
(2008) 09 DEL CK 0290

In the Delhi High Court

Case No : Writ Petition (C) 5329 of 2008

Tandan Kumar and Others

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 2, 3, 4, 5, 5(1)

Citation : (2009) 1 ILR Delhi 714

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : P. Chandra and Ashok Kumar, for the Appellant; A. Mariarputham, Maninder Singh and T. Singhdev for respondent No. 2/MCI, Jyoti Singh and Ankur Chibber for respondent No. 4 and S.K. Luthra, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioners, who belong to the Other Backward Class(OBC) category appeared in the entrance examination conducted by the University of Delhi for admission to the M.B.B.S and B.D.S courses in medical/dental institutions affiliated to the said University have filed this writ petition to seek a writ of certiorari for quashing the communication dated 08.07.2008 whereby the respondent University of Delhi has stated that in the M.B.B.S. Course, there are no seats reserved for the OBC category candidates for the academic session 2008-09 in two of its affiliated institutions, namely, Maulana Azad Medical College (MAMC) and University College of Medical Sciences (UCMS). A mandamus is also sought by the petitioners for a direction to the respondents to provide reservations to the students belonging to the OBC category in terms of the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006, (the Act) and to allot seats within the reserved category to eligible candidates in the current academic session 2008-09.

2. The Act enforced on 03.01.2007, inter alia, provides that reservations in seats

in admission in Central Educational Institutions shall be provided to the extent of 27% seats from out of the annual permitted strength in each branch of study or faculty for the OBC. "Central Educational Institution" is, inter alia defined in Section 2(d) of the Act to mean "a university established or incorporated by or under a Central Act." The University of Delhi is established by the Delhi University Act passed by Parliament and is a Central Educational Institution. MAMC and UCMS are institutions affiliated to it and are bound to implement the reservation policy of the Central Government, as contained in the Act.

3. "Annual Permitted Strength" is defined in Section 2(b) in the following manner:

(b) "annual permitted strength" means the number of seats, in a course or programme for teaching or instruction in each branch of study or faculty authorised by an appropriate authority for admission of students to a Central Educational Institution;

4. Sections 5 & 6 of the said Act are relevant, and read as follows:

5. (1) Notwithstanding anything contained in clause (iii) of Section 3 and in any other law for the time being in force, every Central Educational Institution shall, with the prior approval of the appropriate authority, increase the number of seats in a branch of study or faculty over and above its annual permitted strength so that the number of seats, excluding those reserved for the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes, is not less than the number of such seats available for the academic session immediately preceding the date of the coming into force of this Act.

(2) Where, on a representation by any Central Educational Institution, the Central Government, in consultation with the appropriate authority, is satisfied that for reason of financial, physical or academic limitations or in order to maintain the standards of education, the annual permitted strength in any branch of study or faculty of such institution cannot be increased for the academic session following the commencement of this Act, it may permit by notification in the Official Gazette, such institution to increase the annual permitted strength over a maximum period of three years beginning with the academic session following the commencement of this Act; and then, the extent of reservation for the Other Backward Classes as provided in clause (iii) of Section 3 shall be limited for that academic session in such manner that the number of seats available to the Other Backward Classes for each academic session are commensurate with the increase in the permitted strength for each year.

6. Reservation of seats in admissions to begin in calendar year, 2007 - The Central Educational Institutions shall take all necessary steps, which are required in giving effect to the provisions of Sections 3, 4 and 5 of this Act, for the purposes of reservation of seats in admissions to its academic sessions commencing on and from the calendar year, 2007.

5. The expression "appropriate authority" used in Sections 2(b) and 5 is defined in Section 2(c) as follows:

(c) "appropriate authority" means the University Grants Commission, the Bar Council of India, the Medical Council of India, the All India Council for Technical Education or any other authority or body established by or under a Central Act for the determination, coordination or maintenance of the standards of higher education in any Central Educational Institution.

6. A perusal of the aforesaid provisions of the Act shows that, even though, eventually OBC category candidates are mandatorily required to be provided reservation to the extent of 27%, in the initial transitory period of three years from the enforcement of the Act, reservation has to be provided for OBC category students in terms of Section 5 of the Act. The Scheme laid down by Section 5 appears to be to provide the said reservation by enhancing the intake capacity of the Central Educational Institutions so that the number of existing seats for the general unreserved category, as were existing in the immediately preceding academic year from the date of commencement of the Act, are not reduced. The Central Educational Institutions are obliged to obtain the requisite statutory approvals from the concerned appropriate authority for increasing the number of seats. Since the institutions in question i.e. MAMC and UCMS are both medical institutions, the appropriate authority relevant for our purpose is the Medical Council of India (MCI).

7. Even though the Act was enforced from 03.01.2007, and Section 6 thereof provided that the Central Educational Institutions shall take all necessary steps for giving effect to the provision of Sections 3, 4 & 5 for the purpose of granting reservation of seats in admissions in the academic sessions commencing from the calendar year 2007, on account of interim orders passed by the Hon'ble Supreme Court in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, , reservations for the OBC category students in Central Educational Institutions could not be provided for, until the final decision of the Supreme Court in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, . By that decision the Supreme Court has upheld the grant of reservation of 27% to the OBC in Central Educational Institutions. Therefore, for all practical purposes, the enforcement of the Act can be said to have taken place only on and from 10.4.2008, except in respect of those Central Educational Institutions, if any, where reservations for the OBC category candidates might have been provided in terms of Section 5 of the Act even prior to the interim order of the Supreme Court on 29.3.2007.

8. So far as the Lady Hardinge Medical College (LHMC) is concerned, it has increased its intake capacity by 20 (from 130 to 150) from the current academic session 2008-09 and reservation for the OBC has been provided in that institution. Since LHMC is an institution established by the Government of India, the Central Government has granted permission for increase in intake capacity on its own. However, UCMS is an institution which is being run by the respondent University, while MAMC is an institution managed by the Government of NCT of

Delhi. It was, therefore, imperative for these institutions to make applications to the MCI for increase of intake capacity to comply with the statutory requirements of Section 3, 5 & 6 of the Act. I am informed by Mr. Luthra, who appears for UCMS that the said institution has already forwarded an application to the Central Government for increase in intake capacity. In respect of MAMC there is no representation before the Court despite service, and it is not informed to the Court whether an application has been made to the Central Government in terms of the schedule approved in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, . Learned Counsel for MCI submits that it has not yet received any application for enhancement of intake capacity either in respect of UCMS or MAMC.

9. The Supreme Court in *Mridul Dhar(supra)*, in para 28, approved the schedule for the purpose of receipt of applications for establishment of new medical colleges and processing of the same by the Central Government and the MCI. The same procedure would apply even in respect of increase in intake capacity. As per that schedule the applications are to be submitted with the Central Government between 01st August to 31st August of the year. The same are required to be forwarded by the Central Government to the Medical Council of India by 30th September of the same year. The letter of permission by the Central Government, in case approval is granted by the MCI, is eventually to be issued by the 15th of July of the subsequent year.

10. In view of the fact that the final decision of the Supreme Court in *Ashok Kumar Thakur (supra)* came to be delivered only on 10.04.2008, and till then the grant of reservations to the OBC category was put on hold by the Supreme Court, as aforesaid, so far as the present academic session i.e. 2008-09 is concerned, the application for increase in intake capacity could possibly not have been submitted in time since that process ought to have begun between 01st and 31st August of the year 2007 for it to take effect in the current academic session.

11. It is seen from the record that on 28.05.2008 the University of Delhi, Faculty of Medical Sciences sent a communication to the MCI, thereby intimating the increase in intake capacity in respect of LHMC from 130 to 150 seats and in UCMS from 100 to 118. The MCI has responded vide its communication dated 24.06.2008. The stand of the MCI is that the ad-hoc committee appointed by the Supreme Court and the executive committee of the MCI has considered the said communication. So far as the UCMS is concerned, the increase in intake capacity from 100 to 118 was not favourably considered, since the increase can be considered only in lots of 50/100/150. The stand of MCI is also that the respondent University could not, of its own, increase the intake capacity without the prior permission of the MCI. Since the Central Government is exempt from the requirement of a prior approval being granted by the MCI u/s 10A, though it is bound by the regulations framed by the MCI for the purpose of grant of approval, the approval granted by it in respect of LHMC for increase in intake

capacity by 20 seats has been implemented for the current academic session. But the same is not the case in respect of MAMC or UCMS.

12. In view of the aforesaid position, I am of the opinion that the petitioners are not entitled to the relief prayed for in the present petition. The grant of reservations to the OBC has to be only from out of the additionally created/ approved seats. Section 5(1) preserves the number of seats for the general category (unreserved seats) as were existing before the enforcement of the Act. Therefore, reservation for the OBC candidates can not be granted by reserving any seat from the unreserved general category seats. The percentage seats reserved for the Schedule Caste and Schedule Tribe candidates are also statutorily prescribed and cannot be reduced to accommodate the OBC category candidates.

13. However, the respondent authorities are bound to implement the provisions of the aforesaid Act. Section 6 itself provides that the Central Educational Institutions shall take all necessary steps, which are required, to give effect to Sections 3, 4 & 5 of the Act for the purpose of grant of reservation of seats in admissions to the OBC candidates. As per Section 5(2) of the Act, the level of reservations for the OBC category candidates that has to be achieved within three years from the date of commencement of the Act is 27% of the annual permitted strength.

14. There may be some justification for the respondents not granting reservations for the OBC category candidates in the current academic session in MAMC and LHMC, since the final judgment of the Supreme Court in Ashok Thakur (supra) was rendered only on 10.04.2008 and prior to that there was an interim stay operating. However, there can be no justification for the respondents not to take steps to implement the provisions of the said Act at least for the next academic session i.e. 2009-10.

15. I, therefore, dismiss this petition, but at the same time issue directions to the respondents to ensure compliance of the provisions of the Act from the next academic session i.e. 2009-10. In case MAMC has not already made the application for increase in intake capacity, which was required to be made between 01st and 31st August, 2008, the same should be made within ten days from today.

Dasti.