

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 5332/2011 and CM 10826/2011**

Reserved on: 05.01.2012

Date of decision: 15.03.2012

IN THE MATTER OF:

THANOOJA C. AND ORS.

..... Petitioners

Through: Mr. Deepak Prakash, Advocate with
Ms. Vineeta Bansal, Advocate

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES AND ORS.

..... Respondents

Through: Mr. Mehmood Pracha, Advocate with
Mr. Sheikh Faraz Iqbal and Mr. Sumit Babbar,
Advocates for R-1 and R-2/AIIMS alongwith
Mr. Rakesh Yadav, Sub-Dean, AIIMS.
Ms. Sweety Manchanda, CGSC for R-3/UOI.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The three petitioners herein have sought a writ in the nature of mandamus to be issued to respondents No.1 and 2/AIIMS directing them to allot them seats in the M.Sc. (Nursing) course, Session August 2011, by following the reservation guidelines for SC, ST and OBC candidates in terms of the directions issued by the Supreme Court and the High Courts from time to time.

2. A brief backdrop of the present case is necessary. In April 2011, respondents No.1 and 2/AIIMS had invited applications for admission in various degree courses, including a two year post graduate course of M.Sc. (Nursing) for the academic session commencing from August, 2011. As per the prospectus circulated by respondents No.1 and 2/AIIMS, there were a total of 18 seats for the M.Sc. (Nursing) course, out of which, 4 seats were reserved for OBC candidates alone. The details of the disciplines and the total number of seats in the unreserved and OBC categories, in which the same were to be allotted in the M.Sc. (Nursing) course, were as below:-

	Name of Discipline	Total Seats	UR	SC	ST	OBC	AIIMS (Over and above)
3.	M.Sc. Nursing						
	Cardiological/CTVS	5	4	0	0	1	0
	Neuro-Sciences	5	4	0	0	1	0
	Paediatrics	4	3	0	0	1	0
	Psychiatric	4	3	0	0	1	0
	Total	18	14	0	0	4	0

3. The eligibility criteria prescribed by respondents No.1 and 2/AIIMS in its prospectus for August, 2011 for admission to the M.Sc. (Nursing) course was as below:-

"3. M.Sc. Nursing

- (i) B.Sc. (Hons.) Nursing/B.Sc. Nursing (Post-Certificate)/Post-Basic/B.Sc. Nursing (4 years)

course from any recognised University, from an educational institution Recognised by the Indian Nursing Council, with 60% marks for Gen/OBC candidates (55% marks in case of SC/ST candidates).

- (ii) Registration as Nurse, RN, RM (Registered Nurse, Registered Midwife) with any State Nursing Council."

4. The schemes for competitive entrance exams and the procedure for selection in respect of M.Sc. (Nursing) course was laid down in the prospectus in the following manner:-

"B. M.Sc. Nursing Courses

The question paper for M.Sc. Nursing course will be of 90 minutes duration consisting of 90 Multiple Choice Question (MCQs) carrying 90 marks.

The allocation of disciplines will be on merit basis and by counselling. The number of candidates called for counselling in each category will be four times the number of seats. The order of counselling will be ST, SC, OBC and General categories. The candidates will exercise their choice of course in order of merit subject to availability of seats in their respective category. Counselling will be held as per schedule given under 'At a Glance' on the inner side of the front cover of this Prospectus."

5. All the three petitioners herein had applied for admission to the M.Sc. (Nursing) course Session August, 2011. The entrance test for the aforesaid course was conducted by respondents No.1 and 2/AIIMS on

26.06.2011. On 01.07.2011, respondents No.1 and 2/AIIMS had published a list of candidates, who were called for counselling. Counselling for the above course was conducted on 15.07.2011. As per the petitioners, some of the students, who had appeared for the counselling session, did not satisfy the eligibility criteria prescribed in the prospectus and intimated to the candidates in the letter dated 05.07.2011 issued by respondents No.1 and 2/AIIMS, which required them to produce their original documents for the purpose of participating in the counselling. The petitioners allege that respondents No.1 and 2/AIIMS illegally gave undue weightage to candidates from their own institution, who did not even satisfy the eligibility criteria. It is a matter of record that though the counselling was conducted on 15.07.2011, vide letter dated 21.07.2011, respondents No.1 and 2/AIIMS informed all candidates that the earlier counselling had been cancelled and a fresh schedule for re-counselling was fixed on 29.07.2011. On the eve of the aforesaid rescheduled counselling, the three petitioners herein had filed the present writ petition on 27.07.2011.

6. When notice was issued on the present petition on 28.07.2011, the respondents were duly represented by their respective counsels. While calling upon the parties to complete the pleadings in the writ petition and the interim application, it was directed that as the

counselling was already in progress, the entire counselling and the admission process of the M.Sc. (Nursing) August 2011 Session would be subject to the final outcome of the present writ petition.

7. It is pertinent to note that after a period of one month thereafter, on 26.08.2011, the petitioners had filed an interim application registered as C.M.No.12562/2011 seeking to amend the originally filed writ petition on the ground that they wished to incorporate certain points of fact and the law, which were omitted at the time of filing of the writ petition and that they also wanted to implead six persons as respondent No.4 to 10, who allegedly got preference in admission as they belonged to the AIIMS faculty. However, on 28.11.2011, counsel for the petitioners made a statement that she did not wish to press the said application for amendment and instead, requested that the main petition be heard as it was. Earlier thereto, vide order dated 22.09.2011, respondents No.1 and 2/AIIMS were directed to file an additional affidavit and disclose therein whether the eligibility requirements stipulated in the prospectus were fulfilled by the candidates, who were finally selected in the M.Sc. (Nursing) course. As a result, besides the counter affidavit filed by respondents No.1 and 2/AIIMS on 13.08.2011, an additional affidavit was filed in October 2011.

8. Learned counsel for the petitioners raised a two-fold argument. He firstly argued that while filling up the seats in the M.Sc. (Nursing) course, respondents No.1 and 2/AIIMS had flouted the basic norms of reservation and rules of admission by adopting an improper method to select candidates by treating general merit candidates as reserved candidates and by giving undue preference to several candidates at the time of holding the first counselling on 15.07.2011, which resulted in adverse reports in the media as well as complaints by some candidates. Consequently, the first counselling had to be cancelled by respondents No.1 and 2/AIIMS. It was canvassed that while reservation is prescribed only in filling up the seats and not in assigning a particular discipline/stream of subject, respondents No.1 and 2/AIIMS did not follow the said correct procedure and thus, violated the rules of reservation, by giving admission to ineligible candidates in the M.Sc. (Nursing) course.

9. The second limb of the argument on behalf of the petitioners was that respondents No.1 and 2/AIIMS had violated the Indian Nursing Council Regulations by permitting some of the ineligible candidates to participate in the counselling held on 15.07.2011 and the re-counselling held on 29.07.2011 and thereafter proceeding to admit them in the M.Sc. (Nursing) course that commenced with effect from 01.08.2011. He pointed out that the eligibility criteria for admission to the course as

stipulated in the prospectus was that a candidate was not only required to possess a degree in B.Sc.(Hons.) Nursing/B.Sc. Nursing (Post-Certificate) from any recognised University/educational institution recognised by Indian Nursing Council with 60% marks for General/OBC candidates and 55% marks in case of SC/ST candidates, but was also additionally required to be registered as Nurse/Registered Nurse/Registered Midwife with any State Nursing Council. However, the candidates, who were selected by respondents No.1 and 2/AIIMS for admission to the M.Sc. (Nursing) course were allegedly not registered with any State Nursing Council on the date of their counselling and it was claimed that the said condition had been illegally waived simply because the said candidates belonged to the faculty of respondents No.1 and 2/AIIMS. In support of his submission that the respondents could not have admitted ineligible candidates against the provisions of the prospectus issued by them, learned counsel for the petitioners relied upon the judgments in the cases of Punjab Engineering College Chandigarh Vs. Sanjay Gulati reported as **AIR 1983 SC 580** and Varun Kumar Agarwal Vs. Union of India & Ors. reported as **179 (2011) DLT 24.**

10. Learned counsel for respondents No.1 and 2/AIIMS refuted the aforesaid contentions and stated that the first counselling held on 15.07.2011 was cancelled in view of the reports in the media as well as

complaints made by some candidates that the method adopted to select the candidates was not proper and three OBC candidates, who were selected on their own merits, were not adjusted against the general category seats and instead, they were given admission against the OBC category, which is contrary to the ratio of the decision of the Supreme Court dated 07.05.2010 in **CA No.4310-4311/2010** entitled UOI vs. Ramesh Ram & Ors. wherein, it was laid down that where a meritorious reserved candidate is able to obtain his/her preferred post by virtue of his/her ranking in the general list, such a candidate is not to be counted as a reserved candidate.

11. Learned counsel for respondents No.1 and 2/AIIMS submitted that in view of the guidelines laid down in the aforesaid judgment, the entire procedure adopted in selecting candidates in the course of counselling held on 15.07.2011 was reviewed and it was found that one, Ms.Parvathy Joshy, an OBC candidate, who had secured rank no.3 in the general merit list in the first counselling, had been allotted a seat in the Paediatrics discipline as per her preference, but due to an error committed by respondents No.1 and 2/AIIMS, the said candidate was adjusted against a reserved category seat for OBC. As a result of the above omission, the entire counselling procedure for the M.Sc. (Nursing) course had to be scrapped and re-counselling had to be conducted on

29.07.2011. He submitted that in the re-counselling, the aforesaid OBC candidate, Ms. Parvathy Joshy, who got a seat on merit as a general candidate, opted for Cardiology/CTVS as a discipline of her choice and she was adjusted as per her own merit against a general category seat in Cardiology/CTVS, which was duly accepted by her. Thereafter, the two OBC candidates at ranks no.8 and 14, i.e., Ms. Sarita and Ms. Mohita Rani opted for the subjects of their choice, namely Cardiology and Paediatrics, respectively, but by the time their turn came in the counselling process, the said choices were available for seats falling in the OBC category, due to which, they were adjusted against OBC seats.

12. The net result of the aforesaid re-counselling conducted on 29.07.2011 was that while the candidate at rank no.3 who was in the OBC category, but a meritorious candidate as per her ranking, was adjusted against a general seat and the candidates at ranks No.8 and 14 respectively were adjusted against OBC seats as per their choice of subjects, none of the petitioners herein, namely petitioners No.1 and 2, who were OBC candidates and petitioner No.3, a candidate in the unreserved category, could get any seat in the re-counselling and, therefore, were not accommodated. It was pointed out that at the time of the re-counselling that was held by respondent No.1 and 2/AIIMS on

29.07.2011, the overall rank and the OBC rank of the three petitioners was as below:-

Sr. No.	Name of the candidate	Overall rank	OBC rank
Petitioner No.1	Ms.Thanooja C.	32	7
Petitioner No.2	Ms. Fasilmon C.	37	9
Petitioner No.3	Ms. Rajandeep Kaur	23 UR	--

13. The Court has perused the writ petition and the counter affidavit filed by respondents No.1 & 2/AIIMS and considered the submissions made by both the counsels in the light of the law applicable to the facts of the case. It is a matter of record that the first counselling held on 15.07.2011 had to be scrapped by respondents No.1 & 2/AIIMS and following the law laid down by the Supreme Court in the case of Ramesh Ram (supra), re-counselling had to be held on 29.07.2011 as per the combined merit list. In the said re-counselling, the subject-wise choice was asked for from the candidates as per their merit. Records reveal that the first and the second ranking candidates, Sajin S. & Lilu Thomas were from the unreserved category and both of them had opted for the discipline of Paediatrics, which had four seats assigned to it as per the prospectus (3 unreserved and 1 reserved). Accordingly, both of them were adjusted in the said discipline against two unreserved seats. Then

came the turn of the candidate at rank no.3, namely, Ms. Parvathy Joshy (OBC candidate), who opted for the discipline of Cardiology. At that stage, all the five seats (4 unreserved and 1 reserved) were available for allotment under the said discipline, and accordingly the said candidate was accommodated in the said discipline under the unreserved category by virtue of her overall ranking in the general list. The next three candidates in the combined merit list featuring at ranks No.4,5 & 6, who belonged to the unreserved category, opted for the discipline of Cardiology and were allotted the remaining three seats in the said category under the said discipline. As a result, all the four unreserved seats in the discipline of Cardiology got exhausted at rank no.6, thus leaving only one reserved seat in the said discipline.

14. The next candidate at rank No.7 in the combined merit list was an unreserved candidate and she had opted for and was given admission in the discipline of Paediatrics, a discipline under which a total of four seats had been assigned and two seats already stood allotted to the unreserved candidates at rank No.1 and 2 in the combined merit list, thus, leaving one seat vacant in the OBC category. The candidate at rank No.8, namely, Ms. Sarita, who was in the OBC category, opted for the discipline of Cardiology and was accommodated against the one and only seat left in the said discipline in the OBC category. The next five

unreserved candidates featuring at ranks No.9 to 13 opted for and were allotted seats under the unreserved category in the disciplines of Psychiatric, Neuro-Sciences, Psychiatric, Psychiatric and Neuro-Sciences in that order. Thereafter came the turn of the candidate at rank No.14, namely, Ms. Mohita Rani, who was in the OBC category. The said candidate opted for the discipline of Paediatrics, in which discipline, one seat was available for allotment in the OBC category and the same was so given to her. The next two candidates at rank No.15 and 16 were from the unreserved category and both of them had opted for the discipline of Neuro-Sciences whereunder, seats were available for allotment and they were duly accommodated.

15. After completion of counselling of candidates upto rank No.16, only two vacant seats were left to be allotted, one in the discipline of Psychiatry and the other in the discipline of Neuro-Sciences and both falling in the OBC category. Resultantly, the next OBC candidate after rank No.14, who featured at rank No.20, namely, Ms. Siva Priya M.I., opted for and was assigned a seat in the discipline of Psychiatry and the next below OBC candidate featuring at rank No.25, namely, Ashitha E.B., was left with one seat in the discipline of Neuro-Sciences, for which she opted and was so assigned by respondents No.1 and 2/AIIMS. In the

aforesaid manner, the entire list of 18 seats in the M.Sc. (Nursing) course stood exhausted.

16. From the above, it is clear that all the three OBC candidates in the combined merit list featuring at ranks No.3, 8 and 14 had got their choice of disciplines as per their own merit and they had opted for the disciplines of their choice in the unreserved and reserved categories depending on their rank and the availability of seats in the discipline in question at the time of re-counselling. As the three candidates at ranks No. 17 to 19 belonged to the unreserved category and by the time their turn for re-counselling came, all the seats in the said category in all the four disciplines had got exhausted, they could not be accommodated. As a result, respondent No.1 and 2/AIIMS travelled down the combined merit list to scout for two OBC candidates as two OBC seats were still available for allotment and reached the OBC category candidates featuring at rank No.20 and 25, as per their order of merit, and allotted to them the last two seats in the OBC category in the disciplines of Psychiatric and Neuro-Sciences that were available for allotment. The net result of the re-counselling was that the turn of petitioner No.1, whose overall rank was 32 and OBC rank was 7, petitioner No.2, whose overall rank was 37 and OBC rank was 9 and petitioner No.3, a candidate in the unreserved

category, whose overall rank was 23, did not come and they could not be accommodated against any seat.

17. The Court does not find any fallacy in the aforesaid method adopted by respondents No.1 and 2/AIIMS to select candidates for allotment of seats in the M.Sc. (Nursing) course, Session August 2011. Rather, there could be no other manner of allotment of seats except for the one followed by respondents No.1 and 2/AIIMS. In fact, when they had initially conducted the counselling on 15.07.2011, respondents No.1 and 2/AIIMS had faltered in selecting candidates as they had allotted a reserved category seat to Ms.Parvathy Joshy, who was undoubtedly an OBC candidate but, having secured rank No.3 in the general merit list, she ought to have been allotted a seat in the Paediatrics discipline as per her preference but from the seats in the unreserved category by virtue of her ranking in the general list. The aforesaid omission had compelled respondents No.1 and 2/AIIMS to scrap the earlier list while fixing 29.07.2011 as the new date for re-counselling.

18. It is erroneous on the part of the counsel for the petitioners to contend that respondents No.1 and 2/AIIMS had violated the rules of reservation or that they had given admission to ineligible candidates for the subject course and that the seats ought to have been allocated to the candidates on a merit-wise basis by allocating seats to the candidates

from rank No.1 to 14 in the unreserved category and after the 14th candidate, allotted the remaining four seats reserved for the candidates belonging to the OBC category by identifying four candidates from the said category on the basis of their seniority in the overall merit list. The aforesaid submission made by learned counsel for the petitioners goes against the dictum of the Supreme Court in the case of Ramesh Ram (supra), wherein the constitutional validity of sub-rules (2) to (5) of Rule 16 of the Civil Services Examination Rules relating to civil services examinations held by the UPSC in the years 2005 to 2007 was examined, and the legal question considered as to whether candidates belonging to the reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to the reserved category.

19. The aforesaid legal issue was answered by the Supreme Court by holding that when meritorious reserved category candidates are entitled to two seats, one depending on their performance in the general list and the other depending on their position in the reserved list, and when such candidates are placed in the general list on their own merit, they do not automatically relinquish their reserved seats. Rather, the better performance of such a meritorious reserved category candidate

remains protected and he/she gets a chance to be allotted a more preferred service. Upon such a meritorious reserved category candidate obtaining his preferred post by virtue of his/her ranking in the general list, he/she is not to be counted as a reserved candidate and is certainly not counted amongst the respective reservation quota.

20. In the present case, when re-counselling was held on 29.07.2011, respondents No.1 and 2/AIIMS were mindful of the aforesaid guidelines laid down by the Supreme Court in the case of Ramesh Ram (supra). Merely because the judgment relates to civil services examinations for selection to posts in the three streams of All India Services would not mean that the guidelines laid therein are not applicable to the case in hand, where seats were required to be filled up in the subject course by first selecting candidates from the list of candidates as per their merit and then giving an option to a candidate from the OBC category, who was in any case high in the rank-wise merit list, to migrate to his/her preferred discipline at the time of counselling on the strength of being an OBC candidate.

21. It is fallacious on the part of the petitioners to claim that the respondents ought not to have applied reservation in assigning a particular discipline/stream of subject. A bare perusal of the prospectus circulated by respondents No.1 and 2/AIIMS for the academic session

commencing from August 2011, reveals that not only were the details of the disciplines and the total number of seats to be allotted in the M.Sc. (Nursing) course circulated, respondents No.1 and 2/AIIMS had also disclosed the manner in which the seats in each discipline were bifurcated in the unreserved, SC, ST and OBC category. The aforesaid prospectus was printed and circulated by the respondents in the month of April 2011, and the petitioners were well aware of the manner of allocation of seats. If the petitioners had a grievance that reservation could be prescribed only for filling up the seats and not in assigning a particular discipline/stream of subject, it was for them to have approached the Court at the earliest. Having failed to do so at the relevant time, it is not permissible for the petitioners to lay a challenge so belatedly to the procedure adopted by respondents No.1 and 2/AIIMS to allocate the seats. Therefore, the petitioners cannot claim that they were kept in the dark by the respondents.

22. As regards the second limb of argument urged by learned counsel for the petitioners that respondents No.1 and 2/AIIMS had violated the Indian Nursing Council Regulations by permitting some of the ineligible candidates to participate in the counselling that had been held initially on 15.07.2011 and in the re-counselling that was held on 29.07.2011, the Court declines to go into the said issue as the petitioners

have failed to amend the writ petition by impleading the six candidates, who had allegedly been given preference in admission by the respondents. It is noteworthy that that the petitioners withdrew their application to amend the writ petition and instead urged the Court to hear the main petition as it was. The petitioners are well aware of the fact that for this Court to pass any orders on the aforesaid argument, they ought to have ensured the presence of the candidates, who were likely to be adversely affected by the outcome of this petition. Despite knowing the consequence of withdrawing their application for amendment to the writ petition and thereby not impleading the six candidates, who allegedly got preference over the petitioners on the ground that they belonged to the AIIMS faculty, the petitioners still went ahead and withdrew the said application. After taking such a step, counsel for the petitioners cannot be permitted to press the said argument nor is the Court inclined to consider or adjudicate upon the same. The Court can only conclude that the petitioners have given up the second ground taken by them to challenge the allocation of seats by respondents No.1 and 2/AIIMS for the subject course by allegedly violating the eligibility criteria. For the aforesaid reason, the Court declines to examine the argument of the petitioners that ineligible candidates had been purportedly admitted by respondents No.1 and 2/AIIMS from their own institution, which as per

the petitioners, was contrary to the provisions of the prospectus published by them.

23. As a result of the aforesaid discussion, the present petition fails and is therefore dismissed alongwith the pending application while leaving the parties to bear their own costs.

MARCH 15, 2012
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(HIMA KOHLI)
JUDGE