

Dr. Sumita Mathur Vs. Union of India (Uoi) and anr.

Dr. Sumita Mathur Vs. Union of India (Uoi) and anr.

SooperKanoon Citation : sooperkanoon.com/752221

Court : Rajasthan

Decided On : May-12-1994

Reported in : AIR1995Raj102; 1994(3)WLC26; 1994(2)WLN294

Judge : V.K. Singhal and; Arun Madan, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Special Appeal (Writ) No. 212 of 1994

Appellant : Dr. Sumita Mathur

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Prem Ashopa,; N.C. Goel and; Mohd. Rafiq, Adv.

Advocate for Pet/Ap. : Ajay Rastogi, Adv.

Disposition : Appeal partly allowed

Judgement :

Madan, J.

1. This special appeal arises out of the order, dated 11th January, 1994, passed by learned single Judge of this court in S.B. Civil Writ Petition No. 4241/1993, whereby the learned single Judge dismissed the writ petition with the observations that seats lying vacant at Bikaner in the specialities of M.S. Gynaecology and

Obstetrics shall be deemed to have been surrendered to the State Quota for doing needful and the writ petition filed by the petitioner-appellant was consequently dismissed. Feeling aggrieved by the aforesaid order of the learned single Judge the appellant has preferred this appeal before this Court which came up for hearing before us on 15th March, 1994 when the appeal was admitted and notices were issued to the respondents. Subsequently the matter came up for hearing on 18th March, 1994, after service of the notices to the respondents and subsequently on 22nd March, 1994 and 23rd March, 1994, when the arguments were heard and concluded.

2. The facts giving rise to the filing of the present appeal briefly stated are as under:

The petitioner-appellant had appeared in the All India Central Pre. P.O. Entrance Examination held in the year 1993 for MD/MS/ Diploma Courses (Post-Graduate Course in Medicine). For the year 1993, the scheme in vogue for admissions in All India Quota was that merit lists were being issued from time to time according to preference given by the candidates. The first preference for the subjects given by the petitioner was Obstetrics and Gynaecology. It was contended by the appellant that she was declared successful in the aforesaid examination and on the basis of her performance and over all merit she was assigned position at serial No. 1816 in order of merit which was communicated to her vide letter, dated 13th April, 1993. It was further contended by the appellant that 25% seats out of total seats allocated for the State are reserved for MD/MS/Diploma courses which are to be filled up as per rules and regulations specified by the Government of India, Ministry of Health and Family Welfare and for which All India Entrance Examination was conducted by All India Institute of Medical Sciences (for short 'AIIMS'), New Delhi. It is further contended by the appellant that the candidates have to fill his/ her application forms on the basis of his/her choice as well as the college/Institution which he/she desires to study within the (sic) successful candidates. In compliance with the requirements of the rules the appellant also submitted her choice for study and college in the following order of preference: Subjects Colleges1. Gynaecology & Obst. Jaipur, Bombay2. Paediatrics Ajmer, Udaipur3. Ophthalmology Jodhpur, Ahmedabad4. Medicine Bikaner.

3. During the course of hearing Shri Ajay Rastogi, learned counsel for the appellant submitted before us that on the basis of performance of the appellant in the Pre-Entrance Examination for MD/MS; Diploma course in the year 1993, the appellant had secured position in order of merit at serial No. 1816; whereas candidates who were much lower in the merit were given admission for the above course by the respondents contrary to the criteria and the rules governing the admissions for the year 1993. In support of his contention Shri Rastogi placed reliance on Annexure 2 to the writ petition (Office Order, dated 19-6-1993) issued by the office of the Principal and Controller of S.M.S. Medical College, Jaipur and attached Hospital, Jaipur from the perusal of which it is clearly apparent that in continuation of the earlier office order, dated 19th May, 1993 issued by respondent No. 2 as many as 12 candidates ranging from Dr. Neha Mathur, merit No. 336 to Dr. Mini S. Nair, merit No. 1865, were given admissions to the subjects of their choice under the orders of Assistant Director General (ME), Directorate General of Health Services, Government of India, New Delhi vide order, dated 10th June, 1993 on the basis of their performance in All India Entrance Examination for the year 1993. For the sake of convenience and ready reference the aforesaid candidates who were given admissions in terms of the aforesaid order are indicated below:

Name of candidates	Name of Speciality
1. Dr. Neha Mathur	MS (Ophthal)
2. Dr. Asheesh Lal	MD(Gen. Med.)
3. Dr. Preet Singh Kang	MS (Gen. Sug.)
4. Dr. Sharad C. Agarwal	MD (Gen. Med.)
5. Dr. Tilak Raj Dangwal	MD (Gen. Med.)
6. Dr. Maneesha Jitendra Singhi	MB (Gynae. & Obst.)
7. Dr. Rajesh Purusho-thaman	MD (TB & Chest)
8. Dr. Seema Chawla	MD(Psych.)
9. Dr. Nirupma Sharma	MD (Pathology)
10. Dr. Hanish Sethi	MD. RD.
11. Dr. Jatinder Kumar Soni	MD(RT)
12. Dr. Mini S. Nair	D.G.O.

4. Learned counsel for the appellant invited attention of this court to the brochure/bulletin of information issued by AIIMS, New Delhi which pertains to All India Entrance Examination and admissions to MD/MS/Diploma Course and MDS courses for the year 1993. The introductory portion of the said brochure reads as under:

'In compliance of the Directives of the Hon'ble Supreme Court of India, the All India Institute of Medical Sciences will be conducting the competitive Entrance Examination on All India basis for admission to all postgraduate medical and dental courses on open merit for 1993. This entrance examination is being conducted exclusively for admission to 25% of seats of various postgraduate courses (MD/MS/Diploma) in different medical colleges and MDS courses against open seats as specified in the Directives of the Hon'ble Court. It will be governed by the rules and regulations specified by the Government of India, Ministry of Health and Family Welfare for the same from time to time.'

The said brochure which deals with MD/MS/Diplom courses at the first instance provides that the duration of MD/ MS course is for a period of three years commencing from the date of admission to the said courses, the candidates are eligible for admission after completion of compulsory rotating internship. For Diplomas the said brochure provides that the duration of the Diploma course shall be for a period of two years from the date of admission for candidates joining after completion of compulsory rotating internship. With regard to the Scheme of examination as contained in Rule 1 of the said brochure provides that the scheme for selection of candidates for admission to the post-graduate medical courses against open seats on All India basis shall be applicable to all Medical Colleges/Institutes throughout the country and the medical college/institute shall hereafter conduct competitive entrance examination of its own for the open seats on All India basis except those exempted by the Hon'ble Supreme Court. The States of Jammu and Kashmir and Andhra Pradesh have been excluded by the Supreme Court from the purview of of their judgments in this regard. Therefore the students having passed their MBBS examination from an institution in these States shall not be eligible to participate in All India Competitive Entrance Examination for selection of candidates against open seat. Relevant clauses of Rule 5 of the aforesaid brochure deals with the eligibility criteria for admissions to Medical Colleges which are reproduced below:

'Eligibility Criteria:--

(a) He/ She must be an Indian National.

(b) A candidate, who holds a recognised MBBS Degree from a recognised medical college or foreign medical degree included in the Schedules to the Indian Medical Council Act, 1956 and who has obtained full registration either from the Medical Council of India or any of the State Medical Councils after completing compulsory rotating internship shall be eligible to take up the competitive entrance test for admission to postgraduate degree or diploma courses.

The candidates who have obtained their MBBS degree from the Medical Colleges which are not recognised by Medical Council of India shall not be considered for admission.

Provided that a candidate who after passing the final qualifying examination (MBBS or the foreign recognised medical degree), is undergoing compulsory rotating internship/ practical training and is likely to complete the same by 31st March, 1993, will be eligible to take up the competitive test, but he/ she shall not be eligible for admission to the postgraduate course unless he/she has completed the compulsory rotating internship/ practical training and obtained full registration on or before 31 st March, 1993 (whichever is earlier) before admission to the post-graduate medical course to which he/she might have been selected'.

5. Relevant clauses of Rule 6 of the said brochure dealing with the option for Medical Courses/ Medical Colleges provides as under:

6. Each candidate will be allowed to give option in order of preference for admission to post-graduate medical courses for maximum of 6 degrees and/or diploma course and at a maximum of 8 medical colleges/institutions.

(i) Options once given cannot be changed.

(ii) The options given in the computer sheet will be considered as final.

(iii) Some of the Universities are having regulations that candidates who are already pursuing the PG Course in their University or in another University are not eligible for admission till they complete the course. The candidates who are already pursuing the PG Course either through All India Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility condition of

that University in this regard. Refusal of admission to such candidates shall not be the responsibility of DGHS. Such candidates may apply at their own risks and costs.

7. Rule 13 of the aforesaid brochure deals with the method of selection and admission. Sub-rules (h) and (u) of Rules 13 are very relevant for the purpose of deciding the controversy at issue which are reproduced below:

'13(h) -- The allotment shall be made to the candidates considering the following criteria -- merit, subject choice, college choice (as mentioned in the computer record sheet by the candidates himself/herself and recorded in the floppy disc by AIIMS) and eligibility as per the availability of seat at his/her rank; each subject choice will be considered in all the college choices mentioned by the candidate in order of preference. In case no seat is available in any of the subject and college choices no allotment will be made to such a candidate. All such candidates to whom no allotment has been made will be reconsidered for allotment on the availability of vacancy due to non-joining of the candidates allotted in the previous list depending upon the availability of time as per the time schedule fixed by Hon'ble Supreme Court of India. The allotments made will be firm and final'.

'13(u) --'Change of subject/college from one place to another is not permitted'.

8. We are of the view there is no violation or departure from the aforesaid rules made by the respondents in this case.

9. According to the learned counsel for the appellant one seat was reserved for the appellant pursuant to order, dated 23rd July, 1993, by learned single judge of this court till the final disposal of the petition. Learned counsel further submitted that the said reserved seat is still available for allocation in favour of the appellant which may be provided to the appellant in any Medical College of her choice in the colleges and specialities indicated in para 1 of the writ petition. Learned counsel for the appellant also placed reliance upon Annexure 1 to the writ petition which is certificate, dated 13th April, 1993, which indicates the rank of the appellant on the basis of her merit position as 1816 subject to fulfilment of all the eligibility conditions as laid, down in the brochure for admission to post-graduate/diploma

courses for the year 1993.

Learned counsel for the appellant further invited the attention of the court to office order, dated 19th May, 1993, issued by the Principal and Controller of S.M.S. Medical College, Jaipur (respondent No. 2, Annexure A to the writ petition) wherein the last date of joining is mentioned as 26th May, 1993. Reliance was also placed on notice, dated 13th July, 1993, issued by respondent No. 2 (Annex. 3 to the writ petition) wherein the allocation of seats at five Medical Colleges of the State at Jaipur, Ajmer, Bikaner, Jodhpur and Udaipur as a result of re-shuffling of seats (specialitywise) including vacant seats was permitted by the respondents to the respective candidates.

Shri Ashopa, learned counsel for the respondents, has contended that since the appellant was not eligible for admission in any medical college on the basis of her performance and merit and since the change of college or place of admission was not permissible under the rules therefore, the appellant was not considered eligible for admission to any of the medical colleges.

10. In the present case when the first allotment was made, the petitioner was not in merit list and hence being not eligible, could not be considered. So was the position when the second merit list was prepared. The Director General of Health Services, surrendered the seats thereafter. There was counseling under the directions of Delhi High Court in which it was directed that the candidates; of the State quota are not to be considered. The name of the petitioner was excluded in this counselling because of the directions given by the Delhi High Court. The submission of the learned counsel is that at the time of second allotment there were two more vacancies, one of it had arisen because of the resignation and other because the candidate having not joined. This fact was not brought to the knowledge of the Director General and, therefore, the name of the petitioner was not considered in the second allotment.

11. The candidate who was given the seat in the State Quota has applied for cancellation of his name under the Central Quota and his application was pending. The Principal passed an order on 19-7-1993 which was made effective from 1-6-1993 but because of the order having been passed on 19-6-1993, the candidature

of petitioner was not considered in the second allotment. It may be possible that if the information was sent by the Principal the candidature of the petitioner and the like candidates could have been considered, but it was on account of the delay on the part of the Principal that the candidature of the petitioner could not be considered in the second allotment.

12. Learned counsel for the petitioner has contended that without any notice or opportunity given to the appellant, the State Government passed an order on 13th July, 1993 from which it came to the notice of the appellant that the available vacant seats have been surrendered by DGHS to the State Government and that the State Government wanted to fill the seats of the Central Quota by making admission for the candidates who were selected in the State Pre-PG course and consequently having come to know of this fact the petitioner immediately moved to this court by filing S.B. Civil Writ Petition No. 4272/93 in which interim stay was granted by the learned single Judge of this court on 23rd July, 1993 directing one seat of MS (Gynaecology & Obdt.). According to the petitioner re-shuffling took place on 24th July, 1993. In our view this contention of the learned counsel for the petitioner is of no avail to the petitioner in view of the fact that the second counselling took place on 10th June, 1993 and even in the second counselling the name of the petitioner did not figure anywhere in the merit list and hence the question of the petitioner having been considered for allotment of vacancy in view of alleged reshuffling having taken place on 24th July, 1993, does not arise.

13. We had called for the records from the respondents on persuance of the appellant which were made available to the court for perusal and from the perusal of the said records we do not find any infirmity or violation of the rules having been committed by the respondents. Since the petitioner was neither eligible at the time of first counselling which took place on 5th May, 1993 or even on the date of second counselling took place on 10th June, 1993, the question of the petitioner having been considered for allotment of a seat in the speciality of her choice, does not arise.

14. We are in full agreement with the view expressed by Full Bench of Delhi High Court in the matter of Dr. Sandhya Kabra v. University of Delhi, AIR 1993 Delhi 40

wherein the learned Full Bench made the following observations and laid down the guidelines to be followed in the matter of admissions to the medical colleges in para 76 of the said judgment which reads as under (at p. 56)

'In brief, our conclusions in these writ petitions area as follows:--

(a) The time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case for admission to Post Graduate Courses should be strictly adhered to.

(b) The admissions will first be made to the All India Quota.

(c) Seats which are unfilled in the All India Quota will automatically lapse and will be available for the local candidates.

(d) No change of course or hospital is allowable to the candidates who have already secured admission.

(e) The courses will commence after all the admissions have been completed according to the time schedule fixed by the Supreme Court. If due to any error or otherwise any vacant seat is to be filled, the same should be done within two months of the start of the course. All admissions must come to an end thereafter.

(f) The order dated 10th July, 1991 of the Supreme Court has been misconstrued by the authorities. There is no departure from the time schedule laid down by the Supreme Court in Dr. Dinesh Kumar's case, 1987 (4) SCC 459 and the date of 7th February, mentioned in the order of 10th July, 1991 pertains only to the State of Goa who was the applicant when that order of 10th July, 1991 was passed.'

The learned Full Bench has observed in the said judgment with regard to the vacancy of seats that courses will commence after admissions have been completed according to time schedule fixed by Supreme Court and the vacancy should be filled up within two months of the start of the course.

15. The above observations of the learned Full Bench of the Delhi High Court are entirely in keeping with the law laid down by the Apex Court of the country in the matters of Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad, (1987) 4 SCC 122 : (AIR 1987 SC 2396), State of Bihar v. S.K. Singh, AIR 1990 SC 749 :

(1990) 4 SCC 624 wherein the Apex Court took serious view of the default being committed in not adhering to the time schedule for admission to the Medical Colleges.

16. Our view is further fortified from the judgment of the Apex Court in the matter of Anand S. Biji v. State of Kerala, 1993 (3) SCC 80 wherein the question which arose for consideration before the Apex Court was as to whether system of counselling introduced in place of existing system of issuing merit list was proper or not for admission to MD/MS/Diploma and MDS courses. The Apex Court held the system of counselling valid and proper and that the medical authorities should not adhere to the old system of releasing merit lists of the candidates for admission to the Medical Colleges.

Our view is further fortified by the earlier judgment of the Apex Court in the matter of Dr. Anupam Gupta v. State of U.P., AIR1992 SC 932 (paras 12 and 14): (JT 1992 (4) (SC) 422) wherein the Apex Court held that it would not be proper for the authorities to allow admissions to the candidates in the medical colleges belatedly and the delay in technical courses should not be condoned.

17. In the matter of Dr. Subodh Nautiyal v. State of U.P., AIR 1991 SC 1131 the Apex Court held that delay in technical courses such as admission to medical colleges in filling up the vacancies should not be condoned. In the matter of Ashok alias Somanna Gowda v. State of Karnataka, 1991 (4) JT (SC) 160 : (AIR 1992 SC 80) and in the matter of Sharwan Kumar v. DGHS, AIR 1992 SC 2202: (1992 AIR SCW 2661) the Apex Court held the system of counselling introduced for admission to the medical colleges replacing the existing system of issuing merit list for admission to Post-graduate/Diploma Courses for admission to the Medical Colleges to be valid and proper.

18. As earlier stated, at the time of issuance of the first merit list on 5th May, 1993 the petitioner was not eligible inasmuch as the concerned file was summoned by this Court from the department and the perusal of the said file was made in presence of the parties' counsel. Soon after two seats fell vacant as per the contention of the learned counsel for the petitioner and the contention -advanced by the learned counsel for the petitioner was that alternatively his client should be

accommodated in either of the two seats. In this respect it was incumbent upon the respondents to have intimated DGHS regarding availability of two seats which had fallen vacant and that was not done in this case, as a result of which the candidature of the petitioner could not be considered. It is for this reason that the appellant has raised the grievance that before the second allotment when the seats had fallen vacant and the petitioner was in merit, she should have been considered. Non-consideration by the Director General of the candidature of the petitioner deprived her valuable rights for getting education which is fundamental right enshrined under the [Constitution of India](#). The vacancies which had fallen vacant and surrendered by the Director General of Health Services to the State quota is the subsequent act. The respondents in their affidavit, dated 8th October, 1993, submitted that the counseling was to be done on 30th Sept. 1993 but the petitioner remained absent. Hence the petitioner cannot be permitted to blame the respondents for her own lapse having remained absent at the time of 2nd counselling and the seats could not be kept vacant indefinitely.

19. We have heard the rival contentions advanced by the learned counsel for the parties and have also perused the documents placed on the record including the counter affidavit filed by the respondents as well as the additional affidavit filed by the respondents as well as the additional affidavit of the petitioner and its counter reply filed by the respondents. It will be very pertinent to mention here that from the perusal of the aforesaid documents on the record as well as the counter affidavit filed by the respondents, the allocation of seats in the Medical Colleges to the eligible candidates was done by the respondents strictly on the basis of merit-cum-preference-cum-eligibility and the allotment was done strictly in accordance with the directions of Hon'ble Supreme Court keeping in view the following principles:

1. Merit,
2. Choice of subjects,
3. Choice of College, and
4. Eligibility.

20. Every candidate was allowed to make choice of six subjects in eight medical colleges and the admissions were given on the basis of All India Examination for Entrance to the Medical Colleges conducted by the respondents for filling up 25% PG seats in 70 medical colleges in 40 specialities including 2/ 3 years degree and 2/1 year diploma courses. We are of the view that in making the aforesaid allocation, the respondents had strictly followed the principles of merit-cum-preference cum-eligibility and that there was no departure from the rules. The respondents have been specific stand in their counter affidavit that the petitioner should not be allotted any seat in the two lists of allotment, dated 5th May, 1993 and 10th June, 1993, since the petitioner was not eligible for admission according to her merit position, hence the question of any preference having given to the petitioner in respect of two vacancies does not arise since the petitioner had no claim even on her merit position.

21. In view of the above observations, we are of the opinion that the petitioner was not eligible for admission at the time of first counselling since she was not in merit. In second counselling the name of the appellant could not be considered because the order, dated 19th June, 1993 was given effect from 1 st June, 1993. It is possible that the petitioner or any other meritorious candidate could have been considered against the vacant seat. Thereafter, the remaining seats were surrendered by the DGHS to the State Government, the order surrendering the seats was withdrawn and the counselling was directed in accordance with the decision of the Full Bench of the Delhi High Court in which the petitioner being already given admission in diploma course under the State quota was not considered. It is submitted that in accordance with the directions given by this court one seat in the Central Quota is still lying vacant and this vacancy is said to be on account of the stay order passed by this court. Mr. Asopa has submitted that his client has been given admission on the said seat. We do not think that the respondents could/have acted in violation of the stay order granted by this court. Therefore, we proceed on the assumption that one seat is still lying vacant. The order of surrendering the vacant seat to the State quota subsequently does not affect the stay order passed by this court, and therefore, candidate having the merit alone could be considered. The respondents are directed to consider the candidature of the petitioner or any other candidate who may deserve the

admission on the said seat. Proper notice on the notice Board may be affixed by the respondents in all the colleges giving 15 days' time for making applications and the said seat may be allotted to the meritorious candidates.

22. Consequently this special appeal is partly allowed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com