

(1995) 02 SC CK 0025

In the Supreme Court Of India

Case No : Civil Writ Petition No. 777 Of 1994

Ms. Swati Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21

Citation : (1995) 2 JT 438 : (1995) 1 SCALE 480 : (1995) 2 SCC 560

Hon'ble Judges : S. C. Sen, J; R. M. Sahai, J

Bench : Division Bench

Advocate : Ashraf Chaudhary, Ms M. Chaudhary, Shahid Rizvi and R.N Keshwani, Advocates, for the Petitioner; ???Dr Rajeev Dhavan, Senior Advocate (R.B Misra, Advocate, with him) for the Respondent. ???Pradeep Misra, Advocate, for Respondent 3.

Final Decision : Disposed Of

Judgement

1. The petitioner who appeared for the Combined Pre-Medical Test of 1994 held in the State of U.P. challenged a circular issued by the Lucknow University based on a letter dated 17th May 1994 issued by the Secretary, Government of U.P. It was claimed that reservation of 65% general seats in the, medical colleges was violative of the constitutional guarantee Under Articles 16, 14, 19 and 21 of the Constitution and the ratio laid down by this Court in Indira Sawhney Vs. Union of India, . After the petition was filed the Government issued another notification on 17.12.1994 clarifying its stand in respect of reservations. The relevant portions of it are extracted below:

In continuation of G.O. No. 2697/Sek14/V/- 94/III/93 dated 17.5.94 or the above subject, I am directed to say clarifying the Govt. policy that horizontal reservation be granted in all medical colleges on total seats of all the all the courses to be filled through combined Pre Medical Test [C.P.M.T.] 1994 as given below:

1. Real dependents of freedom fighters 05 percent

2. Sons/daughters of deceased/disabled soldiers 02 percent

3. Physically handicapped candidates 02 percent

4. Candidates belonging to hill areas 03 percent

5. Candidates belonging to Uttaranchal areas 03 percent The above reservation would be 'horizontal', and the candidates of the above categories selected on the basis of merit would be kept under the categories of Scheduled Caste/ Scheduled Tribes/ Other Backward Classes/ General to which they belong. For example. if a candidate dependent on a Freedom Fighter selected on the basis of reservation, belongs to the Scheduled Caste, he will be adjusted against the seats reserved for scheduled caste. Similarly, if a physically handicapped candidate selected on the basis of reservation belongs to other backward class or general category, he would be adjusted against the seats reserved for other backward classes or general category.

[a] Scheduled caste candidates -21 percent] 30 per cent [b] Scheduled tribe candidates -02 percent] seats] in each [c] Other backward] category class candidates -27 percent] reserved for ladies

In the earlier circular the provision for reservation which is relevant read as under:

Out of the total seats being filled up through the C.P.M.T. 1994, 35% seats are reserved for the candidates belonging to the general category and remaining 65% seats shall be for the reserved categories which are limited to the percentage mentioned against the following categories of the candidates:

Percentage of the reserved seats.	Reserved Categories
-----------------------------------	---------------------

1.Backward Classes 27 (of them 30% reserved per cent for ladies.)	
---	--

2.Hilly area 3 per (of them 30 per cent cent reserved for ladies.)	
--	--

3.Uttarakhand Area 3 % (30% reserved for ladies.)	
---	--

4.Scheduled Caste 21 % (30% for ladies)	
---	--

5.Schedule Tribes 2 % (30% reserved for ladies.)	
--	--

6.Actual dependents 5 % (30% percent reserved of the freedom fighters for ladies.)	
--	--

7.Daughter/sons of soldiers 2 % (30% reserved for who became handicapped or ladies) killed in action/war.	
---	--

8.For handicapped candidates 2 % (30% reserved for ladies.) ----- 65 per cent -----	
---	--

The remaining seats will be of the general category in which 30% reservation will

be for the ladies.

2. Reservation of 65% resulting in reducing the general category to 35% was undoubtedly violative of Article 16. Further by reserving 30% of the general seats for ladies the general category shrunk to 5%. But these glaring infirmities have been rectified by the amended circular. Reservation of 30% for ladies has now been confined to paragraph (3) of the amended circular. Dr. Dhawan, the learned senior counsel appearing for the State clarified that he has instructions to make a statement on the amended circular that now there is no reservation for ladies in the general category.

3. Similarly, the other defect in the circular reserving 35% seats for general category has been removed. The vertical reservation is now 50% for general category and 50% for scheduled caste, scheduled tribes and backward classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in C.P.M.T. into two categories one, general and other reserved. Both have been allocated 50%. Paragraph 2 of the circular explains that candidates who are selected on merit and happen to be of the category mentioned in Paragraph 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in *Indira Sawhney* (supra). Whether the reservation for such persons should have been made or not was not challenged, therefore, this Court is not required to examine it.

4. In the result this petition is disposed of by directing that in view of the circular issued by the Government on 17.12.1994 clarified by paragraph (2) the grievance of the petitioner cannot be said to be. The interim order passed by this Court staying the declaration of results is discharged.