

CASE NO.:
Writ Petition (civil) 393 of 2002

PETITIONER:
Supreet Batra & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 27/01/2003

BENCH:
S. RAJENDRA BABU, D.M. DHARMADHIKARI & G.P. MATHUR.

JUDGMENT:

J U D G M E N T

[With W.P.(C) No.473/2002]

RAJENDRA BABU, J. :

These petitions are offshoot of a Scheme framed by this Court in Sharwan Kumar, etc.etc. vs. Director General of Health Services & Anr. etc.etc., 1993 (3) SCC 332, 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 September [now changed to 7th August] 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 and the date fixed, as stood altered, as indicated therein and the last date for receipt of vacancy position is fixed as 7th August of each year and the IInd round of counselling is proposed to be taken between the period from 18th July to 24th July of each year.

Now in these petitions, it is contended that selection or counselling has not been done in some States and therefore, they would not take full advantage of IInd round of counselling. The details are set forth as under :

- a. The date of the PMT in Punjab has been altered from 23rd June to 21st July, 2002.
- b. The States of Haryana and Uttar Pradesh have only conducted their PMT on 30th June, 2002.
- c. In the state of Karnataka the counselling sessions for the Karnataka quota will commence on the 31st of August and the counselling sessions for the non-Karnataka quota will commence on 11th September, 2002.
- d. In the State of Rajasthan, the results of the PMT were declared on 26th June, 2002. However, no counselling schedule has been declared so far.
- e. In the State of Bihar, the date of the PMT had been shifted from 9th June to 11th July, 2002.
- f. In the State of Jharkhand, the date of the pre-entrance test for screening has been fixed at 7th July, 2002 and no date has been fixed for the main entrance test i.e. the P.M.T.
- g. In the State of West Bengal, no date has been announced vis--vis the counselling sessions.
- h. In the state of New Delhi, the DPMT was conducted on 18th May, 2002 and the date of the counselling is scheduled to be held on 16th and 17th July, 2002.
- i. In the States of Gujarat and Himachal Pradesh, they have not conducted the PMT yet.
- j. Vis--vis All India All India Institute of Medical Sciences, the test was conducted on 1st June, 2002 and the counselling is scheduled to be held on 29th July, 2002.

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 seat 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 IIIrd round of counselling is required to be held in the special features of the case 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 7th August, 2002 and that instead of successful and meritorious candidates in the All-India Quota should be allotted these seats and pass such other orders as may be necessary.

This Court in Dr. Pradeep Jain & Ors., etc. etc. vs. Union of India & Ors., etc. etc., 1984 (3) SCC 654 and Dr. Dinesh Kumar & Ors. vs. Motilal Nehru Medical College & Ors., 1986 [3] SCC 727, while disapproving of the total reservation on different scores in regard to admission of students in medical courses such as MBBS and post-graduate specialties, 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 this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2002-2003, 1484 seats for MBBS course and 150 seats for BDS course, totaling 1634 seats were made available by the States under the 15% All-India Quota. On the basis of the results declared by respondent No.2, 2778 successful candidates were sent call letters. By the end of the first round of counselling, the entire 1634 seats were allotted up to 1835th rank.

The contention of the petitioners is that inasmuch as certain circumstances have arisen in view of change of date in the matter of counselling and date by which intimation of the vacancy position to the Director General of Health Services, the scheme framed by this Court in Sharwan Kumar's case is not being given full effect with the consequence of seats reverting to States thus frustrating the Scheme framed by this Court.

As per clause 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 IInd 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 IInd round of counselling by personal appearance was to be concluded by a particular date.

When 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 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 200 seats are not filled up for various reasons and such not filled up seats were much less in the earlier years, 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. We have taken identical view in the decision in Writ Petition (Civil) No. 407 of 2001 (Ms. Neelu Arora & Anr. vs. Union of India & Ors.) and connected matters disposed of on 24.01.2003. Moreover, this Court in Medical Council of India vs. Madhu Singh & Ors., 2002 (7) SCC 258, 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 mid-session 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. These writ petitions shall stand dismissed.

By an interim order this Court had directed that the seats in the All-India quota should not revert to the States. As a consequent these seats have not been filled up either in All-India quota or State quota and with the dismissal of these petitions, that interim order gets dissolved. In I.A.No.13 filed in W.P.[Civil] 393 of 2002, it is brought to our notice that the State of Kerala had extended period of Rank List upto December 31, 2002 only and thereafter applicants would lose their eligibility. It is made clear that period of validity shall stand extended until the appropriate steps are taken by the concerned authorities in that State.

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