

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.05.2015

+ **W.P.(C) 7404/2013 & CM 15872/2013**

PALLAVI SINHA & ANR

..... Petitioners

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Shuvodeep Roy.
For the Respondents : Mr Mukul Talwar with Mr Vipin Singh for R-1.
Ms Priyank Khattar for UOI/R-3.
Mr Aditya Garg for R-4.
Mr Braham Singh with Mr N.S. Vidhudi
and Ms Manju for R-5.
Mr Arvind Kr Sharma for R-7.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioners have filed the present petition, *inter alia*, impugning the basis on which seats in respect of Post-graduate Medical for the academic year 2013-14, were allotted by the respondent University (hereafter 'GGSIU'). The petitioners are, particularly, aggrieved by the manner in which the Roster Point system has been implemented by GGSIU.

2. According to petitioners the roster for admission for academic year 2013-2014, should have commenced from Roster Point 118 and this would

have placed petitioner no.1 at Roster Point 122. However, GGSIU commenced the Roster Point from 119 instead of 118; consequently, petitioner no.1 was placed at Roster Point 124.

3. The petitioners are further aggrieved with regard to the admission of respondent No.5 to a Post-Graduate course against seat reserved for OBC Category. It is their case that the certificate furnished by respondent No.5 does not conform to the Office Memorandum dated 08.09.1993 as modified by Office Memorandum 14.10.2008, which provides for exclusion of candidates belonging to the 'creamy layer'. Whilst, the entitlement of candidates belonging to the OBC Category is required to be based on the income for three consecutive years, the petitioners point out that the certificate furnished by respondent No.5 itself indicates that it is based on the income for the financial year ending 31.03.2008. It is thus argued that respondent No. 5 would not be entitled to a reserved seat on the basis of the certificate furnished by her as it was not based on the income for the financial years 2009-10, 2010-11 and 2011-12.

4. The petitioners further contend that respondent No.4 was not eligible for being admitted to the course and if the candidature of respondent No.4 was excluded, petitioner No.2 - being the first on the waiting list - would be entitled for admission against the said seat. It is contended that respondent no.4 had appeared for the entrance examination and had resigned his seat after accepting admission for the academic year 2010-11. The petitioners have referred to Paragraph 3.2.4 of the Admission Brochure-III for the Academic Session 2013-14 (hereafter 'Admission Brochure-III') , issued by GGSIU, which indicates that students who had taken admission in the

year 2010-11 or 2011-12 and subsequently resigned from the course would be ineligible for admission.

5. I have heard the learned counsel for the parties at length.

6. The prospectus issued by GGSIU for the Academic Session 2013-14 explains the Roster system followed by GGSIU. Clause (ii) of Paragraph 11.4 of the Admission Brochure-III is relevant and is quoted below:-

“(ii) At the time of allotment of seats 200 points roster will be followed from point one to 200 point in order to CET merit. The specific Roster point will be used to call the candidate of that particular category and all the seats at that point of time will be offered to the candidate in both the institutes. This year, i.e. 2013-14, the Roster will be operated from the next point on which the admission was closed during the last year i.e. 2012-13. Further next year, i.e. 2014-15, the Roster will be operated from the next point on which the admission would close during this year i.e. 2013-14.”

7. It is apparent that the purpose of following a Roster Point system for admissions is to ensure that the percentage of reservation is maintained and the seats are equitably distributed amongst students belonging to various categories. As indicated in the Admission Brochure-III, GGSIU follows a 200 point roster. The reserved and unreserved seats are allocated to various Roster Points and the same are filled up in the order of merit of students from various categories. The candidates belonging to Scheduled Castes/Scheduled Tribes and Backward classes are admitted against Roster Points for the said categories. In the present case, GGSIU commenced admissions for the academic session 2013-2014 from the Roster Point 119.

According to the petitioners the roster for the academic session 2013-2014 should have commenced from Roster Point 118. The aforesaid controversy had arisen as the GGSIU had allocated seats till Roster Point 116 in the previous academic session. Thereafter, two other candidates, namely, Dr Priyanka and Dr Yogesh Roy were also admitted by GGSIU in the academic session 2012-2013. According to the GGSIU the said admission would be against the Roster Point Nos.117 and 118 and consequently, the admissions for the academic session in question would commence from Roster Point 119. According to the petitioner, Dr Priyanka had been admitted in the previous academic session against a seat which fell vacant due to withdrawal of one Dr Sanchit Sharma, who was a candidate from the un-reserved category and was admitted at Roster Point 36. The petitioners contend that Dr. Priyanka ought to have been considered as admitted against Roster Point 36 and not at Roster Point 117. Consequently, admission of Dr Yogesh Roy would be at Roster Point 117 and not at Roster Point 118. It is not disputed that Dr Priyanka – a candidate from the un-reserved category - was admitted against the seat that was surrendered by Dr Sanchit Sharma who was admitted at Roster Point 36. In the aforesaid circumstances, the limited controversy to be addressed is whether Dr Priyanka has to be considered admitted against Roster Point 36.

8. The purpose of maintaining of roster was explained by the Supreme Court in **R. K. Sabharwal v. State of Punjab and others** : (1995) 2 SCC 745. The court held that a roster is implemented as a running account to ensure that Scheduled Castes/Scheduled Tribes and Other Backward Classes get the percentage of reserved posts. The relevant extract from the

said judgment is quoted below:-

“5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of “running account” is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of “running account” in the impugned instructions has to be so interpreted that it does not result in excessive reservation. “16% of the posts...” are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The “running account” is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out

in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the “running account” must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.”

(Emphasis Supplied)

9. Although, the aforesaid judgment was rendered in the context of reservation for employees, the rationale for maintaining a roster would be equally applicable for maintaining reservations in academic institutions. The purpose of following a roster is to maintain a discipline in admitting candidates from each category so as to ensure that requisite reservation is maintained. This would necessarily entail that vacancies arising are filled up by candidates belonging to the same category. Thus, if vacancies arise as a result of a candidate belonging to a Scheduled Caste/Scheduled Tribe or Backward Classes surrendering his/her seat, the same would necessarily have to be filled up by another candidate belonging to that reserved

category. This seat cannot, obviously, be offered to candidates from the unreserved category as this would subvert the integrity of the roster and would result in the numerical strength of candidates from reserved categories falling below the requisite percentage of reservation. The same would be true if a seat taken up by an un-reserved candidate falls vacant and is filled up by a candidate belonging to Scheduled Caste/Scheduled Tribe and/or Backward Classes. Clearly, this would result in excessive reservation. Thus, in my view, it would not be open for GGSIU to keep a Roster Point vacant. This would clearly militate against the purpose of maintaining a roster. In my view, there is considerable merit in the contention that Dr Priyanka ought to have been considered as admitted against Roster Point 36. Resultantly, the roster for the academic session 2013-14 ought to have commenced from Roster Point 118 and not Roster Point 119.

10. The learned counsel for the respondent has referred to a decision of a coordinate bench of this Court in **Dr. Sandeep Dhama v. The State and Anr.** W.P. (C) 3043/2014 rendered on 16.04.2015. In that case, GGSIU filed an affidavit with regard to method for implementation of the Roster Point System. The same was accepted by the Court as being “*most fair and transparent method*”. The relevant extract from the additional affidavit filed by GGSIU, indicating the implementation of the Roster Point System as noted by the Court in that decision is reproduced hereunder:-

“3. That if pursuant to the first round of counselling, any student who vacates the seat allotted, during the first round of counselling then the second round of counselling will start from the Roster Point at which the first withdrawal comes

from. It is further submitted that while conducting the second round of counselling the relevant category of the student vacating the seat shall be considered and all those students who belong to the same category shall be called after the vacated position on the basis of their placement in the merit list of the relevant category. Once the list of such category of students is exhausted, the seat shall be converted in terms of the Government of India Rules. For example, if a student who was allotted a seat at Roster Point 85 in the category of OBC, vacates the seat after the first round of counselling, the second round of counselling will start from roster point 85. It is further submitted that while filling up Roster Point 85, all students belonging to the OBC category who come after the student who was offered/allotted the seat at Roster Point 85, will be called merit wise irrespective of whether they were allotted or offered the seat during first round of counselling or not (for example at roster point 90, 95, 100, 119) during second round of counselling till all the OBC students are called and offered the seat. If none of the students belonging to OBC category accept the said seat, the said seat shall thereafter be converted in terms of the Government of India guidelines.

In case, any OBC candidate who comes in the merit list after the student at Roster Point 85 who did not opt for the seat offered to him during the first round of counselling but is higher in the merit than the student who was allotted the seat on the next roster point during first round of counselling (i.e. 90, 95, 100....) then that student shall be offered the seat so vacated prior to the such student who was already allotted the seat on the next roster point in terms of merit. If such a student who was offered a seat but he did not opt for the seat accepts the vacated seat the second round of counselling shall proceed from roster point 121. However, if he does not accept the seat the procedure as mentioned below shall be adopted.

In case, any OBC candidate who has already been allotted a seat in first round of counselling accepts the said seat vacated by the OBC candidate for e.g. at roster point 90,

the seat of the roster point 90 now vacated shall be offered to the next OBC candidate, i.e., 95. If 95th accepts the offered seat, then the seat of the 95th Roster point shall be offered to student at Roster Point 100. If 100th accepts the offered seat, then the seat of the 100th Roster Point shall be offered to the student at Roster Point 119. Since the student at Roster Point 119 is the last selected candidate in the first round of counselling in the said category the seat so surrendered by him shall be offered to the next OBC candidate as per merit. If the next student as per merit, accepts the seat then the second round of counselling will proceed from Roster Point 121 as the first round of counselling ended at Roster Point 120. However, if he refuses to accept the seat, the said seat shall be offered to the next OBC in the merit list till such time the said seat is accepted by an OBC candidate. However, if no OBC candidate accepts the seat surrendered by 119, then it shall be converted in terms of Government of India Guidelines and shall be offered to a student of such converted category next on the merit list, irrespective of him being allotted a seat at a lower roster point wise in the first round of counselling. That if student at roster point 90 refuses/rejects the stream vacated at the roster point 85 then the same shall be offered to student at Roster Point 95 and so on (100, 119..... till the last OBC candidate merit wise) and in case any student accepts the vacated stream, the procedure as above shall continue. However, if the seat is accepted by a student who was not allotted any seat in the first round of counselling, the second round of counselling shall begin from roster point 121 as the first round of counselling ended at 120.”

11. The learned counsel for the petitioners also submits that if the Roster Point System as indicated by GGSIU in their affidavit and as quoted above was implemented, the grievance of petitioner No.1 would not survive.

12. Undisputedly, petitioner No.1 was entitled to be placed at Roster Point No. 122 and was entitled to a seat in Vardhman Mahavir Medical

College (VMMC) instead of Dr Ram Manohar Lohia Hospital. Whilst the petitioners stand is vindicated, I am unable to accept that any relief can be granted to petitioner No.1. Petitioner no.1 and respondent no.5 have already completed two academic years of a course which spans three years. At this stage, compelling respondent no.5 to migrate from VMMC and join Dr. Ram Manohar Lohia Hospital would not be appropriate. It is also necessary to bear in the mind that the respondent No.5 had no role to play in implementing the Roster Point System as devised by GGSIU; she was not instrumental in petitioner no.1 being placed at Roster point 124. Considering that she has already undergone two years of the course, uprooting her from her institution (VMMC) at this stage would amount to unfairly penalising her.

13. Insofar as the issue regarding OBC certificate is concerned, the learned counsel for respondent No.5 does not dispute that a certificate based on the income for the three consecutive years proximate to the date of admission was required. He, however, submits that the certificate furnished by respondent No.5 contains a typographical error inasmuch as it indicates that it is based on the financial income for the year ended 31.03.2008. He asserts that, in fact, the same is based on the income certificate dated 10.11.2012 which was issued by the office of Anchal Adhikari, Dhanwar, Jharkhand. He has handed over documents obtained by respondent No.5 by applying under the Right to Information Act, 2005 which indicate that the income of petitioner's father was ₹3,25,000/- which was below the specified threshold of ₹4,50,000/-. The learned counsel for respondent No.5 further undertakes, on instructions, that a corrected

certificate would be obtained and furnished to GGSIU within a period of six months from today. In view of the aforesaid undertaking no further orders are required in this regard. Needless to say that if such certificate is not furnished, it would be open for GGSIU to take such action against respondent No.5 as may be available in law. In any view of the matter, petitioner no.2 cannot be granted admission to the course against a vacancy in the academic session 2013-2014, at this stage.

14. Insofar as the petitioners grievance regarding admission of respondent no. 4 is concerned, the petitioners contend that the same is, apparently, contrary to Paragraph 3.2.4 of the Admission Brochure-III which reads as under:-

“3.2.4 - 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. Candidates who have taken admission in any Post Graduate Medical Degree Course through Common Entrance Test conducted by this University during the academic session 2010-11 or 2011-12 and subsequently resigned from the course concerned are not eligible.”

15. It is not disputed that respondent no. 4 was granted admission in the academic session 2010-11 and had surrendered his seat after accepting admission to the course. Thus, on a plain reading of Paragraph 3.2.4 of the Admission Brochure-III, respondent no. 4 would have been disqualified for being admitted to the course in question. However, the learned counsel for the GGSIU points out that although the aforesaid clause mentioned academic session

2010-11, the same is an apparent typographical error. He supports his contention by referring to the declaration referred to in Paragraph 3.2.4 of Admission Brochure-III. The format of the declaration is provided in Appendix-11 of the Admission Brochure-III. Clause (c) of the said declaration is relevant and reads as under:-

“c. I undertake that in the event of my admission to any SSMC/Degree/Diploma course I will not apply for or accept admission to any course in any University/Institution till I complete the course to which I am admitted on the basis of this application. I further undertake that in the event of my resigning the course concerned to which I am admitted, I will not appear in the next and subsequent Entrance Tests, till the duration of the course concerned is over”

16. Undisputedly, respondent No.4 was admitted by GGSIU for the academic year 2011-12 and had resigned his seat. It is apparent that the rationale for not permitting such candidates to re-apply and seek admission would be to ensure that once a candidate has rejected the seat, which was accepted by him, he should be disqualified to secure admission during the duration of the course. This is to discourage students from taking up admissions, which they do not want to pursue. Admittedly, the course for which the respondent No.4 had resigned would conclude in the year 2012-13. Thus, the disqualification of respondent No.4 would not extend to the academic year 2013-14. A conjoint reading of the declaration and Paragraph 3.2.4 of the Admission Brochure-III clearly indicate that the reference to the academic session 2010-11 is a

typographical error as contended by the learned counsel for GGSIU. Thus, the contention that respondent No.4 was disqualified from being admitted is bereft of any merit.

17. Accordingly, the petition and the pending application are disposed of. No order as to costs.

MAY 06, 2015
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VIBHU BAKHRU, J

