
(2001) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No's. 199 and 227/99

Dr. (Smt.) Sunita Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4)
Madhya Pradesh Medical and Dental Post Graduates Entrance Examination Rules, 1997
— Rule 3

Citation : (2001) 5 MPHT 276 : (2001) 2 MPLJ 524

Hon'ble Judges : S.P. Srivastava, J; R.B. Dixit, J

Bench : Division Bench

Advocate : N.K. Mody, in LPA No. 199/99, for the Appellant; Arvind Dudawat in LPA No. 227/99 and J.D. Suryavanshi, Government Advocate, for the Respondent

Judgement

S.P. Srivastava, J.

Dr. Sunita Sharma, the appellant in L.P.A. No. 199 of 1999; who was an "in service" candidate holding the post of Assistant Surgeon and fell in "general category", had appeared in the PRE-PG-1999 examination held by Professional Examination Board, Madhya Pradesh, Bhopal and was able to secure 370 marks out of the total mark of 900.

Dr. (Kum.) Roli Agarwal, the appellant in L.P.A. No. 227 of 1999. Who was an "institutional candidates" and fell in the "general category" had also appeared in the same entrance examination and had secured 620 marks out of total marks of 900. Both the aforesaid doctors had sought for their admissions in the Post Graduate M.S. course in the subject of "Gynaecology" and "Obstetrics".

The Writ Petition No. 1213/99 giving rise to L.P.A. No. 199 of 1999 was filed on 9-8-1999. Whereas the Writ Petition No. 1659 of 1999 giving rise to L.P.A. No. 227 of 1999 was filed on 25-10-1999. Both the writ petitions were consolidated and heard together. Both the petitioners had raised their claims for admission as against 25% seats allocated as against All India Quota which seats had been

reverted on account of no candidate being available.

The learned single Judge had dismissed the Writ Petition No. 1213/99 filed by the "in service" candidate Dr. Sunita Sharma being of the view that the reverted seat could not be made available to Assistant Surgeon quota and further the said petitioner had already been given admission in the diploma course of Gynaecology and Obstetrics, and, therefore, she was not entitled to seek change of subject under the Rules.

So far as the Writ Petition No. 1659/99 filed by the "institutional candidate". Dr. Ku. Roll Agarwal was concerned, her writ petition was finally disposed of observing that no direction for admission could be given in the light of the order passed in the Writ Petition No. 1213 of 1999. However, it was directed that if the said petitioner was eligible for counselling she should be called for counselling for admission in the degree course of Obstetrics and Gynaecology.

Feeling aggrieved by the orders passed by the learned single Judge both the petitioners have filed separates Letters Patent Appeals which had been consolidated and were heard together. Taking into consideration the facts and circumstances brought on record and the nature of the controversy raised in both the writ petitions they are being disposed of by a common order.

The relevant portion of Rule 3 of the Madhya Pradesh Medical and Dental Post-graduates Entrance Examination Rules, 1997 under the provisions where of the Pre-PG 1999 Entrance Examination had been held provides as follows :--

"3. M.D./M.S. and Diploma Courses--

(I) Duration.--.....

(II) Nature.--.....

(III) Reservation- Fifteen percent of seats are reserved for candidates belonging to the Scheduled Castes. Twenty one percent seats are reserved for candidates belonging to the Scheduled Tribes and Fourteen percent seats are reserved for candidates belonging to other backward classes. A total number of 35 seats of degree and 15 seats of Post-graduate Diploma are reserved for Assistant Surgeons working under and sponsored by the Government.

Note--....

(IV) (a)-....

(b) Sponsorship of other in-service candidates--In-service candidates, other than Assistant Surgeons referred to above will have to produce sponsorship certificate in the prescribed proforma (in Appendix-VIII) from their employers at the time of counselling.

(V) Seats available--Availability of seats coursewise and subjectwise for each degree and diploma courses is given in Appendix (I, II, IIIA, IIIB, III-C). This list may be subject to any change from time to time. Examination will be conducted

at the centres fixed by the Board, the candidate shall fill in the application form, the name of the Examination centres from where she/he wished to appear for the Examination. Under no circumstances would the Examination centre, once allotted be changed.

(VI) Eligibility Criteria--A person must fulfil following criterion:--

(i) He/She must be a citizen of India.

(ii) He/She must have passed M.B.B.S. (All Examination of M.B.B.S. Course) from a Medical College of Madhya Pradesh recognised by Medical Council of India and must have completed compulsory rotating internship in a hospital recognised by Medical Council of India on or before 30th April of the year in which the Examination is held and must have full registration with the State Medical Council of Madhya Pradesh:

Provided that a candidate who is a bonafide resident in terms of the definition laid down by the Government of Madhya Pradesh shall also be eligible to appear in the Entrance Examination who has passed MBBS examination from any Medical College recognised by the Medical Council of India and has completed compulsory rotating internship in a hospital recognised by the Medical Council of India on or before 30th April of the year in which the examination is held and has full registration with the State Medical Council of Madhya Pradesh :

Provided further that a spouse of an employed working under Government of Madhya Pradesh for atleast five years immediately preceding the last date of submission of the application will also be eligible provided he/she has passed MBBS from any Medical College recognised by the Medical Council of India and has completed one year compulsory internship from a hospital recognised by Medical Council of India on or before 30th April of the year of examination and is registered with the State Medical Council of Madhya Pradesh.

Rule 3 (X) of the aforesaid Rules provides that candidates whose names are borne in the merit list will be called in batches for counselling. In case of candidates other than Assistant Surgeons for MD/MS Courses Director, Medical Education, Deans of atleast two medical colleges of Madhya Pradesh and the Controller of the Board or his representative will constitute the committee before whom such candidates will have to appear at the time of counselling. However, in the case of Assistant Surgeons, the Committee shall consist of Director Medical Education, Director of Health Services, Deans of atleast two medical colleges and Controller of the Board or his representative. The candidates who appear before the Committee at the time of counselling will be informed of the available subjects and institutions in which the course are available at the time of his/her counselling. He/she would be entitled to elect only one course subject and one institution and he/she will be admitted in that subject and the institution so elected. A candidates so admitted and assigned to a particular course and a particular institution will not be entitled to seek change of subject or institution later on any ground. No request for change of subject or institution shall be

entertained. The candidate shall also give an undertaking that he/she shall not make any application/representation or petition of change for subject/institution so allotted/assigned to him/her.

Rule 3 (X) (V) of the Rules is to the following effect :--

"If any seat remain or fall vacant in any subject in any institution the same would be filled up from the waiting list strictly in the order of merit by subsequent counselling in the same manner as mentioned above. The dates of subsequent counselling for the candidates in waiting list will be communicated to them by registered post and also displayed on the notice board of the office of the Director of Medical Education. While filling up such vacant seats, candidates already admitted to any subject in any institution will not be considered and candidates in waiting list will be considered.

However, the Rule 3 (X) (vi) provides as follows :--

The vacant seats of State quota will be filled up by candidates belonging to same category from waiting list, Seats surrendered/reverted from All India quota will be divided among the various categories Viz. General, Scheduled Castes, Scheduled Tribe and Other Backward Classes in same ratio as prescribed for the State seats. Categorywise distribution for these surrendered/reverted All India quota seats will be done by draw of lots.

It is not disputed that out of the total 35 seats set apart for "in service" Assistant surgeon quota, nine seats were allocated as against All India quota of 25% and remaining 26% were for State Assistant Surgeon Quota. This is clearly stated by Dr. K.C. Dubey, the Deputy Director of Medical Education, who represented the respondents-authorities, in his affidavit dated 19-9-2000. It is also not disputed that All India Quota 1999 was surrendered back to local quota in respect where of the information was sent to the concerned State Authorities vide the telegram dated 1-6-99 on account of non-allotment of the seats to the seats to the candidates in view of non-reporting, non-joining, resignation etc.

Dr. Sunita Sharma was required to appear at the counselling on 25-6-99 alongwith the documents and original certificates intimating her that the counselling will take place for her on 26-9-99. She appeared at the counselling on 26-6-99 and was granted admission in the Diploma course in subject of Gynaecology and Obstetrics.

Dr. (Kum.) Roll Agarwal was granted the admission in Diploma Course of Gynaecology and Obstetrics in the counselling held on 13th and 14th October, 1999. Later on, vide the order issued by the State Government dated 31-10-2000 exercising the jurisdiction envisaged under the proviso to Rule 10 (3) of the Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, she was granted the admission in M.D. (Obstetrics and Gynaecology).

It may be noticed at this stage that the State Government had amended the

Madhya Pradesh Medical and Dental Post Graduate Entrance Examination Rules, 1997, by inserting a proviso below Rule (X) 3 of the Rules vide the notification published in the Madhya Pradesh Gazette (Extraordinary) dated 27-9-1999 which was to the following effect:

"Provided that the State Government may change the subject and institution in exceptional circumstances."

It was in exercise of the jurisdiction secured in favour of the State Government under the aforesaid proviso change of subject was permitted to Dr. Roli Agarwal granting her the admission in the Post Graduate degree course vide the order dated 31-10-2000.

It may, however, be noticed that vide another order dated 13-11-2000, the State Government cancelled the admission granted to Dr. Roli Agarwal on the ground that there was no seat available in M.D. (Obstetrics and Gynaecology) against which the admission had been granted to her.

As has already been indicated herein above in the Letters Patent Appeal No. 199/99 an affidavit on behalf of the respondent-authorities sworn on 19-9-2000 was filed by the Deputy Director of Medical Education, Bhopal asserting that out of the total 35 seats of In-service Assistant Surgeon quota, 9 seats had been earmarked for the All India quota and 26 seats remained available for the State Assistant Surgeon quota.

In Paragraph 7 of the aforesaid affidavit, it was indicated that the aforesaid 26 seats were proposed to be filled up by allotting 13 seats to the General Category, 4 seats for the Scheduled Castes category, 5 seats for the Scheduled Tribe Category and 4 seats for the Other Backward Classes. It was also indicated in the said affidavit that for the 26 seats referred to hereinabove, the cut off marks had been reduced for the General category Assistant Surgeon to 40% Assistant Surgeon Scheduled Caste to 20%, Assistant Surgeon Scheduled Tribe to 15% and, Other Backward Class to 40%. It was also indicated that against the 13 seats of the Assistant Surgeon quota of the General category out to the 26 seats only 9 candidates qualified in the counselling and they were given admission in the Post Graduate degree course. The remaining 4 seats of the General category were not filled up and they were reverted to the General Institutional candidates quota.

In another affidavit filed by the Deputy Director, Medical Education, Bhopal, sworn on 14-11-2000, it was stated that out of 35 Degree seats of Assistant Surgeon quota 9 seats of the General category, and 4 in the reserved category, in all 13 Degree seats were allotted on 26-9-1999 to the Assistant Surgeon candidates and the remaining 22 seats reverted back to the General category merit candidates. These reverted seats were added along with the other vacant seats of the General category seats. It was asserted that in view of the directions issued by the Medical Council of India, the General category candidates with 50% marks and the reserved category candidates with 40% marks as the minimum

qualifying marks were held eligible for admission to the Post-Graduate Courses.

It was further asserted that Dr. Sunita Sharma belonged to the Assistant Surgeon category and after reverting the seats to the General category, no seat of Assistant Surgeon quota could be taken to be available and since Dr. Sunita Sharma who had been called for the counselling on 26-6-1999 did not have to her credit 50% marks, she was not offered the seat for the Post-Graduate degree course as she could be eligible to such seat only if she continued to remain an in-service candidate but on the reversion of the seat, she was treated at par with the other General category candidates holding her to be not entitled to the reduction in the percentage/cut off marks which was admission to an "in-service" candidate.

It may further be noticed that in the writ petition No. 1213/99, on 13-10-1999, an interim order had been granted by this Court to the following effect:

"It is further ordered that any admission to the course of M.S. (Gynaecology) after the counselling shall not be offered to any one without the orders of this Court".

Vide another order passed by this Court dated 27-10-1999, it was provided that till the next date of hearing, the interim order passed on 13-10-1999 shall continue.

The aforesaid writ petition was finally disposed of vide the judgment and order dated 1-11-1999.

In the Letters Patent Appeal No. 227/99 filed by Dr. (Kum.) Roli Agarwal, it has been asserted by her that she had been called for the counselling on 14-11-1999 and though a seat in M.S. (Obstetrics and Gynaecology) at Raipur was vacant, she was not offered that seat in view of the interim order passed by this Court and instead she was granted the admission in the Diploma course in the subject of Obstetrics and Gynaecology.

However, the aforesaid admission granted to her in the Diploma course was later on changed to an admission in the M.D. (Obstetrics and Gynaecology) which admission was later on cancelled vide the order dated 13-11-2000 for want of the availability of the seat. The appellant, Roli Agarwal has prayed that she was entitled for the admission in M.S. (Obstetrics and Gynaecology) which has been reverted and made available for allotment to the General category candidates.

Dr. Sunita Sharma on the other hand has prayed for the admission in M.S. (Obstetrics and Gynaecology) on the strength of her being an "in-service" candidate as against the reverted seats asserting that she was entitled to the cut off marks of 40% as she was an "in-service" candidate and the respondent - authorities had erroneously disentitled her for the reverted seat simply on the ground that after reversion, she could not claim the benefit admissible to an "in-service" candidate.

In LA. No. 7770/2000, Dr. Smt. Sunita Sharma had asserted that the respondents - authorities in spite of the interim order of stay passed by this Court, granted the admission to Dr. Binni in the Post Graduate Course on 14-10-1999, and she had joined at G.R. Medical College, Gwalior on 22-10-1999. This admission had been granted to her in the degree course in the subject of M.S. (Obstetrics and Gynaecology).

The correctness of the fact that the admission was granted to Dr. Binni as indicated hereinabove was not disputed by the respondents-authorities. In the affidavit sworn on 9-11-2000, the stand taken by them is that since the writ petition itself was dismissed on 1-11-1999, the interim orders passed thereunder also had lost its efficacy and in any view of the matter the seat in question i.e. M.S. Degree Course in the subject of Obstetrics and Gynaecology was not offered to any candidate till the final order passed by this Court dated 1-11-1999 and it was only on 8-3-2000 that a seat was offered Dr. Rupali Gulati a candidate of general category who was more meritorious and secured more than 50% marks. It was, however, admitted that Dr. Binni was allotted the seat of M.S. (Obstetrics and Gynaecology) on 14-10-1999, consequent upon the second Post Graduate counselling held on 14-10-1999 but it was claimed that by the aforesaid date, the interim order had not been received by any of the respondents.

As has already been noticed herein above the Rule 3 (X) (iii) of the Madhya Pradesh Medical and Dental Post-Graduate Entrance Examination Rules, 1997 had been amended with effect from 27th September, 1999 by inserting a proviso vesting the State Government with ample jurisdiction to change the subject and institution in exceptional circumstances. In exercise of the aforesaid jurisdiction the State Government had passed various orders from time to time during the period 27-3-1999 to 9-11-2000 in respect of 48 candidates. The details of the orders were furnished by the respondents-authorities in the supplementary affidavit filled by Dr. P.C. Mahajan, the Officer Incharge, sworn on 27-2-2001. The details furnished indicate that the candidates who had been granted admissions in the Diploma Courses against the seats of the year 1997 and 98 were granted admissions in the Post graduate courses in the subsequent academic sessions. Further a candidate granted admission as against the seat in the year 1998 in Diploma course was accommodated as against in the Post Graduate Degree course in an unfilled seat of the year 1997 by carrying it forward. Moreover, the candidates who were granted admissions in the Diploma courses in the year 1998 were granted admission in the next session in the year 1999-2000 in the post graduate course seats of that year. Further the candidates who were granted admission in the Diploma Courses in the year 1999 were accommodated as against the seats in the next academic session 2000. It is also apparent from the chart that change of subject from diploma course to post graduate degree course was granted for the candidates who had been admitted in the year 1998 against available vacancy in the year 1999 and for some candidates who had been granted admissions in the diploma courses in the year 1998 they were accommodated as against the post graduate degree seats for the

subsequent years.

Again, the candidates granted admission as against a seat of the year 1998 in a diploma course was granted admission to the post-graduate degree course in the subject of Medicine on 15-10-1999 adjusting him as against the vacant seat. Dr. Karuna Bansal, who had been granted admission as against a seat of the year 1998 in Diploma course who granted admission to the post-graduate degree course in the subject of Obstetrics and Gynaecology on 7-2-2000 as against a seat in the post-graduate degree course of 1997 as is apparent from Annexure P-13. Dr. Bhawana Saxena, who had been granted admission in Diploma course against a seat of the year 1998 was granted admission in the post-graduate degree course on 25-2-2000 against a seat which was available in the year. 1997 Again another candidate granted admission in a Diploma course as against the seat of the year 1998 was granted admission in the post-graduate degree course on 15-3-2000 against the vacant seat. Similarly, Dr. Pranita Atlani, who had been granted admission in the Diploma course as against the seat of the year 1998 was granted admission in a degree course on 30-9-2000 against the vacant seat. A large number of candidates who had been granted admission in the diploma course as against the seat of the year 1999 were granted admission to the post graduate degree course during the period 8-3-2000 to 9-11-2000.

The exceptional reasons for the aforesaid course of action was disclosed in Annexure II to the supplementary affidavit, referred to herein above. In this annexure the gist of the exceptional circumstances were indicated. A perusal of the aforesaid annexure indicates that convenience of the candidate was found sufficient to make out an exceptional circumstance. For example, the exceptional circumstances which were disclosed were family problem, health ground of father, marriage, self finance, father's illness, mother's illness, self illness, etc.

30A. The most striking and significant feature of the course of action adopted by the State Government in exercise of the jurisdiction contemplated under the proviso to Rule (X) of Rule 3, referred to hereinabove, which is apparent is that seats of the year 1997 and 1998 in the diploma course or even in degree course which had remained vacant were carried forward in the subsequent years for accommodating those candidates, who had been granted admissions from the diploma course to the degree course with the change of subject.

In the Rules regulating the entrance test for Pre-PG 2000 a provision was made in Rule (X) Sub-clause (iii) providing that candidates who are already admitted and pursuing their studies in diploma course from 2-5-2000 may be considered by the Government for transfer from diploma (two years course) to three years degree course in the same subject in any institution strictly on the basis of merit (marks obtained in Pre-PG 2000) on the seats which fall vacant after 2-7-2000 and before 1-5-2001. In Rule (X) (iii) (c) it was provided that the State Government may change the subject/course/institution in exceptional circumstances subject to availability of seats.

In view of what has been indicated hereinabove the State Government reserved in its favour the power and jurisdiction to carry forward a vacant seat and to change the subject/course/institution subject to availability of seats in exceptional circumstances. In the past, it may be noticed, for ensuring the availability of the seats the State Government had been adopting a course of action where a seat which remained unfilled in previous years was taken to be the seat available in the subsequent years. This is apparent from the chart submitted by the respondents-authorities alongwith the supplementary affidavit referred to hereinabove.

32A. It is in the aforesaid backdrop of the factual matrix evident from the record to which a reference has been made hereinabove, that the claim of the petitioners-appellants in regard to the admissions to the post-graduate courses requires to be considered.

The contention of the learned counsel for the appellant, so far as "in-service" candidate, Dr. Sunita Sharma is concerned, has been that she could not have been denied admission against the seats reserved/earmarked for the "in-service" Assistant Surgeon quota assuming her to be at par with the general candidates denying her the benefits which stood attached to an "in-service" candidate in regard to lower-cutoff marks. It has been urged on her behalf that in any view of the matter it was not open to the respondents-authorities to refuse to offer to her the seat of All India quota which had been reverted and was available on 26-6-1999. The fact that the said seat was not offered to her had been specifically brought to the notice of the respondent-authorities as is apparent from the application dated 21-7-1999 (Annexure P-6), The correctness of the assertions made in that application has not been disputed.

So far as the other appellant of the general category, Dr. Roli Agarwal, is concerned, the contention is that her admission granted on 31-10-1999 could not be cancelled on the erroneous assumption that no seat was available. In this connection it may be noticed that in the chart which has been furnished by the respondents-authorities, while carrying forward the vacancies in the seats for the earlier years admissions in the post-graduate courses had been granted by permitting change of diploma course to degree course on 7-2-2000, 8-3-2000, 21-3-2000 and 8-3-2000 and again on 12-7-2000 by granting admissions from diploma course to degree course in M.D. Obstetrics and Gynaecology. The contention is that taking into consideration the merit-position of Dr. Roli Agarwal her admission was not liable to be cancelled and in any case if a seat was not available on 31-10-2000 in Rewa she could have been adjusted in any vacancy in the Post Graduate Course in Obstetrics and Gynaecology which become available and was filled up on the aforesaid dates.

The Honourable Supreme Court in its decision in the case of K. Duraisamy and Anr. v. State of Tamil Nadu and Ors., reported in AIR 2001 SCW 448 had observed as follows:-

"That the government possess the right and authority to decide from what sources the admissions in Educational Institutions or to particulars disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively settled view of this Court that at the super speciality level in particular and even at the Post-Graduate level reservations of the kind known as "Protective discrimination" in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of in-service candidates, cannot be equated or treated on par with communal reservation envisaged under Article 15(4) or 16(4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal consideration."

It was further observed in Paragraph 10 as follows :--

"10.... If the Government can be said to possess the power to fix a quota for the exclusive benefit of "in-service" candidates, it is beyond comprehension or dictates of either reason or logic as to why the Government cannot equally exclusively earmark the remaining seats in favour of "non-service" or private candidates, thereby confining the claims of services candidates to the number of seats earmarked and allocated to them. As there can be a classified category of "service candidates", it is open to the Government to make classification of all those other than those falling in the category of service candidates, as non-service candidates and allocated the remaining seats after allotment to the service candidates for exclusive benefit of source of non-service or private candidates. There is nothing in law which deprive the Government of any such powers....."

In Paragraph II of the judgment it was observed as follows :--

"11. On a consideration to the reasoning of the Full Bench as also the construction placed upon the Government order and the prospectus, we are of the view that State Government, in the undoubted exercise of its power, has rightly decided, as a matter of policy, so far as the admissions to super speciality and Post Graduate Diploma/Degree/MDS courses for the academic session 1999-2000 are concerned to have scheme or pattern of two sources of candidates based upon a broad classification into two categories, i.e. in-service candidates and non-service or private candidates with each one of them allocated exclusively for their own respective category of candidates fifty percent of the seats, the ultimate selection for admission depending upon the inter se merit performance amongst their own category of candidates."

In Paragraph 12 of the aforesaid decision it was observed :--

"12. The mere use of the word "reservation" per se does not have the consequence of ipso facto applying the entire mechanism underlying the

constitutional concept of a protective reservation specially designed for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes to enable them to enter and adequately represented in various fields. The meaning, content and purport of that expression will necessarily depend upon the purpose and object with which it is used. Since reservation has diverse nature and may be brought about in diverse ways with varied purposes and manifold objects the peculiar principle of interpretation laid down by the Courts for implementing reservations envisaged under the Constitution in order to ensure adequate and effective representation to the backward classes as a whole cannot be readily applied, out of context and unmindful of the purpose of reservations as the one made in this case, more to safeguard the interest of candidates, who were already in service to enable such in-service candidates to acquire higher and advanced education in specialised fields to improve their professional talents for the benefit and of the patients to be treated in such Medical Institutions where the in-service candidates are expected to serve. That apart, where the Scheme envisaged is not by way of a mere reservation but is one of classification of the sources from which admissions have to be accorded, fixation of respective quota for such classified groups, the principles at times applied in construing provisions relating to reservation simpliciter will have no relevance or application. Though the prescription of a quota may involve in a general sense reservation in favour of the particular class or category in whose favour a quota is fixed, the concepts of reservation and fixation of quota drastically differ in their purport and content as well as the object. Fixation of a quota in a given case cannot be said to be the same as a mere reservation and whenever a quota is fixed or provided for one or more of the classified group or category, the candidates falling in or answering the description of different classified groups in whose favour respective quota is fixed have to confine their respective claims against the quota fixed for each of such category, with no one in one category having any right to stake a claim against the quota earmarked for the other class or category."

In view of what has been indicated hereinabove, it is apparent that so long as the seat exclusively earmarked for "in-service" candidate like the appellant in L.P.A. No. 199 of 1999 was available the respondents-authorities were obliged to offer the same first to her extending in her favour all the benefits which stood attached to an "in-service" candidate with the lower cut off marks. She could not be treated to stand at par with the general category candidates on the reversion of the seats from the All India Quata. In case there was no other "in-service" candidate available or eligible for being considered for admission as against the seats earmarked for "in-service" candidates only in that event the remainder of the reverted seats could be added to the quota earmarked for general category candidates.

In the present case, it is not disputed that on reversion of the seats from All India quota the "in-service" candidate, Dr. Sunita Sharma, was available who could be accommodated as against the seat earmarked for the "in-service"

candidate. The seat was, however, not offered to her on the erroneous assumption that on reversion of the seats she had to be treated at par with the general category candidates losing all the benefits which stood extended to an "in-service" candidate.

So far as Dr. Roli Agarwal is concerned she had been granted admission as against a seat in the diploma course. Change of course was permitted to her and she was granted admission in the post graduate degree course but that was cancelled on the assumption that seat was not available in Rewa.

This Court in its decision in the case of Sanjay Maheshwari (Dr.) v. State of Madhya Pradesh and Ors., reported in 1992 MPLJ 292 rendered by a Division Bench had clarified that when the All India seat of Assistant Surgeon quota was not filled up, that had to be filled up by Assistant Surgeon in the absence of any specific impairment of that category under any law or order of the Court.

It must be emphasised that absence of arbitrary power is the first essential of the Rule of law upon which our whole constitutional system is based. In a system governed by the Rule of law discretion when conferred upon an executive authority must be confined within clearly defined limits. If a decision is taken without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with law. The Rule of law means that the decision should be made by the application of known principles and rules.

It should not be further lost sight of that slackening of the standards by any administrative fiat to control the mode of education and examination system are detrimental to the efficient management of the education.

The proviso to Rule 3 (X) inserted in the Rules referred to hereinabove with effect from 27-9-1999 vested the State Government with the discretionary jurisdiction in the matters relating to the change of the subject and the institution in exceptional circumstances. In the absence of any guidelines regulating the exercise of the discretion, this power could be utilised in an unbridled and whimsical manner taking any circumstance irrespective of its nature to be an exceptional one. In fact, the chart furnished by the State Government giving the instances of exceptional circumstances amply demonstrates that even the alleged convenience of a candidate was taken to carve out an exceptional circumstance for justifying the change of the institution and the change of the diploma course to degree course etc. In the garb of that provision even the seats which had remained unfilled in the previous years were carried forward in the subsequent years sacrificing the merit.

It further seems to us that the State Government in its anxiety to grant the admissions abused its jurisdiction secured in its favour under the aforesaid proviso ignoring altogether that in our constitutional system, the Government is not to be taken to be a Government of men but a Government of the law. It has to act not in an arbitrary manner and without forgetting that what is not fair and just is unreasonable and what is unreasonable is arbitrary. The arbitrary action is

ultra vires.

Another aspect which cannot be ignored is that the admission had been granted by the State Government in flagrant disregard of the interim order issued by this Court. The materials on the record indicate that the interim order was in the knowledge of the concerned authorities.

It must be emphasised that when the Court intends a particular state of affairs to exist while in its seisin of a lis that state of affairs is not only required to be maintained but it is presumed to exist till the Court orders or directs otherwise. The Court in these circumstances has a duty, as also the right to treat the action taken in disregard of the interim order as having not taken place at all for its purposes.

In its decision in the case of Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , the Apex Court had observed that where irregularities are committed in admitting students it is not until a period of six months or a year elapsed after the admissions are made that the intervention of the Court comes into play. The time consumed in disposal of such cases by the High Court and Supreme Court creates difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded inevitable, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul, once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions. It is found that this situation has emboldened the erring authorities or educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. Those who infringe the rules must pay for their lapse and, the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. The authorities who made admissions by ignoring the rules of admission cannot be allowed to contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students or that in regard to Medical Colleges the Indian Medical Council will not sanction additional seats.

In the aforesaid case, the Hon"ble Apex Court had directed that over and above the sanctioned strength for the next academic year, the additional seats shall be

created for accommodating the students who had been wrongly denied the admissions with a direction that those seats shall be apportioned in an equal measure between the two groups of students i.e. local students and the outside students.

The Hon''ble Apex Court in its aforesaid decision had further observed that the authorities charged with the duty of making admissions to the educational institutions have to be above suspicion. They cannot play with the lives and careers of the young aspirants who, standing at the threshold of life, look to the future with hope and expectations.

In its decision in the case of Deepak Sibal Vs. Punjab University and Another, , the Apex Court having found that the refusal to admit a candidate was illegal and the concerned candidate was entitled to be admitted had over-ruled the objection to the effect that all the seats had been filled up and, therefore, those candidates could not be admitted observing that as injustice was done to the candidates it will be no answer to say that all the seats are filled up. In the aforesaid view of the matter the admission was directed to be granted providing, however, that it was not to disturb the admissions already made directing further that the seats allocated to the aforesaid candidates will be in addition to the normal intake of the students in the college.

In the present case, what we find is that the State Government itself was responsible for creating the mess in the absence of any guidelines for the exercise of the jurisdiction vested under the proviso to Rule 3 (X) of the Rules referred to hereinabove. The authority was acting in an arbitrary, unfair and unjust manner sacrificing the merit ignoring the claim of the petitioners/appellants in regard to the admissions sought for by them in the Post Graduate Course of study in the subject of M.S. (Obstetrics and Gynaecology).

The learned single Judge had declined to exercise the discretion in favour of the petitioner in W.P. No. 1213/99 being of the opinion that in view of the Rule 3 (X) (vi), the seats from the All India quota which had been reverted had to be divided amongst various categories i.e., General, Scheduled Caste, Scheduled Tribe and Other Backward classes in the same ratio as prescribed for the State seats and the distribution of these surrendered/reverted seats of All India quota will be done by draw of lots.

It may be noticed that the aforesaid rule had to be interpreted in the light of the observations made by the Apex Court in its decision in the case of K. Duraisamy and another (supra). In that case, the Apex Court had observed that it has been the consistent and authoritatively settled legal position that at the super speciality level in particular and even at the Post-Graduate level reservations of the kind known as "protective discrimination" in favour of those considered to be backward should be avoided as being not permissible. Further, reservation, even if it be claimed to be so in that case, for and in favour of in-service candidates, cannot be equated or treated on par with communal reservations envisaged

under Article 15(4) or 16(4) of the Constitution of India and extended the special mechanics of their implementation to ensure that such reservations to be the minimum by not counting those selected in the open competition on the basis of their own merit as against the quota reserved on communal reservation. The allocation of seats in the form of fixation quota in favour of in-service candidates should not be treated to be at par with the communal reservations.

The implications arising under the aforesaid observations made by the Apex Court in its aforesaid decision, leave no manner of doubt about the distinct and broad classification into two categories i.e., in-service candidates and the private candidates, each one of them allocated exclusively for their own respective category of candidates, the ultimate selection for the admission depending upon the inter se merit performance amongst their own category of the candidates. The mere use of the word "reservation" per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes to enable them to enter and adequately represented in various fields. The meaning, content and purport of that expression will necessarily depend upon the purpose and object with which it is used.

It may be noticed that Rule 3 (X) Sub-clause (vi) of the Rules referred to hereinabove refers to the various categories and is only enumerative and not exhaustive.

The learned single Judge has further totally omitted to consider the implications arising under the proviso to Rule 3 (X) Sub-clause (iii) which came into force with effect from 27-9-1999 and the course of action adopted by the respondent - authorities in carrying forward the seats and granting the admissions in Post-Graduate course even in those cases where the candidates had already taken admissions in the diploma courses.

Taking into consideration the facts and circumstances as brought on record and our conclusions referred to hereinabove, sufficient ground has been made out for interference in the impugned order.

In the result, these appeals succeed in part. It is directed that the petitioners shall be accommodated in the Post Graduate Course of M.S. (Obstetrics and Gynaecology) as against the available vacancies in the Post Graduate Courses and in the absence of the required number of seats to accommodate them, the additional seats shall be made available for the present petitioners-appellants in the next academic year and they shall be allowed to pursue their Post Graduate course of study as against the aforesaid seats.

The order passed by the respondent-authorities cancelling the admission to the Post Graduate Course granted to the petitioner in Writ Petition No. 1659/99 shall stand quashed.

It is further directed that the State Government shall frame the guidelines regulating the exercise of the discretionary jurisdiction in the matter relating to the change of the subject and the institution and further clarifying as to whether the expression "seat" as envisaged under Regulation 3 (X) (iii) (b) will include the unfilled seats of the previous years also. It shall be ensured that the relevant guidelines are framed within six weeks from the date of production of the certified copy of this order before the concerned authority.

The writ petitions filed by the appellants shall stand disposed of with the aforesaid directions.

There shall however be no order as to costs.