical College, which has been set up on ?All India Pattern?, is as under:

4.1 REGION-WISE AND CATEGORY-WISE ALLOCATION OF SEATS:

I. All India Region Category	Category	Number of Seats	General	8
A. Subsidized	SC	3	ST	5
B. Non-Subsidized	Open for all Categories	9	Total of I	25
II. Delhi Region Category	Category	Number of Seats	General	20
A. Subsidized	SC	12	ST	02
B. Non-Subsidized	Open for all Categories	16	Total of II	50
III. All India Quota to be filled Through CBSE		15	IV. Central Pool of Allocation	10
Total of III & IV		25	GRAND TOTAL : I + II + III + IV	100

RESERVATION FOR PHYSICALLY HANDICAPPED PERSON: One seat for physically handicapped person will be filled on the basis of merit from any region and category. The reservation for the physically handicapped candidates would be as per Medical Council of India Guidelines.

7. The Admission Brochure III categorically stipulated that in case of unfilled seat reserved for Scheduled Caste will be treated reserved for Scheduled Tribes and vice versa and in case sufficient number of eligible candidates of Scheduled Caste and Scheduled Tribe not be available, the seat thus remaining vacant will be treated as unreserved. The relevant Clause 4.2 of Admission Brochure III is as under:

4.2 SCHEDULED CASTES/SCHEDULED TRIBES CANDIDATES

Any unfilled seat reserved for Scheduled Castes (SC) will be treated as reserved for Scheduled Tribes (ST) and vice versa. In case sufficient number of eligible candidates of SC and ST are not available, the seats thus remaining vacant will be treated as unreserved.

A Caste Certificate in the name of the applicant from a competent authority will have to be submitted at the time of admission. In case the certificate is in the

candidate's parents name, admission will be provisional. In such a case, the candidate must produce the requisite certificate in his or her name within one week from the date of admission. A list of approved authorities to issued the SC and ST Certificates are as under:

(i) District Magistrate, Additional District Magistrate, Deputy Commissioner, Collector, Additional Deputy Commissioner, Deputy Collector, 1st Class Stipendiary Magistrate (not below the rank of 1st class Stipendiary Magistrate), City Magistrate, Sub-Divisional Magistrate, Taluka Magistrate, Executive Magistrate and Extra Assistant Commissioner.

(ii) Chief Presidency Magistrate, Additional Chief Presidency Magistrate and Presidency Magistrate.

(iii) Revenue Officer not below the rank of Tehsildar.

(iv) Sub-Divisional Officer of the area where the candidate and/or his/her family normally resides.

(v) Administrator, Secretary to the Administrator or the Development Officer (Lakshdweep & Minicoy Islands).

8. The grievance of the petitioner is that the respondents for 7.5% reserved seats for Scheduled Tribes could not allocate seven seats only as for half fraction or more, a full seat ought to have been allocated for Scheduled Tribes for All India Region and Delhi region together. According to the petitioner, the ordinance issued by respondent No.1 allocated 15% seats for candidates belonging to Scheduled Castes and 7.5% seats were reserved for candidates belonging to Scheduled Tribes. Relying on para 4.1 of admission brochure which is detailed hereinabove, it was contended that there are 100 seats and out of that 15 seats are reserved for Scheduled Caste candidates and for the Scheduled Tribe candidates, despite 8 seats in accordance with rules and the pronouncement of Apex Court, only 7 seats have been reserved which is contrary to the respondents' ordinance and settled law.

9. In these circumstances, the petitioner has claimed that the admission brochure to the extent allocating only 7 seats for Scheduled Tribes for a quota of 7.5% be quashed and it be held that the respondents are liable to allocate 8 seats out of 100 seats for Scheduled Tribe candidates. Consequently, it has been prayed that respondents be directed to allocate one more seat for Scheduled Tribe category and respondents be directed to fill one seat by counseling forthwith.

10. In support of petitioner's contention, learned Counsel for the petitioner has relied on Union of India (UOI) and Another Vs. Satya Prakash and Others, (2005) 2 SCC 10, State of Punjab v. Asha Mehta, (1997) 11 SCC 410 and Bipin Prakash Vs. High Court of Judicature, .

11. The petition is contested by the respondents. A counter affidavit has been

filed by Shri V.K. Jain, Registrar, GGS Indraprastha University, Kashmere Gate, Delhi contending that respondent No.1 is an affiliating and teaching University which functions within the framework of Act of 1998 and the University is 100% funded by the Government of National Capital Territory of Delhi. For academic year 2006-2007, the respondent No.1 had issued 3 admission brochures and Admission Brochure III pertained to MBBS Programme.

12. The respondent No.1 opposed the petition on the ground that the seat allocation and reservation is done by the Government of India, Ministry of Health and Family Welfare, Department of Health, New Delhi and respondent No.1 implements the direction of the Government of India and no changes regarding reservation can be carried out by respondent No.1. For seat allocation, the respondent No.1 relied on a copy of letter No.Z-28015/17/2002-H dated 24th April, 2003. The relevant portion of the said communication is as under:

Total Number of seats -- 100 CBSE -- 15 Central Pool -- 10 Remaining -- 75
Delhi Seats - 50 All India Seats - 25 Non-subsidized - 16 Non-subsidized - 09
SC - 12 SC - 03 ST - 02 ST - 05 General - 20 General - 08

2. It is, Therefore, requested that necessary action to hold the entrance examination for filling up the remaining 75 seats may please be initiated. While drawing up the schedule for the examination, it may be ensured that the classes for ensuing academic session (2003-04) starts from 1st August, 2003 positively. It may also be ensured that the examination is conducted on All India basis. Schedule drawn in this regard may be intimated to this Ministry at the earliest.

3. The fee structure will be as follows:

(a) For non-subsidized seats the fee will be Rs. 1,00,000 (Rupees one lakh) per annum per student.

(b) For other seats the fee will be Rs.15000/- (rupees fifteen thousand) per annum per student.

13. According to respondent No.1, the examination for 2006-2007 was conducted with seat matrix as detailed in Clause 4 of Admission Brochure III, which has been detailed hereinabove. The seat allocation is prepared and finalized according to respondent No.1 by Department of Health, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.

14. The respondent No.1 challenged the maintainability of the petition on the ground that it suffers from delay as the petition has been filed on 19th August, 2006. According to the said respondent the petitioner knew about the reservation policy in March 2006 as the Admission Brochure III was on sale from 31st March, 2006. The respondent No.1 also challenges the maintainability of the petition on the ground that in the Admission Brochure, the number and percentage for reservation for ST category is given as 5 seats for All India Region and 2 seats for Delhi region and the separate percentage is not given. The facts were known to the petitioner in March, 2006, however, the petition has been filed after first

and second counseling are over in August 2006.

15. The first counseling had taken place on 3rd and 4th August, 2006 and 7 seats reserved for Scheduled Tribe Category had been filled up. The details of the Scheduled Tribe Candidates who were admitted to 7 seats of Scheduled Tribes are as under:

Sl. No. Name Rank 1. Sher Singh Meera 103 2. Sunil Kumar Meena 180 3. Ram Prasad Meena 602 4. Ramesh Chandra Meena 608 5. Rahul Kumar 631 6. Manish Meena 2124 7. Yashi Rawat 5625

16. According to respondent No.1, the last candidate in the Scheduled Tribe category had rank of 5625 whereas the rank of the petitioner is 6250. There are 9 candidates between the rank of the last Scheduled Tribe candidate and the petitioner. According to the respondent No.1, even second counseling was over on 25th August, 2006 and the seats have been filled up.

17. The averment of the petitioner that for B. Tech/M. Tech 0.375 has been rounded off to 1 and 0.525 has been rounded off to 1 which is the reservation out of 15% quota for outside Delhi region was refuted. Reliance was placed on Ms. Neelu Arora and Another Vs. Union of India (UOI) and Others, to contend that no admission can be made after second counseling. The relevant observation of the Supreme Court as relied on by the respondent No.1 is as under:

...if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counseling because there is no scope of the third round of counseling....

18. The petition is also opposed by the Union of India, respondent no. 2 and an affidavit of Shri Rajendra Singh, Under Secretary, Ministry of Health & Family Welfare, Government of India has been filed. The counter affidavit on behalf of Union of India gives the seat matrix of 100 MBBS seat for the year 2006-07.

2.The seat matrix for 100 MBBS for the year 2006-07 is as under:

I All India Region Category A. Subsidized Category Number of Seats General 8 SC 3 ST 5 B. Non-Subsidized Open for all Categories 9 Total of I 25 II Delhi Region Category A. Subsidized Category Number of Seats General 20 SC 12 ST 02 B. Non-Subsidized Open for all Categories 16 Total of II 50 III. All India Quota to be Filled through CBSE:- 15 IV. Central Pool of Allocation :- 10 Total of III and IV 25 Grand Total: I+II+III+IV 100

19. It was contended by the respondent no.2 that out of 10 seats in the central pool allocation, two seats are earmarked for citizens of Maldives, and Therefore only 98 seats are available for candidates from India against which 7 seats are reserved for Scheduled Tribes. It was also asserted that out of central pool of allocation, one seat has been allocated to the State of Nagaland which too is subject to the reservation for Scheduled Castes and Scheduled Tribe candidates.

Since 2 seats were earmarked for citizens of Maldives, Therefore, for remaining 98 seats, only 7 seats could be reserved. A categorical assertion was made on behalf of respondent No.2, Government of India that for the year 2007-2008 this aspect of allocation of 7.5% seats will again be scrutinized and it will be ensured that the seat reserved for Scheduled Tribes are not less than 7.5% each year.

20. The petitioner filed the rejoinder affidavit contending that according to reliable information received by the petitioner, out of 10 seats reserved for central pool, four candidates have not joined and as such four seats for the year 2006-07 are vacant in the respondent No.3. college. Regarding allocation of 2 seats for the citizens of Maldives, out of 10 seats of central pool allocation, it was contended that out of total number of 100 seats reserved for central pool allocation, reserving two seats for citizens of Maldives will reduce the number of seats to 98 and on the basis of 98 seats the reserved seats for the Scheduled Tribes of 7.5% quota will be 7.35 which can be rounded off to seven only.

21. Regarding delay in filing the petition, it was contended that need and occasion for the petitioner to file the petition arose only when the name of the petitioner was not included in the allocation of 7 seats necessitating filing a representation to the respondents on 8th August, 2006 and on not receiving any response to the said representation, the writ petition was filed on 19th August, 2006 and the same cannot be construed to be suffering from delay and laches. Regarding merit list, petitioner stated that there are only two candidates above the petitioner in the category of Delhi region because other seven are from outside Delhi. According to petitioner, one more seat has fallen vacant on account of recent cancellation of admission of Shri Jas Karan Gujral who has taken admission in a college in Punjab.

22. I have perused the writ petition, counter affidavits and rejoinder affidavit and the detailed arguments by the counsel for respondent. From the letter dated 11th May, 2000 bearing DO No. F. 1-6/99(SCT), it is apparent that specific reservation for Scheduled Caste and Scheduled Tribe students has been provided for admission to various course in the Universities and colleges. For Central Universities and Deemed Universities which are receiving maintenance grants on 100% basis, the reservation is 15% for the Scheduled Castes and 7.5% for the Scheduled Tribes.

23. On behalf of Union of India, an additional affidavit was filed contending that one seat was allotted to Nagaland from central pool and for this, the reliance was placed on a letter No.U.14014/84/86-ME (UG) dated 9th December, 1986 confirming that one seat earmarked for the State of Nagaland has been given to ST candidate only and consequently two seats were allotted to Maldives and out of 98 seats, the reservation for Scheduled Tribes at 7.5% will result into 7.35 seats which on rounding off would be 7 seats out of 98 seats and in the circumstances allocation of 7 seats only is justifiable. The relevant extract of the communication dated 9th December, 1986 is as under:

4.22? % of the seats allotted to each State/UT concerned will be reserved for students belonging to Scheduled Castes/Scheduled Tribes of that State/UT. The break-up of this reservation will be as follows:

(a) A distinct reservation of 15% for Scheduled Castes and 7?% for Scheduled Tribes.

(b) The reservation as mentioned in sub-para (a) above, can be interchanged. Thus, if a sufficient number of candidates are not available to fill-up seats reserved for Scheduled Tribes, they may be filled-up by suitable candidates from Scheduled Castes and vice-versa; and

(c) If the number of available scheduled castes and Scheduled Tribe qualified candidates is less than 22?% of the seats; the balance can be given to non-scheduled caste and Scheduled Tribe candidates.

5. Only those candidates will be eligible for admission against the seats reserved for the Government of India who have secured at least 50% (40% in the case of candidates belonging to Scheduled Castes and Scheduled Tribes or as amended by the Medical Council of India from time-to-time of the aggregate marks in English, Physics, Chemistry and Biology in the qualifying examination, pre-medical/1st year of three years degree course/1st year of three year B.Sc (Hons) course-pre-degree (two years course/pre-university (two years course) ? 10+2 under the new pattern of 10+2+3 or any other examination recognised as equivalent by the Medical Council of India. 80% weightage is to be given to the results of the eligible examinations for admission and 20% to that of matriculation or school leaving examination; when a candidate has passed B.Sc or M.Sc examinations, then 80% weightage is to be given to the result of the eligible examination, 10% of the result of the matriculation or school leaving and 10% on the results of the B. Sct or M. Sc. examinations.

It may be further noted that-

(a) For a candidate who has passed the qualifying examination in the 2nd attempt, 2% of the marks from the total aggregate should be deducted in determining his merit; and

(b) Candidates who have passed the qualifying examination in more than two attempts should not normally be considered suitable for medical studies.

7. It is requested that the above criteria for the selection and nomination of candidates against the MBBS/BDS seats reserved for the Central Government should be strictly followed. The Central Section Committee in this Ministry will also follow the procedure.

24. The learned Counsel for respondent No.1 also contended during the arguments that there was one seat for Delhi region Scheduled Caste category and one seat for all India general category for which counseling has been notified for Saturday, the 30th September, 2006 at Auditorium of Respondent No.2

University at 2.30 PM and Therefore there are no vacant seats as far as respondent No.1 is concerned.

25. This is not disputed and can not be disputed that reservation for scheduled tribe is 7.5%. If the reservation is in fraction then how it should be considered. This has to be based on logic and common sense. Applying the principle of rounding off of mathematics which is if part is one half or more, its value should be increased to one and if part less than half then its value should be ignored. Applying that principle in the facts of present case for 7.5% reservation, first one has to see as to how many seats are to be reserved with fractions on the basis of 7.5% reservation.

26. The respondent No.2 gave the seat matrix for MBBS course 2006-07 on the basis of hundred seats. If the seats available to scheduled Tribes are to be computed on the basis of hundred seats, the seats which ought to have been in earmarked for scheduled Tribes would work out to be 7.5. Applying the common principle of mathematics of rounding off, 7.5 should be worked out as eight and Therefore the respondents ought to have allocated eight seats for scheduled Tribes.

27. Whether the principle of rounding off of simple mathematics can be applied in the facts and circumstances of reservation? Reliance can be placed on (2005) 2 SCC 10, State of U.P and Anr.v. Pawan Kumar Tiwari and Ors. The Apex Court in this case had held that the rule of rounding off based on logic and common sense should be applied under which if part is one half or more, its value should be increased to one and if part is less than half then its value should be ignored. The relevant observation of the Supreme Court regarding rounding off is as under:

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

The practice of rounding off the marks in recruitment process in examination conducted by Union Public Service Commission whereby half mark is rounded off to full mark was approved by the Supreme Court in State of Punjab v. Asha Mehta, (1997) 11 SCC 410

28. The government has worked out the reservation of 7.5% on the basis of 98 seats. The plea that the two seats had been allocated for the residents of Maldives also has some variation. In the counter affidavit filed on behalf of respondent no. 2 it was asserted that two seats had been allocated for 'citizens' of Maldives, however, statement filed by the Government of India indicating the names of beneficiary agencies and the number of MBBS/BDS seats allocated to them from

the central pool for the academic session 2006-07 reflects that these two seats at VMMC, Safdarjung Hospital, New Delhi had been allocated to MEA (Maldives) and MEA is Ministry of external affairs as is apparent from legends of that letter. No other Explanation has been given by the learned Counsel for the respondents. If two seats have been allocated out of 10 seats at VMMC, Safdarjung Hospital, New Delhi, how these two seats can be excluded from the total number of seats for computation of 7.5% seats for scheduled tribes, has not been satisfactorily explained. If that be so, there is no legal basis to compute 7.5 per cent reservation for scheduled Tribes from 98 seats. In these circumstances the plea of the respondents that 7.5 per cent reserve seats for scheduled tribes had to be calculated from 98 seats is not acceptable. Consequently the plea that 7.5 per cent of reserve scheduled Tribes seats shall work out to be 7.35 and applying the principle of rounding off it will be seven seats, is not acceptable in the present facts and circumstances.

29. Another plea of the government is that one seat was allotted to Nagaland from central pool and for this reliance has been placed on a letter no. 14014/3/2006-ME.IV dated 19th July, 2006, a copy of which is annexed by the respondents with their additional affidavit. The said letter stipulates that one seat has been allocated at Lady Harding Medical College for Nagaland. The plea of the respondent no.2 is that this seat was allocated from Central Pool and since this was filled by a candidate who is from Scheduled Tribe, so this seat should be taken as gone to scheduled tribe and so even if eight seats were to be allocated for 7.5% reservation for scheduled tribes, the eight seats have gone to scheduled tribes and Therefore, no other seat can be released to scheduled tribes category for a reservation of 7.5%.

30. This plea is also based on wrong legal assumption. The Supreme Court has held that if a reserved category candidate is recommended by the commission without resorting to relaxed standard could not get his/her preference in the merit list, he/she can opt a preference from the reserved category but while computing the quota/ percentage of reservation he/she will be deemed to have been allotted a seat as an open category candidate (i.e. on merit) and not as reserved category candidate recommended by the Commission by resorting to the relaxed standards. Reliance can be placed for this on Union of India (UOI) and Another Vs. Satya Prakash and Others, where it was held as under by the Supreme Court:

18. By way of illustration, a reserved category candidate, recommended by the Commission without resorting to relaxed standard (i.e. on merit) did not get his own preference ?say IAS? in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the

vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. This is the mandate of the proviso to Sub-rule (2) of Rule 16.

19. In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the quota/ percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard.

20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference.

31. The inevitable inference in these facts and circumstances on the reasons as detailed herein above is that for 7.5% reservation for scheduled tribes, the government should have allocated eight seats. The respondents have rather allocated only seven seats and Therefore the respondents are liable to allocate one more seat for scheduled tribe quota. The Respondent no.2 has even admitted in its counter affidavit that in the following year that is for the year 2007-08 this aspect shall again be scrutinized and it will be ensured that the seats reserved for scheduled tribes are not less than 7.5% each year.

32. Considering the facts and circumstances, the plea of the respondents that the petition suffers from delay and laches and ought to have been filed before first and counseling is also not acceptable and exercise of jurisdiction by this Court is not to be declined.

33. Since the seats are to be filled by 30th September, 2006 according to the guidelines of the Supreme Court and the seat allocation was done by the respondents much earlier, the direction to the respondents to allocate one more seat in the category of scheduled Tribes shall be subject to the availability of one more seat.

34. Consequently the respondents are directed to allocate one more seat to the category of scheduled tribes for the year 2006-07 subject to availability of one more seat. This one more seat for the category of scheduled tribe will be for All India Region Category and Delhi Region Category. Whether it should be for All India Region Category or Delhi Region Category shall be decided by the respondent no.2. Since the admission has to be completed by 30th September, 2006 pursuant to the directions of the Supreme Court, the respondents shall

make diligent endeavor to fill this one seat before 30th September, 2006 so that it does not go waste.

35. Consequently the rule is made absolute and the respondents are directed to allocate one more seat to the category of scheduled tribes for the year 2006-07 subject to availability of one more seat. The respondent no.2 is also directed to make diligent endeavor to fill this seat in accordance with rules and regulations. The writ petition is allowed to this extent and the parties are left to bear their own costs in the facts and circumstances of the case.

Copies of this order be given duly to the parties under the signatures of Court Master of this Court.