

**(1992) 05 AHC CK 0088**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 15123 of 1991 and Writ Petition No's. 13644, 14901, 25267, 27753, 27857, 27858, 28102 and 28103 of 1991

Dr. Rajeev Kishore Saxena

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 15-05-1992

**Acts Referred:**

**Citation :** (1992) 3 AWC 1394

**Hon'ble Judges :** M.L. Bhat, J

**Bench :** Single Bench

**Advocate :** Pankaj Srivastava and Archana Srivastava, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

M.L. Bhat, J.—Hearing of these nine petitions was concluded on 8-4-92. There upon Mr. Pankaj Srivastava appearing for the Petitioners made an application that the Respondents in the writ petitions be directed to admit the Petitioners in the specialties as mentioned in the writ petitions in view of the subsequent judgment given by the Supreme Court. It was submitted by learned Counsel for the Petitioners that the Supreme Court has passed some orders in review petition and that review petition is still pending against its judgment dated 13-2-92. On these submissions it was ordered that these nine petitions would be heard again. However, interim relief was not granted to the Petitioner. Learned Counsel for the Petitioner was directed to supply a copy of this application to learned Counsel for the other side and the writ petitions were directed to be posted to 22-4-92. These nine petitions were heard again on 6-5-92 in the light of the orders of the Supreme Court passed on 23-4-92. On 13-2-92, the Supreme Court had allowed the appeal of the State Government in SLP Nos. 16180-81 and 19446 of 1991 State of U.P. and Ors. v. Dr. Anupam Gupta and Ors. It was held that instructions issued by the State in the letter dated 20-2-90 prescribing the eligibility criteria of 50% marks in the entrance examination conducted for the purpose of

admission to post graduate degree and diploma courses are legal, valid and supplementary to the statutory rules. These candidates alone would become eligible for admission who would fulfill the said criteria. The prescription of 40% cut out for Schedule Caste and Schedule Tribe candidates was also upheld as a measure of social justice to accord equality of opportunity to Schedule Caste and Schedule Tribe candidates. In conclusion the Supreme Court says as under:

Accordingly we hold that securing 50% marks at the entrance examination is one of the conditions precedent to become eligible for admission into the post graduate degree and diploma courses. This is also consistent with the view expressed by this Court in Dr. Ajay Kumar Agarwal's case-

2. It seems that review petition has been filed before the Supreme Court by three doctors who were Respondents in the SLP. The Supreme Court made the following order in the review petition on 26-3-92:

The learned Senior Counsel for the State, Mr. D.V. Sehgal, undertook to instruct the consent to implement the direction already given by this Court to admit the three students within a period of 10 days. List the matter on 7th April, 1992.

3. What happened on 7-4-92 before the Supreme Court is not known. However, the matter seems to have been placed before the Supreme Court on 23-4-92. The Supreme Court made the following order in the matter of admission to three candidates:

It is stated that Dr. Anupam Gupta was given conditional admission in the Medical College at Agra. It is stated that by Shri Misra learned Counsel for the State that since six candidates have already been admitted with similar conditions there is no seat available. As such admission was given conditional to the Petitioner. Therefore, he seeks time for the Government or concerned Department to create a seat either of relaxation of the rules or as special cases. Three month's time is given to the State to do the needful and the Petitioner has since been admitted he would continue to pursue the course of study.

Though Ms. Renu Gupta was communicated offering to give admission in the Medical College at Allahabad, she has not responded. Obviously she is not interested to pursue her course. Therefore her petition no longer survives.

Dr. Sanjay Agarwal has already been admitted unconditionally in Gorakhpur. The Review petition are closed with the above directions.

4. Mr. Pankaj Srivastava submits that the judgment of the Supreme Court dated 13-2-92, has merged in the order of the Supreme Court dated 23-4-92. According to Mr. Pankaj Srivastava judgment given by the Supreme Court on merits on 13-2-92 is altered/modified by the Supreme Court and the order granting admission to the Respondents in SLP is the guideline which should be followed by this Court also, in the matter of grant of admission to the Petitioners in these writ petitions. He tried to argue that the eligibility criteria of fixing 50% marks for admission in the entrance test was arbitrary and bad and against the

previous practice which prevailed in the State. Therefore, the said eligibility-criteria prescribed by the State should be quashed and the Petitioners be granted admission as was done by the Supreme Court in the matter of three Respondents against whom S L.P. was filed in the Supreme Court.

5. The first question that would fall for consideration in this judgment would be whether the judgment of the Supreme Court dated 13-2-92 is altered by subsequent order of Supreme Court dated 23-4-92. In my opinion the submission of Mr. Pankaj Srivastava is fallacious. The Supreme Court is always empowered to make suitable direction which will serve the ends of justice. The judgment of the Supreme Court on the eligibility criteria in the SLP given on 13-2-92 has become final and certain. In the subsequent order the Supreme Court has not altered the judgment on merits, nor allowed any modification of the said judgment. In fact no modification of the judgment was sought by any of the parties to the SLP. The Supreme Court seems to have instructed the State of U.P. to grant admission to three Respondents in the SLP and the State had delayed to implement the direction of the Supreme Court. Therefore, they issued written direction to the State which is contained in the judgment dated 23-4-92. The directions issued by the Supreme Court reveal that the Supreme Court has treated the case of the Respondents as a special case and desired that either relaxation of the rules or as special case, the State Government should create a seat for one of the Respondents. Another student was not interested to pursue her course, therefore, her petition was not considered. One of the Respondents had already been admitted unconditionally. The review petition was closed. The Respondents had applied only for admission on equitable ground because the High Court seems to have granted them admission. The Supreme Court, therefore, in its discretion had admitted few students which would not amount to altering or modifying their earlier judgment dated 13-2-92. The said judgment is operative and binding on the Petitioners as also this Court on the subject which was dealt with by the Supreme Court in the said judgment.

6. All the Petitioners in the nine writ petitions seek writ of mandamus commanding the State of U.P. and principles of various Medical Colleges in U.P. to grant them admission to the post-graduate courses in various specialties. All the Petitioners have completed M.B.B.S. examination and had appeared in the entrance examination conducted for the purpose of granting admission in post-graduate courses in various medical colleges, as internal candidates.

7. In the entrance examination the Petitioners were required to obtain 50% marks for being eligible to seek admission to post-graduate degree or diploma courses. It is admitted in the writ petition that none of the Petitioners has secured 50 per cent marks in the entrance examination. They have secured less than 50 per cent marks in the entrance examination. The Petitioners after appearance in the test, challenged the eligibility criteria of 50 per cent and also submit that seats in the post-graduate course in various specialties were vacant and available, therefore, they be admitted against those vacant seats,

notwithstanding the fact that they have secured less than 50% marks. The admission against vacant seats is claimed on the basis of certain observations made by the Supreme Court in *Ambesh Kumar v. Principal LLRM Medical College Meerut* AIR 1987 SC 661.

8. Heard Mr. Daya Shankar, Mr. R.B. Singhal as also the learned Standing Counsel for the Respondents.

9. At one stage this Court had made a direction to the Respondents to produce record of certain admissions made by the various medical colleges to the vacant seats in various specialities. However, in the meantime, judgment of the Supreme Court in SLP filed before it was pronounced on 13-2-92 Therefore, the direction made by this Court for examining the record of the various colleges in respect of the admission of students to various specialities paled into insignificance.

10. The eligibility criteria of 50% marks in entrance examination is upheld by the Supreme Court and the Government instructions in this regard are held to be legal and valid. Therefore, it is not open to this Court to consider the submission of Mr. Pankaj Srivastava about the eligibility criteria of 50% marks being arbitrary and invalid. That question is no more reintegrate. Therefore, this Court has to proceed on the basis of the principles laid down by the Supreme Court In their judgment dated 13-2-92 which says that no candidate is eligible to seek admission to post graduate course unless he has secured 50% marks in the entrance test. Therefore, admission of any other candidate who has secured less than 50% marks in the entrance test cannot be considered by this Court. The ratio of the judgment of the Supreme Court with regard to the validity of eligibility criteria prescribed by the State Government is reproduced else-where in this judgment what was practice followed previously is also not relevant now because that practice is no more prevalent after the eligibility criteria of obtaining 50% marks in the entrance examination was fixed by the State Government. Whether or not the instructions of the State Government are inconsistent with the criteria laid down by the Medical Council of India can also not be considered by this Court in view of the Supreme Court's judgment dated 13-2-92.

11. The Petitioners seek writ of mandamus. The Petitioners have to establish that the Respondents are obliged to grant them admission. Meaning thereby that the Petitioners have a right to seek admission which is denied by the State. If this is established, this Court can by a writ of mandamus command the Respondents to respect the rights of the Petitioner. Therefore, another question which would fall for consideration in this case would be whether the Petitioners have a right to seek admission to post-graduate course and that right is required to be enforced by this Court in its writ jurisdiction.

12. As already stated that admittedly, none of the Petitioners has secured 50% marks in the entrance test All the Petitioners have secured less than 50% marks in the entrance test, therefore, they have no right to seek admission to post-

graduate course or diploma course in various specialities. Their right could be enforced and the State Government could be directed to consider the Petitioners for admission to post-graduate course if they had secured 50% marks in the entrance test. Necessity of securing 50% marks in the entrance test is a condition precedent for being eligible to seek consideration for admission to post-graduate course. The Petitioner, in view of their low merit position were ineligible to seek consideration for admission to the post-graduate course in various specialities. They have no right to seek a writ of mandamus against the Respondents. The Respondents are not obliged to consider the Petitioners for admission because none of them falls within the zone of eligibility criteria. That being so no other question needs to be decided in this writ petition.

13. These writ petitions are in fact concluded by the judgment of the Supreme Court dated 13-2-92 and submission made by Mr. Pankaj Srivastava on the question which has already been decided by the Supreme Court cannot be considered by this Court.

14. Mr. Pankaj Srivastava submitted a long list of authorities and prayed that merits of the writ petition be considered because in his opinion, 50% legibility criteria was arbitrary. I do not feel that it is necessary for me to consider the matter on merit which has already been concluded by the Supreme Court's judgment dated 13-2-92. The said judgment has clinched the issues which are sought to be raised by the Petitioners and for which they want this Court to examine various authorities.

15. Learned Counsel for the Petitioners in the alternative made a prayer that a certificate of fitness, granting, permission to the Petitioners to appeal to the Supreme Court, be granted. I decline to grant any certificate to Mr. Srivastava for approaching the Supreme Court. No substantial question of law, muchless, of constitutional importance is involved in these petitions. The eligibility criteria of securing 50% marks in the entrance examination is the only question which was to be considered by this Court. In view of the judgment of the Supreme Court dated 13-2-92 that question has already been decided. Therefore, the alternative prayer of Mr. Srivastava is rejected.

16. for the reasons stated above, all the nine petitions fail as they have no merit. Accordingly, the writ petitions are dismissed. There will be no order as to costs.