

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

% Judgment reserved on: 20.11.2013  
Date of Decision: 22.11.2013

+ W.P.(C) 6268/2013 & CM 13714/2013 (Stay)

TUSHAR SHARMA ..... Petitioner  
Through: Mr. K.C. Mittal and Mr. Kuldeep  
Singh, Advs.  
versus  
UNION OF INDIA & ORS ..... Respondents  
Through: Mr. B.V. Niren, CGSC for R-1–  
UOI, Mr. Giriraj Subramaniam,  
Adv. for R-3

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

JUDGMENT

V.K.JAIN, J.

The petitioner before this Court, in essence, is challenging the decision of the Government of India to allocate 39 out of 150 seats of the MBBS in Vardhman Mahavir Medical College (VMMC) and Safdarjung Hospital to All India Region, over and above 23 seats to be filled through CBSE under the All India Quota. The petitioner belongs to OBC category and had appeared in the entrance test called NEET-UG 2013, held for admission to various medical institutions. The petitioner, however, could not secure admission and his name was placed in the waiting list.

2. VMMC was established by Government of India in Safdarung Hospital in the year 2001, considering the number of medical seats available in Delhi in relation to its population and demand was disproportionately small. The Government of India decided that admission to VMMC would be on All India basis, on the lines of admission in AIIMS and JIPMER, Pondicherry. Initially, 100 seats in the MBBS course were available in the said college. The Government decided to allocate 50 seats out of those 100 seats to Delhi Region category and remaining 50 seats to All India category. During the academic year 2002-03 to 2008-09, 15 seats out of 100 seats were earmarked to 15% All India Quota for which selection was made through entrance examination conducted by CBSE and the seats were allotted by Directorate General of Health Services, 10 seats were reserved for Central Pool Quota and the remaining 75 seats were distributed by allocating 50 seats to Delhi Region Category and 25 seats to All India Region Category. The aforesaid distribution could not take place during the year 2001-02 on account of late start of session during the said year. For the academic year 2009-10, the number of seats was increased from 100 to 140, considering provision of 27% reservation for OBC candidates. For the academic year 2010-11, the admission was

made against 150 seats. For the academic years 2011-12 and 2012-13, distribution of seats was worked out by Government of India and sent to Guru Gobind Singh Indraprastha University (GGSIU). In the year 2011, out of 150 seats available in MBBS course, 39 seats were allocated to All India Region, 79 seats to Delhi Region, 22 seats to All India Quota and 10 seats to Central Pool. The distribution of seats in the academic year 2012-13 was 39 to All India Region, 80 to Delhi Region, 23 to All India Quota and 8 to Central Pool and in the year 2013-14, 41 seats were allocated to All India Region, 81 to Delhi Region, 22 to All India Quota and 6 to Central Pool. Out of the seats allocated to All India Region, 10 seats are reserved for OBC candidates, whereas out of 80 seats allocated to Delhi Region, 23 seats are reserved for OBC candidates. Against the seats reserved for OBC candidates in All India Quota and All India Region, admissions are made as per the OBC list notified by Government of India, whereas admission against 23 OBC seats, out of Delhi Region Quota are made from amongst OBC candidates as per the OBC list of Delhi Government.

3. The case of the petitioner is that in Hindu Rao Hospital, another college affiliated to GGSIP University, 27% of seats, after excluding 15% All India Quota, are filled from amongst Delhi OBC candidates

and same is the position in ESIC Dental College, which has been established by Government of India, whereas in VMMC, only 23 seats out of 127 seats which remain after deducting 23 seats under All India Quota have been filled up from amongst OBC candidates as per Delhi Government OBC list. According to the petitioner, if 20% of the 127 seats remaining after deducting 23 seats against All India Quota are filled up from amongst Delhi OBC candidates, he would get admission in VMMC since he is placed at serial No. 7 in the waiting list. The contention of the petitioner is that the Government of India has created a sub-classification of All India Region in Delhi Region, without any authority of law, thereby violating his constitutional right. It is also submitted by the learned counsel for the petitioner that in **Mridul Dhar vs. Union of India** (2005) 2 SCC 65, the Hon'ble Supreme Court did not accede to the request to increase All India Quota to more than 15%.

4. In **Dr. Pradeep Jain and others versus Union of India and others** and other connected matters, [(1984) 3 SCC 654], the constitutional validity of residential requirements and institutional preference in regard to the admission in medical colleges in Karnataka, Uttar Pradesh and Delhi was under challenge. The Apex Court was informed, during the course of hearing, that it was a uniform and constitutional practice for admission of the students to provide for residential requirements or institutional preference. The Apex Court

noted that though theoretically speaking, if admissions are given on the basis of all India national entrance examination, each individual would have equal opportunity of securing admission, but that would not take into account diverse consideration, such as, differing level of social, economic and educational development of different regions, disparity in the number of seats available for admission to the MBBS course in different States, difficulties which may be experienced by students from one region who might in the competition on all India basis get admission to the MBBS course in another region far remote from their own and other allied factors. The Court felt that though admission on All India basis is a desirable policy, it would be unrealistic to achieve the idea in the present circumstances since the real equality of opportunities cannot be achieved unless there is complete absence of disparities and inequalities. The Court felt that a certain percentage of reservation on the basis of residence requirements may legitimately be made in order to equalize the opportunities for medical admission, such percentage of reservation may also include institutional reservation for students passing from the same college or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the States and for that purpose there could be no distinction between the schools affiliated to the State Board and the schools affiliated to the Central Board. The Court, however, held that the reservation based on residential requirement or institutional preference could not exceed the outer limit of 70% of the total number of seats after taking into account the other kinds of reservations validly made. The Court also desired that this outer limit of 70% should be gradually reduced over a period of time.

Thus, the Apex Court in the aforesaid case fixed the outer limit for reservation based on residential requirement or institutional preference and not for admission on All India Basis, meaning thereby that the reservation based on residential requirement or institutional preference could if the concerned government so decided be less than 70%, though it could, in no case, exceed 70%. In fact, the Court noted that the aforesaid outer limit of 70% needs to be gradually reduced by the government.

In Saurabh Chaudri versus Union of India & others [(2003) 11 SCC146], the Apex Court, *inter alia*, observed as under:

“39. The Ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefore. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said Articles for all intent and purport are species of Article 14 which is the genus in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in- cur constitutional scheme. Whereas larger interest of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.

5. What emerges from the above referred decisions of the Apex Court is that ideally, admissions to medical colleges should be made on All India basis where all the candidates irrespective of the place of their residence or the location of the college/ institute from which they passed the qualifying examination are eligible for admission against all the seats, but considering the diverse situations – such as varying level of socio-economic and other developments prevailing in various States/Territories, the country is not as yet ready for adoption of such a policy and reservation based on location of the college/ institute and institutional preference cannot be dispensed with.

6. The All India Quota which was fixed at 30% of the total seats in Pradeep Jain (supra), was later on changed to 15% of the total seats in Dr. Dinesh Kumar and others versus Motilal Nehru Medical College, Allahabad and others [(1986) 3 SCC 727] (hereinafter referred to as Dinesh Kumar-II). What is important to note here is that the All India Quota fixed at 30% of the unreserved seats in Pradeep Jain (supra) and later changed to 15% of the total seats in Dr.Dinesh Kumar –II (supra) was not the outer limit for such quota, but was rather the minimum quota for admission on All India basis. This was made amply clear by the Apex Court in Dinesh Kumar and others versus Motilal Nehru Medical College, Allahabad and others [(1985) 3 SCC 22] (hereinafter referred to as Dinesh Kumar-I), where the Court referred to the aforesaid All India Quota as ‘minimum 30%’ of the non-reserved seats. Even in Dinesh Kumar-II (supra), the Apex Court pointed out that as a result of its decision in Pradeep Jain (supra), at least 30% of the seats were to be made available for admission of the students on All India basis. In the said case, the Apex Court referred to 15% quota as “not less than 15%

of the total number of seats in each medical college or institution” without taking into account any reservation. Therefore, if concerned government so decides, it would be eminently justified in increasing the All India Quota to more than 15%. It appears that the petitioner is under the misconception that the All India Quota fixed by the Hon’ble Supreme Court in Dr. Pradeep Jain(supra) and Dinesh Kumar-II (supra) was the maximum quota. In fact, it was the minimum quota for admission on All India basis.

7. As regards the submissions that in *Mridul Dhar (supra)*, the Apex Court did not increase the All India Quota from 15%, that, to my mind, would be of no consequence since in the aforesaid case, the Apex Court did not say that the All India Quota cannot be more than 15% even if the government so decides. Therefore, the Government of India, in exercise of its executive powers and also being the authority which set up VMCC could certainly have allocated 39 more seats to All India region, to be filled through GGSIPU, in addition to 23 seats allocated to All India Quota to be filled through CBSE. The challenge to the aforesaid allocation to the All India region, therefore, has no merit. Even with respect to allocation to the Central Pool Quota, no illegality in the decision of the Government could be pointed out by the petitioner.

8. Moreover, as noted earlier, in the Prospectus/ Admission Brochure issued by GGSIPU, it was clearly stated that in VMCC, the allocation of seats would be 39 to All India region, 80 to Delhi region, 23 to All India Quota and 8 to Central Pool of Allocation. The petitioner, instead of challenging the aforesaid allocation contained in the prospectus, participated in the admission process including the

counseling conducted by GGSIPU in terms of the aforesaid stipulations contained in the prospectus/ admission brochure. Having taken a chance to get admission on the basis of aforesaid allocation notified in the Prospectus/ Admission Brochure issued by GGSIPU, the petitioner is now stopped from challenging the aforesaid allocation. This is yet another reason for which the petition must necessarily fail.

9. In **Dr.R. Murali vs. Dr. R.Kamalakkannan and three others** AIR 2000 Mad 174, a Full Bench of the High Court held that the Government who runs the medical colleges got the right to decide from what sources admissions will have to be made. The Court, after examining various pronouncements of the Apex Court on the subject, also held that the writ petitioners, having participated in the written test after fully knowing the terms and conditions of the prospectus are stopped from questioning the selection process. In Kaushalendra Kumar v. Delhi Subordinate Services Selection Board LPA No.686/2012 decided on 8.3.2013, a Division Bench of this Court reiterated the settled proposition of law that a candidate who participates in a selection process on the basis of the terms and conditions stipulated in the advertisement inviting applications or the Recruitment Rules applicable to the advertised post cannot later challenge the terms and conditions, stipulated in the advertisement or the Recruitment Rules, prevailing at the time applications were invited.

10. During the course of hearing, the learned counsel for the petitioner referring to the decision of this Court dated 3.7.1993 in W.P(C) No.4010/2013 Ram Awtar Manda & Ors. Versus Guru Gobind Singh Indraprastha University and others , contended that since VMCC

is not a Central Educational Institution within the meaning of the Central Educational Institutions (Reservation in Admission), Act, 2006, the respondents were not required to make admission on the basis of OBCs list of Delhi Government for the purpose of admission against OBCs seats. I, however, find no merit in the contention. As would be seen from the Prospectus/ Admission Brochure issued by GGSIPU, the admission against the seats allocated to All India region was to be made from amongst the candidates who had passed the qualifying examination from any school/ college located in any part of the country. It is only the admission against seats allocated to Delhi region that the candidates who had passed the qualifying examination from a school/ college located in Delhi alone were to be considered. It is only logical to say that if the candidates passing out from any school/ college in the country are eligible for admission against the seats allocated to the All India Region, the OBCs list of Delhi Government cannot be applied for the purpose of determining the eligibility of OBCs candidates and it is only the OBCs list issued by the Central Government which can be used for the purpose. The OBC list issued by Delhi Government can be used only for making admission against the seats allocated to Delhi region. I, therefore, find no merit in the aforesaid contention of the petitioner.

11. For the reasons stated hereinabove, the petition being devoid of any merit is hereby dismissed. There shall be no orders as to costs.

NOVEMBER 22, 2013  
BG/rd

V.K. JAIN, J.