

Naveen Jamval and Others Vs. Arvind Kumar Kankane and Others

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Court : Allahabad

Decided On : Feb-11-2000

Reported in : 2000(2)AWC880; (2000)2UPLBEC1537

Judge : G.P. Mathur and ;Bhagwan Din, JJ.

Acts : Uttar Pradesh State Universities Act, 1973 - Sections 28(5)

Appeal No. : Special Appeal Nos. 1282, 1301 and 1374 of 1999

Appellant : Naveen Jamval and Others

Respondent : Arvind Kumar Kankane and Others

Advocate for Def. : Ashutosh Srivastava, Adv.

Advocate for Pet/Ap. : Ashok Bhushan and ;Sidhartha, Advs.

Judgement :

G. P. Mathur, J.

1. All the threespecial appeals arise out of Writ Petition No. 41814 of 1999 filed by Dr. Arvind Kumar Kankane, and, therefore, they are being disposed of by a common order.

2. The controversy involved in the appeals relates to admission in Post Graduate courses in the State Medical Colleges. Under the current system, an entrance test

is held and separate merit list of general and reserved category candidates is prepared. The candidates are then called for a counselling strictly according to their ranks in the merit list. They are shown the list of the seats which are available in different Medical Colleges. The candidate may opt for one of the available seats in which case the slot chosen by him gets closed for the candidates who are lower in rank. A candidate has the option not to opt for any seats, which is available at the time of the counselling, and in such a case he is kept in the waiting list. A candidate opting to remain in the waiting list is not considered again in that round of counselling. Sometimes the candidates after having opted for a seat do not join the course or leave the course within a short time. The seats left vacant after the first round of counselling and also such seats which have fallen vacant on account of non-joining or leaving of a candidate are determined. In order to fill in these vacant seats, a second round of counselling is held in which candidates lower in rank than the candidates who had been given opportunity in the first round of counselling and also those candidates who had opted for being kept in the waiting list are allowed to participate in order of their rank in the merit list. However, those candidates who had opted for a seat in the first round of counselling are not allowed to appear in the second counselling.

3. The writ petitioner Dr. Arvind Kumar Kankane appeared in U. P. Post Graduate Medical Entrance Examination, which was conducted by Medical College, Meerut, on 10.1.1999. The result of the said examination was published on 1.4.1999 in which the petitioner secured 179th rank. The appellants of Special Appeal No. 1282 of 1999. viz.. Dr. Naveen Jamval. Dr. Prakash Kumar Khaitan and Dr. Km. Sudha Yadav secured 86. 215 and 238 rank respectively. The writ petitioner wanted admission in Master of Surgery Course (M.S.) but by the time his turn came in the first counselling held on 17.8.1999. the seats in the said course had already been allotted to those candidates who had secured higher rank in the merit list. He. therefore, opted for admission to Doctor of Medicine Course (hereinafter referred to as M.D.) and was given admission in Medical College. Gorakhpur, where he joined on 24.8.1999. About a month thereafter, an advertisement was issued on behalf of Director General. Medical Education and Training. U. P., notifying that a second round of counselling would be held in Medical College, Meerut on 6th and 7th of October, 1999 and only such

candidates who had not been allotted or had not opted for any seat in the first round of counselling would be allowed to participate. In view of the aforesaid condition, the petitioner was excluded from consideration in the second round of counselling. He then filed the writ petition praying that the condition which prohibits those candidates who had already been allotted seats in the first round of counselling from consideration in the second round of counselling be quashed and he may also be considered for allotment of seat in the second round of counselling according to his rank in the merit list.

4. A learned single Judge disposed of the writ petition by the judgment and order dated 30.9.1999 and the operative part of the order in which certain directions were given to the authorities is being reproduced below :

'Whenever after first counselling any subsequent counselling is decided to be held by the respondents for allocation of remaining seats as well as the seats which have been fallen vacant subsequent to the first counselling because of candidates who were allotted seats during first counselling refusing or failing joining, the respondents will issue a public advertisement at least in one daily newspaper, which in any case is normally done for every counselling. The advertisement will disclose the seats which have fallen vacant out of seats which were allotted during first counselling. A copy of the said advertisement may also be transmitted to each of the Medical Colleges which are covered by combined entrance test and copy of the same will be pasted on the notice board of the college for information of the students of that college. The first date of each subsequent counselling will be reserved for the candidates who were allotted seats at the earlier counselling and who wish to change their seats. It will not be necessary for the respondents to notify each candidate, who has opted for a seat during first counselling, individually. Out of the candidates, who were allotted seats at the first counselling, who turn up for subsequent counselling on the first date which is reserved for such students, distribution of seats which have fallen vacant subsequent to first or earlier counselling will be done according to merit. The change of seat to these students who have been allotted seats during first or earlier counselling will be permitted only in respect of seats which have been fallen vacant after first counselling and not of the left over seats.'

5. The appellants of Special Appeal No. 1282 of 1999, who were not parties to the writ petition, but felt aggrieved by the judgment and order of the learned single Judge moved an application for recalling of the judgment but the same was rejected with certain clarification on 11.11.1999. Special Appeal No. 1282 of 1999 has been filed by them challenging the main judgment and order dated 30.9.1999 of the learned single Judge and Special Appeal No. 1301 of 1999 has been filed challenging the order dated 11.11.1999 passed on the recall application. The Director General of Medical Education and Training. U. P., has also preferred Special Appeal No. 1374 of 1999 against the judgment and order dated 30.9.1999 by which the writ petition was disposed of.

6. In order to appreciate the contention raised at the Bar, it is necessary to notice the relevant provisions laying down the scheme for admission to Post Graduate Courses in Medical Colleges. In exercise of power conferred by Section 28 (5) of U. P. State Universities Act, 1973, as amended from time to time and other powers enabling him in this behalf, the Governor of U. P. issued a notification on 9.10.1990 for implementation of Junior Residency, Senior Residency and Dental Residency Scheme and also laid down the policy and procedure for filling in the seats, and also specifying the number thereof, in various Degree and Diploma Courses in all the Government Allopathic Medical Colleges, Dental College and K. G. Medical College. Lucknow. Clause 8 of the notification provides that a competitive entrance examination shall be held every year for registration and residency admission to three years' Post Graduate Degree Courses and the said examination shall be held for 75 per cent institutional seats after excluding 25 per cent seats specified for All India Entrance Examination. It further provides that department wise selection and registration of Residents in the Colleges under the scheme shall be made on the basis of merit-cum-option and the said merit shall be determined on the basis of marks obtained in the competitive examination. The scheme- was amended by notification dated 30.3.1994 and the amended clause Gha and Anga reads as follows :

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mudh Js.kh ij miyC/klhVksa esa ls viuk pquko nsus dh muls vis{kk dh tk,xhA vkcaVu LFkk;h vkSj vfUregksxkA fdlh vH;FkhZ dks fo'ks'krk ;k dkyst cnyus dh vuqefr ughs nh tk,xhA

M-& tks vH;FkhZ Js.kh ds fy,miyC/k lhVksas ls fdlh lhV ds fy, mi[k.M&Pk; ds v/khu vius fodYi dk iz;ksxughs djrk gS mls izrh{kk lwph esa j[kk tk,xkA ;fn fdlh dkj.k ls dksbZ lhV fjDrgksrh gS rks mls izrh{kk lwph esa ls viuh lwph esas mudh Js'Brk ds vuqlkjvkcafVr fd;k tk,xkA fo'k'kKrk vkSj dkyst ds leLr vkcaVu fo'k'kKrkikB~;dze ds l= ds izkjEHk gksus ds nks ekl ds Hkhrj dj fn;s tk;saxs vkSj mldsckn ml l= ds fy, leLr izos'k cUn gks tk;saxsA*

7. The Meerut Medical College, which had been nominated by the Government for conducting the competitive entrance examination for admission to Post Graduate Courses, had issued an information brochure along with the application form. This contains the details regarding eligibility criteria, scope of examination, evaluation and certain other conditions. Condition C (iii) relating to eligibility Criteria reads as follows :

'(iii) A candidate who is already admitted to any post graduate course will not be eligible to appear in the U.P.P.G.M.E.E.-1999 for admission in any other speciality till he/she completes the course and passes the examination.'

8. The relevant part of conditions G (iv) and (vii) relating to result and selection read as follows :

'G (iv) At the time of counselling the available seats in the different courses and colleges shall be displayed. According to their merit the candidates shall have to choose any one of the available seats. The same will be allotted to them. Candidate once allotted a seat for any course/college shall not be allowed to participate in any subsequent counselling.

G (vii) Those candidates who, do not wish to opt for a seat in any course/college, amongst the seats available at their merit, can write 'Not opted' and they will be eligible for allotment in subsequent counselling.'

9. Sri Ashok Bhushan. who has appeared for the appellants in Special Appeal No. 1282 of 1999 and Sri Ashutosh Srivastava, who has appeared for Director General. Medical Education and Training, have submitted that under the Government Order issued on 30.3.1994, it was clearly provided that the allotment of subject (speciality) and college of study made on the basis of option exercised by a candidate is final and no candidate can be permitted to change the subject or the college. A candidate who does not exercise his option in the counselling will be kept in the waiting list and if at any subsequent state a seat falls vacant, the same shall be allotted on the basis of the option exercised by those who are in the waiting list and the same will be done strictly in accordance with the merit secured in the entrance examination. The information brochure contained the same conditions which was binding upon all the candidates who had appeared in the entrance examination. According to the learned counsel, the writ petitioner Dr. Arvind Kumar/Kankane had exercised his option and was allotted M.S. course in Gorakhpur Medical College and. consequently, he could not be permitted to take part in the second counselling. It is urged that the direction given by the learned single Judge is contrary to the Government Order and also to the conditions of examination. It would completely frustrate the scheme framed by the Government and is bound to result in reopening of the entire allotment done at the time of first counselling leading to uncertainty and delay in starting the course. Sri Ashok Khare, learned counsel of writ petitioner has, on the other hand, submitted that the policy of the Government has the effect of giving benefit to a less meritorious candidate as a person having lower rank gets a chance to get admission in a subject or College which was denied to a candidate who had higher rank in the first counselling as the same was not available at that time but became available later on.

10. The Post Graduate Medical Courses are conducted in various Medical Colleges in association with the hospitals on the recommendation of Medical Council of India. They stipulate that the Post Graduate student will be under the direct supervision of a Post Graduate Teacher in the speciality concerned and student teacher ratio in such courses will be maintained at 1:1. He is to prepare a thesis under the guidance of his teacher. A Post Graduate student is required to work as a regular doctor in the institution/hospital and has to attend to patients in

the particular department pertaining to his course of speciality. The recommendation of Medical Council further stipulates that in service, training should be given to the candidates who has to be a resident in the hospital campus with responsibility of management and treatment of patients. He is paid a residency allowance of Rs. 11,800 per month, which increases, to Rs. 12,700 by the 3rd year. In *Dr. Dinesh Kumar v. Mofi Lal Nehru Medical College, Allahabad*, 1987 (4) SCC 459. the Supreme Court directed that a uniform practice should be followed with regard to duration of Post Graduate Course throughout the country and a time schedule was fixed.. The emphasis on time schedule was reiterated in *State of Bihar v. Dr Sanjay Kumar Singh*, AIR 1990 SC 749 ; *Dr. Ajay Pradhan v. State of M. P.*, AIR 1988 SC 1875 ; *Dr. Subodh Nautial v. State of U. P.*, AIR 1991 SC 1131 ; *State of U. P. v. Anupam Gupta*, AIR 1992 SC 932 and *Dr. Inder Kant V. State of U. P.*, AIR 1993 SC 1215. It was laid down in these cases that the courses must commence on schedule and must be completed within schedule. In fact in *State of Bihar v. Dr. S. K. Sinha*, (supra), a warning was given that a serious view would be taken if there was violation of Court's order. In *Dr. Ajay Pradhan v. State of M. P.*, (supra), the Apex Court ruled in clear terms that no admissions should be granted in the midst of the session by making the following observations :

'.....The syllabus prescribed by the Medical Council of India for the Post Graduate Course in M.D/M.S. as also the student-teacher ratio of 1 : 1 virtually negate the right to admission to a seat falling vacant in the midst of or towards the end of the academic year to which it pertains.'

11. In *Anand S. Biji u. State of Kerala*. 1993 (3) SCC 80. the Apex Court introduced the system of counselling for giving admission in a particular subject and in a particular college on the basis of Post Graduate Entrance Examination keeping in view the suggestion made by the Medical Council of India and other authorities. It was clearly laid down in this case that allotment made will be firm and final. It may be noticed that there is acute shortage of trained and qualified doctors and public interest requires that seats should not be left vacant and as far as possible, effort should be made to fill in all the available seats in the Post Graduate Courses.

12. The direction given by learned single Judge permits those candidates who have already been granted admission to again exercise their option in the second counselling. The result of such a course of action will be that the seats, which had been allotted to them in the first counselling, will fall vacant and it will inevitably result in holding of a third counselling. This will virtually set a chain reaction in motion and the candidates who had participated in the second counselling would like to participate in the third counselling which would again create vacancy in the seats allotted to them in the second counselling. This will probably require a fourth counselling and completion of the admission process would take a very long time. This will naturally disturb the entire schedule and the courses will never be completed within a period of three years as laid down by Medical Council of India and emphasised in several decisions of Supreme Court. The period spent while studying a particular course would be completely wasted and the time devoted by a teacher to a student will also be wasted on account of change of subject or college by him. This kind of a system would inevitably result in loss of public money and a complete disturbance in the working of a Medical College.

13. The rationale behind the policy of not permitting a candidate who has been allotted a seat in the first round of counselling to participate in the second round is to attain finality to the admission process and to commence the course on the scheduled time. It may no doubt have the effect of depriving a candidate to opt for seat which may have fallen vacant subsequently on account of non-joining of a candidate. But in the matter of admission to a post graduate course in a medical college, the rights of a candidate have to be judged along with other equally important factors, viz., that the Government has to incur huge expenditure in maintaining and running of the medical colleges and hospitals, that a ratio of 1:1 is to be maintained between a student and a teacher, that a good salary is paid to a teacher from the public exchequer and that the candidate himself is paid sizable residency allowance and he is not just an ordinary student. No one can be permitted to exercise his rights in such a manner, which seriously affects the working of the system itself or tends to destroy it. The rights of an individual must give way to larger public interest.

14. The scheme of admission and the conditions imposed therein which is subject-matter of challenge in the writ petition giving rise to the present appeals is exactly similar to one in force in University of Delhi and a similar challenge was considered by a Full Bench of Delhi High Court in *Dr. Sandhya Kabra v. University of Delhi*, AIR 1993 Del 40. It was held that no change of course or hospital is permissible to the candidates who have already secured admission and further a candidate who during counselling expresses his desire to be placed on the waiting list and not to be allocated any subject will be free to choose any of the subject or institution which may become available subsequently in order of merit. In *Dr. Veena Gupta v. University of Delhi*, AIR 1994 Del 108 (FB), the Court examined the position where a seat though available but was not offered to the candidates at the time of first counselling on account of some fraud played by a person in authority. The contention that the seat should be offered to the candidates called in the first round was repelled with the following observations :

'Any seat which is available and which has not been included in any of the three counselling by mistake should be filled in in order of merit amongst the wait listed candidates. Normally, when a seat is available, the same should be included in the initial counselling. If by mistake a seat is not included in the initial counselling then the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for counselling, the result would be that all the candidates who took part in the first counselling, should be given a chance, in order of merit, to opt for the same seat. This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counselling. There again a chain reaction will start leading to the third Counselling. The effect of putting the seat back for counselling for all candidates would, therefore, be to upset the entire counselling which had already taken place. As such, even though it may seem unfair, there is no alternative, apart from leaving the seat unfilled, but to offer the said seat to the wait listed candidates.

Those candidates who have not been offered any seat or who have not accepted the allotment of any seat during the earlier counselling will, of course, be regarded as candidates who are wait listed. But there are cases where a candidate had

accepted a seat during counselling and paid the fees but (hereafter had not joined the course. It is to be seen that at a short notice, a candidate has to make up his mind during counselling as to which seat to accept. He is thereafter given 15 days time to join. It is possible that even though a candidate may have accepted a seat, thereafter for reasons best known to him, he may decide not to join course which he has selected. It will be unjust, unfair to punish such a candidate and not to consider him in future counselling if he has chosen not to join and has expressed his desire to be on the waiting list. Of course, if a candidate joins the course and thereafter chooses to resign or abandon then the said candidate cannot be placed in the waiting list. It is only those candidates who do not join any post-graduate course for any reason whatsoever, either because of not being offered, have not accepted or have not joined, who may be regarded as being on the waiting list.'

15. The scheme in the State of Haryana also provided that those candidates who had been given admission in any course or institution on the basis of option exercised by them would not be considered in the second counselling which may be held on account of some seats falling vacant. A Division Bench of Punjab and Haryana High Court took the view that it would be in the interest of justice and fair play that the advantage of the seats, which have fallen vacant on account of fortuitous circumstances, be offered to all the students on merit. This decision was reversed by a Full Bench in *Anil Jain v. Controller of Examination*, 1998 (3) ESC Cases 2016 and it was held as under :

'If the view taken by the two Division Benches in the cases mentioned above are adopted, it will unsettle the admission given to the students at the first counselling. As and when vacancies arise in each discipline, it will have to be put to all the candidates. If one, on higher rank wants to change his discipline and opt for the vacant seat, he has to be accommodated. Seat left by him in the discipline in which he was already admitted should again be thrown open to others. This process will continue for an indefinite period and that will adversely affect the course of study. To prevent such a tendency and to have a finality to the process of admission, their Lordships of the Supreme Court in *Anand S. Biji's case* (supra) observed that the allotment of seats made to a candidate in the first counselling should be firm and final. Views expressed by the Division Benches of this Court

referred to earlier are, therefore, unsustainable and we disapprove the same.'

16. We are in respectful agreement with the view taken in the two Full Bench decisions of Delhi High Court and the Full Bench decision of Punjab and Haryana High Court. The procedure laid down by the learned single Judge in the impugned judgment and order is not a workable one as it will set up a chain reaction of holding several counsellings resulting in loss of public time and money and considerable delay in the completion of the course. Such a course of action would also be in violation of the directives emphasized by the Apex Court in several decisions. The impugned judgment and order dated 30.9.1999. therefore, cannot be sustained and has to be set aside. The order dated 11.11.1999 merely clarified the judgment and order dated 30.9.1999 and. consequently, the aforesaid order also deserves to be set aside.

17. In the result, all the three special appeals succeed and are hereby allowed. The impugned judgment and orders of the learned single Judge dated 30.9.1999 and 11.11.1999 are set aside and the writ petition is dismissed.