

N. Deepak and Etc. Etc. Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-30-1994

Reported in : AIR1995Kant137; ILR1994KAR3614; 1995(1)KarLJ167

Judge : S.A. Hakeem and ;T.S. Thakur, JJ.

Acts : [Constitution of India](#) - Article 14; Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 - Sections 14; Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993 - Rules 1(3), 9, 10, 11, 12 and 15; Karnataka High Court Act, 1884 - Sections 9; Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Appointment etc.) Rules, 1992

Appeal No. : Writ Petition Nos. 28779, 31485, 29567, 28361 and 31556, etc., of 1994

Appellant : N. Deepak and Etc. Etc.

Respondent : State of Karnataka and Others

Advocate for Def. : Sri Yoganarasimha, Govt. Adv.

Advocate for Pet/Ap. : M/s. Vagdevi Associates, ;C.N. Kamath, ;B. Sreenivasa Gowda, ;Ashok R. Kalyan Shetty, ;B. Veerabhadrapa, ;T.P. Rajendra Kumar, ;Vigneshwar S. Shastri, ;M.C. Narasimhan and ;Sri Patil & ;Patil As

Judgement :

ORDER

Hakeem, J.

1. These petitions are before us on a reference made under section 9 of the Karnataka High Court Act.

2. The petitioners in all these cases are students who, having passed the Pre-University Course, had taken Common Entrance Test (C.E.T) with a view to join professional courses, viz., Engineering, Medical and Dental courses. In the result announced by the Special Officer, Common Entrance Test Cell (C.E.T. Cell), the respective ranking of the candidates for Engineering, Medical and Dental courses was published in the newspapers. The candidates were, inter alia, intimated procedure under which a spot selection of the candidates for the aforesaid courses would be made. The petitioners were called for counselling for admission to Engineering course in the first instance and, upon being selected for the first year B.E. course in the free seats category, a provisional admission order was issued to them on the same date having regard to the choice of the discipline and the college made by the candidates for the said course. Subsequently, in response to the publication calling upon the candidates coming within the specified rankings to appear before the Spl. Officer, C.E.T. Cell, for counselling regarding selection to the first year M.B.B.S. course, the petitioners approached the venue where the selection was being made. But they were turned out and their claim for consideration of the free medical seat was not entertained on the ground that they were already selected for the B.E. course. It transpires that on the respective dates when the petitioners appeared for counselling to claim a medical seat, and subsequently, a number of students having a lower ranking than the petitioners were selected to the Medical/Dental course in the free seat quota. The petitioners have, therefore, challenged the validity of Rules 10 and 11 of the 'Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993' (as amended by notification dated 22-6-1994) ('the Rules' for short) and the instructions issued by the C.E.T. Cell in pursuance thereof as being illegal, arbitrary and violative of Article 14 of the [Constitution of](#)

[India](#) and sought for a writ of mandamus directing the C.E.T. Cell to consider their cases for admission to the M.B.B.S. course for the academic year 1994-95.

3. On behalf of the petitioners, Sriyuths B. Veerabhadrapa, H. K. Vasudeva Reddy and M. C. Narasimhan among others, led the main arguments which were adopted in the other cases. The following contentions are urged, viz..

(i) That Rules 10 and 11 of the Rules are contrary to the guidelines issued by the Supreme Court in the case of 'Unni Krishnan J. P. v. State of Andhra Pradesh', : [1993]1SCR594 ;

(ii) That the instructions issued by the C.E.T. Cell regarding the procedure for counselling and spot selection are not only without authority of law, but contrary to Rule 11 of the Rules.

4. The questions that arise for consideration are :--

(1) Whether Rule 10(3A) of the Rules is invalid or violative of Article 14 of the Constitution

(2) If not, what is the correct interpretation to be given to the same ?

(3) Whether the instructions issued by the Special Officer, C.E.T. Cell are in furtherance of the Rules or contrary to Rule 10(3A) ?

(4) What is the relief that can be granted in the circumstances ?

5. The questions involved turn upon the interpretation of the Rules and the instructions referred to above.

6. The method of selection adopted for the first time in the State known as 'spot selection', came to be introduced under the rules framed by the State by virtue of its rule making power under Section 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. The case of the State is that the said Rules were framed in pursuance of the directions and guidelines issued by the Supreme Court in Unni Krishnan's case : [1993]1SCR594 (supra). The relevant provisions of the Rules which are necessary for the purpose of answering the

contentions raised in these cases are stated hereunder.

7. From Rule 1(3) of the Rules, it is clear that the expression 'courses' means either Engineering, Medical or Dental and it has to be understood in the same context wherever it occurs. Rule 9 of the Rules, inter alia, enjoins upon the Entrance Test Committee to prepare two separate general merit lists --one for Medical and Dental Courses and the other for Engineering course of all the eligible candidates who have appeared for the Common Entrance Test. Wide publicity of the said lists had to be given. Rule 10 of the Rules which provides the method or modality of actual selection process reads as under:--

'10. Selection of candidates to free seats:--(1) Subject to Rules 12 and 12A, out of the lists prepared under Clauses (a) and (b) or sub-rule (1) of Rule 9, another merit list called 'Eligibility list for Medical and Dental Course' and 'Eligibility lists' for Engineering Course' shall be prepared in the following order:--

(a) Seats for General Category;

(b) Seats reserved under sub-rule(l) of Rule 12;

(c) Seats reserved under sub-rule (4) of Rule 12.

Provided that no reservation shall be made to candidates belonging to clauses (ii) to (iv) of Rule 12(1) referred to in (b) above if the required number of candidates belonging to the said categories have been selected under (a) above.

(2) For selection against the seats reserved under Clauses (i) to (v) of Rule 12(1) for Committee constituted under Rule 14 will interview the candidates and prepare a rank list based on attainment in sports, N.C.C., Scouts/Guides and performance in the entrance test and the extent of handicap, as the case may be. The Committee may also interview the candidates seeking seats reserved under clause (vi) of sub-rule (1) of Rule 12;

(3) No candidate seeking reservation for admission under sub-rule (4) of Rule 12 shall be admitted to any institution unless he produces a validity certificate obtained under Rule_7 of Karnataka Scheduled Castes, Scheduled Tribes and

other Backward Classes (Reservation of Appointment etc.) Rules, 1992, 'at the time of allotment';

(3A) (a) After the publication of the General Merit Lists under sub-rule (1) of Rule 9 of these Rules, the Special Officer (Examinations) shall, for the purpose of allotment, cause publication of details as to the place, dates, time, category, rank number, etc., in respect of such allotment in one or more leading newspapers having wide circulation in the State for the information of the intending candidates;

(b) The Special Officer (Examinations) shall display conspicuously at the allotment centre full and comprehensive details regarding the seats being filled through the Common Entrance Test against 'Free seats' and 'Payment seats' in the various Institutions and the courses referred to in clauses (i) and (ii) of sub-rule (3) of Rule 1 of these. Each day, a specified number of candidates shall be called by the Special Officer (Examinations) based on inter se merit and reservation. Every candidate shall be required to give his choice of course and institutions either under 'Free Seats' or under 'Payment Seats' as the case may be, when he gets his turn for allotment.

Provided that a non-Karnataka candidate shall not be entitled to claim reservation against any of the reserved categories and shall opt for payment seat only.

(c) Each candidate shall also pay the fee prescribed for the first year through a crossed Demand Draft made payable to the Special Officer (Examinations) at Bangalore and produce all the relevant original documents for verification. The Special Officer (Examinations) shall cause verification of all the original documents produced by the candidate and after ascertaining that the documents so produced are proper and in order, he shall issue allotment order to the candidate as per the rank and choice of the candidate and with reference to the vacancy position obtaining at the time of allotment. The Allotment Order shall contain the details of the Institution and Course to which the candidate is allotted and also the category of seat to which he has been allotted. Once the allotment order is issued, it shall be final and the candidate shall not have any more opportunity to exercise his option again.

(d) With the issue of Allotment Order, the candidate shall be deemed to have been finally admitted.

(e) After getting the Allotment Order, such candidate shall join the respective institution to which he is allotted within the period specified. If the candidate fails to join within the said specified period, his allotment shall automatically stand forfeited without any further notice to the candidate. Vacancies thus arising shall be filled by Special Officer (Examinations) in the manner specified in cl. (g). It shall be binding on the institutions to allot the candidates allotted by the Special Officer (Examinations) to join the institutions to which they are allotted;

(f) After the last date fixed for the candidates to join the institutions to which they are allotted, the Principals of the respective institutions shall send the list of candidates who have joined, to the Special Officer (Examinations) within one week therefrom;

(g) The Special Officer (Examinations) shall also prepare lists called 'Waiting list of medical and Dental Course' and 'Waiting list of Engineering Course' based on merit and reservation from out of the General Merit lists prepared as per clauses (a) and (b) under sub-rule (1) of Rule 9 of these rules for filling up any casual or drop out vacancies in these categories:

Provided that admission to such seats shall not be made after the last date fixed by Govt.

(4) The provisional admissions to each college shall be intimated to the Committee which shall scrutinise to the extent necessary and approved the admissions of all eligible candidates. Any candidate whose admission is not approved by the Committee shall be discharged from the Institution.

(5) Request for change of Institution or Course shall not be entertained.'

Rule 11(1) (a), (b) and (bb) of the Rules reads as under:--

'11. Selection of candidates against payment seats:--

(1) The following candidates shall be eligible for selection for admission to the payment seats:--

(a) All candidates who have been selected for admission to a seat in any institution under the 'free seats' category and who have also opted for selection against 'payment seats';

(b) Candidates remaining in General Merit List;

(bb) The selection of candidates against 'payment seats' shall be made in the same manner as specified under sub-rule (3A) of Rule 10.XXX XXX XXX XXX'

Rule 15 of the Rules provides for penalties for furnishing false or incorrect documents and rejection of the application on that ground. It further provides for forfeiture of seat if already allotted.

8. Along with the application form for appearance to Common Entrance Test. 1994, the C.E.T. Cell has issued an instruction brochure containing, inter alia, the scheme of allotment of seats and general instructions. The scheme of allotment of seats is stated as under:--

'Candidates are not required to indicate their options in the application form for preferred colleges or course. The general rank list will be published on the basis of the results of the CET examination and the marks obtained in the PUC/equivalent qualifying examination. Candidates will be called in the order of rank subject to reservations for SC, ST, A, B, C, etc., for spot allotment of seats according to the availability of vacancies under each category and option exercised on the spot by the candidate. Full arrangements will be made for prominent display of information regarding the number of free and payment seats in all the courses and colleges in the State, with detailed break up such as the number of seats in each course and college reserved for each category namely, GM, SC, ST, Urban, Rural, Free, Payment etc. As and when each allotment is made, the vacancy position will be immediately updated on the computerized electronic display board.

This will enable every candidate to have full information regarding the Free and Payment seats available in the different colleges and courses when his/her turn

comes to exercise the choice.'

It is further stated therein that the instructions are based on the existing rules and in case of amendment to rules, the revised rules as on the date of admission will apply.

9. It is not disputed that the general merit list was published as provided under R. 9(1) of the Rules. Thereafter, the Special Officer, C.E.T. Cell, issued the '1994-95 MBBS/ BDS/BE free seats on the spot counselling and admission notice', inter alia, drawing the attention of the Karnataka candidates who had obtained Provisional Ranks in the CET 94 to the instructions regarding 'on the spot' counselling and admission procedure for MBBS/BDS/BE free seats. Weekly schedules for such counselling and allotment were issued through publication in the news papers under which a specified number of candidates were called on various dates. The said instructions, according to the learned Government Advocate, are purported to be in pursuance or in aid of the Rules. The instructions, which are crucial and relevant for the purpose, are extracted hereunder:--

'6. On the Spot Counselling & Allotment Procedure:

1. The total number of seats available this year for allotment by the CET Cell under the Free Seat Quota in various Courses & Colleges will be notified shortly.

2. The actual availability of seats at any given point of time in each discipline/category/colleges/course process will be constantly displayed on Five Electronic Display Boards (3 Engineering, 1 Medical and 1 Dental) kept at the Admission Centre for the benefit of the candidates and their parents/ guardians.

I. Registration : The candidate must arrive at the allotment venue well on time on the appointed day (i.e. latest by 8.30a.m. or 1,30 p.m. depending on whether he has been called for the forenoon or afternoon session respectively). On production of his original CET admission ticket, the candidate and one parent/guardian will be allowed to enter the allotment venue. He should immediately proceed to the registration counter situated in the cellar and register the time of his arrival.

(Note : On-the-spot-counseling and allotment will commence at 9a.m. and 2p.m. sharp on each day. If the candidate does not report on time for the counselling session he has been called for, he will be eligible only for such seats that may be available on any subsequent day at the time of his actual reporting at the allotment venue and completing all pre-allotment formalities. Therefore, each candidate is advised to report on time in order to avoid forfeiture of his claim to be considered for allotment of a seat according to his CET Provisional Rank),

II. Verification of Documents : After registration, the candidate proceeds to the document verification counter and submits his original documents (along with photocopies) and the demand draft(s). He has to fill an application form giving all his relevant details. If everything is in order, the candidate is given counterfoil of the DD receipt challan and escorted to the ground floor.

III. Exercising Options : In the ground floor while awaiting his turn for counselling, the candidate has to fill an option form wherein, he indicates 3 options regarding discipline, college and course, in order of preference, after looking at the current seat (category wise / college wise / coursewise) availability status displayed on the On Line Electronic Display Boards. When a Line Monitor indicates to the candidates that his turn has come for counselling and allotment of seats, he proceeds with his parent/guardian to the corresponding Engineering or Medical/Dental allotment counter and hands over the filled option form. After counselling based on his rank, category and options, provisional allotment of a seat will be made subject to availability.

Note: 1. Option once exercised is final. No change will be permitted under any circumstances.

2. If the candidate is not interested in the discipline, college and course in which seats are available for allotment at his Rank and Category, he may forfeit his claim for the same and collect back his original documents and DD. However, if he has secured rank in both Medical/Dental and Engineering, he may come once again for spot allotment under the other discipline on the prescribed date and session.

3. If for any reason, the candidate is found to be ineligible, his claim will be rejected and his documents and DDs returned.

IV. Collection of Provisional Allotment Order : After a seat is allotted to him, the candidate should sign in a register maintained for this purpose and collect his provisional allotment order.

V. Refund of Excess Money Deposited if any : The candidate has to proceed to the bank counter located at the allotment venue, produce his provisional allotment order and DD receipt challan counterfoil and collect the excess amount deposited, if any.

VI. Post Admission Formalities : The candidate has to, at the earliest, report to the Principal of the College to which he has been admitted, with his provisional admission order and await the starting of classes. His original document and fee will be transferred in due course to the college concerned, by the CET cell. There is no provision for subsequent change of course of college.

7. Miscellaneous Information :

1. If the candidate or his authorised representative fails to appear for the On-the-spot-counseling on the day and session specified, the candidate automatically loses his claim for allotment of a seat on the basis of his CET-94 Provisional Rank, without any further notice or reference. The candidates are therefore advised to check their rank, as declared by the CET cell at any of the following offices. CET cell, DTD, DME, Noda Centres where the candidates had registered their application forms, nearest University which will enable them to appear in person on the correct date and time.

2(a). If a candidate has obtained ranks in both Medical/Dental and Engineering he has to choose between the two disciplines. Thus, if he is allotted a seat in one of the disciplines (for eg, MBBS) he forfeits his claim for the consideration for allotment under the other disciplines (for eg. Engineering or BDS).

2(b). Similarly, if the candidate is allotted a seat under the Free Seat Category, he forfeits his claim for consideration for allotment under the payment seat category.

2(c). Similarly, a candidate belonging to one of the BC Categories or SC/ST Categories or Special Categories, such as Defence, Sports, Freedom Fighters etc. he can choose a seat either under general merit or the concerned category, subject, of course, to availability at his rank option and category. If he is allotted a seat, he loses his claim for consideration under all other categories.

3. All admissions are provisional. If at any time, it is detected that the candidate has secured admission on the basis of false information (regarding qualifying examination marks, number of years of study in Karnataka, number of years of study in rural areas, BC/SC/ST Caste and Category, annual family income, date of birth etc.) this provisional admission will automatically stand cancelled without any further notice or reference and the candidate and his parent/ guardian will also be liable for such criminal/ civil action as may be deemed necessary by the CET cell and or the State Government.

4. Mere calling for or appearance at spot allotment does not confer a right on the candidate for allotment of a seat. Seats will be allotted subject to availability and acceptance by the candidate and keeping in view his inter se rank, category and options. The CET cell is also not responsible for any incidental expenses incurred (on to and fro travel, boarding and lodging charges etc.) in this regard by the candidate and parent/guardian or authorised representative.

5. In case all the seats in a particular discipline, course or category are exhausted before all the candidates called for the On-the-spot-counseling are covered, allotment for the particular discipline/course/category will be stopped and the CET cell is not responsible for any non-availability or non-allotment of seats to the rest of the candidates under the particular discipline, course or category on this account.

6. If the candidate for any reason, cancels his admission, refund of his documents and amount deposited as fee will be possible only if he intimates to the CET cell his desire to cancel the seat well before the end of the allotment process. Otherwise, he forfeits the fee amount. Also after such a cancellation, the candidate forfeits his claim for consideration for a fresh allotment to some other discipline/ college/course under the same/different category.

7. Any change in the allotment schedule or venue, due to unforeseen circumstances, will be notified to the candidates only through the newspapers. No individual intimation will be sent to the candidates.

Note : All non-Karnataka candidates interested in Payment Seats are requested to await further announcements in the newspapers regarding allotment of Payment Seats. Allotment of Payment Seats will be taken up only after the on-the-spot allotment of all the Free Seats is over.

10. Although the relevant rules, viz., Rules 10 and 11 providing the procedure for selection to the provisional courses were initially challenged, it was fairly conceded by the learned counsel for the petitioners that there is nothing inherently wrong with the said rules as they are capable of being interpreted to achieve the object as provided under the scheme/guidelines by the Supreme Court in Unni Krishnan's case : [1993]1SCR594 . It is further not seriously disputed that statutory Shape is given to the scheme in framing the statutory rules which would prevail. However, it is contended that the crucial instructions referred to above are prima facie contrary to the letter and spirit of Rules 10 and 11. There appears to be considerable force in this contention. A perusal of the Rules makes it clear that forfeiture of seats is permissible only under Rules 10(3A)(e) and 15, and not otherwise. Whereas forfeiture of the seat is provided under note 2 to instruction 6(2)(iii) when the candidate does not accept the seat offered; under instruction 7(1),-- if the candidate did not turn up in pursuance of the publication of the notice, he loses his claim. Under instruction 7(2)(a), if the candidate is allotted a seat in one course, he forfeits his seat in the other course. Under instruction 7(2)(b), if free seat is granted in any of the courses, the candidate is not eligible for Payment Seat. Under instruction 7(a), if the candidate cancels his seat, he forfeits his claim for consideration for allotment in some other discipline/college/course under the same or different category.

11. Sri Yoganarasimha, learned Govt. Advocate, was at pains to justify the correctness of the procedure under the instructions which, according to him, was intended to avoid a candidate cornering a seat on merit in one course and taking a chance for a seat in another, thus opting for the latter seat and foregoing earlier

allotment. According to the counter, such procedure would unnecessarily create occurrence of vacancies of seats in general merit quota; and it is only to avoid such contingency, based on previous experience and to avoid litigation, counselling as per instructions has been resorted to. As such, it is urged that the petitioners having voluntarily opted and secured a seat in the Engineering course of his/ her choice, will not be entitled to exercise his/her option for the second time. We are unable to agree with this contention for obvious reasons. If the Rules do not warrant denial of a candidate's right to choose his/her course, such a right cannot be taken away executive instructions, which are without any authority of law and not warranted by the Rules.

12. The procedure adopted as per the aforesaid instructions, in our opinion, is demonstrably contrary to the letter and intent of Rule 10(3A) of the Rules in so far as no choice of taking one of the two courses is provided to the candidate who may come within the ranking entitling him to a seat in both the courses, either initially or on a subsequent date, on account of fluctuation of the ranking in a course of his choice.

13. In the Law Lexicon by P. Ramanatha Ayer, the expression 'choice' is defined as under :-

'Act of choosing; deciding between two alternatives. 'Choice' or 'selection' means the power to determine between two or more. No choice or selection can be made when there is no alternative.'

Similarly, the meaning of 'option' given by the learned author is as under :--

'A wish; power or right of election, a choice, preference; a right granted to.....

The word 'option' is a synonym for 'choice' or 'preference'.

Option, Choice. We speak of option only as regards one's freedom from external constraint in the act of choosing: one speaks of choice only as the simple act itself. The option or the power of choosing is given : the choice itself is made : hence we say a thing is at a person's option,'

The expression 'choice' in Rule 10(3 A)(b) has to be reasonably and harmoniously interpreted only in the aforesaid context. Hence, when the rule says that 'every candidate shall be required to give his choice of course and institutions.....when he gets his turn for allotment', has to be necessarily interpreted as a choice between the two courses given to the candidate, may be on different dates, when he can exercise the same. Thus, by merely accepting the Engineering seat given on an earlier date, he does not lose his right to make his choice in favour of medical seat if he becomes entitled to it according to his ranking as prevailing on the subsequent date when he is again called for counselling. This position further becomes clear on a combined reading of all the clauses in Rule 10. For instance, clause (g) of Rule 10 enjoins upon the Special Officer to prepare a waiting list of Medical and Dental course and waiting list of Engineering course based on merit and reservation from out of the general merit lists prepared as per clauses(a) and (b) under Sub-rule(l) of Rule 9 of the Rules for filling up any casual or drop out vacancies in these categories. This cannot be interpreted to mean that a less meritorious candidate who may be at the bottom of the list in either of the courses and who was not eligible to be selected on the date of counselling should be preferred to a more meritorious candidate who may, according to his ranking, be entitled to such a seat. Sub-rule (4) of Rule 10 further states that the admissions to the colleges are to be treated as provisional and any candidate whose admission is not approved by the Committee shall be discharged from the institution.

14. As can be seen from the instructions to the candidates for preferring applications, they are prohibited from indicating any preference to a course or institution. The test itself is common entrance test covering all the professional courses. As such, the occasion to exercise a choice arises only when the candidate is called for counselling and spot allotment. Having regard to the apparent object of the rule in pursuance of the policy to simplify the procedure for allotment, the procedure should be so devised as to give a reasonable opportunity to the candidate who is eligible for admission to the course or college of his/her choice even if on the first date of counselling he/she was not entitled to such course, but who may become entitled to the course of his/her choice at a subsequent stage when such vacancy occurs on account of the fluctuation of the ranking. It is true that, in such process, certain practical difficulties may occur and

certain amount of inconvenience may be caused to the selection authority. But such difficulty or inconvenience is not insurmountable. The policy of admission should be so devised as to subserve the object of the rule and in the best interest of the meritorious candidates.

15. In this connection, we may also refer to Rule 11 providing for selection of candidates against payment seats. It is stated that all candidates who have been selected for admission to a seat in any institution under the 'Free Seats' category who have also opted for 'Payment Seats' shall be eligible for the latter. It also includes candidates remaining in general merit list. This rule makes it clear that the object of the rule is not to debar or foreclose forever the choice of the candidate who has in fact been selected to a seat in a course in a particular college and who may wish to change the same to a payment seat on account of various personal reasons, including his inability to join an institution at a distant place etc. In other words, the authorities cannot permanently debar a candidate from changing his mind to take a payment seat in a course and institution of his choice, if he is eligible to the same. Therefore, the intention of the rule cannot be to compel a candidate to choose the only course which is offered to him and foreclose his choice of another course to which he may be entitled at a subsequent date which can be only construed as a 'Hobson's' choice : the option of taking the thing offered or nothing.

16. According to the instructions (supra), if a candidate secures an Engineering seat during spot selection, he will become ineligible for allotment of a seat in Medical or Dental course when he gets his turn for allotment to such course on a subsequent date even if he fits into the ranking on such date. Admittedly, under the procedure adopted as per instructions, the candidates are required to appear for counselling before the C.E.T. cell on two different dates. In all the cases before us, the candidate is called in the first instance only for selection to the Engineering seat when he can only make a choice of one of the several disciplines within the Engineering course and the institution or college which he prefers. According to the instructions, if a student secures an Engineering seat on that occasion, he will become ineligible for allotment of Medical/Dental seat when his turn comes for counselling in respect of that course. This is exactly the purport of sub-clause

(2)(a) under instruction 7. It is not disputed that in this system while the position of cut off rank to a particular course on a particular date may be known, a candidate will never know his ranking on a subsequent date when his turn comes for counselling for the next course. For instance, a candidate with rank No. 1500 who may be eligible for an Engineering seat but does not come within the ranking to secure a Medical seat on the day of spot allotment/counselling, may become eligible on a subsequent date to secure a seat in Medical course as well on account of the fluctuating ranking, which is inherent in the system, would be denied a seat as he had already been selected for a Engineering seat. The resultant position is that on a subsequent date when a lower ranking candidate appears for selection, he may be allotted a Medical seat since the position of ranking will be in his favour. That being the position, the reasonable apprehension of the candidate is that by refusing an Engineering seat on an earlier date in the hope of getting a Medical seat when his turn comes for counselling for the latter, he may stand to lose both, if his ranking on the subsequent date is lower than the cut off rank for the latter course. Hence, the system works to the detriment and disadvantage of higher ranking candidates who are called upon for counseling/allotment of Engineering seats appear earlier resulting in the candidates with lesser merit being allotted a Medical seat when their turn comes up later. This, in our considered opinion, could never be the object sought to be achieved under Rule 10(3A) of the Rules providing for an opportunity to the candidates with higher ranking to make a choice of the course which they desire to pursue. In other words, it could never be the object of the Rules to sacrifice merit by giving a technical twist or interpretation to it in the form of instructions which will have contradictory effect. In fact, neither the CET cell nor the Special Officer is delegated with any power to frame such instructions.

17. In 'A. Er._Franklin Joseph_(DR) v. State of T.N.', : [1994]1SCR924 , the Supreme Court has disapproved 'the principle of treating a rule on the basis of convenience and relied upon the following observations in 'Pradeep Jain v. Union_.of India', : (1984)IILLJ481SC :--

'The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our

founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country..... Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available..... '

18. It cannot, therefore, be disputed that in all cases of selection in a professional college, the meritorious candidates who become eligible to a course during the selection process should be selected to a course of his choice and the fact that he has been already selected to one course without affording him a reasonable opportunity of making a choice to take another course, even though he may become entitled to it, would be violative of Art. 14 of the Constitution. As can be seen from the course of events, in the very nature of things, it is not possible for a candidate to speculate regarding his/her chance of being selected in the Medical course which he/she may prefer. It is only when his/her turn for counselling comes for the said course that he/she can be said to have an opportunity to make a choice between the Engineering course to which he/she was already selected on an earlier date and the Medical/Dental course to which he/she will be eligible as on the subsequent date.

In *M/s. Girdhari Lal & Sons v. Balbir Nath*, : [1986]1SCR383 , explaining the rule of interpretation, the Supreme Court has slated thus:--

'So we see that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote/advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if

necessary.'

19. In construing a provision, all its relevant parts should be considered together and their true effect ascertained. Hence, it is not difficult to find out the true purport behind the procedure prescribed under Rule 10(3 A) of the Rules. In the circumstances, the exercise of option to choose one course or the other, in our opinion, is one integral process. In our opinion, therefore, the meaning of the expression 'choice' and 'option' in the Rules is plain and unambiguous and does not warrant the understanding by the authorities on the basis of which the impugned instructions are issued. The instructions to that extent are, therefore, not only contrary to Rule 10(3 A) of the Rules but clearly violative of Art. 14 of the [Constitution of India](#). Therefore, the denial to the petitioners of a course of (their choice merely on the ground that they had been selected on an earlier date for the Engineering course cannot be sustained,

20. In *Shrawan Kumar v. D.G. of Health Services*, : AIR 1994 SC1448 , a question arose as to the procedure to be followed to admission to M.B.B.S./B.D.S. when allotment of seats to the said course was on personal appearance basis (as in the instant case). The scheme approved by the Supreme Court, in our opinion, would give an idea as to what should be the reasonable procedure that may be adopted in implementing the scheme under the Rules. The scheme so approved contemplates an entrance examination which the candidates take without giving their preference of course and college choice. The relevant clauses in the said scheme provide as under:--

'1. xxx xxx xxx3. A merit list equal to total number of seats plus a waiting list of 50% of the total number of seats shall be prepared;

4. The successful candidates whose names are included in the merit list shall appear in person for allotment to seats on notified dates;

5. About 200 candidates will be called for personal appearance on a notified date in accordance with the rank in the merit list, i.e., ranks Nos. 1 to 200 on the first day, ranks Nos. 201 to 400 on the second day and so on.

6. The seats available will be displayed on computer screen and the notice-boards and thus the candidate will stand informed about the available seats at the time of allotment;

7. On the day of personal appearance the allotment will be made in order of merit, out of the seats available for allotment at his/her rank, through computer;

8. Candidates will have an option to either

(a) Select any one of the seat/seats available

OR

(b) Reject the available seat/seats and forfeit the claim for a seat under all-India quota.

xxx xxx xxx13. The first round of allotment by personal appearance would be from August 1 to August 14 covering all the successful candidates including waiting list candidates.

xxx xxx xxx15. The second round of allotment by personal appearance will be for (a) candidates who were allotted a seat in the first round and who wish to change their allotted college/ course and wish to join the same against vacancies arising due to non-joining of the candidates allotted in the first round of personal appearance; and (b) for candidates on the merit list who could not be considered for allotment in the first round;

16. The candidates who were allotted a seat in the first round and who desire to change their allotted college/course for the vacancies arising due to non-joining of allotted candidates will have to apply to DGHS in writing by registered post. Their applications, duly forwarded by Principal/Dean of the allotted colleges should reach the DGHS by registered post on or before September 5. They will have to give an undertaking that their earlier allotment will stand cancelled and the seat will be vacated by them in case the change is made to them;

xxx xxx xxx19. The candidates who have been allotted a seat in the second round will have to join the college within 15 days from the date of their personal

appearance; xxx xxx xxx

21. It is seen that two rounds of allotment by personal appearance are contemplated in which the candidate can effectively exercise his choice for the course and the college of his preference. There is no reason why R. 10(3A) should not be interpreted in the light of the said decision.

22. Having held that the instructions are not in consonance with Rule 10(3A) of the Rules and the denial to the candidate of making a choice, or rather, a meaningful choice, the next question that arises for consideration is as to the nature of relief that can be granted in such a case. In *Punjab Engineering College, Candigarh v. Sanjay Gulati*, : [1983]2SCR801 , dealing with a similar situation, viz., spot admissions, the Supreme Court has stated the relevant considerations to bring about the distinction of equities between the students wrongly admitted and those unjustly excluded. It is stated thus (at pp. 581-82):--

'Cases like these in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul : once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions.

XXX XXX XXXIt is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian

Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made.'

23. The situation in the instant case does not appear to be so serious as in the above cited case. In fairness to the petitioners, we may say that no specific mala fide intention is pleaded. The dispute revolves round the correct interpretation of Rule 10 of the Rules and the instructions. It transpires that five Medical seats are available on account of some selected candidates not joining the Medical Colleges. A few more seats may be available depending upon further drop outs in the Medical course,

24. In view of the above discussion, we make the following order:--

The writ petitions are allowed. Rule is made absolute.

While holding Rules 10 and 11 of the Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993, to be valid, Notes 1 and 2 to instruction 6(2)(iii) and instruction 7(2)(a) and (b) of the Instructions issued by the Special Officer, Common Entrance Test Cell, are held to be ultra vires of Rule 10(3A) of the said Rules and violative of Art. 14 of the Constitution of India.

Five of the petitioners are entitled to be allotted the aforesaid available seats in accordance with their ranking.

If further vacancies in the M.B.B.S. course occur by any further selected candidates not joining for any reason, or being found ineligible in terms of Rule 15, those available seats shall be allotted to the other petitioners (according to their ranking); failing which the remaining number of petitioners are directed to be admitted to the Medical course by appropriately increasing the number of seats and allotted to the Colleges in the State, having regard to their relative ranking.

It is made clear that the selections already made/implemented but not challenged so far by the candidates shall remain undisturbed.

In the circumstances, the parties shall bear their own cost.

25. Petitions allowed.

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