

Subodh Kumar and ors. Vs. Union of India (Uoi) and ors.

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Court : Patna

Decided On : Dec-21-2005

Judge : S.K. Katriar, J.

Acts : [Constitution of India](#) - Articles 14 to 16, 16(4), 16(5), 29, 38(2) and 335

Appeal No. : CWJC No. 3646 of 2005

Appellant : Subodh Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Raieshwar Prasad, Government Pleader No. VI and Ajit Kumar, Adv. for respondent Nos. 1 to 5

Advocate for Pet/Ap. : Chittaranjan Sinha, Sr. Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Katriar, J.

1. The three petitioners, namely, Dr. Subodh Kumar, Dr. Mahesh Hembram and Dr. Manju Kumari, have joined this writ petition seeking a common relief for enforcing the policy of reservation for the category of Scheduled Caste and Scheduled Tribes for admission to the All India Entrance Examination for the Post

Graduate Courses conducted by All India Institute of Medical Sciences (hereinafter referred to as 'AIIMS'). The three petitioners are members of the Scheduled Caste.

2. According to the writ petition, the Government of India has formulated a scheme for admission to the Post Graduate courses in medical colleges of all the State Governments as well as the Union of India including AIIMS. Each medical college is required to contribute 50% of its total seats of the PG Courses to the central pool the entrance test of which is conducted by AIIMS and the students are admitted as per the merit list prepared by it. This was perhaps with the intention to standardize medical education all over the country and was perhaps also in the interest of national integration. The petitioners raise a grievance before this Court that the respondent authorities in violation of its statement in the prospectus for reservation of seats in PG Courses of Medical Sciences in favour of Scheduled Castes and Scheduled Tribes, declining to enforce the promise with respect to the entrance test in question. The first year of the course coincides with the year 2005-2006. It is, therefore, prayed that the respondent authorities should be directed to reserve half of 22.5% of the seats of the central pool for admission to the PG Courses after taking into account Clause 10 of the prospectus (Annexure 1).

3. The respondents have placed on record two sets of counter affidavits wherein they have set up a common case opposing the writ petition. One counter affidavit has been filed by respondent Nos. 1 to 3, sworn by Assistant Director General, Directorate General of Health Services, Ministry of Family Welfare, Government of India, and the other one is from respondent No. 4, sworn by the Director of AIIMS.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears that the Government of India has created a pool of seats for the PG Courses which were to be contributed by every Government Medical College of State Governments and those of the Government of India. In the initial stages, every college was required to contribute 15% of its seats, the examinations of which were conducted by AIIMS under the aegis of the Government of India. A controversy arose in the beginning whether or not 15% of the seats of each Medical College will be after taking into account, i.e. excluding, the reserved seats of each college. The issue fell for consideration of the Supreme

Court in the case reported in AIR 1986 SC 1877 Dr. Dinesh Kumar v. Motilal Nehru College wherein it was clarified that 15% of the seats to be contributed by each medical college shall be without excluding the reserved seats. In other words, to illustrate the position, if a particular medical college had 100 seats 20 of which were reserved for different categories, the college was required to contribute 15 seats, rather than 15% of 80 seats. The percentage has gradually been enhanced from time to time and the present percentage of contribution is 50% of the seats without excluding the reserved seats. The latest position is indicated in the order dated 28.2.2005, passed by the Supreme Court in civil writ (civil) petition No. 18/05 Budhi Prakash Verma v. Union of India. The issue is thus clear as to the contribution to be made by each Government college to constitute the central pool.

5. As stated hereinabove, the present writ petition relates to the entrance test for the PG Courses for the academic year 2005- 2006. AIIMS in consultation with the Government of India in the Ministry of Health issued the prospectus photocopy of which is marked Annexure 1. The three petitioners are admittedly holders of MBBS degrees and had appeared at the entrance test pursuant to Annexure 1. They have not received call letters to participate in the counselling for admission and raise a grievance before this Court that their exclusion has taken place because the respondent authorities have not reserved seats for members of the Scheduled Castes and Scheduled Tribes. The petitioners rely on the following clause occurring in the prospectus (Annexure 6) which is as follows :-

B. Reservation of seats

1. 22.5% of the total postgraduate seats, excluding those for sponsored/foreign national candidates are reserved for the candidates belonging to Scheduled Castes and Scheduled Tribes.

The petitioners insist that half of 22.5% of the central pool should be reserved for the two categories, inter alia, for the reason that the balance of half of 22.5% would be reserved by the contributing medical colleges.

5(1). The contention is stated only to rejected. It is wholly unsafe to rely on this clause because the prospectus (Annexure 6) wherein the same occurs relates to a

completely different examination. The petitioners will have to establish their claim for reservation on the basis of the terms and conditions stated in the prospectus in question, namely, Annexure 1.

6. Learned counsel for the petitioners has next relied on clause 10 of the prospectus in question (Annexure 1) which is set out hereinbelow for the facility of quick reference :-

10. Merit List

(a) The merit list will consist of number of candidates equal to the number of seats available for allotment. Candidates securing less than 50% marks (40% in case of SC/ST candidates) in the Entrance Examination will not be considered for admission and their names will not be included in the merit list. A waiting list containing 25 percent of the merit list will also be declared from amongst the successful candidates who have secured not less than 50 percent marks in the competitive examination (40% in case of SC/ST candidates).

Counsel submits ;hat the lower qualifying marks for SC and ST candidates has a direct nexus with reservation of seats. In other words, in his submission, unless seats were reserved for the two categories, there would not have been the need or the occasion to lower the qualifying marks for candidates of the two categories. The contention on the face of it is attractive, but does not survive a close judicial scrutiny. It appears to me that the intent and purpose of the clause is that candidates belonging to the two categories securing less than 40% marks, and candidates belonging to the rest securing less than 50% marks, shall not be considered for admission even though seats were available. It appears to me that, in the interest of quality of medical education which directly relates to treatment of human lives, the Central Government has advisedly not allowed any reservation policy for admission to the PG Courses in question. There is no other clause in the whole of the prospectus which supports the petitioners' case that reservation of seats for the two categories have been carved out.

7. Equality of treatment to all citizens irrespective of caste, creed or religion, is the dominant note of the [Constitution of India](#), and preferential treatment is an

exception. This position is manifest from a perusal of Articles 14 to 16 of the [Constitution of India](#) which have been hailed as the heart and soul of the Constitution. The provision for reservation is to be found in Articles 15(4), 16(4) and 16(5) of the [Constitution of India](#) which in substance are enabling clauses. The same vest the State to make provision for preferential treatment. Article 15(4) provides as follows :-

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place or birth.-

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

8. The Constitution Bench judgment of the Supreme Court in the case of *Indra Sawhney v. Union of India* reported in 1393 LAB. I.C. 129, clearly excluded certain categories of avocations from the benefit of reservation. Paragraph 112 of the judgment is set out hereinbelow for the facility of quick reference :-

112. While on Article 335 we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organizations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

As a matter of fact, the impugned Memorandum dated 13th August, 1990 applies the rule of reservation to 'civil posts and services under the Government of India' only, which means that defence forces are excluded from the operation of the rule

of reservation though it may yet apply to civil posts in the opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable for the reason indicated hereinbefore. Some of them are : (1) Defence Services including all technical posts therein but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment, (3) Teaching posts of Professors - and above, if any. (4) Posts in super-specialities in Medicine engineering and other scientific and technical subjects. (5) Posts of pilots (and co-pilots) in Indian Airlines and Air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts to which the Rule of reservation shall not apply but on the account the implementation of the impugned Office Memorandum dated 13th August 1990 can not be stayed or withheld.

We may point out that the services/posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence. Some of them are second level and third level posts in the ascending order. Hence, they form a category apart. Reservation therein may not be consistent with 'efficiency of administration' contemplated by Article 335.

We may add that we see no particular relevance of Article 38(2) in this context. Article 16(4) is also a measure to ensure equality of status besides equality of opportunity.

9. The petitioners have not set up a case that they have been subjected to hostile discrimination. The two sets of the respondents, namely, Government of India and AIIMS, in their separate counter affidavits have stated that there is no provision for reservation for the admission to the central pool, a stand clearly supported by the terms and conditions of the prospectus. The relevant portion of the two counter affidavits are set out hereinbelow. It is stated as follows in the counter affidavit of respondent Nos. 1 to 3 :-

Para Nos. 7 to 9 : That in reply to paragraphs 7 to 9 of the writ petition, it is submitted that as per the directions of the Hon'ble Supreme Court dated 28.2.2005

in writ petition (civil) No. 18/2005 filed by Budhi Prakash Sharma v. Union of India and Ors. Dte. GHS was required to conduct Counselling for 50% of total Post Graduate seats of Government Medical/Dental College without any exclusion. Therefore, All India PG counselling was conducted by Dte, GHS from 3.3.2005 to 2.4.2005 without earmarking any seats for any caste/category.

Para No. 11 : In reply to para 11 of the writ petition, it is submitted that as per the prospectus of All India Entrance Examination for MD/MS/PG Diploma and MDS Courses 2005 published by conducting authority i.e. AIIMS, the merit list will consist of number of candidate equal to the number of seats available for allotment. Candidates securing less than 50% marks (40% in case of SC/ST candidates) in the entrance examination will not be considered for admission and their names will not be included in the merit list. It may thus be observed that qualifying marks for reserved category are 40% and for general category are 50% and the candidate obtaining less than these marks in All India PG Entrance Examination will not be considered for inclusion in the select list of qualified candidates. There is only one list of merit holder candidates in said entrance examination conducted by AIIMS New Delhi as there is no separate reservation for any category of candidates.

It is stated as follows in the counter affidavit of respondent No. 4 :-

2. That I am filing this affidavit in observance to the orders dated 25.4.2005, passed by this Hon'ble Court. At the very outset it is submitted that there is no merit in the writ petition as under the scheme of All India PG Entrance Examination there is no concept of Reservation of any kind whatsoever. It is respectfully submitted that the scheme of All India PG Entrance Examination is being conducted by the All India Institute of Medical Science, New Delhi in accordance with the scheme framed by the Government of India pursuant to the directions of the Hon'ble Supreme Court and the scheme of the entrance examination has been approved by the Apex Court and forms part of its directions. The decision of the Supreme Court is reported as Dinesh Kumar v. Motilal Nehru College AIR 1986 SC 1877.

10. There is yet another aspect of the matter. Learned counsel for the respondents has placed before the Court the results of the All India PG Entrance Examination held on 19.1.2005 (Rankwise List) (MD/MS/Diploma Course), which has been allowed to be inspected by learned counsel for the parties. Learned counsel for the respondents has also placed before me the communication from the deponent of the counter affidavit of respondent Nos. 1 to 3 to his learned counsel, copy of which has been handed over to learned counsel for the parties, and is set out hereinbelow :- Dated The 19th July, 2005

Subject : CWJC No. 3646/05 - filed by Dr. Subodh Kumar and Ors. v. Union of India and Ors. In the High Court of Judicature at Patna.

Sir

Please refer to your letter No. C-18018/7/2005-MEC dated 8th July 2005 on the subject cited above. In this connection, it is stated that the status of the petitioners are as under:

Sl. No. Name Roll No. Over all Rank Marks obtained

1. Dr. Subodh Kumar 5156265 11102 44.222%

2. Dr. Manju Kumari 5169312 21822 30.660%

3. Dr. Mahesh Hembram 5175950 15437 38.797%

It is clear from the above facts that all the three petitioners have failed to qualify the entrance examination as per the eligibility criteria as laid down in the prospectus.

It is thus manifest that petitioner No. 1 (Dr. Subodh Kumar) has alone secured more than 40% marks, and petitioner Nos. 2 and 3 (Dr. Manju Kumari and Dr. Mahesh Hembram) have secured less than 40% marks in the entrance test. The writ petition on behalf of petitioner Nos. 2 and 3 is obviously not maintainable.

12. It thus appears to me on the basis of a combined reading of the materials placed before me that there is no concept of preferential treatment, and no

reservation of seats, for the members of the categories of Scheduled Castes and Scheduled Tribes for admission to the courses in question. It is made clear that this writ petition is confined to the question of admission of the petitioners to the courses in question on the sole basis of reservation of seats for members of Scheduled Castes and Scheduled Tribes.

13. The writ petition is without any merit it is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

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