

(2010) 10 DEL CK 0232

In the Delhi High Court

Case No : Writ Petition (C) No. 4232 of 2010

Pallavi Doshi

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0232

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : N.N. Aggarwal and D.K. Thakur, for the Appellant; Mohinder J.S. Rupal and Sonam Gupta for R-1 and Ashok Singh, for R-3/UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner was born of parents of Indian origin in USA and is a citizen of USA. However, upon her father taking up employment in India, the petitioner shifted to India and has since class III studied in schools in India. The petitioner took the class XII examination held by the ICSE Board, an Indian Board and applied for admission in Delhi University.

2. The Information Bulletin published by the University of Delhi for admissions in the academic year 2010, in Clause 4.4 thereof provides as under :

4.4 Reservation of Seats for Foreign Students

At least 5% seats in the first year of each course in Colleges are reserved for foreign students. However, this reservation will not be open to those foreign students who have passed the qualifying examination for purposes of admission to the University from an Indian Board/University in India including Indian Boards like CBSE located in a foreign country.

3. The petitioner, though a foreigner (being not an Indian citizen) having passed the qualifying examination from an Indian Board and thus not eligible for

reservation under clause aforesaid, preferred this petition in June, 2010 challenging the Clause 4.4 aforesaid of the Information Bulletin and seeking its quashing and seeking direction for admission in the category of 5% seats reserved for foreign students. It was inter alia the case of the petitioner that the Information Bulletin required the petitioner to pay one time Foreign Student Registration Fee of US \$300 and US \$100 per year to the College but was wrongfully carving out an exception against foreign students who had passed the qualifying examination from an Indian Board. The petition came up before this Court during summer vacations on 16th June, 2010 when notice was issued. No interim relief was granted to the petitioner.

4. On 2nd July, 2010 the counsel for the petitioner inter alia contended that the reply of the respondent No. 2 University Grants Commission (UGC) was essential inasmuch as the University was entitled to provide for reservation under the UGC Act, 1956 and the Regulations of 1985 framed thereunder only. The counsel for the University on that date argued that the petitioner had suppressed from this Court that she was an overseas citizen of India and that she had already taken admission to Miranda House College. The counsel for the petitioner however contended that admission to Miranda House College was on the basis of merit and in the General Category and if the petitioner succeeded in the petition, she may be entitled to admission in a better college/college of her choice.

5. The counsel for UGC on 13th July, 2010 informed that UGC had not provided for reservation and the same was an internal matter of the University according to instructions issued by the Central Government. Accordingly, the counsel for the petitioner was heard on that day. The counsel for the petitioner, during the course of hearing on that day, impugned the competence of the University to carve out an exception out of the reservation of 5% seats for foreign students. Since no such plea had been taken in the petition, the petitioner was permitted to file an amended petition. Amended petition and counter affidavit thereto were filed. However, during the course of hearing on 6th September, 2010, the question again came up as to whether a Single Bench of this Court would be entitled to entertain the petition challenging the competence of the University to make the reservation or to carve out an exception therein. The counsel for the petitioner, for the sake of expediency, rather than having the petition placed as per roster before a Bench which could entertain such challenge, gave up the said ground and the petition thus has to be considered only on the basis of interpretation of the Resolution of the Academic Council of the University annexed to the counter affidavit of the University i.e., whether the same permits the University to carve out from the reservation for foreign students an exception for the foreign students with eligibility qualification from an Indian Board.

6. The counsel for the respondent No. 3 Union of India has handed over a copy of the letter dated 29th June, 2010 of the Ministry of Human Resource Development stating that the Union of India is not concerned with the admission process of the Delhi University which is required to be in accordance with the provisions laid

down in the Ordinances of the University.

7. The University, in its counter affidavit, has inter alia pleaded that reservation of 5% seats for foreign students has been provided with an aim to provide opportunities to the foreign nationals who wish to study at University in India; such students who are mostly from developing countries and suffer from lower academic standards are unable to compete with students from Indian Board/Universities; hence necessitating reservation. It is further pleaded that the said reservation is also with a view to maintain diplomatic relationship with foreign countries and as a matter of policy. It is stated that there is an intelligible differentia having a nexus with the object sought to be achieved which is to promote opportunities of education for foreign nationals in India. It is yet further stated that if admissions under the said reservations are given to candidates as the petitioner, it would defeat the very purpose and object sought to be achieved by providing for reservations. The Foreign Student Registration Fee and the annual fee aforesaid charged from the petitioner is also justified. It is further pleaded that it has been left to the individual Colleges to consider whether to grant reservation to foreign nationals or not, the seats being supernumerary in nature and that the petitioner has no right to seek reservation under foreign quota in any specific category. It is further pleaded that the colleges in which the petitioner is seeking admission in the reserved category have not even been made a party; St. Stephens College being the first priority of the petitioner is stated to be having its own admission criteria being a Minority Institution; Lady Shri Ram College which is the second priority of the petitioner is informed to have not provided any seat under the foreign quota in the current academic year; similarly Shri Ram College of Commerce is informed to have provided five seats under the foreign quota which have already been filled up and lastly Hindu College is informed to have provided only two seats which are also informed to have been filled up.

8. The University has relied on the Resolution No. 304 passed by the Academic Council of the University on 27th December, 1983 in this regard and the copy of the said Resolution has also been annexed to the counter affidavit. As aforesaid, the scope of the present petition is now confined to interpretation of the said Resolution i.e. whether the Clause 4.4 (supra) of the Information Bulletin is in accordance with the said Resolution or not.

9. Undoubtedly, the Resolution while providing for reservation of 5% seats in colleges affiliated to the University for foreign students does not carve out any exception as in Clause 4.4 of Information Bulletin (supra). However, para 11 of the same Resolution is as under:

11. Foreign Students who are stationed in India and have passed last examination from Board/University in India may seek admission on the basis of merit alongwith other students after obtaining no objection certificate from the Foreign Students" Advisor. After their admission, each Faculty/College shall send a list of the Foreign Students admitted during the year to the Foreign Students"

Cell.

10. The counsel for the petitioner has taken me through the UGC Act, UGC Regulations, Delhi University Act, 1922, Statutes 8, 28, 29, 30 and 31 and Ordinance I. However, in view of the scope of writ petition having been limited as aforesaid, it is not necessary to deal with all the said arguments.

11. The counsel for the petitioner has argued that para 11 (supra) cannot be the basis for excluding foreign students passing qualifying examination from Indian Boards from reservations. It is contended that para 11 is only an enabling provision.

12. I am not in agreement with the contention of the petitioner. Para 11 of the Resolution aforesaid of the Academic Council clearly provides that foreign students stationed in India and who have passed last examination from Indian Board are to seek admission only on the basis of merit alongwith other students. If such foreign students also were to be covered by the reservation, there was no need for providing that they are to seek admission on the basis of merit, alongwith other students. The Resolution clearly provides that the foreign students falling in the reserved category are to be distributed by the University in the Colleges on pro rata basis. On the contrary the foreign students stationed in India and qualifying eligibility from Indian Boards were to seek admission from individual Colleges as is the norm for the general category candidates. It thus cannot be said that Clause 4.4 of the Information Bulletin is contrary to the Resolution of the Academic Council.

13. I also find that the term used throughout is a "foreign student" and not a "foreign citizen" and on which basis the petitioner has made out her case. The petitioner having studied in India since Class III and being of an Indian origin cannot be said to be a "foreign student". The University in providing for reservation for foreign students was providing for students entering India for education in the University at the time of admission and not those as the petitioner. Black's Law Dictionary 6th Edition defines "foreign" as belonging to another nation or country, made, done or rendered in another State or jurisdiction. The petitioner who is of Indian origin and has studied in India since class III and has passed examinations held by Indian schools and Indian Boards cannot at the time of admission in University be said to be a foreign student or a student coming from a foreign land.

14. There is no merit in the petition. The petition is dismissed. No order as to costs.