

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.9771/2009**

% **Date of Decision: 03.07.2009**

Ansuya Ahluwalia Petitioner
Through Mr. Ashutosh Ahluwalia, Father and
attorney of the Petitioner.

Versus

Union of India & Ors. Respondents
Through Mr. Mohinder J.S. Rupal, Advocate for
University of Delhi.
Mr. M.L. Khan, Advocate for
Respondent Nos. 1 & 5.
Mr. Jatan Singh, Advocate for AICTE.
Mr. Avnish Ahlawat with Ms. Latika
Choudhary & Ms. Simran Singh,
Advocates for Delhi College of
Engineering.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

The petitioner claims implementation of alleged scheme of quota for foreign / PIO's students by University of Delhi and Delhi College of Engineering pursuant to notification dated 21st January, 2004 of All India Council for Technical Education and for consideration of the candidature of the petitioner for the academic year 2009-10 out of

supernumerary quota of 15 % for foreign nationals / Persons of Indian Origins.

The petitioner holds passport of United States of America as she was born there on 1st May, 1991. The petitioner passed her CBSE examination from Delhi Public School, R.K. Puram with 92.4% mark and with a PCM average of 95%.

According to petitioner after passing her CBSE exam from Delhi, she is a candidate of Delhi region as per the eligibility conditions laid down for admission to Delhi College of Engineering and Netaji Subhash Institute of Technology under the combined entrance examination (CEE) scheme.

Though the petitioner is not a citizen of India, however, her admission form for Combined Entrance Examination was accepted and she was allowed to appear for admission to Bachelor of Engineering Degree course offered by Faculty of Technology, University of Delhi and her rank in the entrance examination is 2723.

After obtaining the rank of 2723 in the Combined Entrance Examination for admission to Bachelor of Engineering Degree course, petitioner claims that respondents No.2 & 3 should implement the scheme of providing 15% supernumerary seats quota for foreign

students and that she should be considered for admission in the said quota.

According to the petitioner, in 2004 the Prime Minister of India during Parvasi Bhartiya Divas announced for supernumerary quota of 15% over and above the seats available, to be reserved for PIOs/NRIs in technical and educational institutions. It is contended that a policy notification dated 21st January, 2004 was published on 26th February, 2004. The said notification of All India Council for Technical Education is applicable to foreign nationals / persons of Indian Origins (PIOs) / children of Indian workers in gulf Countries seeking admission to AICTE approved institutions in terms of para 2 of the said notification. Para 4 of the said notification contemplates 15% seats on supernumerary basis. Para 4 (a) of the notification is as under:-

“Foreign Nationals/PIOs/Children of Indian Workers in the Gulf Countries”.

Under these Regulations fifteen percent (15%) seats in all the institutions / University Departments, **approved by AICTE**, offering technical course leading to Diploma. Degree and Post-Graduate Degree in Engineering and Technology, Architecture & Town Planning, Pharmacy, Applied Arts, MBA & MCA, Hotel Management & Catering Technology shall be allowed on supernumerary basis from amongst Foreign Nationals / Persons of Indian Origin (PIOs) / Children of Indian Workers in the Gulf Countries, over and above the approved intake provided that 1/3rd of the 15% shall be reserved across different disciplines in the educational institution, for the Children of Indian Workers in the Gulf Countries. However, any vacant seats out of 1/3rd category shall be reverted to the quota of 2/3rd meant for PIO/Foreign Nationals.

This is subject to the **availability of adequate infrastructure** facilities in the applicant institutions, **to be verified by AICTE, based on its Norms and Guidelines**. These supernumerary seats shall be exclusively meant for these category of students in the diploma, under-graduate and post-graduate courses with a rider that under no circumstances a seat remains unfilled shall be allocated to anyone other than a foreign student / PIO. Foreign Nationals / persons of Indian Origin (PIOs) / Children of Indian Workers in the Gulf Countries admitted in an AICTE approved institutions through Indian Council for Cultural Relations (ICCR) or as Government of India nominee shall be included within this 15% ceiling”.

Thus para 4 (a) of the said notification contemplates 15% seats on supernumerary basis subject to the availability of adequate infrastructure facilities in the institutions, to be verified by AICTE, based on its norms and guidelines.

Reliance has also been placed by the petitioner to a reply dated 26th October, 2006 to the letter of the petitioner dated 28th September, 2006 by the Joint Secretary of MOIA stating that Government of India has allowed 15% supernumerary seats in technical institutions approved by AICTE. The petitioner has also relied on a notification dated 11th April, 2005 contemplating parity between the overseas citizens of India and Non-Resident Indians in respect of all facilities available in economic, financial and educational fields.

15% quota is also sought by the petitioner on the ground that several other institutions in NCR like Jamia Hamdard, New Delhi, Greater Noida Institute of Technology, Greater Noida having inferior

facilities have already implemented notification of All India Council for Technical Education reserving 15% seats on supernumerary basis.

The father of the petitioner, her attorney, had also sought information under the Right to Information Act from respondent no.2 regarding implementation of notification of All India Council for Technical Education and it was revealed that the reasons for not implementing the scheme is lack of infrastructure.

The petitioner claims that considering the facilities available at the other institutions which have already implemented the notification, the respondents No. 2 & 3 cannot take shelter under the plea of lack of infrastructure and consequently the respondent should fix 15% quota on supernumerary basis and consider the petitioner under the said quota.

The petitioner has also claimed that though the quota for SC/ST & OBC were implemented within a year when HRD Ministry came down upon the authority of respondent no.2, however, despite an earlier notification by All India Council for Technical Education the scheme for providing supernumerary quota for foreign students has not been implemented.

I have heard the father of the petitioner who has appeared as her attorney. The notification dated 21st January, 2004 ex facie is

applicable to the institutions which are approved by All India Council for Technical Education. The notification contemplates 15% seats subject to the availability of adequate infrastructure facilities in the concerned institutions to be verified by AICTE based on its norms and guidelines in terms of para 4 (a) of said notification.

Admittedly, the respondent no.2 is not an institution approved by AICTE nor the college of respondent no.2, respondent no.3 is an approved institution of All India Council for Technical Education. The contention of pervasive control by All India Council for Technical Education over the universities was repealed by the Supreme Court in *Bharathidasan University and Another v. All India Council for Technical Education & Others*, 2001 (8) SCC 676. The Supreme Court had held that considering the provisions of All India Council for Technical Education and provision of UGC Act, it is apparent that the role of All India Council for Technical Education vis-à-vis the universities is only advisory, recommendatory and a guiding factor. It was held that All India Council for Technical Education does not act as an authority empowered to issue and enforce any sanction by itself except submitting a report to UGC for appropriate action. The Supreme Court in para 10 at page 685 had held as under:-

10. All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting

teaching in technical education or programmes in any of its departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the **role of AICTE vis-à-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action.** The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-à-vis universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited attention and consideration in their proper and correct perspective.....”

Consequently, on the basis of the notification dated 21st January, 2004 the petitioner cannot claim that the respondents No. 2 & 3 must reserve 15% seats for foreign students in terms of the notification by All India Council for Technical Education.

In any case, the 15% seats are subject to availability of adequate infrastructure facilities which are to be verified by All India Council for Technical Education based on its norms and guidelines. In case, the seats can be created on the basis of norms and guidelines of All India Council for Technical Education and the same seats cannot be created on the basis of norms and guidelines of the affiliated universities, an institution affiliated to a university cannot be compelled to have 15% seats on the basis of alleged infrastructure. In reply to a RTI query by

the father of the petitioner, the reason for not implementing 15% supernumerary seats has been disclosed as lack of infrastructure and modalities.

The learned counsel for All India Council for Technical Education who has appeared pursuant to advance notice has contended that though under Section 10(k), the power of All India Council for Technical Education is advisory, however, the power under Section 10(o) regarding admission of students to technical institutions and universities imparting technical education is mandatory. The contention of learned counsel of All India Council for Technical Education cannot be accepted as it will lead to a anomalous situation wherein an institution cannot be given any mandatory direction, however, a university to which the institution is affiliated can be given mandatory direction in respect of admission.

In any case, availability of infrastructure in an institution affiliated to the university has to be judged on the basis of norms prescribed by the university and not on the basis of the norms prescribed by All India Council for Technical Education. There can be situations where the seats can be created on the basis of norms of AICTE but the seats may not be permissible within the norms of Universities.

In the present facts and circumstances, the respondent no.3 has contended that it does not have infrastructure facilities to have supernumerary quota of 15% for the foreign citizens and persons of Indian origin. The petitioner cannot insist that availability of infrastructure is to be adjudged on the basis of norms laid down by All India Council for Technical Education. The plea of the petitioner that other institutions in NCR have introduced 15% supernumerary quota for NRIs/PIOs cannot be a ground at this stage to direct the respondent to have the said quota. The respondents No. 2 & 3 also cannot be directed to have the said quota on the ground that they were able to have quota for SC/ST & OBC within one year of the concerned notification.

In any case, the petitioner has already appeared as general candidate and her merit list ranking is 2723 as a general candidate. The quota for foreign students/NRIs/PIOs was not announced nor has any examination been conducted for such students. It is apparent that in this circumstance, such students who can claim reservation under such category have not applied nor appeared in the entrance examination. In the circumstances the petitioner shall not be entitled to claim that a supernumerary quota of 15% be created for foreign nationals/PIOs and her candidature be considered in the said quota though she has appeared as general candidate and her ranking is 2723.

The learned counsel for the respondents No.2 & 3 has contended that petitioner may not get admission in general category with such low ranking and that the present petition has been filed with a view to somehow ensure admission to respondent no.3.

In the totality of the facts and circumstances and for the forgoing reasons, the petition is without merit and it is, therefore, dismissed in limine.

July 03, 2009
'gsr'

ANIL KUMAR, J.