

# SUPREME COURT OF INDIA

Neelu Arora

Vs.

Union of India

Writ Petn. (Civil) No. 407 of 2001

(S. Rajendra Babu, K. G. Balakrishnan and P. Venkatarama Reddi JJ.)

24.01.2003

## JUDGEMENT

### **Rajendra Babu, J.**

1. These petitions are offshoot of a Scheme framed by this Court in *Sharwan Kumar etc. etc. v. Director General of Health Services and another etc.*<sup>1</sup>, prescribing the procedure to complete the process of allotment of 15 per cent of All India quota for admission to MBBS/BDS courses in various colleges in the country by Sept. each year. The said Scheme was modified pursuant to an order made in I.A. No. 10 of 2000 in WP (C) No. 443 of 1992 the dates fixed stand altered as indicated therein, but we are not concerned with the same in these proceedings. The last date for receipt of vacancy position is fixed as Sept. of each year and the II<sup>nd</sup> round of counselling is proposed to be taken during the period fixed therein.

2. Now in these petitions, it is contended that the II<sup>nd</sup> round of counselling for the All-India quota seats which was scheduled to be held have neither been held as the Pre-Medical Test (PMT) is not conducted nor counselling for the seats under the State quota is completed.

3. This Court in *Dr. Pradeep Jain and others, etc. etc. v. Union of India and others, etc.*<sup>2</sup>, and *Dr. Dinesh Kumar and others v. Motilal Nehru Medical College and others*<sup>3</sup> while disapproving of the total reservation on different scores in regard to admission of students in medical courses such as MBBS and post-graduate specialities, stated that "the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation preferences for students passing the qualifying examination." The primary consideration in formulating the scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background resulted in the formulation of the Scheme, which is sought to be interpreted or modified now. We should not read the Schemes framed by this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2001-2002, 1483 seats for MBBS course and 146 seats for BDS course, totalling 1629 seats were made available by the States under the 15% All-India quota. On the basis of the results declared by respondent No. 2, 2759 successful candidates were sent call letters. By the end of the first

round of counselling, 86 seats remained unfilled to be allotted in the second round. Some States or colleges informed their vacancy position under 15% All-India quota from first round of allotment amounting to 245 seats. However, some States have not intimated vacancy position even as late as 5-9-2001.

4. It is submitted that the candidates from these States who have been allotted seats in the first round of allotment may not have been given the course or college or place of their choice and in case later on they get the allotment of their choice under the State quota, then they will vacate the seats allotted to them under the All-India quota. Hence they apprehend that more than 700 seats will fall vacant once the counselling is conducted in the aforesaid States. Therefore, it is submitted that a third round of counselling is required to be held and that the vacant seats, if any, should arise in the 15 per cent. All-India quota seats should not be allowed to revert back to the States/colleges after September, 2001 and that instead successful and meritorious candidates in the All-India quota should be allotted these seats or such other orders as necessary may be passed.

5. As per Cl. 14 of the Scheme, if the Dean or the Principal of the concerned college does not notify the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein the seats allotted to the college will be treated as vacant and allotment of candidates will be made against these deemed vacant seats and it shall be the responsibility of the Dean or the Principal of the concerned college to give admission to those candidates. The second round of allotment by personal appearance will be for 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 for candidates on the merit list who could not be considered for allotment in the first round. It is thus the second round of counselling by personal appearance was to be concluded by a particular date.

6. When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh and others*<sup>4</sup> has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making midsession admissions and there cannot be

telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions.

7. Interlocutory applications filed shall stand disposed of in view of the order made by us in the main petitions.

8. These petitions shall stand dismissed.

Petitions dismissed.

<sup>1</sup>1993 (3) SCC 332

<sup>2</sup>1984 (3) SCC 654

<sup>3</sup>1986 (3) SCC 727

<sup>4</sup>2002 (7) SCC 258