

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

Date of decision: 31th August, 2010.

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W.P.(C) No.4282/2010

DR. ASHOK KUMAR

..... PETITIONER

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Mohit Chaudhary, Mr. Ramesh
Gopinathan, Mr. A. Das & Mr. Rituraj
Chaudhary, Advocates

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.**

..... RESPONDENTS

Through: Mr. Mukul Talwar & Mr.
Sradhananda Mahapatra, Advocates
for R-1.
Mr. Rakesh Mahajan, Advocate with
Mr. Gautam Anand & Mr. Pramod
Kumar Tyagi, Advocates for
respondents 5,6,7,9,10,12,14 & 15.
Mr. Arvind Chaudhar, Advocate for
R-13.
Mr. Amit Kumar, Advocate for R-19.

AND

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W.P.(C) 4283/2010

DR. MUVEEN KUMAR & ORS.

..... PETITIONERS

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Mohit Chaudhary, Mr. Ramesh
Gopinathan, Mr. A. Das & Mr. Rituraj
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UNIVERSITY & ORS.**

..... RESPONDENTS

Through: Mr. Mukul Talwar & Mr.
Sradhananda Mahapatra, Advocates
for R-1.

Mr. Abhishek Goyal, Advocate for Mr. B.V. Niren, CGSC & Mr. G.D. Parashar, Mr. Neeraj Chaudhari, CGSC, Mr. Khalid Arshad, Advocates for R-3.

Mr. Ashok Mathur & Mr. Prem Prakash, Advocates for R-4.

Mr. Gautam Anand & Mr. Pramod Kumar Tyagi, Advocates for respondents 5,6,7,9,10,12,14 & 15.

Mr. AP. Singh, Advocate for R-8 & 11.

Mr. G.D. Chotmurada & Mohd. Aslam, Advocates for R-16&17.

AND

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W.P.(C) 4425/2010

DR. POOJAN AGARWAL

..... PETITIONER

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Chaudhary, Mr. Ramesh Gopinathan, Mr. A. Das & Mr. Rituraj Chaudhary, Advocates

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS**

..... RESPONDENTS

Through: Mr. Mukul Talwar & Mr. Sradhananda Mahapatra, Advocates for R-1.
Mr. Neeraj Chaudhari, CGSC, Mr. Khalid Arshad, & Mr. G.D. Parashar, Advocates for R-3.
Mr. Gautam Anand & Mr. Pramod Kumar Tyagi, Advocates for respondents 5,6,7,9,10,12,14 & 15.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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

RAJIV SAHAI ENDLAW, J.

1. The three petitions relate to admissions to the Post Graduate Medical Degree/Diploma Programme for the academic session 2010-11 of the respondent no.1 Guru Gobind Singh Indraprastha University and are being listed and taken up together for consideration. The counsels made their submissions with respect to the facts of WP(C) No.4283/2010.

2. The petitioners contend that the University in the matter of admissions has incorrectly applied the provisions for reservation to SC/ST/OBC category, by wrongly extending the reservation to students who enjoy SC/ST/OBC status in other States like Bihar, Uttar Pradesh, Assam etc. but are not recognized as SC/ST/OBC in Delhi. The action of the University is stated to be in contravention of the law laid down in (i) ***MCD Vs. Veena*** (2001) 6 SCC 571 (ii) ***Subhash Chandra Vs. Delhi Subordinate Services Selection Board*** (2009) 15 SCC 458 & (ii) ***Manish Tokas Vs. UOI***, WP(C) No.13304/2004 decided on 1st March, 2007. The petitioners claim that if admissions to SC/ST/OBC category of students not holding such status in Delhi were to be not made or are to be struck down, the seats reserved for SC/ST/OBC candidates would fall vacant and in accordance with judgment of Supreme Court in ***Ashok Kumar Thakur Vs. Union of India*** (2008) 6 SCC 1 be available for admission of General category to which the petitioners belong. The candidates who according to the petitioners have

been so wrongly admitted have been impleaded as respondents. The case of the petitioners is that the candidates so wrongly admitted had not produced any certificate from the authorities at Delhi of their belonging to the Reserved category in Delhi and were thus not entitled to admission in the Reserved categories.

3. The relevant provisions of the Admission Brochure issued by the University and to which attention has been invited during the hearing are as under:-

*2. Common Entrance Test (CET) for only 50% seats as indicated in above Tables against **State Quota** will be conducted by Guru Gobind Singh Indraprastha University for admission to Post Graduate Medical Degree / Diploma courses. For this test, only Medical graduates of Guru Gobind Singh Indraprastha University are eligible.*

*3. All admissions against the seats of **State Quota** to Post Graduate Medical Degree / Diploma Courses will be made on the basis of merit of Common Entrance Test (Test Code: 26).*

6.2.4 Candidates who are already admitted to any Post Graduate Medical Degree / Diploma Course in any University / Institution as on the date of counselling will not be eligible for admission. Candidate will be required to give an undertaking in the proforma as per Annexure-I.

6.2.6 In case of any dispute, the decision of the Post Graduate Admission Committee shall be final. However, an appeal could be made to the Vice-Chancellor, Guru Gobind Singh Indraprastha University against such a decision.

7. RESERVATION AND ALLOCATION OF SEATS

7.1 Out of total seats as already indicated in para 4 above, 50% seats are reserved for All India Quota, to be filled up on the basis of All India Entrance Test conducted by All

India Institute of Medical Sciences, on behalf of DGHS, Government of India.

7.2 The other 50% seats will be reserved for MBBS graduates of Guru Gobind Singh Indraprastha University. Reservation will be applicable in these seats as per policy of Government of India as applicable from time to time for Schedule Caste (SC), Schedule Tribe (ST) and OBC candidates. For reservation to Physically Challenged (PC) candidates, guidelines of Medical Council of India will be applicable.

Final decision regarding reservation policy will be taken by the Government (for the year 2010-11) and in accordance with the same the counseling will be conducted.

7.2.1 Guidelines for Schedule Caste and Schedule Tribes Seats

In case any seats reserved for the candidates belonging to SC/ST category remain unfilled due to non-availability of the eligible candidates under the said category, then the seats would be offered to the other category, i.e., seats of SC to ST and vice-versa as the case may be. In case sufficient number of eligible candidates of SC & ST is not available, the seats thus remaining vacant will be treated as unreserved. **A Caste Certificate in the name of the applicant from a competent authority will have to be submitted at the time of Counselling.**

A list of approved authorities to issue the SC and ST Certificates are as under:-

- (i) District Magistrate, Additional District Magistrate, Deputy Commissioner, Collector, Additional Deputy Commissioner, Deputy Collector, 1st Class Stipendiary Magistrate (not below the rank of 1st Class Stipendiary Magistrate), City Magistrate, Sub-Divisional Magistrate, Taluka Magistrate, Executive Magistrate and Extra Assistant Commissioner.
- (ii) Chief Presidency Magistrate, Additional Chief Presidency Magistrate or Presidency Magistrate.
- (iii) Revenue Officer not below the rank of Tehsildar.

(iv) **Sub-Divisional Officer of the area where the candidate and / or his / her family normally resides.**

(v) Administrator, Secretary to the Administrator or the Development Officer (Lakshdweep & Minicoy Islands).

7.2.2 Twenty Seven (27%) percent seats shall be reserved for the candidate belonging to OBC category as per the guidelines of Govt. of India. OBC certificate in the name of candidate from a competent Authority as per central list OBCs will have to be submitted at the time of counselling.

18. DOCUMENTS REQUIRED FOR COUNSELLING / ADMISSION

(vi) Schedule Caste/ Schedule Tribe / OBC certificate, if applicable; The reservation certificate should be issued from the respective State / region in which the reservation is claimed e.g. In case any candidate claims for the seat reserved for DSC category than he has to bring SC certificate issued by Govt. of NCT of Delhi.

4. Notice, first of WP(C) No.4282/2010 was issued owing to the law as laid down in the following paragraph in the judgment in *Veena* (supra):-

“Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they been specified may be totally different. So the degree of disadvantages of various elements which constitute

the date for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.”

Notice in other writ petitions was issued on the basis of notice having been issued in W.P.(C) No.4282/2010.

5. Though the counsels have addressed elaborate arguments but I find the aforesaid question to be not arising in the present case. A perusal of the terms aforesaid of admission would disclose that while 50% of the seats were to be filled up on the basis of the All India Quota, the admissions whereto were through a separate process (and with which we are not concerned), the other 50% seats with which this writ petition is concerned are described *inter alia* as the “State Quota” seats. The petitioners base their case on the seats being “State Quota” and claim that the State Quota can be understood as quota for citizens of Delhi only. On this basis it is urged that candidates seeking admission in reserved category have to belong to reserved categories as in Delhi and are not entitled to benefit of reservation if of reserved category in places other than Delhi.

6. Though the petitioners contend as aforesaid, but have nowhere in the petition pleaded that they are domiciled in Delhi. The contention of the

petitioners being that the seats are for Delhites, it has to hold good for both, Unreserved as well as reserved categories. It cannot be that the Reserved seats are for Delhites and Unreserved for other than Delhites also. It was as such asked from the counsel for the petitioners whether the petitioners claim to be having a domicile of Delhi so as to be admitted in the State Quota seats. The answer is in the negative.

7. In my view the challenge of the petitioners in this petition is liable to be dismissed on this ground alone. The petitioners cannot apply different standards to themselves and to others whose admission they are challenging.

8. However, since arguments were addressed on other aspects also, it is deemed expedient to deal with the same also for the sake of finality.

9. The counsel for the University has contended that the 50% seats aforesaid are not State Quota seats to be understood as, for which only domicile/residents of Delhi only can apply. Reference is made to clauses of the admission brochure providing that the said seats are for medical graduates of the respondent University. It is urged that such Institutional reservation has been recognized by the Supreme Court. The University thus contends that the post graduate seats subject matter of disputes were to be filled up by medical graduates of the respondent University, whether they be residents/domicile of Delhi or not. It is explained that the expression "State Quota" was used only because the medical college of the respondent University is in Delhi. It is stated that the petitioners as well as those whose

admission is challenged are all medical graduates of the respondent University and have earlier been litigating together against the University. It is thus contended that the candidates belonging to Reserved category are only required to be medical graduates of the respondent University and belonging to Reserved category, not necessarily in the list of Reserved categories in Delhi. It is also pointed out that though the candidates whose admission is challenged, at the time of admission had not produced certificate issued by Authority in Delhi of belonging to Reserved category in Delhi, have subsequently produced documents issued by Authority in Delhi confirming that the caste/class to which they belong is included in the Reserved class/caste in Delhi also. It is further clarified that all the petitioners also have secured admission to Post Graduate Degree/Diploma programmes and the fight in the petitions is for better stream/course.

10. Mr. Ashok Mathur, Advocate has contended that both the Colleges / Institutes to which admission is under consideration are Central Educational Institutions within the meaning of the Central Educational Institutions (Reservation In Admission) Act, 2006. Attention in this regard is invited to the Admission Brochure aforesaid where both Institutions i.e. (i) Vardhman Mahavir Medical College & Safdarjang Hospital & (ii) Dr. Ram Manohar Lohia Hospital & PGIMER are described as having been established and being operated under the Ministry of Health, Government of India. It is urged that they are not Institutes / Colleges of the Delhi State for admission

in the Reserved category thereof being required to be confined to the SC/ST/OBC of Delhi only. Para 29 of the judgment in *Subhash Chandra* (supra) relied on by the petitioners is cited where it is observed that reservation in Union Territory-run institutions must be confined to members of SC/ST as notified for Union Territories but reservation in respect of All India Institutions is for SC/ST/OBC in general irrespective of the State for which they are notified.

11. Mr. Rakesh Mahajan, Advocate has referred to Section 2(g) of the Act aforesaid and has contended that the policy of the Government of India referred to in Clause 7.2 of the Admission Brochure aforesaid is as contained in the Act. He also contends that since the brochure provides for the final decision regarding reservation policy being of the Government of India, the petitioners if aggrieved ought to have approached the Government first. Relying on Clause 7.2.1 of the Admission Brochure, it is pointed out that the authorities whose certificate of belonging to the Reserved category are prescribed include the Sub Divisional Officer of the area where the candidate or his / her family normally reside, indicating that the certificate need not have been of the authority from Delhi only. It is contended that the Clause 7.2.1 overrules the Clause 18.6 of the Admission Brochure.

12. Mr. Arvind Chaudhary, Advocate points out that very few of the SC/ST/OBC seats have been filled up; the remaining seats in the Reserved category have already gone to General / Unreserved category.

13. Mr. A.P. Singh, Advocate has also handed over a report to show that both the Institutions aforesaid are Central Government Institutions. His contention also is that in the legal notice issued by the petitioners prior to institution of the writ petition no grievance was made with respect to the admission of respondents 8 & 11. It is contended that the petitioners cannot expand the dispute in the writ petition so as to challenge the admission of respondents 8 & 11 also. Relying on Clause 6.2.6 of the Admission Brochure, it is contended that the writ petition is not maintainable for the reason of alternate remedy provided therein being available.

14. The counsel for Medical Council of India (MCI) has contended that the last date for admission / migration from one course to another is over and now no relief can be granted to the petitioners.

15. On a conjoint reading of the Clauses set out hereinabove, besides the aspect of domicile dealt with hereinabove, I am satisfied that the candidates admitted in the Reserved category were not required to produce certificates of their belonging to the Reserved category from the authorities situated in Delhi and were entitled to admission on production of certificate of their belonging to the SC/ST/OBC category of the area where they / their family normally reside. I am also satisfied that the admission was confined to Medical Graduates of the respondent University irrespective of their domicile and thus the students falling in the Reserved category outside Delhi were not required to be in the Reserved category in the City of Delhi also. It

is for this reason that the judgments on the basis whereof the petition was filed have no application to the present case.

16. Besides the point aforesaid, the only other point urged is of the respondents 16 and 17 being not entitled to admission for the reason of Clause 6.2.4 of the Admission Brochure i.e. being already admitted to another Post Graduate Medical Degree / Diploma Course in any University / Institution as on the date of counselling. The respondent no.16 in his counter affidavit had stated that he is a Medical Graduate of the GGSIPU of the year 2006; that he was admitted in the two year Diploma course in the University in May, 2008; that the said course was completed in April, 2010 upon final examination thereof being held; that he appeared in the Common Entrance Test held on 26th May, 2010 by the University pursuant to the Admission Brochure aforesaid and was declared successful for admission into the degree course and was so admitted on 31st May, 2010. His contention is that merely because his result of the course completed in April, 2010 had not been declared till the counselling, would not disentitle him from admission to the Degree Course. The position with respect to the respondent no.17 is the same. The counsels for the respondents 16 & 17 thus contended that the bar of Clause 6.2.4 would not apply qua them.

17. The counsel for the University has also contended that Clause 6.2.4 is intended to prevent a student from holding up two seats and is not attracted

when the course stands completed even if the result thereof may not have been declared.

18. Upon consideration of the matter, I am of the opinion that Clause 6.2.4 does not prevent a student who may have completed his diploma / degree course in the same academic year from being admitted. Merely because the result of his examination held had not been declared would not mean that he at the time of counselling for admission already stood admitted in some other course; the other course stood concluded as on that date. Such a student as per his merit is entitled to admission.

19. There is no merit in the petition. The same is dismissed. However, the petitioners being students, I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

31st August, 2010
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