

(2011) 01 AHC CK 0083
In the Allahabad High Court
Case No : Writ Petition No. 4485 of 2010 (M/S)

Vibhor Raj and Another	Vs	APPELLANT
The Convenor, Common Law Admission Test, CLAT-2010 and Others		RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Constitution of India, 1950 — Article 15, 16

Citation : (2011) 01 AHC CK 0083

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shri Narayan Shukla, J.—Heard Mr. Ashok Sinha, learned Counsel for the Petitioner and Mr. Yashovardhan, learned Counsel for opposite party No. 2 as well as Mr. D.K. Singh, learned Counsel for the opposite party No. 4.

2. Through the instant writ petition the Petitioners have prayed for issuing a writ of mandamus directing the Respondents to upgrade their candidatures to their higher preference treating 4 seats vacant in the University under the terms of Brochure issued by the opposite party No. 1, which governs the Common Law Admission Test. The relevant clause i.e. 13 of Brochure is extracted below:

A candidate would not be allowed to go for a lower preference if a seat is vacant in the higher preference based on the principle of merit-cum preference.

No candidate shall be allowed to be admitted to a University of his/her lower choice if a seat, on the basis of his/her merit and preference is available at a University of his/her higher choice.

But the CLAT admission committee, before his/her admission, may upgrade a candidate to the University of his/her higher choice on the availability of the seat.

3. The Petitioners belong to unreserved category. The total seats for the

programme of B.A, L.L.B.(Hons.) is fixed as 160. For the reserved category, the total seat is fixed as 80. In order to take admission the provisions of vertical and horizontal reservation have been made applicable. Out of total seats the vertical reservation has been provided to fill up the seats by the unreserved, Other Backward Class, Scheduled Caste and Scheduled Tribe categories, for which 80, 43, 34 and 03 seats, respectively are reserved. Simultaneously for the -2- persons with disability and Dependents of Freedom Fighters, the horizontal reservation has also been made applicable i.e. 3% for the persons with disability and 2% for Dependents of Freedom Fighters.

4. By interpreting the law of reservation in light of the judgment pronounced by the Hon'ble Supreme Court the learned Counsel for the Petitioners submits that the horizontal reservation applies to the particular category and accordingly 3% reservation for the persons with disability should be calculated in unreserved category, against the total seats i.e. 80 therefore which comes out 2.4 in number and since it is less than 2.5, it should be rounded of 2 only and accordingly only 2 candidates belonging to the persons with disability should have been admitted, whereas in the present case by calculating 3% reservation for the persons with disability against total seats i.e. 160, 5 candidates of the said category have been admitted in unreserved category. It is further stated that it establishes that had only 2 candidates been admitted under the persons with disability quota, 3 more seats were available for admission from the merit list. Since the Petitioners on the basis of merit are eligible for admission, definitely they would have been admitted against those seats.

5. In support of his contentions, he cited the decision rendered in the case of *Indra Sawhney and Ors. v. Union of India* and Ors. 1992 (Supp) SCC 1. Relevant paragraph 812 is extracted below:

812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations". The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of -3-Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations-what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in

favour of backward class of citizens remains-and should remain-the same. This is how these reservations are worked out in several States and there is no reasons not to continue that procedure.

6. He further cited a decision rendered in the case of *Rajesh Kumar Daria v. Rajasthan Public Service Commission and Ors.* With *Hari Om Awasthi and Ors. v. Rajasthan Public Service Commission and Ors.* AIR 2007 SCW 5650. The relevant paras 5, 6, 7-8 are extracted below:

Para 5. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217, the principle of horizontal reservation was explained thus (para 812):

...all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations." The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes ((under Article 16(4)) may be called vertical reservations whereas reservations in favour of physically handicapped (under Cl. (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations-what is called interlocking reservations. To be more -4-precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Cl. (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to pen competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains-and should remain-the same.

7. A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta and Others Vs. State of U.P. and Others*, thus:

... The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e. S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied-in case it is an overall horizontal reservation-no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification

and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent, in favour of special categories, overall, may be satisfied or may not be satisfied). We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper -5-description of the number of posts reserved for SC, should be: " For SC: 30 posts, of which 9 posts are for women.

8. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are " vertical reservations." Special reservations in favour of physically handicapped, women etc., under Article 16(1) or 15(3) are horizontal reservation." Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for Scs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indira Sawhney (supra)*; *R.K. Sabharwal and others Vs. State of Punjab and others, Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, and *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Castes-Women. "If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) -6-reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for Scs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC woman candidates in

accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates, (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that "SC women" have been selected in excess of the prescribed internal quota of four).

9. On the other hand, learned Counsel for the University submits that though it is undisputed that total number of seat is 160 and in the university concerned the last candidate who secured 135 marks has been admitted; whereas Petitioners 1 and 2 both secured 134 marks being on different rank. It is stated that 3% horizontal reservation has been provided for the persons with disability which comes out 4.8 seats of the total number of seats. He further submits that principle of term "horizontal reservation" has been explained by the Hon'ble Supreme Court in the case of Anil Kumar Gupta and Others Vs. State of U.P. and Others, in which it has been held as under:

.... The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e. S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied-in -7-case it is an overall horizontal reservation-no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent, in favour of special categories, overall, may be satisfied or may not be satisfied).

10. He further submits that the Hon'ble Supreme Court in the case of Rajesh Kumar Daria (Supra) has considered the aforesaid proposition and held that for determination of special reservation (social reservation) for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Castes"-Women. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation.

11. He further invited the attention of this Court towards the relevant paragraphs

quoted above of Indra Sawhney's case (Supra) in which on the point of 3% horizontal reservation of physically handicapped persons; it is provided that person selected against this quota will be placed in the appropriate category; if he belongs to Scheduled Caste category, he will be placed in that quota by making necessary adjustment; similarly, if he belongs to open competition -7- (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains-and should remain-the same. This is how these reservations are worked out in several states and there is no reason not to continue that procedure.

12. In light of the aforesaid observations of the Hon''ble Supreme Court I am of the view that by applying 3% horizontal reservation with the persons of disability in particular category would be whole misreading the rules of reservation as if this special reservation shall be counted against a particular category, then after fulfilling the quota from the candidate of one category, the candidate of other category would be deprived from admission. Further it can be illustrated in the manner that this special reservation is available for all the categories and the candidates are permitted to be admitted against their respective categories, meaning thereby if disabled candidates are available in the different categories, they can be considered for admission in their respective categories on the basis of merit, otherwise, if each and every category 3% reservation would be applied, the candidates of different categories coming under the special class being physically handicapped shall come forward to claim their reservation against their respective categories to the extent of 3% which necessarily would reach more than 3%; whereas total 3% reservation is available for the persons of disability.

13. Therefore, I am of view that this horizontal (Special reservation) cannot be calculated against the respective category rather it has to be calculated against the total seats and the candidates have to be adjusted against their respective categories on the basis of merit in their category but to the extent of 3% against the total seats. Incidentally, in the present case, all the physically handicapped candidates, who are 5 in number, come within 3% of total seats and belong to the unreserved category, accordingly they have been -8-admitted in the said category, in which I do not find error.

Therefore, the writ petition is dismissed being devoid of merit.