

\$~5 (2021 Cause List)

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

Date of Decision:- December 08, 2021

+ W.P.(C) 7848/2020 & CM APPL. 25764/2020

SHEETAL

..... Petitioner

Through: Dr. Suneet Gupta, Advocate.

versus

PANNA DAI SCHOOL OF NURSING

..... Respondents

**Through: Ms. Nupur Agrawal and
Ms. Tara Narula, Advocates for
R-1 (Mobile No. 9810037337).**

**Mr. Praveen Khattar,
Advocate, for R-2/ Delhi
Nursing Council.**

**Mr. V.S.R. Krishna and Mr. V
Shashank Kumar, Advocates
(Mobile No. 9910800508) for
R-3/ Indian Nursing Council.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The petitioner was an applicant for admission to the respondent No.1- Panna Dai School of Nursing for the B.Sc (General Nursing and Midwifery) course in the academic session 2020-21. She applied pursuant to an advertisement issued on 14.08.2020. After the declaration of the selection list by the respondent No.1 towards the

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end of September, 2020, the petitioner has filed the present writ petition for the following reliefs:-

“I. Issue a writ of mandamus against the respondent i.e. Panna Dai College of Nursing directing it to stay the admission outside Delhi SC category seat.

II. Allot the aforesaid seat to the petitioner since the she being from the same category and having higher marks than the present allottee is rightful deserving candidate as in the present scenario cutoff for outside Delhi SC category student is lower than Delhi SC category students, which is in violation of Article 15 of the constitution.

III. Any other relief which this honorable court deems fit and proper in addition to aforementioned reliefs being sought, for which the petitioner would forever be obliged.”

2. By an order dated 19.10.2020, it was recorded as follows:-

“1. Learned counsel for the respondent states that dehors the controversy raised in the present petition about a seat being reserved for an SC candidate from outside Delhi, the petitioner does not qualify even if that seat was to be allotted to a Delhi candidate. It is stated that the petitioner has claimed to have scored 83.75% which is erroneous. She has at best scored 75.25% ignoring the marks of the subjects i.e. Hindi Elective and Hindi Music Vocal which are not mentioned in the prospectus as applicable for preparing the merit list.

2. Learned counsel for the petitioner refutes the aforesaid contention saying that there is nothing in the prospectus which shows that the marks in Hindi Elective and Hindi Music Vocal are not to be added for the purpose of determining the position in the merit list.

3. Let a short counter-affidavit be filed within two weeks.

4. List on 06.11.2020.”

3. The petitioner’s contention regarding the subjects to be considered in computing the relative merit of each candidate were also recorded in a subsequent order dated 08.01.2021. At the request of Dr. Suneet Gupta, learned counsel for the petitioner, the Delhi Nursing Council and the Indian Nursing Council were impleaded as party respondents to the writ petition.

4. During the course of further hearing, Ms. Nupur Agrawal, learned counsel for the respondent No.1, stated that the said respondents have prepared a notional merit list based on the subjects which the petitioner contends ought to have been considered. According to Ms. Agrawal, the petitioner would have still not qualified for admission. It was recorded in an order dated 21.10.2021 as follows:-

“2. By the order dated 17.09.2021 the respondent no. 1 was required to place on record a notional merit list of candidates on the basis of the three best subjects excluding English. Pursuant to the said order, the respondent no.1 has filed a notional merit list.

3.However, the list has been prepared by including only those subjects mentioned in the circular of the Delhi Nursing Council dated 02.05.2017. It is the petitioner’s case that her best three subjects are required to be considered de hors the said list.

4.Dr. Sumeet Gupta, learned counsel for the petitioner, submits that in the event the petitioner would not have qualified on merit even on a calculation based upon the aforesaid contention, the petitioner will not be interested in pursuing the writ petition. The preparation of a merit list on the lines suggested by Dr. Gupta would assist in

narrowing the controversy in the present petition. The respondent no.1 is therefore directed to place on record a notional merit list based upon the three best subjects excluding English of each candidate, without reliance upon the circular of the Delhi Nursing Council dated 02.05.2017. Affidavit be filed within two weeks.”

5. The notional merit list has since been placed on record. The comparative list has been prepared on the basis of the merit of the candidates, taking into consideration only those subjects which the petitioner contends ought to be included. It enumerates all the candidates who have applied for admission in the Scheduled Castes category [“SC category”] from Delhi region. Ms. Agrawal states that the petitioner has been placed at serial No. 15 in the said list, although, there were only three seats available in Delhi region SC category. Those three selected candidates rank higher than the petitioner in the notional merit list, being at ranks 3, 5 and 13.

6. Dr. Gupta submits that this does not conclude the matter against the petitioner. He states that the petitioner’s concern in this writ petition is not only against the manner of computation of the respective merit of the candidates, but also against the respondent No.1’s conduct in dividing the four seats available for SC candidates between the categories of Delhi and Outside Delhi candidates. He submits that a reservation for In-State candidates is permissible, but all candidates ought to have been considered for the seats in the Outside Delhi category. Dr. Gupta relies upon three judgments of the Supreme Court in this connection: *DN Chanchala vs. State of Mysore & Ors* (1971) 2 SCC 293, *Indra Sawhney & Ors vs. Union of India & Ors*.

1992 Supp (3) SCC 217, and *Jitendra Kumar Singh & Anr vs. State of UP & Ors* (2010) 3 SCC 119.

7. Without entering into the merits of this contention, I am of the view that the relief sought by the petitioner cannot be granted in this writ petition. The advertisement pursuant to which she applied contained “BREAKUP OF SEATS” as follows:-

<i>State</i>	<i>General</i>	<i>OBC</i>	<i>SC</i>	<i>ST</i>	<i>Destitute</i>
<i>Delhi</i>	<i>10</i>	<i>05</i>	<i>03</i>	<i>01</i>	<i>01</i>
<i>Outside Delhi</i>	<i>02</i>	<i>01</i>	<i>01</i>	<i>-</i>	<i>-</i>

It thus clearly made a distinction between the “Delhi” region and the “Outside Delhi” region.

8. In the application form submitted by the petitioner, she indicated that she had passed the qualifying examination from Delhi. The petitioner did not raise these grievances with regard to the bifurcation between Delhi candidates and Outside Delhi candidates until after the result was declared. The contention of Dr. Gupta (i.e., that reservation is permissible in favour of candidates of a particular region, but the remaining one seat ought to be considered on an All-India basis), is a matter of interpretation of the eligibility conditions, which ought to have been raised at the relevant time. The judgments of the Supreme Court *inter alia* in *National Board of Examinations vs. G Anand Ramamurthy & Ors.* (2006) 5 SCC 515 [paragraph 7] and

W.B Central School Service Commission and Ors vs. Abdul Halim and Ors (2019) 18 SCC 39 [paragraph 30-31] also make it clear that the interpretation of eligibility conditions is generally a matter left to the academic authorities and the writ court is slow to interfere in the absence of manifest arbitrariness or perversity. The fact that the petitioner participated in the selection process pursuant to this advertisement and did not ventilate the grievances at the right time also comes in her way.

9. Further, even considering the petitioner's case on the basis claimed by her, she does not contend that she would have qualified on merit in the Unreserved category. Four seats would have been available in the SC category. As far as those seats are concerned, the notional merit list counting the subjects which the petitioner contends ought to be counted, places her at serial No. 15. It is too far-fetched to suggest that she would have secured admission at serial No. 15 if only four seats were available. Thus, even if all the petitioner's contentions are taken to be accepted, she would not have succeeded in gaining admission to the course in question in the academic session 2020-21.

10. For the aforesaid reasons, I am of the view that the petitioner is not entitled to any relief in this writ petition.

11. The writ petition, alongwith the pending application, is therefore dismissed. No order as to costs.

PRATEEK JALAN, J.

DECEMBER 08, 2021/ 'vp'

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