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

% Judgment reserved on : 01.07.2013
Judgment pronounced on : 02.07.2013

\+ W.P.(C) 3926/2013

ANUSAR GUPTA ..... Petitioner
Through: Mr A.K. Singla, Sr. Adv with Mr Nitink K. Gupta and Mr Deepak, Advs.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES, NEW DELHI & ANR.
..... Respondents
Through: Mr Mukul Gupta Sen, Ms Anjali Chauhan and Mr Rishab Kaushik, Advs for Respondent No. 1
Mr Sudhir Nandrajog, Sr. Adv with Mr Rajeshwar Dagar and Mr Swastik Solanki, Adv for R-3/Applicant.

**CORAM:**
**HON'BLE MR. JUSTICE V.K. JAIN**

**V.K. JAIN, J.**

The respondent No. 1, All India Institute of Medical Sciences, conducts entrance test for admission to various medical courses, including MDS. Central Educational Institutions (Reservation in Admission) Act, 2006, *inter alia*, provides out of the 'annual permitted strength in each branch of study or faculty', 27% seats shall be reserved

for Other Backward Classes, it also provides for reserving 15% seats for Scheduled Castes and 7.5% for Scheduled Tribes. The respondent No. 1 held an all India examination for admission to various courses, including MDS on 12th May, 2013. The petitioner, who belongs to OBC category, appeared in the said examination and secured first rank amongst the OBCs candidates. The examination was held for five seats in MDS, comprising one seat each in Conservative Dentistry, Orthodontics and Oral & Maxillofacial Surgery and two seats in Prosthodontics. The grievance of the petitioner is that not even a single seat has been reserved for OBCs candidates in the examination held on 12.05.2013, as a result of which despite holding first rank amongst OBCs candidates and there being 20% reservation for such candidates, admission has not been granted to him. The petitioner is accordingly seeking a writ or order, directing respondent No. 1 to reserve 27% seats out of total seats in MDS course for OBC category and allow him to attend the counseling for admission to the said course. He is also seeking declaration of the current allocation of seats for OBC category to be illegal.

2. The writ petition has been contested by respondent No. 1 as well as by one Dr. Bhaskar Aggarwal, who, on his application, has been

impleaded as a party to the writ petition, he being the 4th candidate in the order of merit for admission to the MDS course. Since three seats have been allocated to General Category and one to SC category, Shri Bhaskar Aggarwal is likely to get the 5th seat in case the petitioner does not get that seat.

3. In its counter-affidavit, respondent No. 1—All India Institute of Medical Sciences has, *inter alia*, stated that for calculating reservation quota for SC/ST and OBC candidate, a point wise roster is used by it. For any session, points are calculated by multiplying 0% reservation to the number of seats being advertised for that session and points are added to the balance point, if any, carried forward from previous session. If the total points are +.5 or more in any category, i.e., SC, ST & OBC, seat/seats is/are advertised in that category. This scheme is being followed since July, 2012.

4. The following is the Chart, indicating reservation made in the examination conducted for the sessions commencing July, 2012, January, 2013 and July, 2013:-

**July, 2012 Session**

| **Speciality** | **Total** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|---|
| Orthodontics | 3 | 2 | 0 | 0 | 1 |
| Prosthodontics | 2 | 1 | 0 | 0 | 1 |
| Conservative Dentistry | 2 | 1 | 0 | 0 | 1 |
| Oral & Maxillofacial Surgery | 1 | 1 | 0 | 0 | 0 |
| **Grand Total** | 8 | 5 | 0 | 0 | 3 |

**January 2013 session**

| **Speciality** | **Total** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|---|
| Orthodontics | 1 | 0 | 1 | 0 | 0 |
| Prosthodontics | 1 | 1 | 0 | 0 | 0 |
| Conservative Dentistry | 2 | 1 | 1 | 0 | 0 |
| Oral & Maxillofacial Surgery | 1 | 0 | 0 | 0 | 1 |
| **Grand Total** | 5 | 2 | 2 | 0 | 1 |

**July 2013 Session**

| **Speciality** | **Total** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|---|
| Orthodontics | 1 | 1 | 0 | 0 | 0 |

| | | | | | |
|---|---|---|---|---|---|
| Prosthodontics | 2 | 1 | 1 | 0 | 0 |
| Conservative Dentistry | 1 | 1 | 0 | 0 | 0 |
| Oral & Maxillofacial Surgery | 1 | 1 | 0 | 0 | 0 |
| **Grand Total** | 5 | 4 | 1 | 0 | 0 |

The summary of seats advertised in last three sessions, after implementation of point based roster scheme and the balance point due for different categories, is, as stated hereinbelow:

**Orthodontics**

| **Session** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|
| July 2012 | 2 | 0 | 0 | 1 |
| January 2013 | 0 | 1 | 0 | 0 |
| July 2013 | 1 | 0 | 0 | 0 |
| Total | 3 | 1 | 0 | 1 |
| **Balance point due** | | -.250 | +.375 | +.350 |

**Prosthodontics**

| **Session** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|
| July 2012 | 1 | 0 | 0 | 1 |
| January 2013 | 1 | 0 | 0 | 0 |

| | | | | |
|---|---|---|---|---|
| July 2013 | 1 | 1 | 0 | 0 |
| Total | 3 | 1 | 0 | 1 |
| **Balance point due** | | -.250 | +.375 | +.350 |

**Conservative Dentistry**

| **Session** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|
| July 2012 | 1 | 0 | 0 | 1 |
| January 2013 | 1 | 1 | 0 | 0 |
| July 2013 | 1 | 0 | 0 | 0 |
| Total | 3 | 1 | 0 | 1 |
| **Balance point due** | | -.250 | +.375 | +.350 |

**Oral & Maxillofacial Surgery**

| **Session** | **UR** | **SC** | **ST** | **OBC** |
|---|---|---|---|---|
| July 2012 | 1 | 0 | 0 | 0 |
| January 2013 | 0 | 0 | 0 | 1 |
| July 2013 | 1 | 0 | 0 | 1 |
| Total | 2 | 0 | 0 | 1 |
| **Balance point due** | | +.450 | +.225 | -.190 |

The contention of respondent No. 1 is that since the balance point in OBC category was less than .5 in July, 2013, no such seat in the said category was advertised in the aforesaid session.

5. A perusal of the prospectus issued by respondent No. 1 for admissions during July, 2013 session would show that no reservation for OBC category was provided against any of the five seats in MDS Course. The seats in Conservative Dentistry, Orthodontics and Oral & Maxillofacial Surgery being one each were allocated to General Category candidates, whereas one seat each in Prosthodontics was allocated to General Category and SC category. No allocation was made for ST candidates.

6. As noted earlier, Section 3 of Central Educational Institutions (Reservation in Admission) Act, 2006 provides for reservation in the "annual permitted strength in each branch of study or faculty". The emphasis thus is on 'annual strength' in 'each branch of study'. The expression "annual permitted strength" has been defined in Section 2 (b) to mean the number of seats in a course or a programme for teaching or instruction in each branch of study or faculty authorized by an appropriate authority. The expression "teaching or instruction in any

branch of the study" has been defined to mean teaching or instruction in a branch of study, leading to three principal levels of qualifications at bachelor, masters and doctoral levels.

7. The first question which arises for consideration is as to whether for the purpose of reservation, the whole of the strength of MDS, i.e., five seats should be taken as the annual permitted strength or Conservative Dentistry, Orthodontics and Oral & Maxillofacial Surgery have to be taken as separate branches of study or faculty, in terms of Section 3 of the Act. As noted earlier, the emphasis of the Act is upon "annual permitted strength", meaning thereby that if otherwise feasible, the attempt has to be to provide reservation to each category, i.e., Scheduled Castes, Scheduled Tribes and OBCs on an annual basis. Since admission to the MDS course is being made session wise, once in January and then in July, the permitted strength in each session has to be taken as the annual permitted strength in terms of Section of the Act.

8. A perusal of Annexure-I of the counter-affidavit of respondent No. 1 would show that in July, 2012, considering the seats available for Orthodontics, Prosthodontics and Oral & Maxillofacial Surgery, no reservation was provided for SC candidates since the percentage of their

points, on the basis of 15% reservation came to less than .5. Same was the position with respect to ST category. One seat each was provided to OBCs candidates in Orthodontics, Prosthodontics and Conservative Dentistry since their share in the seats available in each of these specialties was found to be more than .5. No reservation to OBC candidates was provided in Oral & Maxillofacial Surgery since their share in the only seat available in this speciality was found to be 0.27%.

The share of SC and ST candidates in various specialities was carried forward to January, 2013. The negative balance of OBCs candidates in Orthodontics, Prosthodontics and Conservative Dentistry on account of allocation of one seat each in these categories to them during July, 2012 was also carried forward to January, 2013. As a result, no reservation was provided for Orthodontics, Prosthodontics and Conservative Dentistry to OBCs candidates in January, 2013. The only seat available in Oral & Maxillofacial Surgery was, however, provided to them after clubbing the brought forward points of 0.27 and adding them with 0.27 points for the session January, 2013. There was only one seat each in Orthodontics and Conservative Dentistry both of which were provided to SC candidates on account of their percentage of the said

session, after clubbing with the carried forward percentage of July, 2012 being more than .5. Thus, out of five seats, three went to reserved categories and two went to General Category candidates in the session.

In July, 2013, applying the same formula of carrying forward the positive/negative point and adding the same to the points of that session, out of two seats in Prosthodontics, one was reserved for SC candidate and the remaining one seat in seat in Prosthodontics as well as one seat each in Conservative Dentistry, Orthodontics and Oral & Maxillofacial Surgery went to General Category candidates.

9. As a result of application of the formula devised by respondent No. 1, not a single seat went to SC or ST candidate in July, 2012 despite their share in the annual permitted strength being 15% and 7.5% respectively and the number of vacant seats being 8. On the other hand, OBCs candidates got as many as three out of eight seats though reservation provided for them was only 27%. In the session January, 2013, SC candidates got two out of five seats which comes to 40% share though the quota reserved for them was only 15%. This time also ST candidates did not get even a single seat though one seat was provided for OBCs candidates. For the Session July, 2013, not a single seat has been

provided to OBC candidates, despite reservation provided for them being 27%. Even in this session, no seat has been provided for ST candidates. General Category candidates got 4 out of five seats, despite there being 49.5 % reservation. Thus, the formula adopted by respondent No. 1 is not in conformity with the legislative mandate since sometimes the reserved category candidates are getting more than their due shares and sometimes they are not getting the share which ought to have come to them. Moreover, despite there being only one seat each in Prosthodontics and Oral & Maxillofacial Surgery in January, 2013, the seats went to SC category, thereby resulting in 100% reservation, in case each speciality is taken as an individual branch in terms of Section 3 of the Act and 100% reservation is not permissible in law. That apart, there is no legal sanctity behind the formula adopted by respondent No. 1 for allocation of seats amongst various categories in the MDS course. Considering the meager number of seats available in various specialities, the legislative mandate cannot be achieved in case the formula adopted by respondent No. 1 is allowed to continue. Whether the legislative mandate can be achieved by treating all the seats in MDS, irrespective of the speciality, as one branch of study and providing reservation accordingly in terms of Section 3 of

the Act, is for the respondent No. 1 to examine. But, the formula applied by it is neither legal nor just and fair.

10. A perusal of clause 12E of the prospectus issued by respondent No. 1 would show that the order of counseling will be General/50% AIIMS preferential candidates of total MBBS seats of AIIMS/ST/SC/OBC. The counseling is to be done strictly by combined merit list starting from Rank No. 1. The candidates in order of merit have to exercise their choice of subject according to availability of seats. This provision in the prospectus is an indication that respondent No. 1 has been treating MDS as one branch of study and the specialities are being treated only as different subjects in the same branch of study. Otherwise, there would be no question of allocating the specialities on the basis of choice of the candidate and availability of the seats at the time of counseling.

11. The next question which arises for consideration is as to what would be the appropriate order to be passed in the facts and circumstances of the case. As far as admissions for July, 2013 session are concerned, considering that the petitioner did not challenge the allocation of seats amongst General Category candidates and reserved category candidates before appearing in the examination and participated in the

admission process, pursuant to the prospectus which provided no reservation for OBC candidates, I am of the view that the admission process requires no interference by the Court and should be allowed to be completed as per the allocation notified in the prospectus. However, for future admissions, respondent No.1 is directed to examine the matter afresh in the light of the provisions contained in Central Educational Institutions (Reservation in Admission) Act, 2006, and the anomalies pointed out in this order and take a fresh decision in the matter of providing reservation to SC/ST/OBC candidates in admission to MDS course, in consultation with respondent No. 1, Union of India, within two months from the date of this order.

The writ petition stands disposed of accordingly.

Interim order dated June 10, 2013, directing keeping one seat available, is hereby vacated.

**V.K.JAIN, J**

**JULY 02, 2013**
**BG**