

Mridula Avasthi and Others

Vs

University of Delhi and Others

Writ Petition (Civil) No. 194 of 1986

27.04.1988

ORDER

1. The writ application under Article 32 and the transferred writ petitions from the Delhi High Court relate to selection of medical graduates for under-taking post-graduate study for the year 1988 under the Delhi University. In *Dr. Dinesh Kumar v. Motilal Nehru College, Allahabad* ((1986) 3 SCC 727), this Court emphasised the desirability of post-graduate education in the Medical Faculty as far as possible to have uniformity throughout the country. It, therefore, commended to the educational institutions which followed the system of one year house job followed by two years' post-graduate course to switch over to the pattern of three year post-graduate course with house job in the first year. On September 25, 1987, in the very same matter, when this Court made an order reported as *Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad* ((1987) 4 SCC 459) it was pointed out that in some States the post-graduate course is for a term of two years with one year housemanship while in the other States it is a full term of three years. This Court, therefore, directed with a view to bringing about uniformity on the basis of the principle accepted in the earlier decision that for admission beginning from 1993, there would be only one pattern, namely, a three year integrated course without any separate housemanship. The University of Delhi decided to adopt the three year course for the post-graduate degree and a two year course for the diploma commencing from the academic session of 1988. With a view to mitigating hardship to candidates/students who had already completed the house job and had become entitled to undergo the postgraduate course in two year, as a transitory provision, the University decided to continue the practice prevailing prior to 1988 for a year. The University evolved a scheme whereunder the number of seats for the post-graduate course and diploma course available in the previous year for a student who had completed one year's housemanship were left untouched. The number of such seats are 198 for the degree course and 111 for the diploma course. Out of these 25 per cent. being placed at the disposal of the Government of India to be filled up on all India selection basis, the exact number available to be filled-up by the University worked out to 149 and 84 respectively. As a transitional provision intended for the 1988 session only the University agreed to fix 75 per cent. quota (representing 139 seats in the three year degree course and 66 seats in the two year diploma course). The following was specified a part of the Scheme :

IMPORTANT NOTE

Candidates who have done house job/Junior Residency for a period of one year are not eligible for admission to 3 years post-Graduate Degree and 2 year Post-Graduate Diploma Course.

The prospects, however, prescribed one common selection test.

2. A set of writ petitions were filed before the Delhi High Court challenging the scheme of the University mainly on the basis that when there was one selection test, merit should prevail and

classification in the manner indicated by the scheme was bad. Reliance was placed before the High Court on observations of this Court that for post-graduate degree the test of excellence should prevail and the level of high proficiency should be maintained. The High Court made an interim order requiring the University to have the selection completed on the basis of merit adjudged in the common selection test.

3. This is a dispute essentially between the University and the freshers who have not done housemanship on one side and the seniors who have already completed housemanship for one year on the other. There can be no dispute that the seniors and the freshers belong to two separate categories and cannot be said to be equals. If the University had not prescribed a common selection test for these two categories, the question of test of comparative merit would not have arisen. If that had not been done perhaps the High Court would not have made its direction and the difficulty which has arisen would not have cropped up.

4. The classification of freshers and those who have completed a year's housemanship, though a perceptible one, loses its importance in view of the traditional situation that in the system prevailing prior to 1987, both the groups were treated as qualified for appearing at the selection test for post-graduate study. We are told by learned members at the Bar that after transitory Note extracted above disappears in the coming year, the old practice shall again revive. This is an unfortunate situation. There being no limit to participation in the selection test for post-graduate study candidates who become unsuccessful year after year, in the absence of any limit, keep on taking chances. This certainly is not a desirable feature and should be looked into by the appropriate authorities quickly.

5. If the merit list of the selection examination is followed, more of seniors are entitled to admission and the scheme of reservation would not work. As we have already pointed out in the name of what counsel calls convenience (and how inconvenient it was is not known), the Delhi University made an initial mistake of having a common selection test for two categories of candidates. While we reiterate the view expressed by this Court on more than one occasion that selection in the higher courses should be on the basis of merit, in the peculiar facts and circumstances arising in this case purely confined to a transitory measure, the situation has to be handled not by first principles but by a somewhat informed pragmatic ad hocism. This has to be so because the situation would not reoccur. Again the initial mistake of the Delhi University had brought some amount of confusion and it has mounted up following the intervention by the High Court. The time available is too short as under the Scheme intended to apply to the whole country the course has to begin on May, 2, 1988.

6. In this background we are of the view that the impasse created on account of the rival claims advanced by the freshers and the seniors has to have a rough and ready solution-yet not arbitrary and as acceptable and satisfying a possible. We find that the two year degree course speciality-wise has 149 seats while the three year degree course has 139 seats. For convenience we extract the particulars made available at page 4 of the Bulletin of Information. It may be pointed out that there are 1003 candidates as against total 270 vacancies (degree and diploma courses together) for the seniors; and there are 331 candidates as against 205 vacancies for the two courses for the freshers. With a view to providing some more seats for seniors we suggested to Mr. Rao appearing for the University that the number of seats may be increased and he has on instructions agreed, provided the Union of India provides funds and the Medical Council agrees to accommodate. There are 21 specialities as indicated above. We direct that the University shall create one seat in every speciality and thus 21 additional seats will be available over and above the 149 seats fixed by the University representing the 75 per cent. quota. To this enhanced number of seats the 25 per cent. reservation of

All India Selection shall not apply. From the reserved seats made for the freshers, 21 seats being one from every speciality shall be taken away and made available to the seniors. Thus 42 seats in all will be available for the seniors in the post-graduate course to be filled up on the basis of inter se merit keeping the senior group apart.

7. The creation of the 21 seats will involve additional funds to be provided by the Union of India. It will also require approval of the Medical Council of India and there will perhaps also be necessity for permitting the variation of guide-student ratio. Since it is for one year and there would be no scope for recurrence and this has arisen in peculiar circumstances explained above, we direct the Government of India to take our order made without hearing it with a sense of understanding and make the necessary provisions. We also suggest to the Indian Medical Council to provide the necessary accommodation by relaxing the requirements. These may be done quickly so that the time schedule may not be affected.

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