

HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 1567 (MS) of 2009

Km. Kxhitiza Pandey. ...Petitioner.
Versus
State of Uttarakhand and another. ...Respondents

Mr. Sharad Sharma, Senior Advocate assisted by Mr. J.S. Bisht, Advocate for the petitioner.
Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for the State /respondents.

Hon'ble V.K. Bist, J.

1. Heard Mr. Sharad Sharma, learned Senior Counsel assisted by Mr. J.S. Bisht, Advocate for the petitioner and Mr. K.P. Uppadhyay, Addl. Chief Standing Counsel for the State/respondents and perused the entire material available on record.

2. Present writ petition has been filed by the petitioner for the following reliefs:-

- i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider and grant the benefit of reservation to the dependants of freedom fighters by extending it as against the entire seats advertised and not institution-wise and accordingly the petitioner's candidature may be considered in the third counseling scheduled to be held in the last week of Sept, 2009.
- ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to keep one post vacant in the M.B.B.S. Course which is likely to fall for the dependant of freedom fighter till the final decision of the writ petition,
- iii) Issue a writ, order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case,
- iv) Award the cost of the petition.

3. Brief facts of the case are that the respondent no.2 issued an advertisement inviting applications from the prospective candidates to participate in the selection

process of Uttarakhand pre-medical test-2009. The petitioner extended her candidature, and after being satisfied about her entitlement for benefit of reservation for the category of dependant of freedom fighters the petitioner succeeded with Roll No. 204415 and ultimately in the result she was placed at 578 in the combined rank. The first counseling was held on 05.07.2009 and the second counseling was held on 24.08.2009 in which only 2 candidates were selected in MBBS Course against 3 available seats reserved for dependants of freedom fighters. According to the petitioner, the last candidate who has been selected against the reservation for freedom fighters, namely, Snehi Kanyal, has scored 107 marks and in fact in the said category of dependant of freedom fighters the petitioner falls just next as she scored 106 marks.

4. Learned Addl. Chief Standing Counsel raised preliminary objection that the writ petition should not be entertained at belated stage when the petitioner himself participated in the counseling. According to him the petitioner was fully aware about all the conditions stipulated in the Brochure.

5. This Court is not satisfied with the arguments advanced by learned counsel for the petitioner as legality of action of the State can always be seen by the Court.

6. Learned Senior Counsel for the petitioner submitted that the 3rd seat has yet not been filled by the respondents in any of the Medical Colleges. He drew my attention to the Govt. Order dated 13th July 2001 wherein provision is made regarding vertical as well as horizontal reservation

of various categories. A bare perusal of this Govt. Order reveals that 2% horizontal reservation has been made for the dependants of freedom fighters. Mr. Sharad Sharma, learned Senior Advocate supplied a chart in relation to the total number of seats allotted to the general candidates in various colleges. The chart demonstrates as follows:-

Sl. No.	Name of College	Course	Seats	2%	Total 2%
1.	Govt. Medical College Pauri	MBBS	85	1.66	20.5+4.1
2.	V.K. Forest Trust Medical College, Haldwani.	MBBS	85	1.66	129.9= (General) = 2.59 = 3 seats total.
3.	Guru Ram Rai-Dehradun	MBBS	35	0.7	
4.	Seema dental-Rishikesh	BDS	50	-	
5.	V.K. Dental College, Jolly grant	BDS	40	-	
6.	Sri Narayan Swami Dental- Dehradun	BDS	40	-	
7.	Himalyan Institute Jolly Grant, Dehradun.	MBBS	50	1	

7. According to the learned Senior Counsel for the petitioner 129.6 seats have been allotted for general category and in view of the Govt. Order dated 13th July, 2001, keeping in view the strength of seats allotted to the general category total 2.59 i.e. three seats are to be allotted to the dependants of freedom fighters. He argued that once the reservation is being provided to the candidates in accordance with the Govt. Order dated 13.07.2001, the respondents cannot sub-classify it by administration decision. He pointed out the Information Brochure for Uttarakhand Pre Medical Test-2009 in which it is mentioned that horizontal reservation shall be given college-wise. He argued that this can not be done as Sub Clause Ka of Clause-3 of the Information Brochure vertical reservation has not been made college-wise. He argued that college-wise classification is not only illegal but also contrary to the Govt. Order dated 13.07.2009, as

horizontal reservation should be given against the total number of seats allotted to all the Medical Colleges. He further submitted that by making college-wise reservation merely one or two medical colleges will get horizontal reservation and dependants of freedom fighters will never get admission in other medical colleges. It is further argued that the action of the respondents by putting horizontal reservation college-wise is against the constitutional mandate because it is a social reservation. He relied on para-7 and 9 of the judgment of **Hon'ble the Apex Court reported in (1995) 5 Supreme Court Cases-173, Anil Kumar Gupta and others vs. State of U.P. and another.**

8. On the other hand Mr. K.P. Uppadhyay, learned Addl. Chief Standing Counsel informed the Court that he has received instructions in the matter. He submitted that reservation is being given individually institution-wise and same is not being given collectively for all the medical colleges. He submitted that vertical reservation has also been given college-wise and, therefore, the respondents have rightly given college-wise horizontal reservation. Learned Addl. Chief Standing Counsel made it clear that vertical as well as horizontal reservation is being provided in all the medical colleges college-wise.

9. Though this Court finds force in the arguments of learned counsel for the petitioner as this Court is of the view that college-wise reservation cannot be done as such reservation, if permitted, will certainly affect the overall percentage of reservation. But in view of the statement of learned Addl. Chief Standing Counsel that reservation to all categories was given college-wise, no relief can be

granted in favour of the petitioner as by now almost all admissions are over and grant of relief as prayed in the writ petition will create great confusion and will also disturb the admitted students. Consequently, the writ petition is dismissed.

10. Let certified copy of the order be supplied to the learned counsel for the petitioner today itself on payment of usual charges.

(V.K. Bist, J.)
25.09.2009

NCM: