

**SUPREME COURT OF INDIA**

Gulshan Prakash

Vs.

State of Haryana

C.A.No. \_ of 2009

(K.G. Balakrishnan CJI, P. Sathasivam and J.M. Panchal JJ.)

02.12.2009

**JUDGEMENT**

**P. SATHASIVAM, J.**

1) The petitioners in S.L.P.(C) No. 4590 of 2008 and Writ Petition (C) No. 69 of 2009 are one and the same.

Leave granted in the special leave petition.

2) Challenge in this appeal is to the judgment dated 05.02.2008 of the High Court of Punjab & Haryana at 1 Chandigarh, dismissing the Civil Writ Petition No. 1431 of 2008, filed by the appellants herein for quashing of the prospectus for the MD/MS/PG Diploma and MDS Courses issued by Maharshi Dayanand University, Rohtak, Haryana for Academic Session 2007-2008 to the extent that it does not provide any reservation of seats for Scheduled Caste/Scheduled Tribe

candidates.

3) Challenge in Writ Petition (C) No. 69 of 2009, filed under Art. 32 of the Constitution of India, relates to the prospectus issued by the aforesaid University for the same courses for Academic Session 2009-2010.

4) The brief facts leading to the filing of these matters are as under:

Vide Notification dated 12.11.2007, State of Haryana instructed Maharshi Dayanand University, ('MDU' in short) Rohtak to conduct the entrance examination for admission in the MD/MS/PG Diploma and MDS Courses in Government Medical and Dental Colleges in the State of Haryana for the session 2008-2009 and declare results.

By the same notification, the State of Haryana also instructed Pt. B.D. Sharma PGIMS, Rohtak to conduct the counseling and to finalize the admission in the said courses. In pursuance of the said notification, MDU, Rohtak published a prospectus for holding entrance examination for the MD/MS/PG Diploma and MDS Courses in Government Medical and Dental Colleges in the State of Haryana for the year 2008-2009. On 15.12.2007, the appellants made a representation to the Commissioner and Health Secretary, Ministry of Health and Medical Education, Government of Haryana, Panchkula for implementation of SC/ST reservation in Post-Graduate Courses (MD/MS/MDS/Diploma) PGIMS in accordance with the guidelines issued by the State Government on 19.03.1999. Since there was no response, the appellants preferred writ petition before the High Court for quashing of the prospectus which was dismissed. Hence, the appellants have preferred this appeal by way of special leave.

5) According to the appellants, on 07.08.2000, MDU published the prospectus for the MBBS/BDS/BAMS/BHMS Common Entrance Examination for admission to Medical/Dental/Ayurvedic/Homeopathic Colleges/Institutions in Haryana notifying the seats for admission to various categories providing 20% reservation for the members of Scheduled Castes. On 17.09.2005, all the Institutions including All-India Institute of Medical Sciences provided reservation in the Post-Graduate courses for the members of Scheduled Castes and Scheduled Tribes. The Government Medical College, Patiala, Amritsar and Faridkot also provided reservation in Post-Graduate Courses for the Academic Session, 2007. The University of Delhi is also providing reservation to the members of the Scheduled Castes and Scheduled Tribes. In addition to the same, counsel for the appellants submitted that some States have also provided reservation in Post- Graduate Courses. On the other hand, learned counsel for the respondents submitted that the State of Haryana has already provided reservation at the graduate level courses i.e. MBBS/BDS/BAMS/BHMS etc. and there is no reservation in respect of Post-Graduate Courses and that is the reason the prospectus issued for Post-Graduate Courses does not contain any clause for reservation. They also contended that Article 15(4) is only an enabling provision and the State of Haryana, taking note of various aspects, decided

not to provide reservation for Scheduled Caste, Scheduled Tribe and Other Backward Class candidates in Post-Graduate Courses. They also pointed out that there cannot be any mandamus compelling the State to provide reservation for a particular class of persons.

6) We have heard Dr. Krishan Singh Chauhan, learned counsel for the appellants and Mr. Nidhesh Gupta, learned senior counsel for the respondents and perused all the relevant materials and considered rival contentions.

7) Article 15 mandates that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them.

Sub-clause (4) in both Articles 15 and 16 is only an enabling provision for the State Government to bring forward a legislation or pass an executive order for the benefit of socially and educationally Backward Classes of citizens and for the Scheduled Castes and Scheduled Tribes. Article 15(4) reads as follows:-

"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) Learned counsel for the appellants, in support of his claim, relied on a seven-Judge Bench decision of this Court reported in *State of Kerala and Another vs. N.M. Thomas and Others*, (1976) 2 SCC 310. The issue therein relates to constitutionality of Rule 13AA of the 6 Kerala State and Subordinate Services Rules, 1958 granting exemption to members of Scheduled Castes and Scheduled Tribes for a specified period from special and departmental tests in the matter of promotion. By majority, their Lordships have upheld the validity of Rule 13AA of the Kerala State and Subordinate Services Rules, 1958, and two consequential orders and set aside the judgment of the High Court. In the said decision, the Court nowhere considered the effect and implication of Article 15(4), particularly, whether it mandates the State to provide reservation in Post-Graduate Courses or is only an enabling provision.

9) On the other hand, the consistent view of this Court is that Article 15(4) is only an enabling provision and it is for the respective States either to enact a legislation or issue an executive instruction providing reservation in Post- Graduate Courses. In *Indra Sawhney and Others vs. Union of India and Others*, 1992 Supp (3) SCC 217, which is a nine-Judge Bench judgment of this Court, while considering Articles 16(4) & (1), 15(4), 14, 32, 340 and various other provisions, Jeevan Reddy, J. speaking for the majority held:

"744. The aspect next to be considered is whether clause (4) is exhaustive of the very concept of reservations? In other words, the question is whether any reservations can be provided outside clause (4) i.e., under clause (1) of Article 16. There are two views on this aspect. On a fuller consideration of the matter, we are of the opinion that clause (4) is not, and cannot be held to be, exhaustive of the concept of reservations; it is exhaustive of reservations in favour of backward classes alone. Merely because, one form of classification is stated as a specific clause, it does not follow that the very concept and power of classification implicit in clause (1) is exhausted thereby. To say so would not be correct in principle. But, at the same time, one thing is clear. It is in very exceptional situations, -- and not for all and sundry reasons -- that any further reservations, of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress a specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under clause (1), the vacancies available for free competition as well as reserved categories would be a correspondingly whittled down and that is not a reasonable thing to do."

10) In *K. Duraisamy and Another vs. State of T.N. and Others*, (2001) 2 SCC 538, a three-Judge Bench, while dealing with the reservation at the Post-Graduate level and super-speciality level, observed as follows:-

"8. That the Government possesses the right and authority to decide from what sources the admissions in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively-settled view of this Court that at the super-speciality level, in particular, and even at the postgraduate level reservations of the kind known as "protective discrimination" in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of the in-service candidates, cannot be equated or treated on par with communal reservations envisaged under Articles 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations."

11) In *AIIMS Student's Union vs. AIIMS and Others*, (2002) 1 SCC 428, while considering the similar issue, it was held:- "44. When protective discrimination for promotion of equalisation is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. The basic rule is equality of opportunity for every person in the country, which is a constitutional guarantee. A candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels and education like postgraduate courses. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped -- the reservation geared up to getting over the handicap. The rationale of reservation in the case of

medical students must be removal of regional or class inadequacy or like disadvantage. Even there the quantum of reservation should not be excessive or societally injurious. The higher the level of the speciality the lesser the role of reservation."

Again it was held that:- ".....Permissible reservation at the lowest or primary rung is a step in the direction of assimilating the lesser fortunates in the mainstream of society by bringing them to the level of others which they cannot achieve unless protectively pushed. Once that is done the protection needs to be withdrawn in the own interest of protectees so that they develop strength and feel confident of stepping on higher rungs on their own legs shedding the crutches. Pushing the protection of reservation beyond the primary level betrays the bigwigs' desire to keep the crippled crippled for ever..... Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability, one of the factors to be taken into consideration would be -- whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety....."

12) In *Union of India vs. R. Rajeshwaran and Another*, (2003) 9 SCC 294, direction was sought for to apply the rule of reservation to the Scheduled Castes and Scheduled Tribes in respect of those seats which are set apart for All- India pool in MBBS/BDS list. In the present context, the following conclusion is relevant:- "9. In *Ajit Singh (II) v. State of Punjab* this Court held that Article 16(4) of the Constitution confers a discretion and does not create any constitutional duty and obligation.

Language of Article 15(4) is identical and the view in *Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan and Superintending Engineer, Public Health v. Kuldeep Singh* that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be held to be laying down the correct law. In these circumstances, neither the respondent in the present case could have sought for a direction nor the High Court could have granted the same.

10. Hence, we allow the writ appeal transferred to this Court and set aside order made in the writ petition. The appeal also shall stand disposed of accordingly."

13) The principle behind Article 15(4) is that a preferential treatment can be given validly when the socially and educationally backward classes need it. This article enables the State Government to make provisions for upliftment of Scheduled Castes and Scheduled Tribes including reservation of seats for admission to educational institutions. It was also held that Article 15(4) is not an exception but only makes a special application of the principle of reasonable classification. Article 15(4) does not make any mandatory provision for reservation and the power to make reservation under Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special provision may be made not only by the Legislature but also by the Executive.

14) Learned counsel for the appellants relying on the Constitution Bench decision of this Court in Dr. Preeti Srivastava and Another vs. State of M.P. and Others, (1999) 7 SCC 120, submitted that when it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates, as compared to the general category candidates, it is incumbent on the part of the State Government to prescribe certain percentage for SC/ST candidates even for the Post-Graduate Courses. On going through the decision, we are unable to accept the said contention. In para 10 of the judgment, this Court has posed the following question for consideration:- "We have therefore, to consider whether for admission to the postgraduate medical courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates as compared to the general category candidates. We do not propose to examine whether reservations are permissible at the postgraduate level in Medicine. That issue was not debated before us, and we express no opinion on it.

We need to examine only whether any special provision in the form of lower qualifying marks in PGMEE can be prescribed for the reserved category"

After discussing relevant aspects and earlier decisions this Court concluded:- "In the premises, we agree with the reasoning and conclusion in Dr Sadhna Devi v. State of U.P. and we overrule the reasoning and conclusions in Ajay Kumar Singh v. State of Bihar and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan. To conclude:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education.
2. A common entrance examination envisaged under the regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.
3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest.

4. At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection."

It is clear that first of all in Preeti Srivastava (supra), this Court did not examine whether reservation is permissible at the Post-Graduate level in Medicine. It is also clear that the Court has dealt with only the question as to the prescribing lower minimum percentage of qualifying marks for the reserved category candidates at the Post- Graduate Medical Courses and ultimately it was concluded that the same is permissible, however, insofar as medical education is concerned, it must be decided by the Medical Council of India. It is relevant to mention that pursuant to the said decision the Medical Council of India ('MCI' in short) has prescribed minimum qualifying marks as 50 per cent for the 'general category candidates' and 40 per cent for the 'reserved category candidates'. In such circumstances, the argument based on Preeti Srivastava (supra), by the learned counsel for the appellants is liable to be rejected.

15) It is also useful to refer the judgment in State of Punjab vs. Dayanand Medical College and Hospital and Others, (2001) 8 SCC 664, wherein similar contention as projected before us by the counsel for the appellants was raised. In para 10 of the judgment in Preeti Srivastava (supra), it was clarified that this Court was only paying attention to the question of fixing lower minimum qualifying marks for reserved category candidates. In the same decision, it was stated that such question must be decided by the Medical Council of India, since it affects the standard of Post-graduate medical education. In State of T.N. and Another vs. S.V. Bratheep (Minor) and Others, (2004) 4 SCC 513, this Court reiterated the same reasoning as stated in State of Punjab (supra).

16) In Ajit Singh and Others (II) vs. State of Punjab and Others, (1999) 7 SCC 209, Constitution Bench of this Court in paragraph 28 has held that Article 16(4) is only an enabling provision which reads as under:

"On the face of it, the above language in each of Articles 16(4) and 16(4-A) is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963."

17) Learned counsel for the appellants next contended that, inasmuch as even in All-India Entrance Examination for Post-Graduate Courses, the Government of India itself has made a provision for reservation for SC/ST candidates, the State of Haryana is bound to follow the same and issue appropriate orders/directions providing reservation in the Post-Graduate Courses. He further contended that the prospectus de hors any provision for reservation is bad and is liable to be quashed. In our view, this contention is also liable to be rejected. It is true that Government of India itself has made a provision for reservation of SC/ST categories. This was a decision by the Government of India and it is applicable in respect of All-India Entrance Examination for MD/MS/PG Diploma and MDS Courses, and reservation for SC/ST candidates in All-India quota for PG seats. However, the same cannot automatically be applied in other selections where State Governments have power to regulate. In fact, the Government of Haryana, in the counter affidavit

before the High Court, explained their position that according to them, the matter regarding reservation of seats in the PG Courses has been considered by the State Government from time to time and it has been decided that keeping in view the recommendations of the Medical Council of India and precedents in the other States, reservation of SC/ST in PG Courses is neither feasible nor warranted, as there is already a reservation of 50 per cent of the total seats in MD/MS/PG Diploma and MDS Course in the institutions of the State of Haryana on all-India basis entrance examination, being conducted by AIIMS, New Delhi, and that the appellants had already availed the benefit of reservation of seats in their qualifying examination of MBBS/BDS. They further clarified that only the State Government is the Competent Authority to decide the reservation in the State. The State Government did not prescribe any reservation for SC/ST and backward classes, due to which it was not included in the prospectus. They also clarified that the petitioners before the High Court were on the wrong impression that the Government of Haryana has already taken a decision to make a reservation in admission to MD/MS/PG Diploma and MDS Courses for SC/ST category. It was clarified that the Government of Haryana has never granted the benefit of reservation to SC/ST category in admission to MD/MS/PG Diploma and MDS Course. The Government of Haryana, for the first time, considered and decided on 05.04.1988 that there will be no reservation in admission to PG/Diploma courses. Again, in their letter dated 01.01.1991, reiterated that Government of Haryana is not in favour of reservation for SC/ST categories in PG/Degree/Diploma Courses. Again, by the letter dated 26.04.2002 reiterated that there will be no reservation for SC/ST candidates at Post-Graduate level admission in PGIMS, Rohtak. It is pointed out that since Government of Haryana has taken a conscious decision of not to make reservation for SC/ST categories in admission at the Post- Graduate level, such a decision of the Government suffers no infirmity. The other materials placed by the State shows that before taking such a decision, they considered the recommendations of the Medical Council of India and precedents/decisions in other States and concluded that the reservation for SC/ST categories in Post-Graduate Degree and Diploma Courses is not feasible in the State.

Though, even at the Post-Graduate level, reservation for SC/ST/Backward Community is permissible in view of the specific decision by the State of Haryana not to have reservation for Scheduled Castes and Scheduled Tribes at the Post-Graduate level, there cannot be any mandamus by this Court as claimed by the appellants. After all, medical education is an important issue which should not have any mandatory condition of this nature which may give rise to a situation against public interest if so interpreted by the State Government as State Government is in a better position to determine the situation and requirement of that particular State, as mandated by the Constitution.

18) Finally, learned counsel for the appellants, in more than one occasion, relied on an order dated 31.01.2007 of this Court in Writ Petition (C) No. 138 of 2006, Abhay Nath and Others vs. University of Delhi and Others.

The operative part of the order is as follows:- "The Additional Solicitor General pointed out that in the All India quota of 50% seats, if 22.5% are reserved for SC/ST students, it would be difficult for the State to give the entire percentage to reservation out of the 50% seats left for them to be filled up. It is equally difficult for the DGHS to have entire 22.5% reservation out of the 50% of the seats allotted to be admitted in the All India Entrance Examination. Therefore, it is suggested that the Union of India has decided to provide 22.5% reservation for SC/ST candidates in All India Quota

from the academic year 2007-2008 onwards. The Union of India seeks clarification of the order passed in Budhi Prakash Sharma vs. Union of India passed on 28.02.2005, to the effect that 50% seats for All India Quota shall exclude the reservation.

We review that order and make it clear that the 50% of the seats to be filled up by All India Entrance Examination shall include the reservation to be provided for SC/ST students. To that extent the order passed on 28.02.2005 is clarified."

The above order makes it clear that the directions of this Court are applicable to admission on All-India basis whereas the same have no bearing on the admissions meant for State quota. Inasmuch as the Government of Haryana has not prescribed any reservation for the Post- Graduate Courses, neither the University nor any other authority be blamed for approving and publishing the prospectus which does not contain reservation for Post- Graduate Courses. The clarificatory order of this Court in Abhay Nath (supra), is applicable for the Institutes managed/run by the Central Government and unless the State Government takes any decision for granting reservation in MD/MS/PG Diploma and MDS Courses, it cannot be made applicable. As the State Government is competent to make the reservation to a particular class or category, until it is decided by the State, as being a Policy matter, there cannot be any direction to provide reservation at the PG level. The State of Haryana has explained that reservation in under-Graduate Medical Courses is being provided strictly as per their policy. The Post-Graduate Degree/Diploma in medical education is governed by Medical Council. Even, the Medical Council of India has not followed strict adherence to the rule of reservation policy in admission for SC/ST category at the Post-Graduate level.

19) As stated earlier, Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class categories at Post-Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. under graduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also. As stated earlier, the State Government, in more than one communication, has conveyed its decision that it is not in favour of reservation for SC/ST/Backward Classes at Post-Graduate level. In such circumstances, Court cannot issue mandamus against their decision and their prospectus also cannot be faulted with for not providing reservation in Post-Graduate Courses. However, we make it clear that irrespective of above conclusion, State of Haryana is free to reconsider its earlier decision, if they so desire, and circumstances warrant in the future years.

20) In the result, the Civil Appeal as well as the Writ Petition fail and the same are dismissed accordingly with no order as to costs.

