

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

W.A.No.3472 of 2004
and

W.P.NO.12863 OF 2005

AND

WAMP.Nos.6514, 6838 of 2004 & WPMP.No.14075 of 2005

W.A.No.3472 of 2004

1. Minor D. Ram
rep. by father and Natural
Guardian Dr.D.Balasubramanian
2. Minor D. Shyam
rep. by father and Natural
Guardian Dr.D.Balasubramanian
3, HIG Block, Indira Nagar,
Pondicherry 605 006. ... Appellants

Vs.

Jawaharlal Institute of Post Graduate
Medical Education and Research,
rep. by its Dean (Directorate General
of Health Services)
Pondicherry 605 006. ... Respondent

W.P.No.12863 of 2005

1. Minor D. Ram
rep. by father and Natural
Guardian Dr.D.Balasubramanian ... Petitioner

Vs.

Jawaharlal Institute of Post Graduate
Medical Education and Research,
rep. by its Dean (Directorate General
of Health Services)
Pondicherry 605 006. ... Respondent

W.A.No.3472 of 2004 is filed under Clause 15 of Letters of Patent against the order of the learned single Judge in W.P.No.9158/2004 dated 12.8.2004.

W.P.NO.12863 of 2005 is filed under Article 226 of the Constitution of India for the issuance of writ of Declaration declaring Clause 2.2 of the prospectus for M.B..B.S. Course 2005-2006 issued by the Respondent Institution as unconstitutional and invalid, in so far as it fails to make a reservation for Pondicherry Scheduled Tribe Candidates.

For Appellant : Mr.Vijay Narayan
in WA.No.3472 & Senior Advocate for
Petitioner in WP. Mr. Karthik Rajan
No.12863 of 2005

For Respondent : Mr.V.T. Gopalan
in WA.No.3472/04 & Addl. Solicitor General for
WP.12863/05 Mr.M.T. Arunan, ACGSC
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COMMON JUDGMENT

P.K. MISRA, J

W.P.No.9158 of 2004 had been filed by two minor students represented by their father and natural guardian for issuance of writ of declaration declaring Clause 3.1 of the prospectus for M.B.B.S. Course 2004-2005 as unconstitutional and invalid in so far as it fails to make a reservation for Pondicherry Scheduled Tribe Candidates. W.A.No.3472 of 2005 is filed against the decision in the said writ petition.

Petitioner No.1/Appellant No.1 therein has filed W.P.No.12863 of 2005 claiming for a similar relief in respect of the prospectus issued for the current year, namely, 2005-2006.

2. Jawaharlal Institute of Post Graduate Medical Education and Research (hereinafter referred to as "JIPMER") is an Institute financed and administered by the Ministry of Health and Family Welfare, Government of India through the Directorate General of Health Services, New Delhi. Such Institute is affiliated to the Pondicherry University and provides instruction for MBBS Course. As per Clause 3.1 of the prospectus for the year 2004-2005, 75 seats were available for admission. Such seats were distributed as under :-

" (a)	Open General	14
(b)	Open Scheduled Caste	8
(c)	Open Scheduled Tribe	4
(d)	Pondicherry General	15
(e)	Pondicherry Scheduled caste	5
(f)	Seats to be filled on the basis of Common All India Entrance Test by CBSE	11
(g)	Government of India nomination subject to fulfilment of basic requirements laid down, vide para 2.1, 2.2 and 2.3	18
	Total	75"

3. The contention of Mr. Vijay Narayan, appearing for the migrant Scheduled Tribe candidates, is to the effect that when migrant Scheduled Caste candidates have been made eligible and separate seats are earmarked for them under Clause 3.1 (e), not making a similar reservation for migrant Scheduled Tribe is arbitrary and discriminatory.

4. Learned Additional Solicitor General has combated such contention by contending that as per the Presidential Notification, there is no Scheduled Tribe notified for Pondicherry. He has further submitted that merely because some concession has been shown to Scheduled Caste candidates, who are residents of Pondicherry, there is no mandate to make any such reservation for the migrant Scheduled Tribe candidates and at any rate such Scheduled Tribe candidates can be considered as against the seats available for "Open Scheduled Tribe" candidates. He has further submitted that whatever may be the proportion for 2004-2005, the proportion for Open Scheduled Tribe candidates has been increased making as 7½ % from 75 seats available and no further grievance can be made on that score.

5. So far as the contention of Mr. Vijay Narayan is concerned, it is noticed that for the current year, number of seats earmarked for open Scheduled Tribe has been increased and yet the candidate has not been selected. The grievance is to the effect that he is a member belonging to Scheduled Tribe as per the Presidential Notification applicable to the State of Tamil Nadu and since his parents had migrated to Pondicherry, a similar provision as is applicable to Pondicherry Scheduled Caste under Clause 3.1 (e) should have been made. Learned Senior Counsel has also submitted that in fact in the prospectus issued for the current year, namely 2005-2006, for Vardhman Mahavir Medical College, which is situated in Delhi administered by the very same Ministry, a special provision has been

made for Scheduled Tribe candidates, who are residents within Delhi. Therefore, there is no justification as to why such provision was not made during the year 2004-2005 or even during 2005-2006.

6. It is submitted by him that like Union Territory of Pondicherry, for the Territory of Delhi, no Tribe has been indicated as Scheduled Tribe in the Presidential notification and the persons belonging to the Scheduled Tribe as per the Presidential notification relating to other States and have settled down in Delhi have been extended the benefit, there is no justification for ignoring the Scheduled Tribe residents of Union Territory of Pondicherry.

7. The reservation of 7½ % for Scheduled Tribe is made available under the Open Scheduled Tribe category for the current year. Whether there should have been a further specific provision for any migrant Scheduled Tribe who have settled down in Pondicherry is a matter of discretion. Nothing has been shown that absence of such reservation is arbitrary. The provisions contained in Articles 15 and 16 of the Constitution are obviously enabling provisions and in that sense a member belonging to Scheduled Tribe or Scheduled Caste cannot claim as a matter of right that there should be a reservation and that too to a particular extent.

8. Merely because some special concession has been shown to the Pondicherry Scheduled Caste candidates by earmarking certain seats, it cannot be said that absence of any such special concession for migrant Scheduled Tribe candidates, who have settled down in Pondicherry, is arbitrary or discriminatory. It is not that no reservation has been made. Reservation as per the required ratio having been made, the petitioner cannot claim that his right has been violated merely because some additional concession shown to some other category has not been specifically shown to the migrant Scheduled Tribe and, therefore, such contention cannot be accepted.

9. It is apparent that one seat has been kept reserved during the academic session 2004-2005 and similarly one seat has been kept reserved during the academic session 2005-2006. So far as the vacant seat for the year 2004-2005 is concerned, obviously such seat cannot be added to the total number of seats of 75 for the current year. In that sense it is apparent that such seat has gone waste. So far as the seat reserved during the academic year 2005-2006 is concerned, it would be open to the Institute to admit student against such vacant seat in accordance with law.

10. Accordingly, W.A.No.3472 of 2004 and W.P.No.12863 of 2005 are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

27-09-2005

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

Jawaharlal Institute of Post Graduate
Medical Education and Research,
rep. by its Dean (Directorate General
of Health Services)
Pondicherry 605 006.

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dv/28.9.05

JUDGMENT IN WA.No.
3472/04 & WP.No.12863/2005

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