

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

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Date of Decision: 02.07.2013

+ W.P.(C) 3983/2013
P.S. PRIYA

..... Petitioner

Through: Mr. Jayant K. Mehta, Mr. Manish Kumar,
Mr. Amit Kumar and Mr. Piyush Kumar,
Advs.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Rajeshwar Singh, Adv. for R-1&3
Dr. Rakesh Gosain, Adv. for R-2

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

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court passed out her MBBS examination from the State of Andhra Pradesh. The petitioner appeared in the All India Examination conducted by the respondent no.2- National Board of Examinations (NBE) for admission to Post Graduate medical seats. The result of the petitioner was declared by the respondent no.2 and down-loaded by the petitioner from its website on 8.6.2013. In the said result, the States/ UT of graduation of the petitioner has been shown as Andhra Pradesh, her domicile as adopted by her is shown as Kerala, her All India rank has been shown as 794 and her percentile as 99.1165. There are two

State ranks given to the petitioner- one for the State of Andhra Pradesh and the other for the State of Kerala. The rank of the petitioner in Andhra Pradesh was 99 and in Kerala it was 93. The petitioner was declared qualified in the said examination.

2. Fifty percent of the Post-Graduate seats in the Government Medical Colleges fell under All India Pool whereas the remaining 50% of such seats fall in State Pool. As far as private medical colleges are concerned, 50% of their seats fall in State Pool and the remaining 50% in the Institute Pool. 50% seats falling in All India Pool are to be filled on All India level, on the basis of merit in the examination conducted by the respondent no.2. The remaining 50% seats in Government medical colleges are to be filled at State level, but again as per merit position in the examination conducted by respondent no.2. Even 50% seats in private medical colleges falling in Institute Pool are to be filled up as per merit in the said examination.

3. The respondent no.2 prepared a list of candidates eligible to take part in All India PG Quota (MD/MG/PG, Diploma), 2013. The name of the petitioner does not appear in the said list. The grievance of the petitioner is that though her percentile was 99.1165 and she had 794th position in All India ranking, her name was not included in the list for counselling for the purpose of admission to All India PG Quota, 2013, whereas the candidates who had secured much lower percentile were included in the said list. The petitioner is accordingly seeking quashing of the said list and a direction to the respondents to allow her to participate in the counselling.

4. The petition has been contested by the respondents. The main contention of the respondents is that in view of the order passed by the Supreme Court on 8.11.2011 in IA No.27 in Writ Petition (C) Nos.348-352 of 1985 **Dr. Dinesh Kumar and others versus Motilal Nehru Medical College and ors.**, the petitioner,

having passed MBBS from the State of Andhra Pradesh is not eligible to be admitted under All India Quota and that is why her name has not been included in the list of candidates called for the purpose of counselling.

5. Vide order dated 21.7.1986 passed in Writ Petition Nos.348-352/1985, the Supreme Court framed a scheme for admission to Under-Graduate and Post Graduate Medical Courses. Paragraph 7 of the said Scheme, which is reproduced in the order of the Supreme Court dated 8.11.2011, reads as under:

“7. The next question raised on behalf of some of the State Governments was that since the States of Andhra Pradesh and Jammu & Kashmir have been exempted from the operation of the main judgment dated 22.06.1984 and these two States would not be liable to set apart seats for admission on the basis of All India Entrance Examination and students from other states would not be entitled to compete for admission to the MBBS/BDS and postgraduate course in the medical colleges and institutions in these two States, the students from these two State should likewise not be entitled to appear in the All India Entrance Examination held for admission to the MBBS/BDS courses and postgraduate courses in the other States. Otherwise the result would be that the students from these two states would have an advantage over the students from other States, because they would have all the seats in the medical college and institutions in their own State available to them for admission without sharing even a few seats with students from other States, and in addition, they would be entitled, on the basis of All India Entrance Examination, to secure admission to seats in the medical colleges and institutions in the other States whereas the students from the other States would not be entitled to the opportunity to secure admission in the medical colleges and institutions in the States of Andhra Pradesh and

Jammu & Kashmir and this would clearly amount to denial of equality of opportunity.

There is in our opinion great force in the contention. If the students from the other State are not entitled to compete for admission to the medical colleges and institutions in the States of Andhra Pradesh & Jammu & Kashmir, it would clearly be iniquitous to allow the students from the states of Andhra Pradesh and Jammu & Kashmir to compete for admission in the medical colleges and Institutions of the other States. The lack of reciprocity would plainly and inevitably result in inequity and giving of undue advantage to students from the States of Andhra Pradesh and Jammu & Kashmir as against the student from other States.

We are, therefore, of the view that the students from the States of Andhra Pradesh and Jammu & Kashmir should not be entitled to appear in the all India Entrance Examination, unless the States of Andhra Pradesh and Jammu & Kashmir agree to make not less than 15 percent of the total number of seats for the MBBS/BDS course and not less than 25 percent (at present 50%) of the total number of seats for the postgraduate courses in their respective medical colleges or institutions available for admission on the basis of all India Entrance Examination."

6. IA No.27 in Writ Petition (Civil) Nos.348-352 of 1985 was filed by Union of India seeking modification of the said Scheme, by directing State of Andhra Pradesh and State of Jammu & Kashmir to contribute the Post Graduate and Under-Graduate seats to All India Quota in the same manner as all other States in India. Allowing the said application, the Supreme Court directed as under:

"In the application, it has been averred that the students belonging to the States of Jammu & Kashmir and Andhra

Pradesh are filing writ petitions and orders are being passed for allocation of seats under the All India Quota to the students of these States and this is adversely affecting the entitlement of the students of other States to get admission against seats earmarked for All India Quota.

In our view, the students of the States of Andhra Pradesh and Jammu & Kashmir are not entitled to participate in the process of admission against All India seats.

In the premise aforesaid, we direct that the High Courts of the two States shall not pass any order, interim or final, for participation of the students of two states in the postgraduate and undergraduate seats against All India Quota in future.”

7. It would thus be seen from the above-referred order of the Supreme Court that the “students belonging to the State of Andhra Pradesh” are not eligible to participate in the counselling for admission against All India Seats. Therefore, the only question which arises for consideration is as to whether the petitioner can be said to be a “student belonging to the State of Andhra Pradesh” or not. The contention of the learned counsel for the petitioner is that a person cannot be said to be a student of Andhra Pradesh merely on account of his having passed MBBS Examination from an institution situated in that State and it is only a student who has not only passed MBBS from Andhra Pradesh, but also has a domicile of that State, who can be considered to be a student belonging to Andhra Pradesh. In my view, the contention advanced by the learned counsel for the petitioner cannot be accepted. Domicile has absolutely no role to play as far as admission to such course is concerned. Student means a person following a course of study and instructions at a University, College or School etc. The use of the expression ‘student’ in the order of the Supreme Court dated 8.11.2011 is a clear indication that it is the place

from which the person concerned passes his/her MBBS examination which alone is relevant for deciding whether he is a student from that State or not. A person who sits and passes out MBBS from Andhra Pradesh would certainly be a student belonging to Andhra Pradesh irrespective of the place of his/her domicile. Not only does this interpretation logically arise from the use of the expression 'student' in the order of the Supreme Court, this has also been the understanding of the respondents. The examination for the year 2012 was conducted by All India Institute of Medical Sciences and in the prospectus it was clearly stated that students having passed their MBBS from any institution in Andhra Pradesh and Jammu and Kashmir shall not be eligible to participate in the All India Entrance Examination for selection of candidates against such seats. Though, it is not so stated in the prospectus for the examination conducted by the respondent no.2 for the year 2013, this, according to respondent no.2 has always been its understanding. In its additional affidavit, respondent no.2 has clearly stated that the name of the petitioner or any other similar candidate who had passed his/her graduation (MBBS) either from Andhra Pradesh or Jammu and Kashmir, irrespective of their place of residence or domicile, has been excluded from the main result i.e. All India Rank. Thus, not only the petitioner but all other candidates who passed out MBBS from Andhra Pradesh or Jammu and Kashmir have been excluded while preparing the list of candidates eligible to appear for the counselling for admission under All India quota. As far as respondent no.3 is concerned, it was clearly stated in the prospectus for the year 2012 that the students having passed out their examination from any institution in the State of Andhra Pradesh and Jammu and Kashmir shall not be eligible to participate in the All India Competitive Entrance Examination for selection of candidates against All India Quota Seats. Though, the prospectus for the year 2013 has not been filed, the learned counsel appearing for respondents no.1 and 2 maintains that the same was

the position and the information in this regard has always been available on their website.

8. In view of the above, it is quite clear that the petitioner having passed MBBS from the State of Andhra Pradesh which does not contribute any seat towards All India Quota is not eligible for admission under the said quota and consequently her name has rightly been excluded while preparing list of candidates eligible for appearing for the counselling to fill up the seats under the said quota.

9. It was contended by the learned counsel for the petitioner that though the petitioner had disclosed, while submitting her application, that she had passed MBBS from Andhra Pradesh, she was declared qualified and her result was duly declared. This, to my mind, is of no consequence because the examination conducted by the respondent is meant to full up not only the All India Quota but also the seats falling under the State Quota as well as Institutes Quota and despite her not being eligible to be considered against All India Quota, the petitioner continues to be eligible under the State Quota of Andhra Pradesh as well as in Kerala if it permits admission against State Quota on the basis of domicile.

10. The writ petition is devoid of any merit and is hereby dismissed. No orders as to costs.

Dasti under the signatures of Court Master.

V.K. JAIN, J

JULY 02, 2013/rd