

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 138 OF 2006

ABHAY NATH & ORS.

Petitioner(s)

VERSUS

UNIVERSITY OF DELHI & ORS.

Respondent(s)

(With appln(s) for directions, intervention and office report)

WITH W.P(C) NO. 70 of 2006

(With appln. for stay/direction and office report)

W.P(C) NO. 184 of 2006

(With appln. for ex-parte stay and impleadment and office report)

I.A.No.7 in W.P.(C) No.18/2005

(Appln. for directions)

Date: 31/01/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE DALVEER BHANDARI

HON'BLE MR. JUSTICE D.K. JAIN

For Petitioner(s) Ms. Haripriya Padmanabhan, Adv.

For Ms. V. Mohana, Adv.

Dr. Krishan Singh Chauhan, Adv.

Ms. Gyan Mitra, Adv.

Mr. Chand Kiran, Adv.

Mr. P.K. Jayakrishnan, Adv.

Ms. Malini Poduval, Adv.

W.P.(C) 18/05

Mr. A. Mariarputham, Adv.

M/s. Aruputham, Aruna, & Co., Adv.

For Respondent(s) Mr. Naveen Kumar Singh, Adv.

For Mr. Aruneshwar Gupta, Adv.

Mr. Maninder Singh, Adv.

Mr. Gaurav Sharma, Adv.

Mr. Sumeet Bhatia, Adv.

Mr. Mukul Gupta, Adv.

Mr. T.A. Khan, Adv.

Mr. Gopal Subramaniam, ASG

Mr. T. Srinivasa Murthy, Adv.

Ms. Sushma Suri, Adv.

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Mr. Vikaram Mehta, Adv.

For Mr. Vikas Mehta, Adv.

Mr. P.V. Dinesh, Adv.

Mr. Annam D.N. Rao, Adv.

Mr. Raj Singh Rana, Adv.

Ms. Kavita Wadia, Adv.

Mr. Tara Chandra Sharma, Adv.

Mr. Yashraj Singh Deora, Adv.

For M/s. K.L. Mehta & Co., Advs.

Ms. Kamini Jaiswal, Adv.

Mr. R. Nedumaran, Adv.

Mrs. Shobha Dixit, Sr. Adv.

Mr. Manoj Kumar Mishra, Adv.

Mr. Pradeep Mishra, Adv.

UPON hearing counsel the Court made the following

O R D E R

This Court in Dr. Pradeep Jain & Ors. v. Union of India & Ors.

1984 (3) SCC 654 directed that out of the Post Graduate seats to be filled up

by the various colleges in India, 50% of the seats shall be ad
mitted on the

basis of All-India Entrance Examination. It was directed that out
of the

total number of seats, 50% of the open seats shall be filled up by All-India

Entrance Examination. Thereafter in - Dr. Dinesh Kumar & Ors. v. Motilal

Nehru Medical College, Allahabad & Ors. 1985 (3) SCC 22, it was explained:

,"That is a total misreading of our Judgment. What we ha
ve

said in our Judgment is that after providing for reservation

validly made, whatever seats remain available for non-reserved

categories, 30% of such seats at the least, should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or

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institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our Judgment, 30% of 70% seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference."

And in Dr. Dinesh Kumar & Ors.(II) v. Motilal Nehru Medical College,

Allahabad & Ors. 1986 (3) SCC 727, it was clarified:

"that not less than 25 per cent of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All India Entrance

Examination. This suggestion of the Government of India deserves to be accepted and the objection to it must be overruled."

In Saurabh Chaudri & Ors. v. Union of India & Ors., 2003 (11) SCC 146, the percentage of seats to All-India Entrance Examination was increased to 50%.

Another writ petition was filed in this Court in Buddhi Prakash Sharma v.

Union of India. In this writ petition an order was passed by this Court on 28.2.2005, wherein it was stated that the total number of Post Graduate

seats on All India Basis would be worked out on the basis of 50% of the

total number of seats without any exclusion. The Order indicated that out

of 50% that are allocated are to be admitted by All

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India Entrance Examination and it was made clear that there shall not be

any seats excluded on reservation.

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 the 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 2007-08

onwards. The Union of India seeks clarification of the order passed in

Buddhi Prakash Sharma v. Union of India passed on 28.2.2005, 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 28.2.2005

is clarified.

I.A.No.7/07 in WP(C) No.18/05 is disposed of accordingly.

(R.K. DHAWAN)

COURT MASTER

(VEERA VERMA)

COURT MASTER