

MS. SWATI GUPTA  
v.  
STATE OF U.P. AND ORS.

FEBRUARY 2, 1995

[R.M. SAHAI AND S.C. SEN, JJ.]

*Constitution of India. Arts 16, 14, 19 and 21—Vertical reservation of 65% general seats in medical college in U.P.—Whether violative of constitutional guarantees and ratio in Indira Sawhney v. Union of India, [1992] Supp. 3 SCC 217—Subsequent circular of the University—Clarification regarding different categories—Horizontal as well as vertical reservation.*

The petitioner claimed that reservation of 65% in general seats in medical colleges in U.P. was violative of Arts. 16, 14, 19 and 21 of the Constitution and the ratio laid down in the *Indira Sawhney case*.

After filing of the petition under Article 32, the U.P. Government issued another notification and clarified its policy in respect of reservation in the medical colleges. The clarification outlined horizontal reservation on total seats to be filled through the five specified groups in the prescribed percentage fixed for each group. The candidates of the said five categories selected on the basis of merit would be kept under the categories of SC/ST/OBC/General to which they belonged and there was no additional reservation of 15% seats for them. Vertical reservation for SC/ST/OBC would be 21%, 2% and 27% seats respectively and 30% seats in each of these categories would be reserved for ladies.

Disposing of the petition, this Court

**HELD :** 1.1 The amended circular has rectified the glaring infirmities by making vertical reservations on a 50-50 basis for general and SC/ST/OBC categories and reservation of 15% seats in various other categories has been made horizontal i.e. extending to all seats. [830-F-G]

1.2 The grievance of the petitioner does not survive with the Government's clarification that candidates selected on merit belonging to the five specified horizontal group would be adjusted in general or reserved category depending on the category they belong to. Such reserva-

A tion is not contrary to what was laid in *Indira Sawhney*. [831-A]

*India Sawhney and Ors. v. Union of India and Ors.*, [1992] Supp. 3 SCC 217, referred to.

B CIVIL ORIGINAL JURISDICTION : Civil Writ Petition No. 777 of 1994.

(Under Article 32 of the Constitution of India.)

C Ashraf Chaudhary, Ms. M. Chaudhary, Shahid Rizvi and R.N. Keshwani for the Petitioner.

Dr. Rajeev Dhawan and R.B. Misra for the Respondent.

Pradeep Misra for the Respondent No. 3

D The following Order of the Court was delivered :

E The petitioner who appeared for the Combined Pre-Medical Test of 1994 held in the State of U.P. Challenged a circular issued by the Lucknow University based on a letter dated 17th May 1994 issued by the Secretary, Government of U.P. It was claimed that reservation of 65% general seats in the medical colleges was violative of the constitutional guarantee under Articles 16, 14, 19 and 21 of the Constitution and the ratio laid down by this Court in *Indira Sawhney & Ors. v. Union of India & Ors.*, [1992] Supp. 3 SCC 217. After the petition was filed the Government issued another notification on 17.12.1994 clarifying its stand in respect of reservations. The relevant portions of it are extracted below :

F "In continuation of G.O. No. 2697/Sek-14/v- 94/III/93, dated 17.5.94, on the above subject, I am directed to say, clarifying the Govt. policy that horizontal reservation be granted in all medical colleges on total seats of all the courses to be filled through combined Pre medical test (C.P.M.T.) 1994 as given below :

- |   |   |            |
|---|---|------------|
| G | 1. Real dependents of freedom fighters          | 05 percent |
|   | 2. Sons/daughters of deceased/disabled soldiers | 02 percent |
| H | 3. Physically handicapped candidates            | 02 percent |

- 4. Candidates belonging to hill areas 03 percent A
- 5. Candidates belonging to Uttaranchal areas 03 percent

2. The above reservation would be 'horizontal' and the candidates of the above categories, selected on the basis of merit, would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong. For example, if a candidate dependent on a Freedom Fighter selected on the basis of reservation, belongs to the Scheduled Caste, he will be adjusted against the seats reserved for scheduled caste. Similarly, if a physically handicapped candidate selected on the basis of reservation belongs to other backward class or general category, he would be adjusted against the seats reserved for other backward classes or general category. B C

3. I am also directed to say that "vertical" reservation shall be granted in all medical colleges on total seats of all courses to be filled through C.P.M.T. 1994 as given below: D

(a) Scheduled Caste candidates	- 21 percent	30 percent seats in each category reserved for ladies"	E
(b) Scheduled tribe candidates	- 02 percent		
(c) Other backward class candidates	- 27 percent		

In the earlier circular the provision for reservation which is relevant read as under : F

"Out of the total seats being filled up through the C.P.M.T. 1994, 35% seats are reserved for the candidates belonging to the general category and remaining 65% seats shall be for the reserved categories which are limited to the percentage mentioned against the following categories of the candidate : G

Reserved Categories		Percentage of the reserved seats
1. Backward Classes	27%	(of them 30% reserved for ladies)

H

A	2. Hilly area	3%	(of them 30 per cent reserved for ladies.)
	3. Utrakhand Area	3%	(30% reserved for ladies)
	4. Scheduled Caste	21%	(30% reserved for ladies)
B	5. Schedule Tribes	2%	(30% reserved for ladies )
	6. Actual dependents of the freedom fighters	5%	(30% reserved for ladies)
C	7. Daughter/sons of soldiers who became handicapped or killed in action/war.	2%	(30% reserved for ladies)
	8. For handicapped candidates	2%	(30% reserved for ladies.)
D		65%	

The remaining seats will be of the General category in which 30% reservation will be for the ladies."

E Reservation of 65% resulting in reducing the general category to 35% was undoubtedly violative of Article 16. Further by reserving 30% of the general seats for ladies the general category shrunked to 5% But these glaring infirmities have been rectified by the amended circular. Reservation of 30% for ladies has now been confined to paragraph (3) of the amended circular. Dr. Dhawan, the learned senior counsel appearing for the State clarified that he has instructions to make a statement on the amended circular that now there is no reservation for ladies in the general category.

G Similarly, the other defect in the circular reserving 35% seats for general category has been removed. The vertical reservation is now 50% for general category and 50% for scheduled caste, scheduled tribes and backward classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in C.P.M.T. into two categories- H one, general and other reserved. Both have been allocated 50%. Paragraph

2 of the circular explains that candidates who are selected on merit and happen to be of the category mentioned in Paragraph 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in *Indira Sawhney* (supra). Whether the reservation for such persons should have been made or not was not challenged, therefore, this Court is not required to examine it.

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B

In the result this petition is disposed of by directing that in view of the circular issued by the Government on 17.12.1994 clarified by paragraph (2) the grievance of the petitioner cannot be said to survive. The interim order passed by this Court staying the declaration of results is discharged.

C

A.G.

Petition disposed of.