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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP(C) No.5074/2008

Reserved on 15th January, 2009

Pronounced on 27th January, 2009

USHA RANI KASHYOTIA

..... Petitioner

Through : Mr. Sher Singh, Authorised Representative
of the petitioner.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through : Mr. Anurag Mathur, Advocate for R-1.

Mr. M.P. Singh, Advocate for R-2.

Mr. S.P. Sharma, Advocate for R 3 & 4.

Mr. Ravi Gupta, Advocate for R-5.

Mr. V.S.R. Krishna, Advocate

WP(C) No.5914/2008

ANJANA DHALL

..... Petitioner

Through : Mr. Ravi Gupta, Advocate

versus

RAJ KUMARI AMRIT KAUR COLLEGE OF NURSING & ORS. Respondents

Through : Mr. V.S.R. Krishna, Advocate for R-1.

Mr. M.P. Singh, Advocate for R-2.

Mr. Anurag Mathur, Advocate for R-3.

Mr. Subhash Chander for Ms. Sonia Sharma,

Advocate for R- 4.

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat

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This judgment will dispose of two writ petitions namely, W.P. (C) No. 5074/2008 and W.P. (C) No. 5914/2008; they involve common questions.

1. In writ petition no. 5074/2008, filed in July, 2008 the petitioner (hereafter referred to as “Usha Rani” seeks relief against the alleged arbitrary and illegal action of the University of Delhi, (“the University”) the Principal, Rajkumari Amrit Kaur Nursing (hereafter RAKCON); Govt. of N.C.T. of Delhi (“NCT”; The Medical Superintendent, Guru Teg Bahadur Hospital (hereafter “GTB”). She has impleaded Mrs. Anjana Dhall, the Principal Tutor, School of Nursing, GTB Hospital (hereafter called “Anjana Dhall”). According to Usha Rani, the acts of the University and NCT adversely affected her sponsorship/admission to the Master of Nursing course at RAKCON.

2. The RAKCON conducts a two-year course in Master of Nursing, for which an entrance test is conducted each year. The selection test for the academic year 2008-2009 was to be held on 28.03.2008. According to the prospectus (for that academic year) the said course intake is a total of 21 seats, out of which 50% are reserved for persons covered under ‘Category-I’ (Clause 2.1). Under ‘Category-II’, the remaining 50% seats were offered to the candidates on the combined basis of their performance in the Selection test and the last qualifying exam. The prospectus further stated that students who fulfill the eligibility conditions and have not otherwise been selected under ‘Category-I’ can also participate in the Selection Test (Clause 2.2). Clause 2.3 provided for weightage of 5 marks for sponsored candidates i.e. ‘Non-reserved Candidates’, in the employment of State Government College of

Nursing/School of Nursing and whose names are sponsored by their employer. However, only one candidate from each State/U.T., from among the sponsored candidates of that State/U.T., who secures highest in the Selection test is eligible for weightage of 5 marks. Sponsored candidates receiving 5 marks, if selected were to submit a relieving letter confirming sponsorship at the time of admission. Such candidate was required to produce the sponsorship letter by 10.04.2008 i.e. the original application through proper channel must have reached by the said date.

3. Clause 5.4 empowered the Vice-Chancellor of the University, to nominate two names for two seats out of the total 21. One was to be from the RAKCON nursing faculty on the basis of seniority, provided the candidate fulfilled minimum eligibility conditions and the application must have been recommended by Ministry of Health and Family Welfare and sponsorship letter must be produced before 10.04.2008 (Clause 5.4.1). The other seat could be filled by the Vice Chancellor, from faculty of the Ahilya Bai College of Nursing (hereafter ABCON). The application in case of this seat too, must have been recommended by the concerned authorities and sponsorship letter produced before 10.04.2008 (Clause 5.4.2).

4. Usha Rani apparently was appointed as Sister Tutor on regular basis in the School of Nursing at GTB Hospital, Delhi on 25.04.1998. On 06.02.2008, she forwarded her application, through proper channel, for appearing in the selection test for the said Master of Nursing programme with a request that the same be forwarded to RAKCON before 10.04.2008, along with the required documents (such as certificates of good conduct, experience and sponsorship). On the basis of advance copies submitted to the RAKCON, she and Anjana Dhall and one other sister

tutor of the same school appeared in the selection test. According to Usha Rani, Anjana Dhall retained her original application in her custody with *mala fide* intention and returned it by order dated 07.04.2008. Usha Rani alleges that the application was returned with the remark that the competent authority at GTB Hospital had considered and stated that for shortage of staff only one senior-most candidate, being Anjana Dhall herself, could be sponsored for the said course.

5. Usha Rani alleges there is no such rule in the prospectus that only one candidate can be sponsored from one institute, stressing that although more than one candidates may be sponsored from a single institute in a State/U.T., but only one will get the additional weightage of 5 marks, who secures the highest marks in that State/U.T; further seniority can not be held to be a criteria in terms of the Prospectus. It was also contended by the petitioner that the acts of respondents in altering the selection criteria to the benefit of respondent no. 5 by extending the provision of V.C. Seat (reserved for the ABCON faculty) to the Nursing Faculty of Govt. N.C.T. of Delhi and thereby nominating the respondent no. 5 for the course, is an arbitrary exercise of power and abuse of discretion; moreover Anjana Dhall did not submit her letter of sponsorship from the competent authority within the prescribed period i.e. before 10.04.2008 and that the respondents gave her undue favour by nominating her name for the said course. According to Usha Rani, Anjana Dhall had availed the maximum permissible study leaves i.e. 24 months during entire service for prosecution of B.Sc. Nursing, whereas she has 14 months study leaves to her credit, thereby underlining there is no provision where a person who does not have any study leave his/her credit can be sponsored for a course.

6. Thus, pleading that grave injustice has been occasioned her, and aggrieved of the same Usha Rani preferred an application O.A. (No. 790/2008) before the Central Administrative Tribunal, claiming for sponsorship as in-service candidate. That proceeding is pending before the tribunal. The result of the selection test was declared on 17.04.2008, but results of the petitioner and Anjana Dhall were withheld. On these grounds, Usha Rani claims directions to the respondents not to admit Anjana Dhall, but admit her instead to the course.

7. According to the return of the NCT and GTB, Usha Rani has not disclosed true facts. They contend that out of the two seats created and reserved by the power of the Vice Chancellor of the University for the Master of Nursing Course, one reserved seat originally in favour of ABCON faculty was allocated to the Nursing Faculty of Govt. of N.C.T. of Delhi. They allege that Usha Rani claims admission on the basis of her eligibility in 'Category II' after appearing for a selection test, whereas Anjana Dhall claims admission against the reserved seat to be filled by the Vice Chancellor. These respondents concede that both the Usha Rani and Anjana Dhall had sought admission on the basis of their performance in the Selection test, which they both attempted. However, on 07.04.2008 the authorities decided to allocate the seat reserved for the ABCON faculty under the Vice Chancellor's quota to the other Schools/Colleges of Nursing under the Government of N.C.T. of Delhi. They state that Anjana Dhall, being the senior most was nominated for the said seat by NCT to RAKCON. It was further stated by these respondents that as all three candidates seeking admission for the Master's degree are tutors in the G.T.B. Hospital School of Nursing and considering the short fall of staff at the said school, only Anjana Dhall

was nominated for the course as she was the senior most among the three applicants. Thus, her entitlement is independent of Usha Rani's claim.

8. Anjana Dhall, in her return stated that her entitlement is independent of Usha Rani's claim, as she was nominated by the Vice Chancellor for admission to the said course against the "reserved" quota seat available for nomination by the said official. and that the Usha Rani is claiming admission on the basis of her eligibility in 'Category II' after appearing for the Selection test. She further stated that both she and Usha Rani had appeared in the Selection test, held on 28.03.2008 as previously the provision of reserved Vice Chancellor's seats were only limited to the RAKCON faculty and ABCON faculty. Thus, both of them sought admission as independent candidates on the basis of their performance in the Selection test. Only after the authorities took a decision on 07.04.2008 to allocate the reserved ABCON faculty seat to Nursing Faculty of other Schools/Colleges under Govt. of N.C.T. of Delhi was her name forwarded for the said reserved seat and thus she became entitled for admission on the basis of her nomination. She further posited that Usha Rani's application was forwarded to the Medical Superintendent, G.T.B. Hospital through proper channel she was also informed about the decision of the competent authority that only one senior most candidate could be sponsored due to shortage of staff so that the studies of the students were not disturbed in future.

9. Anjana Dhall, in her writ petition, (WP 5914/2008) seeks a direction to the respondents, RAKCON, Union of India, Govt. of NCT of Delhi and the University of Delhi, to admit her to the course, in view of her being nominated on 16th April, 2008 by the Government of NCT. She stated that the G.T.B. School of Nursing is under the

process of up-gradation to become a College of Nursing and this aspect had been the focus of discussion in various meetings and deliberations and in furtherance of this goal the Govt. of Delhi proposed to the University of Delhi, on 12.02.2008, that seats meant for ABCON could be made available to those working in Govt. of NCT of Delhi, which was accepted on 07.04.2008. It is contended that in these circumstances, the Government of NCT, after considering all relevant facts, decided to nominate her to the RAKCON as she was the senior most Nursing Tutor. It is contended that despite her clear selection, the respondents were not allowing her to start attending the course.

10. In the counter affidavit filed in W.P. (C) No. 5914/2008, (Anjana Dhall's petition), the NCT states that three applications were received for M.Sc. (Nursing) in RAKCON viz. Mrs. Anjana Dhall, Ms. Kanika Saha and Mrs. Shobha Mathews, which were considered for nomination and on the basis of seniority the application of the Mrs. Anjana Dhall was forwarded on 16.04.2008. It alleges that no application was received from Usha Rani she was therefore, not considered. It was further stated that RAKCON had chosen to deviate from the decision of the University's decision.

11. The RAKCON in its return, contests that the decision to allow the Vice Chancellor to nominate candidates from amongst faculty of Schools of nursing in Govt of Delhi, was taken; its version is that the meeting held for the purpose, decided to extend the facility to only those working in Colleges of nursing. It relies on a letter written on 25th April, 2008, in response to the letter of the University, dated 16th April, 2008. According to it, the reservation (for the purpose of nomination) was premised on the fact that it would be from amongst the faculty of

colleges of nursing, as there was an understanding that faculty of such colleges would have the minimum standards to pursue the rigorous M.Sc. (Nursing) course.

12. Mr. Sher Singh argued on behalf of Usha Rani. He submitted that the entire process whereby Anjana Dhall was sought to be nominated was arbitrary and tainted. According to him, both the candidates had participated in the same selection test, for the 50% quota. Despite Anjana not having been sponsored, she managed to get the Vice Chancellor's nomination, through manipulation. It was urged that the respondents surreptitiously managed to extend the zone of consideration to faculty working in Govt. of NCT, and, without notifying the change, or calling for applications from eligible candidates, secretly nominated Anjana Dhall to the seat, on the basis of her being the senior most in the cadre. According to Usha Rani, this was arbitrary and unreasonable.

13. Mr. Ravi Prakash Gupta, learned counsel for Anjana Dhall, submitted that admittedly, she was the senior most tutor in the Govt. of NCT of Delhi. The respondent authorities had started the process of extending the criteria for consideration of nomination in respect of the ABCON seat in February 2008; the University agreed to the request on 07.04.2008. There was nothing arbitrary or objectionable in this, since the University and the Govt. of NCT of Delhi were both of opinion that ABCON faculty no longer needed the reservation, which could be thrown open to others working in the NCT of Delhi. It was submitted that the question of Usha Rani being affected by the decision to give admission to Anjana Dhall is not tenable, because both the candidates sought admission in different quota; the former, in the 50% quota through entrance exam, and the latter, through

nomination. A similar contention was made on behalf of the University and the NCT of Delhi.

14. The original records were called for. They showed that the NCT, on 12.02.2008, requested the Vice Chancellor to reserve one seat for M.Sc. (Nursing) to be filled from amongst faculty of Nursing schools/ college of nursing of the Government of NCT of Delhi. This request was based on the reasoning that such reservation had been made in 1991-92 at the Vice-Chancellor's insistence in favour of faculty of ABCON (Lok Nayak Hospital) and that most of the faculty of that institution had completed the course. The request was considered by the Vice Chancellor, who merely approved it on 04.04.2008. A formal letter was issued to the Govt. of NCT on 07.04.2008. Significantly, this letter was addressed by the Faculty of Science; a copy of the letter was produced by Anjana Dhall. It was not available on the files produced by the University before the court. This letter was not marked to the RAKCON. Anjana Dhall has also produced the copy of another letter, dated 27th May, 2008, written by the Faculty of Science, for the first time to RAKCON, about the decision to fill the seat meant for ABCON faculty, from amongst nursing faculty of Govt of NCT institutions. The letter by which Anjana Dhall was nominated to the course, i.e on 16.04.2008, by the Govt. of NCT, (addressed to the Principal of the RAKCON) reads as follows:

"Madam

I am directed to refer letter No. SF/II/2008/574 dated 7-04-2008 addressed to Spl. Secretary (H&FW) (copy enclosed). This Government is pleased to nominate Mrs. Anjana Dhall, Principal Tutor presently working in School of Nursing, GTB Hospital against the reserved category seat as approved vide letter under reference for your further necessary action."

Two letters, dated 27.05.2008 (written by the University to the Govt. of NCT) and 15.07.2008 (written by the Govt. of NCT to the Faculty of Sciences, University) highlighted that the RAKCON should admit Anjana Dhall. On record, in Usha Rani's case, is also an answer to a queries by her under the Right to Information Act, stating that Anjana Dhall was nominated as she was the senior most nursing tutor in GTB hospital.

15. The course, which both the petitioners are vying admission for is the Master's degree in Nursing, in the RAKCON. The RAKCON is a Central Government institution, established in 1946; it describes itself as a pioneer in nursing education in India, and the South Asian region; it is designated as a study centre for Ph.D programme in Nursing conducted by Rajiv Gandhi University of Health Sciences, Bangalore in collaboration with the World Health Organization and Indian Nursing Council. Its prospectus also refers to ongoing efforts to have the institution declared as a centre of excellence. As noticed earlier, Clause 2.1 under the heading "*Basis of selection*" – of the prospectus, earmarks 50% seats to be filled by candidates qualifying in BSc. (Hons) Nursing with 65% or more in the aggregate marks, in order of merit. Category II, relevant for the purpose of this case, reads as follows:

"2.2 Category-II

The remaining 50% of seats will be offered to candidates on the basis of the performance in the Selection test and last qualifying examination. The criteria for arriving at the merit would be weightage of 50% of the Selection Test and 50% of the qualifying examination. All those candidates who fulfil the eligibility conditions and have not otherwise been declared selected under Category I can also take the Selection test.

2.3 *Weightage for Sponsored Candidates (Non-Reserved Candidates)
For placement in the merit list based on selection Test:*

*Weightage of 5 marks will be given to the candidates who are in the employment of State Government of College of Nursing/Schools of Nursing and whose names are sponsored by their employer. However, only one candidate (non-reserved) per each State/ Union Territory from among the sponsored candidates of that State/ Union territory will be eligible for weightage of 5 marks who secures highest in the selection test. Sponsored candidate receiving 5 marks if selected should submit a relieving letter confirming sponsorship at time of admission. The candidate must produce the sponsorship letter by 10th April 2008. **The original application through proper channel must reach by 10th April 2008.***

Clause 5.4, which enabled the Vice Chancellor to fill two seats, in RAKCON, reads as follows:

“ 5.4.1 Provision of RAK College of Nursing faculty:

One seat will be reserved on seniority basis for the RAK College of Nursing faculty provided the candidate fulfils the minimum eligibility conditions and application must have been recommended by Ministry of Health and Family Welfare and sponsorship letter must be produced by 10th April, 2008.

5.4.2 Provision of Ahilya Bai College of Nursing faculty:

One seat will be reserved for the AB College of Nursing faculty and application must have been recommended by the concerned authorities & sponsorship letter must be produced before 10th April, 2008.

6. Last date for Submission of Application Form is 15th February 2008 by 4:00 PM. The original application through proper channel must reach by 10th April, 2008.”

16. The above narration may now be encapsulated. The admission to RAK College Master’s programme, is by selection from amongst those securing 65% or more in degree of nursing, in order of merit, to the extent of 50%; the rest is to be filled through a selection test, from those with essential qualification of a B.Sc. in nursing. They had to apply for appearing in the selection test, by 15th February, 2008. Two seats were reserved as “Vice Chancellors” reserved seats. The first was to

be filled from amongst RAKCON teaching faculty, on “seniority basis” provided the candidate fulfilled the minimum eligibility conditions, and had been sponsored by the Ministry of Health, by 10.04.2008. Another seat was reserved for the faculty of ABCON. The NCT of Delhi wished to widen this reservation to faculty teaching in its nursing schools and colleges. The proposal was accepted on 07.04.2008. The further action in recommending Anjana Dhall to this seat is in question; she asserts that this was perfectly in order. This position is shared by the Govt. of NCT of Delhi and the University of Delhi. Usha Rani, on the other hand, complains of arbitrariness, pointing out that the process of making the ABCON seat available was secret, and Anjana Dhall was nominated after the last date, without following any process or criteria, and without notifying all concerned, including the candidates.

17. What is striking in this case is that RAKCON in its prospectus has insisted upon cut off dates for receiving applications for filling up the seats- 15th February, 2008, in the case of admission through selection test (for which both the petitioners concededly competed on 28.03.2008) and sponsorship for the Vice Chancellors’ seats (clause 6) itself, by 10th April, 2008. Similarly, those deemed “sponsored candidates” for the selection quota, one of whom is entitled to weightage of 5 marks, from each state or Union Territory, had to submit the necessary sponsorship proof again, by 10th April, 2008. Lastly, the Vice Chancellor’s seats were earmarked for being filled from amongst faculty of two nursing colleges, ie. RAKCON and ABCON.

18. The documents and official files placed on record nowhere reflect any consultation between the University, Govt. of NCT of Delhi, RAKCON and the Central

Government, as to the desirability of earmarking the ABCON seat to Govt. of NCT nursing faculty working in nursing schools and colleges. The entire scheme of admission is premised upon selection by merit – whether it is based on the 50% quota for those with more than 65% or the balance 50% quota for those participating in the selection test. Even those sponsored from each Union territory or state for the extra 5 marks weightage provided she “*secures highest in the selection test.*” The nomination to Vice Chancellor’s seats were therefore an exception; however, two features stand out even in this. One, both RAKCON and ABCON – whose staff were entitled to be nominated, are Colleges of nursing, not schools of nursing. Two, in the case of nomination to either *the last date was 10th April, 2008.*

20. In the decision reported as *Dolly Chhanda v. Chairman, JEE*, (2005) 9 SCC 779, the Supreme Court held that:

“The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation.”

This court is of opinion that the above rule would apply squarely to the facts of this case. Here, the ABCON seat’s reservation existed in favour of its staff, as on the last date for submission of the form for availing the benefit. The seat became available

even according to NCT to Anjana Dhall, when she was nominated on 16.04.2008. No consultation process involving RAKCON, which is the concerned institution, or its management, i.e the Central Government, for extending the reservation to Govt. of NCT nursing faculty in nursing schools and colleges. There is no material available indicative of extension of time for submission of sponsorship forms or applications, beyond 10th April, 2008. Unlike other cases, where candidates may be victims of inadvertence by institutions, or postal delay in forwarding such documents, Anjana Dhall could claim eligibility only after 07.04.2008; even that approval letter of the University of Delhi did not indicate how the seat reserved for ABCON could be filled. The Govt. of NCT of Delhi merely forwarded her name on the basis of a criteria, not spelt out by it, since seniority is a criteria, applicable only for faculty of RAKCON, a nursing college. The entire process of nomination was therefore, opaque, and evolved after the last date prescribed for the purpose. If one keeps in mind that both petitioners had participated in the selection test held on 28-3-2008, this procedure, adopted not by RAKCON, but by Govt. of NCT was arbitrary.

20. The policy paradigm of the management of an educational institution choosing to reserve a portion of its seats, in favour of a class of citizens, was emphasized by the Supreme Court, in the following terms, in *Chitra Ghosh v. Union of India* 1969 (2) SCC 228:

“9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of

particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification." (emphasis supplied)

The above observations were endorsed, and applied in the recent Constitution Bench decision reported as *Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146. In this case, strangely, though the seat (hitherto meant exclusively for a college, i.e. ABCON) was "de-reserved" but sought to be made available to a restricted category of persons, i.e. faculty working in nursing schools and colleges of the Govt. of NCT of Delhi. Though styled as a Vice Chancellor's reserved seat, it could not be filled by anyone; it was meant exclusively for ABCON faculty. If the respondents were of the view that the purpose of that reservation had been fulfilled, the least they could have done was to consult the Central Government, which manages the institution (RAKCON) about desirability of extending the reservation to faculty of those in Govt. of NCT institutions. If one sees that RAKON is a Central Government institution, meant to sub-serve the needs of all eligible candidates in the country (so evident from clause 2.3 which confers weightage, state wise, to one candidate each) the manner of earmarking ABCON faculty reserved seats to only those in NCT nursing schools and colleges, cannot be upheld.

21. This court had *prima facie* 22.09.2008 recorded that there was no challenge, in Usha Rani's petition, to the process of nomination. In Anjana Dhall's petition, the court noted the stand of RAKCON that nomination from Govt of NCT's faculty, from schools of nursing was not acceptable, and to resolve the controversy, asked the

Chief Secretary, Ministry of Health Government of India (apparently recorded wrongly, instead of Secretary) was asked, on 04.12.2008, to convene a meeting and resolve the issue. During the hearing, a copy of the minutes of meeting held by the Chief Secretary, Govt. of NCT of Delhi, held on 09.01.2009 were produced. The Chief Secretary, after considering the views of those present, including a representative of the Central Government and RAKCON, “decided” that the Central Government should be asked to make the ABCON seat available for being filled up from amongst nursing faculty in the Govt. of NCT nursing schools and colleges; he also decided that the RAKCON should give effect to the nomination made (in favour of Anjana Dhall) by the Govt. of NCT. The relevant extract of the minutes of meeting reads as follows:

“Having heard the views of all the parties present, the Chief Secretary took the following decisions:

- H&FW department, Govt. of NCT of Delhi would approach the Ministry of Health & Family Welfare, Govt of India to permit the members of Nursing Faculty of Delhi from Schools and Colleges of Nursing to continue to avail the reserved Vice Chancellor’s seats for pursuing M.Sc. in Rajkumari Amrit Kaur College of Nursing. This facility may continue to be made available for about 3 to 4 years. During this period, Govt. of NCT of Delhi would initiate steps to upgrade its Schools of Nursing to Colleges of Nursing, which would seek affiliation with the University in a time bound manner.*
- In the meanwhile as has been directed by the Hon’ble High Court vide its order dated 22-9-2008, in the WP © 5074/2008 entitled Usha Rani Kashotriya –vs- University of Delhi, Rajkumari Amrit Kaur College of Nursing will take necessary steps to fill the VC seat for Ahilya Bai College of Nursing, LNH as per the nomination made by the GNCTD, Health & Family Welfare department letter dated 16-4-2008 as per approval of the Vice Chancellor for extending the facility to faculty of other colleges/ schools of Nursing under GNCT of Delhi vide letter ref No. SF/II/2008 dated 27-5-2008 from Dean, Faculty of Sciences.”*

22. The order of court had required the Central Government – which has established the institution, and manages it, to decide and resolve the issue; however the Chief Secretary, Govt. of NCT took upon himself to “decide” the entire matter and even direct a Centrally administered institution to abide by his decision. During the hearing, neither the Govt. of NCT nor the Delhi University were able to justify such exercise of power to “reserve” a seat and set down the standards for its being filled up. The court’s order of 22.09.2008 had no doubt recorded that there was no challenge to the procedure of filling up the seat; yet that was only a *prima facie* view. Grounds (c) and (j) clearly point to the contrary; they specifically advert to the irregularity of evolving a new procedure, not notified, for filling the seat, and that seniority in the Govt. of NCT could not have been a criteria for admission, to the Vice Chancellor’s reserved seat, meant for ABBON faculty. Therefore, although the court had required the nomination to be proceeded with, that order cannot now be sustained.

23. The court had been shown the results of the selection test, attempted by the rival candidates. It shows that on performance, Usha Rani’s marks are better than Anjana Dhall’s. However, the RAKCON stated that all seats save the reserved Vice Chancellor seats had been filled. In the circumstances no relief can be granted to Usha Rani, as far as direction to admit her, is concerned.

24. The court is of opinion that the Vice Chancellor of the Delhi University’s decision to “reserve” the ABBON faculty seat was taken without any application of mind. The files nowhere reflect why the Govt. of NCT nursing school and college faculty had to be given the exclusive privilege of nomination to the seat, meant for

faculty of a college; if the original object of the reservation had been fulfilled, the authorities should have considered, whether to continue such reservation, and if so, whether it had to be restricted to those in the Govt. of NCT, since the college is of an All India character. It is noteworthy that even the latest prospectus for the forthcoming academic year 2009-2010 (produced during the hearing) does not reflect the thinking of the University and the Govt. of Delhi; the Vice Chancellor's seat still has been shown as available only to faculty of ABCON – not from faculty of nursing schools and colleges of Govt. of NCT of Delhi.

25. For the above reasons, Usha Rani's writ petition has to succeed partly; Anjana Dhall's writ petition has to be rejected. Accordingly, the letters of the University dated 07.04.2008, and of the Govt. of NCT dated 16.04.2008 are hereby quashed. WP 5074/2008 is partly allowed and W.P. (C) No. 5914/2008 is dismissed.

CM Nos. 9724/2008, 12847/2008, 14054/2008 in WP (C) No.5074/2008
CM Nos. 11328/2008, 14279/2008, 429/2009 in WP (C) No.5914/2008

In view of the orders passed today in the writ petitions, no further orders are required to be passed in these applications, the same are rendered infructuous and dismissed accordingly.

DATED: 27th January, 2009

S. RAVINDRA BHAT, J