

(2011) 07 DEL CK 0404

In the Delhi High Court

Case No : Writ Petition (C) No. 4379 of 2011

Shri Naveen Kumar

APPELLANT

Vs

Faculty of Medical Science and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 DEL CK 0404

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; M.J.S. Rupal, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India , the Petitioner seeks directions to direct the Respondent No. 1 to consider the case of the Petitioner in OBC category and then to grant him admission in the MBBS Course.

2. The background of facts that has led to the filing of the present petition is that the Petitioner had applied for admission in the Delhi University Medical Dental Entrance Test(DUMET) 2011 and in the application form he filled his category as general category and that before the result of the examination, on 30.5.2011 he made a representation to the Respondent university to change his category from general to OBC. The grievance raised by the Petitioner is that his request to change the general category to OBC category has been disallowed by the Respondent No. 1.

3. Learned Counsel for the Petitioner submits that the Petitioner had sought to change his category from general to OBC well before the declaration of his result in the entrance examination. Counsel also submits that the marks obtained by the Petitioner in the entrance examination are much higher than the other OBC candidates and the said refusal on the part of the University to change his

category would deprive a meritorious student to get an admission in the MBBS course while less meritorious candidates will march over him. Counsel also submits that at the time of submission of his application form the Petitioner was not in possession of the OBC certificate and therefore he had applied in the general category and he has sought change in his category from general to OBC immediately after having obtained the said OBC certificate. Counsel also submits that such a change is permitted by other Educational Institutes and one such institute is Central Counseling Board where the candidates appearing in the entrance test of AIEEE are being provided one opportunity to correct the erroneous entries made in their application forms before the commencement of the central counseling process. Counsel thus submits that the Respondent being a Central University should also permit the Petitioner to change his category from general to OBC, otherwise the Petitioner would be unnecessarily deprived of his admission in the MBBS course for no fault on his part. The contention of the counsel for the Petitioner is that the caste of the Petitioner falls in the OBC category as per the centralized list and he cannot be deprived to get due benefit of being an OBC candidate.

4. Opposing the present petition, learned Counsel for the Respondent Mr. Rupal who appears on advance notice took a preliminary objection to the very maintainability of the present petition. Counsel submits that the Petitioner has deliberately not placed on record the Information Bulletin for under graduate courses of the Respondent university. Counsel further submits that in the beginning of the said Information Bulletin, important dates have been duly mentioned for every stage from the sale of Information Bulletin till the closure of admissions. The contention of the counsel for the Respondent is that the sale of bulletin started from 24.1.2001 and the last date of receipt of the application forms in respect of the MBBS course was 7th March, 2011 and therefore there was ample time for the Petitioner to have carefully gone through the instructions and necessary information given in the said Bulletin well before the submission of the application form. Referring to Clause 1.13 of the Information Bulletin, counsel further submits that the said clause clearly stipulates that the application forms which are incomplete in any respect will be summarily rejected and no correspondence in this regard will be entertained by the University. Counsel also submits that the said clause also clearly prohibits the Petitioner to carry out any alteration in the application form after submission of the same with the faculty office. Counsel also submits that any change of category at this stage will cause serious prejudice to other OBC candidates as it is not the case of the Petitioner alone as many other such candidates had sought for such a change in their category from General to OBC and were disallowed.

5. I have heard learned Counsel for the parties and given my serious consideration to the arguments advanced by them.

6. Undeniably, it is the unfettered right of a candidate to apply in the category to which he or she belongs to as listed under Clause 2.1.4 of the Information

Bulletin. Various categories have been defined under which candidates can apply in the application form appended in the said Information Bulletin itself. The prescribed categories under the said clause are as under:

2.1.4 The candidates may apply by submitting application form appended with BOI under the following categories:

- (i) General category (General)
- (ii) Scheduled Caste category(SC)
- (iii) Scheduled Tribe category (ST)
- (iv) Other Backward Classes (OBC)
- (v) Children, Widows and Wives of Armed and Para Military Personnel category(CWWAPP)
- (vi) Physically Handicapped category (PH)

7. Under Clause 1.24, the candidates are required to submit only one application form and submission of more than one application form by a candidate can result in the cancellation of the application form of such a candidate. Under Clause 1.13 of the Information Bulletin it has been clearly laid down that the application forms which are incomplete will be summarily rejected and even no correspondence in this regard shall be entertained by the Admission Committee. The said clause further stipulates that no alteration will be allowed by the University once the application form is duly submitted by the candidate to the faculty office. The said clause is also reproduced as under:

1.13 Application forms, which are incomplete in any respect, will be summarily rejected and no correspondence will be entertained in this regard. Further, no alteration will be allowed to be made in the Application Form after it has been submitted to the Faculty Office. The candidate for DUMET is required to fill the admission ticket attached with the application form in duplicate and return the same along with the application form. The admission ticket must be signed by the candidate before submission. The declaration at the end of application form should be signed by the candidate.

8. There is also a Note given above the aforementioned clause in capital letters which also directs the candidate to fill in the application form in his/her own handwriting. Clause 1.8 of the Bulletin further requires the candidate to furnish true and correct information in the application form as furnishing of any false information or even concealment of any material information will result into the cancellation of candidature of such a candidate. The said clause is reproduced as under:

1.8 In case any candidate is found to have furnished false information or document etc, or is found to have withheld or concealed any material information while submitting his/her application, his/her candidature/result/admission will be

cancelled and fee deposited by him/her shall be forfeited.

9. As would be seen from the perusal of the aforesaid clauses forming part of the said Information Bulletin, every candidate is required to furnish true and correct information about the particulars to be disclosed by him in terms of various clause specified in the application form. Not only that, it is not an incomplete information which will result in rejection of the application form but even no alteration in the application form can be permitted to such a candidate after the same has been submitted by him/her to the faculty office.

10. It would be relevant here to mention that in the representation of the Petitioner dated 30.5.2011 addressed to the Respondent university,(placed on record as Annexure P2) he has stated that the following:

With due respect this is to hereby bring to your kind notice that myself Naveen Kumar filled the DUMET form for the year 2011. As one of the details to be mentioned in the form, I had given my category as General whereas I belong to OBC category basically, but could not mention it due to lack of knowledge.

It would be evident that the Petitioner mentioned that he did not mention the OBC category due to lack of knowledge. To which category a student belongs, whether it is Scheduled Castes or Scheduled Tribes or belonging to OBC candidate, the same is known to a candidate himself/herself and not to the University. It cannot be said that one would know his category later in time after submission of his/her application form. It is, therefore, incumbent and imperative for a candidate to correctly state in the relevant column of the application form as under which category he or she belongs and seeks admission. Undoubtedly a candidate even belonging to a reserved category can seek his admission under the General Category and once having applied in the General Category then later in time he or she cannot change his/her position to change the category. Here would be relevant to mention here the judgment of this Court in the case of Udit Sehgal Vs. University of Delhi and Others, wherein the Petitioner had applied to for admission in B.E degree in the general category at the time of application and later on suffering from an accident, later sought change from the general category to the physically handicapped category, which was dismissed by the Court on the ground that the application process is stated to be completed when the application form is submitted and no change thereafter can be sought after the said date. It would be relevant to reproduce the relevant para of the said judgment here:

There is a complete prohibition on change of category after the receipt of completed application form as per Condition No. 2 of the "Bulletin of Information". The material or crucial date as per the "Bulletin of Information" is the date of receipt of application form. On the said date, the Petitioner was not eligible to apply in the category of physically handicapped. As per the dictum of the Supreme Court in Harpal Kaur Chahal's case (Supra), it would not help even if the candidate acquire the qualification or eligibility subsequently after the cut-

off date. Thus the subsequent disability would not make the Petitioner eligible after the date of receipt of complete application. Moreover, in this case the admission process is stated to be over. The Supreme Court in *State of Rajasthan v. Hitendra Kumar Bhatt* (Supra) has also cautioned in taking too sympathetic a view of such situations and observed that the cut-off date, by which all requirements relating to qualification and eligibility, have to be met, ought not to be ignored.

11. Adverting to the facts of the present case, the Petitioner had applied in the General Category to seek admission in MBBS Course and later he sought change in his category. Such an alteration is clearly impermissible in terms of Clause 1.13 of the Bulletin of Information. It is not the case of the Petitioner that he had furnished a correct information about his category as that of belonging to OBC and he could not furnish proof of the same. The courts have been taking a liberal view so far non submission of such certificates at the time of submission of the application forms in certain situations but certainly to permit a candidate to change his/her category itself neither seems logical nor legally permissible in terms of the requirements laid down in the Bulletin. Counsel for the Respondent has also taken a stand that the instructions laid down in the Bulletin of Information have a statutory force as the said instructions were introduced after the same are passed by the University under its statutory powers. Without going into this issue, this Court does not find any merit in the present petition. A candidate is expected to at least know which caste or category he or she belongs to and accordingly truthfully state his/her category in the application form. A change of category thus sought by the Petitioner at a later stage although may be before the declaration of results cannot be permitted to the Petitioner. Reliance by the Petitioner on such change being permitted by the Central Counselling Board (AIEEE-2011) can be of no help to the Petitioner as no such change has been permitted by the University of Delhi and it is not the case of the Petitioner that the clause contained in the Information Bulletin should be struck down as being discriminatory or being in violation of fundamental rights of the Petitioner.

12. In the light of the above, there is no merit in the present petition and the same is hereby dismissed.