
(1993) 11 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 40797 of 1993

Dr. Namita Agrawal

APPELLANT

Vs

Director Medical Education Training and Others

RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh State Universities Act, 1973 — Section 28

Citation : (1994) 1 AWC 197 : (1994) 1 UPLBEC 122

Hon'ble Judges : S.R. Sirgh, J

Bench : Single Bench

Advocate : R.B. Singhal, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Present petition in directed against the order dated 1-10-1993, whereby the Director of Medical Educaiaion to Training U.P. Lucknow, rejected the petitioner's request fer admission te Post-graduate degree course i.e. M.S./M.D. in Gyan. & obst. at S.N. Medical College, Agra against the vacant seat of 1992-session.

2. Matrix of the fact is that the Petitioner-Dr. Namita Agarwal-passed her M B.B.S. examination from S.N. Medical College, Agra and thereafter, completed one year's internship between Dec. 1990 and Dec. 1991. She then appeared in the post-graduate Medical Entrance Examination, 1992, opting for Gyanecology and obstetrics as the first in order of preference at S. N. Medical College, Agra. She secured 1650 eut ef 3000 marks in the said examination, which fell far short of securing her admission to post-graduate degree course-M.S./M.D. in Gyaa. & Obst. She however, qualified; for and was admitted to Post-graduate diploma course in the aforesaid speciality on 8-7-1-992. Indisputably, the session-1992 commenced on May 2, 1992. Subsequently, by her letter dated 16-4-1993, the Petitioner applied for admission for transfer from Post-graduate diploma course to Post-graduate degree course in Gyanaecology & Obst, in the same college

against a vacant seat pertaining to 1992-session. According to her, there were seven seats in Gyn. & Obst, at S. N. Medical College, Agra, out of which 75% were to be filled in by internal candidates and 25% by external ones i.e. the candidates selected through the entrance test conducted by All India Institute of Medical Science, New Delhi. In her application dated 16-4-1993, the Petitioner alleged that out of the seven seats in the speciality aforesaid one was of the All India Post Graduate Examination quota and the same was lying vacant as the last date of joining i.e. 7th Feb. 1992 had already passed off and none reported within time. It was also alleged that there being no candidate preceding her in the merit list, she could be permitted to join M.S. (Gyn. & Obst.) course against the vacant seat pertaining to 1992 session.

3 The Principal of the College transmitted the petitioner's application to the Director, Medical Education and Training U.P. Lucknow for necessary action studded with the following remarks.

There is one All India Post Graduate quota" seat lying vacant in -M.S. Obst. & Gyn. Course at this Institution for the batch of 192. This seat is deemed to have been surrendered for the Institution candidates as after 7th Feb. 1993 or even earlier as per the latest communication from the Director General & Health Services New Delhi...Therefore now this seat justifiably is open to be filled by internal?candidate. Dr. Namita Agarwal D.G.O. at S.N. Medical College, Agra is claiming this seat of M. S. Obst. & Gyn. As per application, she reports herself to be the highest in order of merit in this context. I, therefore, recommend a necessary action to be taken at your level in this regard.

Upon receipt of this recommendation, the Director Medical Education & Training, U.P. Lucknow, called for further comments from the Principal vide his letter dated 22-4-1993, in the light of the directions issued by Supreme Court vide order dated 10-7-91. A copy of the Supreme Court's order dated 10-7-91 passed in Writ Petitions (Civil) No. 348-52/ 1985-Dx. Dinesh Kumar and others v. Moti Lal Nehru Medical College, Allahabad and others has been annexed as Annexure-1 to the writ petition whereby the Supreme Court emphasised that "outer limit for both allotment and transfer shall be 7th Feb. of the year following the commencement of the session.

4. The Principal of the College vide his letter dated 31-5-1993 addressed to the Director, Medical Education & Training U.P. Lucknow reiterated his stand that after 7th Feb. 1992 the unfilled and vacant seat reserved for external candidates became available for adjustment thereon of an internal candidate and that the Petitioner could be adjusted against the said seat if she had preferential claim on merit over others. The Principal in his letter dated 31-5-93 also illustrated the instance of Dr. Piyush Prasad and others, who were, in the past, adjusted as Internal candidates against vacant external seats.

5. It appears that while the matter was sub-judice before the Director, the Petitioner filed a writ petition in this Court which stood disposed of vide order

dated Sept., 2, 1993 with a direction to the Director, Medical Education and Training, U.P. Lucknow to decide the petitioner's representation by means of a speaking order within 15 days from the date of presentation of a certified copy of the aforesaid order. Upon being served with a copy of the order dated Sept. 2, 1993, the Director, Medical Education & Training U.P. Lucknow, traversed upon the matter in the light of the Supreme Court's decision on the point and in the ultimate analysis, turned down the petitioner's request to admit her to M.S. course in Gyn. & Obst, against the vacant seat of 1992-batch by means of the impugned order dated 1-10-1993.

6. The reason assigned by the Director is that the admission of the candidates of 1992-session, had concluded in June 1992 itself and a period of more than a year ever since the commencement of the aforesaid session had already expired and further that, the admission of the Petitioner against the vacant seat pertaining to 1992-session, would amount to an admission in 1993-sessions which admittedly commenced on May 2, 1993 and in which no seat was vacant in the speciality concerned i.e. in Gyn. & Obst. It has also been noticed by the Director that there were candidates in the waiting list of 1993-session, The Director Medical Education and Training U.P. Lucknow took the view relying upon the decision of the Supreme Court in State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., and Delhi High Court's (FB) decision in Sandhya Kabra and Others Vs. University of Delhi, that in view of time schedule for admission to medical colleges, formulated by the Apex Court, there would neither be a justification nor would it be possible to admit the Petitioner in the mid-1993-session against the vacant seat of 1992-batch. It is this decision of the Director which is the subject-matter of impugnement in the instant petition under Article 226 of the Const. of India.

7. Having heard Sri R. B. Singhal, the learned Counsel, appearing for the Petitioner at considerable length, I am persuaded to the opinion that the impugned order does not wear any taint of illegality or infirmity warranting interference under Article 226 of the Const, of India. In fact, the impugned order accords well with the pronouncements of the Supreme Court, as would be evident hereinafter, in respect of admission to Post Graduate Degree courses. The request of the Petitioner would not have been " accepted except on pain of violating the directions issued and the scheme formulated by the Apex Court for achieving the laudable objectives of excellence in the field of medical-science by enforcing a strict rule of admission at all India level-something conducive to academic temper/discipline in medical colleges and enforcement of rule of law in the matter of admission to medical courses.

8. In Dr. Dinesh Kumar v. Moti Lal Nehru Medical College, Allahabad 1987 (4) SCC 549, the Supreme Court emphasised that uniform practice and pattern should be followed with regard to duration of the Post graduate courses in Medical Colleges and with regard to admission to such courses, it has laid down and underlined the following rule:

What remains now to be dealt with is the finalisation of the programme relating to the selection examination. As already decided the selection examination shall be conducted by the All India Institute of Medical Sciences, New Delhi. The announcement for holding of the selection examination shall be made on October, 1 of every year and a full four weeks time would be made available to candidates for making their applications. After the applications are received not later than six weeks from Oct. 1, the same would be scrutinised and duly processed and admit cards would be issued. Examination shall be held on the second Sunday of January. The results of the examination shall be announced within four weeks from holding of the examination. Admission shall commence two weeks after the declaration of results. The last date for taking admission shall be six weeks from the date of the announcement of results but the Head of every institution shall be entitled to condone delay upto seven days" for reasons shown and grounds recorded in special cases. The courses of study shall commence in every institution providing such study throughout the country from May 2.

In *Mridula Awasthi and Ors Vs. University of Delhi and Ors*, at p 574, the Supreme Court reiterated that, "...under the scheme intended to apply to the whole country, the course has to begin on May 2. "The Supreme Court in the case of *Mridula Awasthi* directed the Union of India to fill up the seats at early date "so that the time schedule may not be affected.

9. In *State of Bihar v. Sanjay Kumar Sinha* AIR 1990 SC 741, the Supreme Court, while- considering the question of non-compliance of its directions as to adherence to the time schedule, has issued the following directions:

Instead of issuing notices to the States and Union Territories for examining the correctness of the allegations of delay and non-compliance of the directions, we have thought it appropriate to indicate that every one including the states, union territories and other authorities running Medical Colleges with Post graduate courses are bound by our order and must strictly follow the time schedule indicated in paragraph 6 of the order. We have not proceeded against defaulting authorities for violation of the court's order hoping that there would be no recurrence of it but we would like to administer a warning to everyone that if it is brought to our notice that there has been any violation, a serious view of such default would be taken. We hope and trust that everyone concerned shall comply with the time frame strictly and there would be no lapse in this regard in future.

In *Dr. Subodh Nautiyal Vs. State of U.P. and others*, , there was a delay of four months in giving admission and the Supreme Court held that to admit a student four months after the commencement would not at all be correct.

10. In *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.*, , the Supreme Court while considering the question arising out of belated admission, observed as under:

...to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full

opportunity to study full course to meet their excellence and come at par excellence. Admission in the midstream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained.

Sandhya Kabra and Others Vs. University of Delhi, , a Full Bench of the Delhi High Court has observed at page 55 of the report as under:

While every efforts should be made that the seats falling within the quota do not remain unfilled, nevertheless, time schedule laid down by the Supreme Court for filling the seats cannot be ignored. If a seat is not filled from the All India quota it is not as if the seat is never filled and remains vacant. Any seat which is not filled from the All India quota, goes to the local candidates, in view of the fact that admission of the local candidates is to start only after the All India quota has been filled, means that if there are vacancies arising from the dropout of the All India quota, the same should be available with the local candidates....

Dealing with the argument that due to delay in communicating the release of the seats from the All India Quota, the said seats are. not offered to the local candidates and this ultimately results in the seat remaining unfilled, the Full Bench of the Delhi High Court held as under:

The only way in which the aforesaid difficulty can be overcome is that there should be an automatic surrender of seats which are unfilled in the All India Quota.....It must follow therefore, that any seats which are not filled in All India Quota by 7th April, must be regarded as being automatically surrendered. They would therefore be available to the local candidates.....In other words, they should exhaust their quota, before 7th April of each year and in case their quota is not exhausted either because the candidates do not join or because the allocation is not made, then the unfilled seats would automatically be deemed to have been surrendered by them and would be available to the local candidates.

11. I am in respectful agreement with the view taken by the Full Bench of Delhi High Court in the case referred to above, that if any seat is not filled from All India Quota it would become available for local candidates. I would, however, add that any such seat, if not claimed by a local candidate upto the date of actual commencement of the session would automatically lapse after the actual commencement of the session to which the seat pertains. It cannot be allowed to be carried forward to the next session for being filled in by a candidate belonging to previous session that is to say by the candidate of concerned session to which the seat pertains, except at the risk of violating the provisions of Article 14 of the Constitution in that it would virtually be an admission in the following session for which a separate merit list is bound to be prepared, and also the directions issued by the Medical Council of India and by the Supreme

Court for the purpose of achieving excellence in medical science: In the instant case, the session in question is deemed to have commenced in May 2, 1992 and it must have actually commenced in July, 1992 whereas the Petitioner stated her claim for the vacant seat of All India P.G. Exam. Quota on 17-4-93 that is to say, after the seat had already stood lapsed.

12. That apart, as held by the Supreme Court in *Dr. Indu Kant Vs. State of U.P. and others*, granting admission to a candidate of 1992 now and to allow him/her to join with the batch of 1993 is bound to increase the total strength of post-graduate students in 1993 which would not only be in violation of the directions of the Medical Council but would also put an additional financial burden on the State Government.

13. The learned counsel for the Petitioner, relying upon clause (e) of Paragraph (8) of notification No. 8390-Section 14/V-250-82 Oct 9, 1990 issued u/s 28 (5) of the U.P. State Universities' Act, 1973, urged that the Petitioner being already admitted to Post-graduate diploma course in Gyn. and Obst, was entitled to be admitted in the same speciality in the post graduate degree course against the vacant seat of 1992 batch. The submissions made by the learned Counsel for the Petitioner does not bear scrutiny on merit. Clause (c) referred to above reads as under:

(c) A candidate, if admitted to any speciality in Post-graduate diploma.. or degree course, he shall not be eligible for admission to any other speciality in post graduate diploma or degree course. For removal of doubts it is hereby clarified that if any candidate has been admitted to any speciality in Post-graduate diploma course, he may be allowed to be admitted in the same speciality in the post-graduate degree course.

14. It is evident that clause (e) of the Paragraph (8) of the Scheme formulated by notification dated October 9, 1990 only lays down that a candidate admitted to any speciality in Post-graduate diploma or degree course, shall not be eligible to be admitted to any other speciality in Postgraduate diploma or degree course, but if any candidate has been admitted to any speciality in Post-graduate diploma course, he may be allowed to be admitted in the same speciality in the Post-graduate degree course. Thus clause (e) of Paragraph 8 of the notification speaks of eligibility and has nothing to do with the entitlement for admission irrespective of the vacancies/seats, and/or the time schedule fixed by the Supreme Court. According to clause (e), the Petitioner was, no doubt, eligible for admission to Post-graduate degree course in Gyanae and Obst. being already admitted to Post-graduate diploma course in the same speciality but in view of time schedule for admission fixed by the Supreme Court, she cannot now claim entitlement for transfer from Post-graduate diploma course to Post-graduate degree course in Gyanae and Obst. in view of the fact that the vacant seat of 1992 batch would be deemed to have automatically lapsed after May 2, 1992 or at least after actual commencement of the session and an additional financial burden cannot be put by the Court on State Government by admitting the

Petitioner now in mid-session of 1993.

15. In view of the above discussion, the Director of Medical Education and Training, U.P., Lucknow, cannot be said to have erred or misdirected himself in refusing to admit the Petitioner to M. S. course in Gyanae and Obst. now in 1993 against a vacant seat of 1992 session. Accordingly, the writ petition is liable to be dismissed in limine.

16. In the result, the petition fails and is dismissed in limine.

17. Let a copy of this judgment be sent to the Director, Medical Education and Training, U.P., Lucknow, for circulation amongst all the Principals of the Medical Colleges in the State of U.P. for guidance.