

(2019) 09 RAJ CK 0191
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14086 Of 2019

Rahul Kumar Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 15(a)

Citation : (2019) 09 RAJ CK 0191

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Vikas Jain, Manjeet Kaur

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner has prayed for granting EWS (Economically Weaker Section) category reservation benefit at the rate of 10% to the petitioner and other similarly situated EWS category candidates while giving admission in PG Course of Ayurveda/Siddha/Unani/Homeopathy) for the Academic Session 2019-20.

2. Learned counsel for the petitioner submitted that after 103rd amendment in the Constitution of India enabling the Government to provide reservation for EWS category of candidates, the Central Government has issued a Gazette Notification on 12/01/2019 notifying the amendment in Article 15 by inserting Clause (a) and (b). Learned counsel further submitted that the UGC, vide letter dated 18/01/2019 directed the Central Universities and other affiliated Institutions for implementation of reservation for EWS category of candidates for admission in all Central Educational Institutions for the Academic Session 2019-20. The Government of India also issued office memorandum dated 17/01/2019 for the said purpose. Learned counsel further submitted that All India Institute of Ayurveda is a Central Government Institution controlled by the Ministry of AYUSH, Government of India and they have conducted Post Graduate Entrance Test (AIAPGET) in July, 2019 and the counselling has started by the

respondents but they are not providing EWS category reservation for the Session 2019-20. Learned counsel further submitted that the AYUSH Department has directed for providing benefit of 10% EWS reservation for the UG Courses in the said Institute itself for the Session 2019-20 but for the PG Courses, without there being any reason or rhyme, the reservation is not being provided. Learned counsel further submitted that denying reservation at PG level is a hostile discrimination and there is no nexus for not providing the said reservation.

3. Per-contra, learned counsel appearing for the respondent No.1 has filed reply and it is submitted that although 10% reservation has been provided for EWS category of candidates, however, the Ministry of AYUSH, Government of India, vide its OM dt.02/05/2019 has directed for implementation of the provisions for PG Courses for the Session 2020-21 while by another letter dated 24/06/2019, the Director, Ministry of AYUSH has only directed for implementation of the EWS category of reservation for UG Courses and thus, for the purpose of PG Courses it has been decided to implement the reservation from Academic Session 2020-21 as the eligibility criteria for PG Courses is much higher than that of UG Courses.

4. After hearing learned counsel for the parties, this Court finds that the reason coming forward from the respondents is found to be wholly unsatisfactory. The eligibility criteria for PG Courses has to be higher than that for UG Courses. However, for the purpose of reservation of seats, the eligibility criteria has got no nexus as it remains same for all categories. It is noticed that vide letter dated 17/01/2019, the EWS reservation was directed to be implemented for the Session 2019-20 and upon reading the letter dated 02/05/2019 issued by the Ministry of Ayurveda, it is noticed that the applicability of the Amendment Act was directed to be effected from 2019-20 and for the said purpose, it was stated as under:-

"The applicability of the Amendment Act, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or academic limitation or in order to maintain the standards of education, such increase can be implemented over a period of two years beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any stage of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced."

5. However, this Court finds that without giving any reason in the next Para, the concerned authority has mentioned that it shall be implemented from the Academic Session 2020-21. Granting of reservation from a particular Session, cannot be said to be within the domain of the concerned Department of Ayurveda. Once the Central Government has taken a decision to implement the

reservation from the Session 2019-20 in all courses, the Department of Ayurveda could not have restricted it only to UG Courses excluding the PG Courses. The admission to Institutions under the Central Government would have to be applied uniformly and for the said purpose, if there has to be increase of number of seats, the same would have to be also provided in terms of the orders passed by the Government of India as noted above. The contention of learned counsel for the respondents to provide the reservation of EWS category only upto UG Courses in order to maintain standard and on account of higher eligibility criteria, is found to be without nexus and discriminatory and it would deprive the candidates who are belonging to EWS quota and seeking admission for the Session 2019-20.

6. This Court has also examined the aspect whether it would fall within the policy domain of the Central Government to exclude this Course and therefore, out of preview judicial review. However, this Court finds that while the decision of implementation of reservation falls exclusively within the policy domain of the Central Government, once it takes a decision and issues directions for implementation of reservation of 10% seats for EWS candidates, from the Session 2019-20, it cannot be allowed to discriminate implementation of reservation for the different courses.

7. In view of above, the contention raised by the petitioner is accepted and the respondents are directed to implement reservation for EWS category of candidates in All India Ayurveda Post Graduation Entrance Test, 2019 and conduct counselling separately for 10% seats which to be provided under the EWS category. The petitioner would be allowed to participate accordingly and if found meritorious, he shall be provided College as per his merit-cum-preference. For the said purpose, the respondents would be free to provide the students the suitable option by method which they may prescribe at their level for the purpose of admission under the EWS category. The counselling shall be accordingly conducted.

8. The writ petition is accordingly allowed. No costs.