

**SUPREME COURT OF INDIA**

Paramjeet Gambhir

Vs.

State of Madhya Pradesh

(S. Rajendra Babu and G.P. Mathur JJ.)

13.03.2003

**ORDER**

**S. Rajendra Babu, J.**

1. Leave granted.

2. These appeals by special leave have been preferred against the judgment and order dated 11th November, 2002 of a Division Bench of the High Court of Madhya Pradesh.

3. The appellants appeared in the Madhya Pradesh Medical and Dental Post-Graduate Entrance Examination which was held on 24th March, 2002. The appellant No. 1 Dr. Paramjeet Gambhir secured 141 rank while appellant No. 2 Smita Lakhotia secured 75 rank. The first counselling was held on 8th and 9th May, 2002. According to the appellants certain seats had been surrendered from All India quota much before 8th May but the same were not included in the counselling. Under MP Medical and Dental Post-Graduate Examination Rules, 2001 a candidate who stood higher in the merit list and who did not get a course of his/her choice could forego his/her claim in the first round of counselling and had a right to appear again in the second counselling. This was commonly known as "opt for waiting". Subsequently in the year 2002 new Rules were made and Rule 15.8 of the said Rules abolished the system of opt for waiting and provided that a candidate who due to any reason did not opt for any course, subject and college available at his/her turn as per merit shall forfeit all the rights for allotment of a seat. The appellants did not opt for any seat in the first round of counselling. Initially they filed writ petitions before the Indore Bench of Madhya Pradesh High Court challenging the vires of Rule 15.8 of 2002 Rules. Since the MP High Court Rules do not permit any question regarding vires being raised before the Indore or Gwalior Bench and the same can only be done at the principal seat at Jabalpur, the petitioners preferred fresh writ petitions at Jabalpur. In the reply filed on behalf of the State Government it was pleaded that a letter had been issued to the Director Medical Education on 19.8.2002 to provide equal opportunity to all the candidates including those who were bound to accept the subjects offered to them in the first counselling as per Rule 15.8 Pre PG Rules, 2002 despite their disinclination. It was further averred that Rule 15.8 had been amended by deleting the present rule and reviving opt for waiting system. The High Court disposed of the writ petitions with certain directions and one of the main direction is that the

counselling for seats which had fallen vacant before the first counselling which was held from 8th to 10th May, 2002 need not be done. In pursuance of the direction issued by the High Court, second counselling was done on 2nd/3rd December, 2002. A statement regarding the seats which are lying vacant and have not been filled up in view of the orders passed by the High Court has been given in the affidavit of Dr. GD Dixit, Professor, Department of Community Medicine, Mahatma Gandhi Medical College, Indore, which has been filed in this Court on 14th February, 2003. The statement shows that 11 seats including 4 in the discipline of Radio-diagnosis have not been filled up and they are lying vacant.

4. Learned counsel for the appellants has submitted that the appellants did not opt for any seat in the first round of counselling as certain seats in the prized disciplines of Radio-diagnosis, Orthopedics and Pediatrics which had been surrendered from All India quota had not been included in the aforesaid counselling. He has further submitted that in view of the clear stand taken by the State Government in the counter-affidavit filed in the High Court that the prohibition contained in the 2002 Rules to the effect that if a candidate due to any reason did not opt for any course, subject or college available at his/her turn as per merit shall forfeit all the rights for allotment of a seat had been withdrawn and the system of "opt for waiting" in the 2001 Rules had been revived, the appellants should have been given an opportunity to participate in the second counselling and in the said counselling all the vacant seats including those surrendered from All India quota should have been made available to them. Learned counsel for respondent Nos. 1 to 3 has urged that the second counselling has already been done in December, 2002 and any direction for admitting the appellants at this stage would disturb the academic session. Learned counsel has further submitted that some candidates who had secured higher rank than the appellants had opted for disciplines/colleges which were made available at the time of the first counselling in view of 2002 Rules and any direction in favour of the appellants at this stage would result in injustice to such candidates.

5. We have given our careful consideration to the submissions made by the learned counsel for the parties. It is true that in a series of decisions of this Court starting from *Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad & Ors.*<sup>1</sup>, *State of Bihar v. Dr. Sanjay Kumar Sinha & Ors.*<sup>2</sup>, *State of U.P. v. Dr. Anupam Gupta etc.*<sup>3</sup>, and finally *Medical Council of India v. Madhu Singh & Ors.*<sup>4</sup> it has been held that the time table for the course should be strictly adhered to and there is no scope for admitting students midstream which would be against the very spirit of the statute governing the medical education. However, in the present case what we find is that certain seats which had been surrendered from All India quota even before the first counselling had been done were not included in the said counselling. The second feature is that the State Government made a provision in the 2002 Rules whereby the system of opt for waiting was abolished but subsequently in the counter-affidavit filed in the writ petition it was pleaded that Rule 15.8 had been deleted and the old system of opt for waiting had been revived. In view of this stand of the State Government the appellants were entitled to participate in the second counselling wherein all the vacant seats/colleges should have been made available. The appellants filed the special leave petitions prior to the holding of the second counselling.

6. In view of the peculiar facts and circumstances of the case and in the interest of justice the appeals are disposed of with a direction to the respondents to consider the candidature of the appellants for giving them admission in a Post-Graduate course in the disciplines in which seats are still lying vacant taking into consideration their rank and choice. This may be done within 10 days of presentation of a certified copy of this judgment before the appropriate authority.

7. We make it clear that this order will not be used as a precedent either for holding third counselling or for granting mid-term admission.

Appeal allowed.

<sup>1</sup>*1987(4) SCC 459*

<sup>2</sup>*1990(4) SCC 624*

<sup>3</sup>*AIR 1992 SC 932*

<sup>4</sup>*2002(4) SCT 444 (SC)*