

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7283 of 2020 (O&M)
Date of Decision: 06.05.2020

Dr. Vikram Pal and others

....Petitioners

Vs.

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ashwani Talwar, Advocate,
for the petitioners.

Mr. Deepak Balyan, Addl. A.G., Haryana,
for respondents No.1 & 2.

Mr. Ankur Mittal, Advocate,
for respondent No.3.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have prayed for the issuance of a writ in the nature of *certiorari* for quashing the notification dated 15.04.2020 (Annexure P-3) issued by State of Haryana to the extent of providing reservation of 87% in respect of admission to the Postgraduate Courses of MD/MS/MDS in various medical colleges in the State, for the academic session 2020-21 and have also prayed for the issuance of a direction to the respondents to make admissions in the aforesaid courses in accordance with the reservation policy notified for the academic session 2019-20.

In brief, respondents No.1 and 2, vide its notification No.16/03/2018-6HBIV dated 15.04.2020, set down the procedure for admission to MD/MS/MDS Courses in Government/Government

Aided/Private Medical and Dental Educational Institutions including those under Private Universities, namely, SGT University, Budhera, Gurugram and PDM University Bahadurgarh, Jhajjar for Academic Session 2020-21. It was further notified that in the Government Institutions covered under the said notification, 50% of the seats will be assigned to the All India Merit Category of NEET PG-2020 and NEET MDS-2020 and the remaining 50% of the seats will be assigned under the Haryana State Merit Category of NEET PG-2020 and NEET MDS-2020. It was further provided that 25% seats shall be reserved (Institutional preference) for the candidates who have passed MBBS/BDS courses from the institutions located in the State of Haryana for admission to MD/MS and MDS courses under State Quota Seats in all Government/Government Aided/Private Medical/Dental Institutes including those under SGT University and PDM University (private Universities) and 5% seats of the State Quota seats shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of 'National Eligibility-cum-Entrance Test' and as per MCI Guidelines issued from time to time. It was further notified that in the private institutions covered under the said notification, 50% of the seats will be filled under Open Merit category seats and remaining 50% of seats will be filled under the Management category. It was further notified that reservation for the EWS category shall be provided as Haryana Government Notification dated 25.02.2019.

It is alleged that the petitioners have qualified the NEET-PG-2020 examination and, thus, are eligible to compete for admission in various institutes of Haryana for the State Quota seats as well as for the 50% seats reserved for All India Quota. It is alleged that after the

issuance of the notification dated 15.04.2020, respondent no.3 uploaded on its website the college-wise and specialty wise tentative seat distribution for PG Courses for the session 2020-21 and as per the said matrix, out of total 222 seats available in respondent no.3-University, 111 seats are of All India Quota seats and balance 111 seats are of State Quota seats. According to the petitioners, out of State Quota Seats, 10% of the seats are reserved for EWS, 25% for Institutional Preference, 20% for Scheduled Caste, 16% for BCA, 11% for BC-B and 5% for PWBD, which makes a total reservation in respect of the State Quota Seats as 87% and only 13% seats are available for candidates in the open/general category. In this regard, the petitioners have demonstrated the distribution of seats in the various institutions by way of the following chart:-

Sr. No.	Name of Institution	Total No. Of State Quota seats	Total No. Of seats available for General/Open Category (13%)
1.	PGIMS, Rohtak	111	23
2.	Govt. Medical College for Women, Khanpur Kalan	12	2
3.	Govt. Medical College, Nalhar (Nuh)	11	1
4.	MAMC, Agroha	22	8
	Grand Total	156	31

It is further alleged by the petitioners that in the previous academic session 2019-20, the only reservation provided for 25% for Institutional Preference and 5% for persons with disabilities and balance 70% seats were reserved for open/general category. The petitioners have prepared a chart in this regard also, which is reproduced as under:-

Sr. No.	Name of Institution	Total No. Of State Quota seats	Total No. Of seats available for General/Open Category (13%)
1.	PGIMS, Rohtak	112	78
2.	Govt. Medical College for Women, Khanpur Kalan	11	7
3.	Govt. Medical College, Nalhar (Nuh)	11	7
4.	MAMC, Agroha	22	15
	Grand Total	156	107

Thus, the precise grievance of the petitioners is that by providing 87% reservation, the seats in the open/general category have been drastically reduced from 107 (in previous academic session 2019-20) to 31 in the current academic sessions 2020-21. The contention of the learned counsel for the petitioners is that the reservation cannot cross the cap of 50% and, therefore, the impugned notification deserves to be struck down.

This Court heard the case through Video Conferencing on 01.05.2020 and passed the following order: -

“Case taken up through Video Conferencing.

*Counsel for the petitioners has submitted that the reservation for the State quota for admission to Postgraduate Medical Courses in various Medical Colleges in the State of Haryana is more than 50% i.e. 87%, which is in violation of the dicta of the Hon’ble Supreme Court in the case of **“Indra Sawhney and others Vs. Union of India and others” (1992) Supp. 3 SCC 217.***

The respondents have filed their short

replies dated 29.4.2020 and 30.04.2020 and it is submitted by their counsel that 25% seats for Institutional Preference and 5% seats for the Physically Handicapped as well as 10% for the EWS category shall fall in the horizontal reservation and thereby the vertical reservation shall not exceed the cap of 50%. However, the replies filed by the respondents do not substantiate the arguments raised by counsel for the State, as counsel for the petitioners has demonstrated from document Annexure P-3 that out of the total 156 seats, the open category seats have been reduced to 31 only.

At this stage, we are persuaded to accept the plea raised by counsel for the petitioners for the issuance of notice to the respondents enabling them to file a detailed reply, if so advised, as the earlier short replies are inadequate.

Notice of motion for 06.05.2020.

Mr. Deepak Balyan, Addl. A.G., Haryana, appearing on behalf of respondents no.1 and 2 also undertakes to appear on behalf of respondent no.3-University and prays for time to file detailed reply(ies).

Till then the process of counselling, which is stated to be scheduled for 4/5.05.2020, shall be kept in abeyance till further orders.”

In compliance thereof, respondents no.1 and 2 have filed their reply dated 05.05.2010, in which they have averred that after the order dated 01.05.2020 was passed by this Court, the Department has re-examined and re-considered the principles governing the seat distribution (Annexure P-3) for which a Committee under the Chairmanship of Registrar, Pt. B.D. Sharma University of Health Sciences, Rohtak was formed to re-examine the earlier principles/formulae followed for seat distribution and the said Committee was directed to submit its report as early as possible. It is further averred that the Committee has submitted its report dated 04.05.2020 and after examining the report, the Department has concurred with the report/ recommendations of the Committee and decided that the seat matrix for admission to Postgraduate Courses for the academic session 2020-21 would be based on the following principles:-

- “1. The distribution of seats will be as per the State Reservation Policy and accordingly 20% reservation to Scheduled Caste, 16% to Backward Classes-A and 11% Backward Classes-B shall be provided which being the reservation under Article 16(4) of the Constitution of India would be Vertical reservation.
- II. Institutional Preference to the tune of 25% has been allowed to the candidates who have completed MBBS/BDS from the Institutes located in the State of Haryana. It is pertinent to mention here that Institutional preference is a preference for which students of all categories who have completed their MBBS/BDS from the Institutes located in the State of Haryana are entitled.

Accordingly, the Institutional seats would be provided horizontally within each category of seats.

- III. Matter pertaining to PWD reservation, as decided by the Hon'ble Supreme Court in "Indra Sawhney and others Vs. Union of India and others" (1992) Supp. 3 SCC 217 and also as per the State Reservation Policy dated 15.07.2014, this reservation will be Horizontal reservation for all categories of seats.
- IV. That it is respectfully submitted that the Haryana Government vide Notification dated 25.02.2019 (Annexure I of Annexure P-2) has notified the reservation for Economically Weaker Section for admissions in Government/Government Aided Educational Institutions in the State of Haryana, Government of India, Ministry of Health and Family Welfare vide letter dated 29.01.2019 (Annexure R-3) has intimated that in order to implement the 10% seats in PG Courses for EWS categories, number of seats over and above its annual permitted strength in each branch of study have to be increased correspondingly so that the number and percentage of reservation provided for SC/ST/OBC categories is not reduced. The relevant para is reproduced as under:-

"...Every Central Educational Institution shall, with the prior approval of the appropriate authority as defined in Clause (C) of section 2 of the Act, 2006, increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for the persons belonging to the EWSs, is not less than the number of such seats available, in each category for the academic session immediately preceding the date of coming into force of these guidelines. The applicability of this Amendment Act, 2019 for the increase of annual permitted strength need to be implemented from the academic year following the commencement of the Amendment Act but in case the annual permitted strength cannot be implemented for reasons of financial, physical or

academic limitation or in order to maintain in the standards of education, such increase can be implemented over a period of two years beginning with the academic session 2019-20, after the representation by the Central Education Institution to the appropriate authority and subject to its satisfaction on the grounds as stated above. At any state of implementation of EWS reservation, the number and percentage of reservation provided for SC/ST/OBC categories shall not be reduced.”

- V. That it is respectfully submitted that Board of Governors in supersession of MCI vide letter 18.4.2019 (Annexure R-4) and 02.12.2019 (Annexure R-5) had asked the State Government to send the proposal of enhancement of Postgraduate seats in existing Medical Colleges for the Academic year 2020-21 for implementation of reservation of 10% seats for EWS candidates. The decision of the State Government to implement the State Reservation Policy for admission to MD/MS Courses was notified on 29.01.2020, thereafter, the State Government took up the matter for increase in seats in MD/MS courses to implement the 10% reservation for EWS candidates with the Medical Council of India after that.

Accordingly, the proposal for increase in seats was sent to the Secretary General, Board of Governors in supersession of MCI vide letter dated 26.02.2020 and subsequently vide D.O. letter dated 03.03.2020 (Annexure R-6).

Medical Council of India vide letter dated 29.04.2020 (Annexure R-7) has intimated that the MCI has considered the proposal of State of Haryana and recommended to Ministry of Health and Family Welfare, the increase in 10 seats under EWS category (06 seats in PGIMS, Rohtak and 04 seats in BPS, GMC Sonapat). The seats have been increased in the specific specialities and in specific Institutes. The list of the Speciality/institutes in which the EWS seats have been granted is as under:-

Sr. No.	Name of Institution	Branch	No. Of seats granted under EWS
1.	BPS GMC, Khanpur Kalan, Sonapat	MD (Community Medicine)	1
2.	BPS GMC, Khanpur Kalan, Sonapat	MD (Forensic Medicine)	1
3.	BPS GMC, Khanpur Kalan, Sonapat	MD (Pathology)	1
4.	BPS GMC, Khanpur Kalan, Sonapat	MD (Physiology)	1
5.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Paediatrics)	1
6.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Community Medicine)	1
7.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Biochemistry)	1
8.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Pathology)	1
9.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Pharmacology)	1
10.	Pt. B.D. Sharma PGIMS, Rohtak	MD (Physiology)	1

VII. Accordingly, it has been decided that reservation under EWS quota shall be provided to only the EWS seats enhanced in those courses/Institutions recommended by MCI vide letter dated 29.04.2020 subject to the final approval/sanction by Ministry of Health and Family Welfare, Govt. Of India and such seats are over and above the sanctioned seats available for various categories including open categories.

8. That it is respectfully submitted that in view of the decisions taken as explained above, the Seat Distribution for admission to MD/MS/MDS courses would be on the following principles:-

Category	Percentage	Remarks
Schedule Castes	20%	As per State Reservation Policy
Backward Classes-A	16%	As per State Reservation Policy
Backward Classes-B	11%	As per State Reservation Policy

PWD	05%	Horizontal Reservation for all categories
25% Institutional Preference seats will be given horizontally within each category to candidates who have completed MBBS/BDS from the Institutes located in the State of Haryana as allowed by the Hon'ble Supreme Court of India vide order dated 31.05.2017 in SLP No.15869 of 2017 in LPA No.762 of 2017.		
EWS quota shall be provided to only the EWS seats enhanced in those courses/Institutions recommended by MCI vide letter dated 29.04.2020 subject to the final approval/sanction by Ministry of Health and Family Welfare, Govt. Of India and such seats are over and above the sanctioned seats available for various categories including open categories.		

9. That it is respectfully submitted that with the above principles, broadly the seat distribution would be as under:-

Sr. No.	Name of Institutions	Total No. of Seats	Open Category	20% SC	16% BCA	11% BCB
1.	Pt. B.D. Sharma, PGIMS, Rohtak	111	59	22	18	12
2.	BPS, GMC, for Women, Khanpur Kalan, Sonapat	12	7	2	2	1
3.	SHKM, GMC, Nalhar, Nuh	11	6	2	2	1
4.	MAMC, Agroha (Govt. Aided)	22	12	4	4	2
	Total No. of Seats	156	84	30	26	16
	05% PWD seats would be provided horizontally within each category					
	25% Institutional preference seats would also be provided horizontally within each category					
	EWS quota shall be provided to only the EWS seats enhanced in the specific courses/institutions as per approval of Government of India, Ministry of Health & Family Welfare.					
	As far as EWS seats are concerned, the said reservation would be provided on the increased EWS seats after the approval of Govt. Of India to the recommendations of MCI for increase of 10 seats for EWS in Haryana.					

After perusing the petition and the replies as well as hearing the counsel for the parties in detail, we are of the considered opinion that this petition has become infructuous in view of the averments made by

respondents No.1 & 2 in para No.9 of their reply dated 5.05.2020 which we have already reproduced in earlier part of our order.

Learned counsels appearing on behalf of respondents No.1 & 2 and 3 have assured the Court that they will upload the modified seat distribution as provided in paragraph 9 (supra) before undertaking the counselling for the purpose of admission.

Learned counsel for the petitioners is also satisfied with this arrangement made between the parties.

Thus, in view of the above, this petition has become infructuous and is disposed of as such.

(RAKESH KUMAR JAIN)
JUDGE

06.05.2020
Vinod/Vivek*

(JASWANT SINGH)
JUDGE