

## **DELHI HIGH COURT**

Dr. Veena Gupta

Vs.

University of Delhi

Civil Writ No. 3121 of 1993

(B.N. Kirpal, C. L. Chaudhry and P.K. Bahri, JJ. )

16.9.1993

### **JUDGMENT**

#### **B. N. Kirpal, J.**

1. (Oral) - This is yet another sequel to the Full Bench decision of this Court in the case of *Sandhya Kabra v. University of Delhi*.<sup>1</sup>

2. In the present case, the petitioner had taken part in the second Counseling and had been allotted a seat in the Diploma in Anaesthesia in Safdarjang Medical Hospital. The case of the petitioner is that she did not join the said course and she wrote to the University giving the said intimation and wanting to remain on the waiting list. It is further alleged that the Principal, Lady Hardinge Medical College, Dr. V. N. Sehgal (respondent No. 3) did not intimate to the University of Delhi that there existed a seat of M.D. (Dermatology) in the Lady Hardinge Medical College. This vacancy had arisen in the Lady Hardinge Medical College with effect from 26th May, 1993. The second Counseling had taken place on 17th June, 1993 and if this seat had been notified, someone would have opted the same and there was every likelihood that the petitioner would have got the same which was the course of her choice.

3. The aforesaid seat of M.D. (Dermatology) in Lady Hardinge Medical College was also not notified to the University when the third counseling commenced on 2nd July, 1993. It was only when the turn of Dr. Richa Sehgal (respondent No. 4), who is the daughter of Dr. V. N. Sehgal, Principal, Lady Hardinge Medical College, came for Counseling, that her husband appeared and produced a letter from Lady Hardinge Medical College to the effect that one seat of M.D.

(Dermatology) was available in Lady Hardinge Medical College and the same should be allotted to respondent No. 4.

4. The aforesaid allegations with regard to the non-notification of the seat of M.D. (Dermatology) to the University stands corroborated by the affidavit of Prof. S. K. Wasan, Registrar, University of Delhi. In his affidavit, he has stated that in spite of reminders, Dr. V. N. Sehgal did not send the vacancy position in his College. A Section Officer and Senior Assistant of University of Delhi then met Dr. V. N. Sehgal on 30th June, 1993 and again on 2nd July, 1993 and on 2nd July, 1993 at 12.00 noon, he gave the vacancy position in his College, which indicated that there were 7 seats which were available but did not include the seat of M.D. (Dermatology) in that list. Based on this vacancy position, the Counseling commenced about 12.15 p.m. Prof. Wasan further states that after 71 candidates of waiting list had appeared at the Counseling and selected their subjects, when it came to the turn of Dr. Richa Sehgal, daughter of Dr. V. N. Sehgal, who was at Serial No. 72, she did not appear personally but her husband appeared and produced the letter of Principal of Lady Hardinge Medical College stating that there was a vacancy in M.D. (Dermatology) on account of one Dr. Sanjay Agarwal leaving the course with effect from 26th May, 1993. It was represented that this seat should be offered to respondent No. 4.

5. The affidavit of Prof. Wasan further states that since a number of candidates of higher merit than Dr. Richa Sehgal had asked for M.D. (Dermatology) and could not be offered the said seat, the University, after obtaining the legal advice and keeping in view the peculiar facts, decided not to allot the said seat of M.D. (Dermatology) to any candidate. It is the case of the University that Dr. V. N. Sehgal had deliberately kept back intimation about the vacancy of the said seat and he made a *mala fide* attempt to secure the admission of his daughter to the course of M.D. (Dermatology) in this manner.

6. Dr. V. N. Sehgal has in his affidavit stated that he had intimated to the University about the vacancy of the seat of M.D. (Dermatology). We do not find the said averment of Dr. V. N. Sehgal to be factually correct. There is no reason to disbelieve the affidavit of Prof. Wasan based on the official record to the effect that intimation about the vacancy of M.D. (Dermatology) in Lady Hardinge Medical College was given only at the time the husband of respondent No. 4 appeared for counseling in the afternoon of 2nd July, 1993. This vacancy had arisen on 26th May, 1993 and the said seat should have been included in

the second Counseling which had taken place on 17th June, 1993. It is distressing to know that Dr. V. N. Sehgal was a member of the Counseling Committee and did not intimate to the University authorities, despite repeated reminders, about the number of seats which were vacant and when two officials of the University personally met him on 2nd July, 1993, they were given the vacancy position with regard to the 7 seats but were not informed about the vacancy position of M.D. (Dermatology). We are informed that the specialty of Dr. V. N. Sehgal is Dermatology and it is this seat which his daughter namely respondent No. 4 wanted. We strongly deprecate the action of respondent No. 3 who was occupying a position of trust. Unfortunately the desire to secure a chosen discipline for his daughter made him act in a manner which was unbecoming of a Principal of an educational institution.

7. The question which now arises for consideration is as to whether this seat should be filled and if the answer is in the affirmative then the manner in which it should be done.

8. In Sandhya Kabra's case (supra), this Court had held that the admission should close and the courses should be commenced by 2nd May of each year. It was further held that if there was any mistake which was committed then the same should be rectified within two months of the commencement of the course. Sandhya Kabra's case (supra) was concerned, like the present, with the State quota seats of the Post-graduate courses. The said decision also envisaged that the All India quota should be filled before the admission to the State quota is undertaken. The reason was that the unfilled All India quota seats were to lapse and were to be filled by the local candidates. In this year 1993, the time schedule, which was laid down for filling the seats under All India quota, could not be adhered to for reasons beyond the control of the Government. There was delay in filling the seats and a large number of them were sought to be surrendered to the State. The seats under All India quota were being filled by issuing lists in the order of merit as per the choices of the candidates. Two lists had been issued and no list was issued in respect of a large number of seats and 664 seats were those for which no allotment had been made and approximately 856 seats were sought to be surrendered.

9. In *Civil Writ No. 3297/93* the Full Bench on 3rd September, 1993, for the reasons stated in the said order, directed that Counseling should take place for filling the said remaining seats of the All India quota. We are informed that the

Counseling is to take place between the 27th September and 1st of October, 1993 and the candidates have to join the courses by 15th October, 1993.

10. It is evident that the seats which may remain unfilled in the All India quota after 15th October, 1993 would be deemed to be surrendered to the State quota and some of those seats may belong to Delhi. Inasmuch as courses regarding All India quota seats, which had remained unfilled, so far have not yet commenced because of the extraordinary situation which had arisen. We deem it appropriate that the time for filling the vacant M.D. seats of the local quota should also be extended so that, if possible, the least number of seats remain unfilled. As the seats under the All India quota, which remain unfilled, will revert to the State quota on 15th October, 1993, so we direct the University of Delhi to hold a Counseling of the wait listed candidates of Delhi on Saturday, the 23rd October, 1993 at the G. B. Pant Hospital at 11.00 a.m. for allotting all unfilled seats.

11. The next question which arises for consideration is as to who are the persons who be considered entitled to take part in the said Counseling. Normally, when a seat is available, the same should be included in the initial Counseling. If by mistake a seat is not included in the initial Counseling then the next question which arises is as to how the said seat should be filled.

12. To find a solution, it is necessary to take an example. If say, one seat of M.D. (Medicine) is available in a good hospital in Delhi and the same is not notified, the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for Counseling, the result would be that all the candidates who took part in the first Counseling, 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 Counseling. There again a chain reaction will start leading to the third Counseling. The effect of putting the seat back for Counseling for all candidates would, therefore, be to upset the entire Counseling 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. We are, therefore, of the view that any seat which is available and which has not been included in any of the three Counseling by mistake should be filled in in order of merit amongst the wait listed candidates.

13. But who are to be regarded as wait listed candidates is the next question. Those candidates who have not been offered any seat or who have not accepted the allotment of any seat during the earlier Counseling's will, of course, be regarded as candidates who are wait listed. There are cases where candidates had accepted a seat during Counseling and paid the fees but thereafter had not joined the course. In our aforesaid order dated 3rd September, 1993, we have permitted all the candidates who have not joined the course to take part in the Counseling in the All India quota and we give same directions in respect of the local seats as well.

14. It is to be seen that at a short notice, a candidate has to make up his mind during Counseling 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 counseling 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. We make it clear that in future those candidates who do not join and want to be considered for any resultant vacancies, must inform the University in writing that they want to be placed in the waiting list and they have not joined any course and it is only then that those candidates who, having been allotted but having not joined, will be put in the waiting list. It is clearly understood that such intimation must be given to the University on or before the last date fixed for joining.

16. It is clarified that any candidate who has joined any Post-graduate course anywhere in India will not be regarded as being eligible to be placed on the waiting list for being considered for Counseling in Delhi quota.

17. We are not going into the question as to whether in this particular case the petitioner had joined the Post-graduate diploma in Anesthesia or not. The case of the petitioner is that she did not join the said course and, therefore, she is

eligible to take part in the Counseling. This is a question of fact which the University will decide within a period of two weeks from today.

18. It is admitted by Mr. Mariaputham that the seat which was initially allotted to the petitioner was included in the third Counseling on 2nd July, 1993 and has been allotted to another candidate.

19. It is reiterated that this extension of time for filling the Post- graduate seats in the Delhi quota is only for this year and the directions given in Sandhya Kabra's case (supra) shall continue to apply in future.

The petition is disposed of in the aforesaid terms.

Copy of the order be given *dasti* to counsel for the parties.

Cases Referred.

1. AIR 1993 (Del) 40.