

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.18/2005.

BUDDHI PRAKASH SHARMA & ORS.

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

[With Appln(s). for directions and Office Report]
With
W.P(C)No.104/2005
[With Appln.(s) for directions and Office Report]; and
W.P(C)No.105/2005
[With Appln.(s) for ex-parte stay and Office Report].

Date : 28/02/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner (s)Mr. A. Mariarputham, Adv.
W.P.(C)No.18/05Ms. Aruna Mathur, Adv. for
M/s Arputham, Aruna & Co., Advs.

W.P.(C)No.104/05Mr. K. Sukumaran, Sr. Adv.
Mr. B.V. Deepak, Adv.
Mr. Nishe Rajen Shonker, Adv.
Mr. Balraj B., Adv. for
M/s. T.T.K. Deepak & Co., Advs.

W.P.(C)No.105/05Mr. Mukul Rohtagi, Sr. Adv.
Ms. Varuna Bhandari Gugnani, Adv.
Mr. Ravikesh Sinha, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent (s)Mr. Mohan Parasaran, ASG
Ms. Sandhya Goswami, Adv.
Ms. Sushma Suri, Adv.

Mr. Dhruv Mehta, Adv.
Mr. Mohit Chaudhary, Adv.
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Mr. Harsh Vardhan, Adv.

MCIMr. Maninder Singh, Adv.
Mrs. Pratibha M. Singh, Adv.
Mr. Angad Mirdha, Adv.
Mr. Kirtiman Singh, Adv.
Mr. Saurabh Mishra, Adv.
W.P.(C)No.18/05 etc.contd.

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Mr. Neeraj Kumar Jain, Adv.
Ms. Kavita Wadia, Adv.

Mr. R. Nedumaran, Adv.
Mr. V. Sundararaj, Adv.

Applicant in I.A.No.2Mr. A.D.N. Rao, Adv.

UPON hearing counsel the Court made the following

O R D E R

An All India quota of Post Graduate seats till last year, i.e., 2004-2005 was 25%. This Court in Sourav Choudhary v. Union of India (2003) 11 SCC 146 while directing the increase of percentage of seats on open merit on All India basis from 25% to 50%, directed it to be operational from the present academic year 2005-2006. By a letter dated 07th December 2004 issued by Directorate General of Health Services (DGHS) information was asked about the availability of Post Graduate seats in MD/MS/Diploma Courses under 50% All India quota but the information was required to be furnished after excluding the seats validly reserved for Scheduled Castes/Scheduled Tribes. The resultant effect of this letter is to reduce the seats of All India quota further from 25% downwards instead of 25% being increased to 50%. It is this action which is under challenge in the writ petition which, inter alia, seeks quashing of the communication dated 07th December 2004 and seeks directions for filling up of the seats in Post Graduate Degree/Diploma Courses on All India basis of 50% of the total seats.

Having regard to the fact that counselling was to commence on 03rd March 2005, this Court directed, on 21st February 2005, the DGHS to send a communication to Chief Secretaries of all the States and Union Territories to furnish to DGHS as to

W.P.(C)No.18/05 etc.contd.

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what will be the total number of seats in Post Graduate courses if worked out on the basis of 50% of the total number of seats without any exclusion. The Chief Secretaries were directed to furnish the requisite information to DGHS by 24th February 2005. It was further directed that at the information received from Chief Secretaries shall be tabulated by DGHS and brought to the notice of this Court today.

Pursuant to directions dated 21st February 2005 the compliance affidavit has been filed along with detail about the available seats in the year 2004, total number of Post Graduate seats about which information was given by respective States/Union Territories to DGHS pursuant to its letter dated 07th December 2004 and such of information which has been supplied by some of the States pursuant to our order dated 21st February 2005. The facts and figures given in the summary provided by DGHS make an interesting reading and it also shows how on account of total non-application of mind in issue of the letter dated 07th December 2004, this situation has arisen resulting in this otherwise totally avoidable litigation. It is not in dispute that till 2004-2005 when All India quota of seats was 25%, the number of Post Graduate seats was worked out on the basis of total seats without any exclusion. It is because of the letter dated 07th December 2004 requiring the information about 50% of All India quota after excluding the reserved seats that this mess has been created. None permitted DGHS to change the basis this year. The result of communication is that in many States the total number of Post Graduate seats has gone down than what it was when the

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All India percentage was 25% instead of it being almost double since the direction of this Court was that from this academic year it would be 50%. In this state of affair learned Additional Solicitor General frankly submitted that he is not in a position to support the letter dated 07th December 2004 or the stand taken by the respondent-Government in the affidavit.

From the material placed before us, it is evident that some of the States have not furnished the requisite information to DGHS. We direct that the total number of Post Graduate seats on All India basis would be 50% of the total number of seats without any exclusion and the calculation of seats would be done on the same basis which was adopted when All India quota was 25%.

Chief Secretaries of States/Union Territories, who have not supplied the requisite information to DGHS on this basis, are directed to supply the same latest by 5.00 p.m. on 01st March 2005 and file a Compliance Affidavit in this Court. Failure to supply the information would be seriously viewed as a violation of this Court's direction by the concerned Chief Secretaries.

The counselling will commence on the dates already announced as we have no doubt that entire information about availability of the seats would be furnished by all concerned to DGHS.

We direct the Secretary, Health to file an affidavit, after such inquiry as he may think necessary, placing on record the person/persons responsible for creating this mess and confusion which resulted because of the communication dated 07th December 2004 but for which this litigation could have been avoided.

W.P.(C)No.18/05 etc.contd.

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The affidavit shall be filed within four weeks. List thereafter.

(Subhash Chander) (V.P. Tyagi)
Court Master Court Master

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