

(2009) 09 DEL CK 0425

In the Delhi High Court

Case No : W.P (C) No's. 5385 of 2008 and 11469 of 2009

Manisha V.

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Indian Medical Council Act, 1956 — Section 10A

Citation : (2009) ILR Delhi 821 Supp

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Y.P. Narula, G.C. Nagar and Aniruddha Chaudhary, for the Appellant; Anurag Mathur, Maninder Acharya for Respondent Nos. 1 and 2, Zubeda Begum and Pawan Kumar Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has filed civil writ petition being CWP No. 5385/2008 seeking a direction to set aside the order dated 15th July, 2008 of respondent No. 2, the Registrar, University of Delhi, Faculty of Medical Sciences cancelling the admission of petitioner to the University College of Medical Sciences and to declare the Clause 2.4.3 of Bulletin of Information for DUMAT 2008 as ultra vires.

2. The petitioner in writ petition CWP No. 11469/2009 has sought a seat in MBBS course on the basis of her 49th merit rank in DUMAT held in 2009 and has sought admission in the University College for Medical Sciences on the basis of All India criterion for reserving the seats for ST candidates.

3. The petitioner had passed her 10th class examination from the Delhi in the year 2005, however she did her 12th class from Kota, Rajasthan in 2007. The petitioner appeared in the entrance examination for admission to the medical colleges in Delhi. Under the regulations for DUMAT 2008, the candidates who had passed 12th class examination under 10+2 system conducted by CBSE/Council

of the Indian School Certificate Examination/Jamia Millia Islamia, New Delhi were eligible. The eligibility conditions restrict admission to those candidates who had studied 11th and 12th classes regularly from a recognized school in Delhi. The relevant condition 2.4.2 and 2.4.3 are as under:

2.4.2 Candidates who have passed 12th class examination under 10+2 system conducted by CBSE/Council of the Indian School Certificate Examination/Jamia Millia Islamia, New Delhi with required subjects i.e Physics, Chemistry, Biology, and English from the recognized schools conducting regular classes situated within the National Capital Territory of Delhi only, will be eligible for admission. The candidate must have studied 11th and 12th classes regularly from a recognized school within the National Capital Territory of Delhi. Further, the candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks (40% marks in case of SC/ST category candidates) taken together in Physics, Chemistry and Biology. 2.4.3 Female candidates belonging to SC category, ST category and CWWAPP category who have passed the qualifying examination from Indian Universities/Boards or Foreign Universities/Boards are eligible for admission to Lady Hardinge Medical College only against the seats reserved for these categories, subject to their fulfilling the prescribed conditions.

4. Though the candidates who had done 11th and 12th from a recognized school within the National Capital Territory of Delhi only were eligible for admission to the colleges under the Faculty of Medical Sciences, however, an exception had been carved out for the female candidates belonging to reserved candidates for admissions to Lady Hardinge Medical College only and therefore female candidates under reserved category were also eligible though they had not passed their 11th and 12th class from a school or institution from Delhi. Under the vacancies available for admission in MBBS course 10 vacancies were reserved for scheduled tribe category candidate in Lady Hardinge Medical College and for these vacancies female candidates from outside Delhi category were also eligible for admission.

5. The petitioner applied for admission and after entrance examination her rank was 93 against ST quota. The petitioner attended the counseling on 9th July, 2008 and was directed to meet the principal in UCMS. The petitioner was required to complete all the formalities by 18th July, 2008. The petitioners assertion is that when she went to deposit the fees in University College of Medical Sciences on 12th July, 2008, the fees was not accepted and later on she received a letter dated 15th July, 2008 cancelling her admission to UCMS on the ground that she had not passed her class 12th examination from Delhi and she had passed her class 12th examination from Rajasthan. The letter intimated her that she is eligible for admission to MBBS course in Lady Hardinge Medical College only and not in any other college under Faculty of Medical Sciences in Delhi.

6. The petitioner assailed the order dated 15th July, 2008 cancelling her

admission to University College for Medical Sciences and filed the writ petition No. 5385/2008 challenging the eligibility conditions 2.4.2 and 2.4.3 on the ground that respondent No. 1 has arbitrarily given preference to the place of study and territory with regard to the eligibility of ST category candidates for admission in MBBS course in two of its colleges out of three colleges. The ground for challenge by the petitioner was also that reservation policy is being implemented in an arbitrary manner and the admission to MBBS course is open to all candidates, who qualify class 12th examination from all over India and consequently for admission to the colleges in Delhi, cannot be restricted to the candidates who have passed the qualifying examinations, 11th and 12th Class from Delhi.

7. During the pendency of the writ petition, CWP No. 5385/2008 the petitioner has filed another petition being CWP No. 11469/2009 seeking admission to the University College of Medical Sciences on the basis of All India criterion of reserving the seats for ST candidates by UGC and on the basis of her result for 2009-2010 examination.

8. Mr. Narula, learned senior counsel for the petitioner has relied on the guidelines of University Grants Commission for implementation for reservation policy of the Government in the University, deemed to be Universities, College and other Grant-in-Aid Institutions and Centers which are deemed to be Universities having grants in aids from the public exchequer. It is contended that the percentage of reservation in admissions and recruitment in teaching and non teaching post has to be 15% for Scheduled Castes and 7.5% for Scheduled Tribes. It is also contended that the reservation is applicable to all admissions to Undergraduate, Post Graduate and M. Phil and PhD courses of Educational Institutions getting grant in aid or reserved institutions and centers.

9. The admission to Undergraduate courses in three medical colleges, University College of Medical Sciences (UCMS), Maulana Azad Medical College (MAMC) and Lady Hardinge Medical College (LHMC) are made centralized by faculty of Medical sciences through a common entrance test. The policy pertaining to medical courses of the Government of India is followed by the faculty of medical sciences providing 7.5% reservation to ST candidates and 15% to SC candidates. The petitioner appeared in DUMAT and obtained 49th rank from the category of scheduled tribes in entrance examination for 2009-2010.

10. The petition is contested by the respondent Nos.1 & 2 who filed the counter affidavit dated 30th July, 2008 in CWP 5385 of 2008 contending inter-alia that for admission in any of the three medical colleges affiliated to Delhi University, the candidate should have passed 11th and 12th class from a recognized school within the National Capital Territory of Delhi. It was asserted that since the petitioner had not done her 12th class from Delhi and she had done her 12th class from Rajasthan, therefore, she was not eligible in terms of Para 2.4.2 and 2.4.3 of Bulletin of Information. The respondents contended that such reservation has already been upheld in the case of State of Haryana by the

Supreme Court in the matter of Anant Madaan and others Vs. State of Haryana and others, The respondent's plea is that the petitioner was considered for admission under the reserved category seats in Lady Hardinge Medical College, however, on account of her merit position petitioner had not been given admission. Regarding the rationale for admitting the female candidates even from outside, it has been contended that Lady Hardinge Medical College is different from other two colleges as Lady Hardinge Medical College is meant for lady candidates exclusively and, therefore, even in the reserved category seats a relaxation has been given for admission in the Lady Hardinge Medical College admitting students who have not done their 11th and 12th classes from Delhi and reserved female candidates even from outside are eligible, however, this relaxation cannot be extended to other colleges and other candidates of other categories.

11. Maulana Azad Medical College is stated to be a medical college which is run and administered by the Government of NCT of Delhi and it is asserted that there is no reservation for women candidate in the said college. University College of Medical Sciences was pleaded to be attached to Guru Tegh Bahadur Hospital which is under the control of Government of NCT of Delhi. According to the respondents pursuant to the directions of the Supreme Court of India, the decision was taken by the Government of India that the said college would be run exclusively by Delhi Government and the said college does not have any reservation for women candidates as against the Lady Hardinge Medical College which is administered by the Government of India. The respondents also relied on historical reasons and contended that Lady Hardinge Medical College is a very old college and the seats are filled up on All India basis for female candidates of reserved category.

12. The respondent also contended that the seats reserved for scheduled tribes candidates in all the three colleges are 27 (LHMC 10, MAMC 11, UCMS 6) and as against 27 seats the merit position/rank of the petitioner is 93 in overall list of scheduled tribes categories and, therefore, even on the plea of the petitioner she was not entitled for admission to UCMS college being the scheduled tribe candidate, though she was not eligible for admission to said college. Regarding the admission of the petitioner in UCMS, it was further contended that the issuance of papers for admissions were erroneous and before the fees could be deposited by the petitioner, the mistake came to light and, therefore, the offer of provisional admission made to the petitioner was cancelled by letter dated 15th July, 2008.

13. An additional affidavit dated 27th September, 2008 was filed by Dr. A.K. Dubey, Registrar, Delhi University stating inter-alia that there were 10 seats in Lady Hardinge Medical College and all have been filled up. The last candidate admitted under the said category was at rank No. 22 and she had secured 441 marks. In comparison to the last candidate with the rank of 22 admitted in the reserved category rank of the petitioner was 93 and the petitioner had obtained

only 326 marks in the entrance examination for 2008-2009. It was stated that there were 58 candidates higher in merit to the petitioner in the outside Delhi category. Regarding petitioner it was reiterated that she was not eligible for admission in MAMC and University College of Medical Sciences and according to her merit ranking she could not be granted admission in Lady Hardinge Medical College.

14. An affidavit dated 5th December, 2008 was also filed by Dr. (Prof) O.P. Kalra, principal stating that University College of Medical Sciences is a maintained institution of University of Delhi and is funded by UGC getting 100% maintenance grant through Ministry of Human Resource Development. It was contended that the medical college is recognized by Medical Council of India u/s 10A of Indian Medical Council Act, 1956. It was categorically contended that the admission policy pertaining to medical courses of the Government of India is being strictly followed providing 7.5% reservation to ST candidates and 15% to SC candidates of the allocated seats. It was pleaded that medical colleges affiliated to University are under the faculty of medical sciences University of Delhi and the admission to Undergraduate/Postgraduate courses are made centralized by the faculty of medical sciences. In the circumstances, it was asserted that the admission is to be made by faculty of medical sciences even in respect of University college of medical sciences and University College of Medical Sciences does not have an independent role.

15. Another affidavit of Sh. Saurabh Kr. Jaipuriyar, Officiating Registrar of Delhi University has been filed stating that seats under ST category are 10 in LHMC and all have been filled up and there is no vacancy. For the entrance examination of 2009-2010 it is stated that the last candidate admitted under the ST category had a rank No. 13 who had secured 416 marks and the rank of the petitioner is 49 and she has obtained 323 marks. Regarding MAMC it was stated that there are 11 ST seats and only Delhi candidates are eligible and out of 11, 6 seats were filled up under ST category and 5 seats were diverted to SC category. In University College of Medical Sciences since no ST candidate was available all the seats have been diverted to SC category

16. The petitioner's plea is that the respondents cannot be permitted to put such a restriction for admission to ST women candidates only to one of the colleges which according to the petitioner is unreasonable. The plea is that university is financed by Government of India and, therefore, respondent No. 1 is supposed to follow the norms, rules, procedures and guidelines issued by UGC and Clause inserted in the information bulletin restricting the admission to the reserved category candidates from outside Delhi only to one college is violative of fundamental rights of the petitioner.

17. In the circumstances, the plea for consideration is whether preference in admission on the basis of residence as well institutional preference is permissible or not. The Supreme Court in Dr. Jagdish Saran and Others Vs. Union of India (UOI), had held that regional preference or preference on the ground of

residence in granting admission to medical college is not arbitrary or unreasonable so long as it is not a wholesale reservation on this basis. Considering the various reasons including that in a particular region there may be limited opportunities for technical education while the region may require such technically qualified persons and since the candidates who are residents of a particular region are more likely to remain in that region and serve that region, in such case if the candidates are preferred for admission to technical institutions of a particular region, the same cannot be termed without any rationale. The Supreme Court was of the view that a state which was short of medical personnel would be justified in giving preference to its own residents in medical colleges as these residents, after qualifying as doctors, are more likely to remain in the State and give their services to their State. In Jagdish Saran (Supra) the Court had observed that in case of women students, regional or residential preference may be justified as their parents may not be willing to send them outside the State for medical education.

18. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, it was held that certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalize opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. In that case the Supreme Court had held that the reservation to the extent of 70% on this basis would be permissible. This percentage was, however, increased to 85% in the case of Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, The Supreme Court again in case of Anant Madaan and others Vs. State of Haryana and others, had upheld the reservation of 85% of seats on the basis of candidates having studied for preceding three years in recognized schools/colleges in Haryana. In State of Haryana 15% seats had to be filled in on All India basis. It was held that the criterion, therefore, is in conformity with the other decisions of the Supreme Court and such a classification was held not to be arbitrary or unreasonable or violated of Article 14 of the Constitution of India.

19. A Shri Santosh Meena Vs. University of Delhi and Others, had upheld the restriction in admission on the basis of a candidate passing class 11th and 12th from Delhi for being eligible for admission in Delhi. In Santosh Meena (Supra) the candidate had undergone only 12th class examination in Delhi and in the circumstances relying on Pradeep Jain and Ors (Supra) had held that the law to enforce condition prescribing that class XI and XII should be completed for Delhi for being eligible for admission in Delhi, cannot be faulted and, therefore, it was held that the candidate Santosh Meena was not eligible for admission in Delhi.

20. Under the eligibility condition 2.4.3 of the bulletin of information, the admission to medical colleges in Delhi is restricted to those candidates who have passed 12th class examination under 10+2 system conducted by CBSE/Council for Indian School Certificate Examination/Jamia Millia Islamia, New Delhi within the National Capital Territory of Delhi and to those candidates who have studied

11th and 12th classes regularly from the recognized schools, therefore, cannot be faulted in the facts and circumstances. The reservation of not all the seats but some of the seats to only those candidates who qualify 11th and 12th classes from Delhi, therefore, cannot be quashed. Even in this reservation, a further classification, an exception has been made whereby the woman candidate of reserved category though they may be from outside Delhi and may not have done class 11th and 12th, are eligible for admission in Lady Hardinge Medical College. If this concession is given only for lady Hardinge Medical College, the petitioner cannot claim that same relaxation must be given for other two colleges that is University College of Medical Sciences and Maulana Azad Medical College. Therefore, the plea of the petitioner that clause 2.4.2 and 2.4.3 is not valid cannot be sustained and is rejected. The petitioner had not been given admission pursuant to entrance examination of 2008 as the rank of the petitioner was below the rank of the last candidate admitted in the reserved category. Therefore, the petitioner could not make a grievance for not getting admission in lady Hardinge Medical College as no candidate in reserved category below the rank of the petitioner had been granted admission. The petitioner is not entitled for admission to University College of Medical Sciences and Maulana Azad Medical College. Therefore, the prayer contained in the petition cannot be granted nor it can be held that the petitioner is entitled for admission to University College of Medical Sciences on the basis of her result in common entrance test of 2008-2009.

21. The petitioner had not been formally admitted in the University College of Medical Sciences for the session 2008-2009 and the letter dated 15th July, 2008 was issued to her before the petitioner could deposit her fees, as it transpired that the petitioner was not eligible for admission as she had not done her 12th class from Delhi. In the circumstances, there are no grounds for cancelling the letter dated 15th July, 2008 and cancelling the provisional admission letter dated 9th July, 2008 issued to the petitioner for admission to MBBS course under quota in ST category at University College of Medical Sciences.

22. In the writ petition CWP No. 11469/2009 the petitioner has sought admission to University College of Medical Sciences on the basis of her 49th rank in DUMAT held in 2009 and on the ground that there should be 15% reservation for scheduled castes and 7.5% in scheduled tribes in University College of Medical Sciences relying on the UGC guidelines for implementation of reservation policy of the Government in the Universities, Deemed Universities, Colleges and other grant-in-aid Institutions and centers. From the additional affidavit dated 1st September, 2009 filed on behalf of respondents in the writ petition No. 5385/2008, it is apparent that the last candidate admitted under the category of reserved candidate had a rank 13 and had secured 416 marks. The rank of the petitioner for 2009 DUMAT entrance examination is 49 and she has obtained only 323 marks. There are 13 more candidates higher in merit to the petitioner and therefore, she cannot be admitted to Lady Hardinge Medical College. Petitioner also cannot be admitted to University College of Medical Sciences as she is not

eligible for admission to said college as she has not done her class 12th from a school and institution from Delhi.

23. The plea of the petitioner that the reservation in the colleges under the Faculty of Medical Sciences is not 15% for SC and 7.5% for ST is also not correct. There is a reservation of 15% for SC and 7.5% for ST, however, petitioner cannot insist that there must be a reservation of 7.5% of ST for the candidate who have not done 11th or 12th class from Delhi. From the affidavits filed on behalf of the respondents it is apparent that the reservation of the seats for SC and ST is in accordance with the guidelines of University Grants Commission. In the facts and circumstances there is no violation of the policy of University Grants Commissions and the UGC guidelines for implementation of reservation policy of the Government in Universities, deemed to be Universities, Colleges and other grant-in-aid institutions and centers.

24. The petitioner is not entitled for admission to University College of Medical Sciences as she is not eligible for admission there and she is not entitled for admission in Lady Hardinge Medical College as the last candidate admitted in the said college had rank much higher than the 49 rank of the petitioner in DUMAT 2009 examination. The writ petition CWP No. 11469/2009 is, therefore, also without any merit and the petitioner is not entitled for any relief and the writ petition is, therefore, dismissed.

25. Consequently, writ petition CWP No. 5385/2008 for admission on the basis of the result of the petitioner in DUMAT 2008 is dismissed and the writ petition CWP No. 11469/2009 for admission on the basis of DUMAT 2009 is also dismissed. Parties are, however, left to bear their own cost.