

IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT

JODHPUR.

ORDER.

Tarun Kothari vs. University of Rajasthan
 & ors.

S.B.Civil Writ Petition No.2305/2005 under Article 226 of the Constitution of India.

Date of Order: May 26, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. RS Saluja, for the petitioner.
Mr. LR Upadhyay, Deputy Government Advocate.
Mr. J.P. Joshi for respondent no.1
Mr. G.K. Vyas for respondent no.4-Dr.Adarsh Purohit.

BY THE COURT

By the writ petition, the petitioner has challenged the action of the respondents by which the respondents have allocated seats in various MD/MS Diploma Course and for which Pre.PG Medical Examination were held in the year 2005.

According to the learned counsel for the petitioner, the seats reservation declared clearly reveal that there were five seats in Paediatrics Medicines at RNT Medical College, Udaipur and as per the reservation of the seats, 50% of the total seats were available in various

MD/MS Diploma Course for the candidates who stand in merit in Pre-PG Medical Examination, 2005 and 50% of seats for in-service doctors. According to the learned counsel for the petitioner, the respondents though had five seats in RNT Medical College, Udaipur in the above speciality, wrongly denied admission to the petitioner despite the fact that the petitioner secured 741 marks out of 1200 marks and that is the highest marks secured by a candidate in the aforesaid examination for the in-service candidate. According to the petitioner, to deny the speciality of the choice of the petitioner, the respondents adopted a strange mechanism and two seats out of which one seat is made for in-service candidate and other for non-service candidate under the State Government quota, both have been given to non-service candidates at Udaipur. The petitioner, by denying that opportunity of getting the admission in the Paediatrics Medicines, has been given allotment of seat in the subject of his second choice, i.e. M.D.(Radiologist).

The contention of the petitioner is that as per the Ordinance 378 (E) and (G), 50% seats are reserved for the State Government out of total number of seats. Thereafter, out of these 50% seats, 50% seats are reserved for in-service candidates while remaining 50% seats are reserved for the fresher, i.e., the persons who are not in-service. The petitioner applied under the category of in-service candidates for the

subject Paediatrics Medicines at RNT Medical College, Udaipur. As per Annx.-1, there were five seats for Paediatrics Medicines and 50% of it, at least two seats were available for the State Government quota and 50% of it, i.e. One was available for in-service candidates and other was available for non-service candidates. The petitioner since was holding the highest numbers, therefore, the petitioner was entitled to have admission in Paediatrics Medicines in in-service quota and that has been denied to the petitioner.

The respondents submitted reply to the writ petition and admitted that out of total seats, 50% of the seats are reserved for the State Government whereas 50% are reserved for the Central Government. This is also not disputed that the quota is divided 50% for in-service and 50% for non-service candidates but, according to the respondents, the seats are required to be filled in as per the regulations made by the Director General of Health Services, Government of India, New Delhi on the basis of the result of All India Competitive Entrance Examination for admission to PG Course on open merit. The respondents also admitted that the admission can be given only as per the Ordinance 278(E) and (G) of the University of Rajasthan. For further distribution of seats among general and reserved candidates categories shall be as per the rules and regulations of Medical Council of India and directives of

Hon'ble Courts in this regard.

According to the respondents, in fact there were only four sanctioned seats of MD in Paediatrics Medicines in RNT Medical College, Udaipur and out of which three had already been allotted for the Central Government candidates under 50% reservation quota while treating these vacancies as five because of the reason that the communication issued by the Medical Council of India dated 9.2.2005 was received late by the RNT Medical College, Udaipur, therefore, five vacancies were shown, however, the mistake was corrected before the process of admission. The respondents admitted that four seats were available in RNT Medical College, Udaipur of PG Course in Paediatrics Medicines.

The learned counsel appearing on behalf of respondent no.4 submits that the petitioner wrongly impleaded respondent no.4 in the writ petition because the petitioner cannot claim any relief against respondent no.4. The learned counsel for the petitioner could not dispute the contention of the learned counsel for the respondent but submitted that since the petitioner's case is that none has been given admission against the quota of the seats for which the petitioner is entitled (in-service quota for State), therefore, the petitioner is

seeking direction to give seat to the petitioner and since all the candidates have been directed to appear for re-counseling and for which the notice had already been issued on 17.5.2005, therefore, the position can be re-settled so far as the case of the petitioner is concerned where the petitioner has demonstrated that no seat has been given to in-service candidates against the seats reserved for in-service candidate.

I considered the submission of the learned counsel for the parties.

It appears from the facts of the case that even if the stand of the respondent-State is taken into consideration then it is clear that the two seats were reserved for the State Government quota, out of which 50%, i.e. One seat should have been offered to in-service candidates and one seat should have been offered to candidates of general category, i.e. non-service freshers candidates at RNT Medical College, Udaipur but none has been given admission to that course from in-service candidates.. Admittedly, that rule has not been followed, rather has been violated totally and no single admission has been given to in-service candidate, despite the fact that originally five seats were declared available and subsequently four seats were declared and out of which, two were reserved for State Government and out of that two, one was reserved for in-service candidates and another for non-service

candidates.

Therefore, the respondents are directed to call the candidates of all India category to whom admission has been given in Paediatrics Medicines at RNT Medical College, Udaipur for re-counseling and the seat may be offered first to the petitioner against the quota of State Government in in-service candidate and shift the candidate of seat of all India category to other speciality so as to give true effect to the re-counseling for which they have issued notice (Annx.4).

The writ petition of the petitioner is, therefore, allowed as indicated above.

(PRAKASH TATIA),J.

mlt.