
(2002) 09 DEL CK 0062

In the Delhi High Court

Case No : C.M. No's. 7709, 8089, 8129, 8478, 8824, 8825 and 8847 of 2002 in
CW No's. 3978, 4911 and 5010 of 2002

Dr. Vineet Saggar and Others

APPELLANT

Vs

Director General Health Services and Another
 Dr.
Chandra Shekhar and Others and Dr. Aditya Verma and
Another Vs University of Delhi

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0062

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : M.C. Dhingra, in CW Nos. 3978 and 4911/2002 and K.L. Budhiraja, in CW No. 5010/200, for the Appellant; Maninder Singh, for resp. No. 1 and A. Mariaputham, for resp. No. 2 in CW No. 3978/2002 and A. Mariaputham, for resp. No. 1 in CW Nos. 4911 and 5010/2002, for the Respondent

Judgement

Manmohan Sarin, J.—By this common judgment, I would be disposing of CM. No. 7709/02 in CW. No. 3978/2002, titled Dr. Vineet Saggar and Ors. v. University of Delhi, seeking clarifications and directions as also the civil writ petition No. 4911/2002 titled Dr. Chandra Shekhar and Ors. v. University of Delhi and CW. No. 5010/2002 titled Dr. Aditya Verma and Anr. v. University of Delhi, since questions requiring adjudication as also the reliefs sought are common and similar.

This judgment will also dispose of C.M. Nos. 8089, 8129 & 8478/2002 moved by applicants/Doctors seeking impleadment and for directions to be permitted to participate in the counselling on 5th August, 2002. While the applicants/Doctors in C.M. Nos. 8824, 8825 and 8847/2002 oppose the plea of the petitioners for re-counselling or being permitted to participate in the counselling on 8th August, 2002.

2. The petitioners/applicants, who are aspirants for admission to the post

graduate medical courses, are aggrieved by the non-inclusion of the allegedly lapsed seats of the All India quota in the counselling held on 30.6.2002. Petitioners claim that they perforce under pressure had to opt for the available courses in the final counselling on 30.6.2002, without the inclusion of the lapsed seats of the All India quota. The petitioners in Cw. No. 5010/2002 and Cw. No. 4911/2002, seek directions that the lapsed seats of All India quota should be filled strictly in order of merit by offering them to all candidates including the petitioners and others, who participated in the final counselling on 30.6.2002, which is claimed to be illegal and vitiated. The submission of the petitioners is that by offering and permitting the lapsed seats to be filled up in the counselling held on 8.8.2002, only by those who had either not opted for any subject in the counselling of 30.6.2002 or had not been offered any subject, merit was being ignored and less meritorious candidates have been preferred over the petitioners and others, resulting in grave injustice.

3. For appreciation of the matter in controversy, the factual matrix may be briefly noted:-

(i) The All India Entrance Examination for post graduate medical courses was conducted by the All India Medical Institute on 6.1.2002. The results were declared in February, 2002. The counselling for 25 per cent seats of the All India quota began on 5.3.2002 and was scheduled to continue till 22.3.2002. While the counselling was in progress, it was stayed by an order dated 7.3.2002, passed in CW. No. 9895/2002, by the High Court of Judicature at Allahabad. Allegations of leakage of the examination papers had been made in Lucknow centre. Counselling had till then been completed for students ranking up to 575. The Division Bench of the Allahabad High Court on 20.3.2002, vacated the stay on counselling. Respondent No. 1, however, did not resume the counselling. The All India Medical Institute approached the Supreme Court, seeking transfer of the writ petitions from the Allahabad High Court to Delhi High Court, where a similar petition bearing No. 1535/2002 had been filed. The proceedings in the writ petition before the Allahabad High Court were stayed. The writ petition filed in the High Court of Delhi bearing NO. 1535/2002 was decided vide judgment dated 6.6.2002. Although, this Court had not granted any stay against counselling, respondent No. 1 vide the said judgment was permitted to continue the counselling from rank 575 rescheduled from 3.7.2002 to 9.7.2002. The resumed counselling was also completed on 9.7.2002 with last date of admission being 24.7.2002.

(ii) The Delhi University for the 75 per cent quota of seats had held its initial counselling between 10.4.2002 to 12.4.2002. The final counselling was held on 30.6.2002. The grievance of the petitioners emanates from non-inclusion of what are known as the "lapsed seats", which became available after the counselling of All India quota seats held up to 575 being included in the initial counselling of Delhi University held between 10.4.2002 to 12.4.2002 and the final counselling held by the Delhi University on 30.6.2002. The contention of the petitioner is

that non-inclusion of what are termed as the lapsed seats in the initial counselling between 10.4.2002 to 12.4.2002 and the final counselling of 30.6.2002, has vitiated the final counselling of 30.6.2002 and resulted in derogation of merit.

4. Learned counsel for the petitioner, Mr. M.C. Dhingra in CW. No. 3978/2002 and CW. No. 4911/2002 and Mr. K.L. Budhiraja, counsel for the petitioner in Cw. No. 5010/2002 and representing the applicants in C.M. Nos. 8089 & 8478/2002 in CW. No. 3978/2002, submitted that the final counselling held by the Delhi University on 30.6.2002 was vitiated and illegal, having been carried out in violation of the judgment of the Supreme Court in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, , Sandhya Kabra and Others Vs. University of Delhi, and Veena Gupta Vs. University of Delhi, The plea being that the admission to the local quota seats should commence after the conclusion of admission to All India quota seats so that the lapsed seats of All India quota are available to be filled by local candidates as per their merit. After the judgment of this Court in CW. No. 1535/2002, Delhi University was fully in the knowledge that the process of admission to All India quota seats would be concluded in July, 2002. The counselling by Delhi University on 30.6.2002, without the lapsed seats of the All India quota being included, would be contrary to the dictum of the Supreme Court in the above judgments. It is urged that the Delhi University was bound to defer the counselling on 30.6.2002 and to hold it after 24.7.2002, when the lapsed seats of All India quota could be added. An effort was made by certain candidates, by filing a writ petition on 28.7.2002 to get the already lapsed seats included in the final counselling of 30.6.2002 or have the same deferred till the admission to All India seats was concluded. The writ petition was directed to be listed on 1.7.2002 and hence became infructuous.

5. Petitioners contend that the counselling of 30.6.2002 stands vitiated as it did not include for consideration 138 candidates including the petitioners and applicants for the resultant vacancies in the All India quota seats that had arisen. Petitioners and others, who had opted of the subjects in the initial counselling, were not considered for the resultant vacancies. Moreover, the counselling of 30.6.2002 did not include the resultant vacancies that had already arisen out of counselling done for All India quota seats before suspension of counselling as also the counselling, which was to follow in July. Accordingly, the counselling of 30.6.2002 stood vitiated.

6. Petitioners and other aspirants were under pressure and with the threat of forfeiture of the available seats looming large they perforce opted for the courses on 30.6.2002. Petitioners claim the order dated 23.7.2002, permitted the Delhi University to fill up the resultant vacancies from the All India quota in accordance with the rules is not being implemented in its true spirit. Rather, the University is flouting the same, which requires it to fill up the resultant vacancies according to the rules, by permitting those candidates, who were lower in merit and who, as per the petitioners and applicants, had forfeited their right of admission by no

picking any seat in the counselling of 30.6.2002. Counsel submits that by this process, merit was being compromised and meritorious candidates, who had earlier under threat and coercion of forfeiture of their seats either opted for subjects in the initial counselling or the final counselling of 30.6.2002, were not given the chance to participate in the counselling of 8.8.2002. To put it succinctly, it is stated that since the initial counselling as also the final counselling on 30.6.2002, did not include the lapsed seats of the All India quota, the said counselling was vitiated. Learned counsel submits that candidates were coerced into picking up the seats against their wishes under the threat of right of admission being forfeited. Candidates higher in the merit were being denied premium seats from the All India quota now available. The said seats have been bestowed on the candidates, with lesser merit, who as per rules have forfeited their right of admission.

7. Counsel for the petitioner urged that in these circumstances, the possibility of candidates lower in rank being selectively advised not to pick up seats and assured of the lapsed seats of All India quota being made available, cannot be ruled out. Allegations of nepotism have also been made. Counsel expressed their apprehension of seats, even having been sold. Counsel urged that the action of the University lacks transparency as it was not disclosed that the University would be resorting to the formula evolved in *Dr. Veena Gupta v. University of Delhi* (supra). The Delhi University is said to have acted illegally as the resultant vacancies could not be filled only from those candidates who did not pick up a seat in the final counselling. It is claimed that such candidates in any case had forfeited their rights by not opting for a seat or course. Mr. Dhingra submitted that reliance on *Dr. Veena Gupta's* case was misplaced as the said situation had arisen in totally different circumstances and was confined to a particular year and it could not be taken as a precedent. Counsel submitted that in fact by the Court order dated 23.7.2002, the final counselling of 30.6.2002 by implication stood vitiated. Counsel also placed reliance on *Anand S. Biji Vs. State of Kerala and Others*, to urge that the Supreme Court had deprecated the allotment of premium seats to candidates with lesser merits. Counsel also submits that in view of the dictum in *Dr. Sandhya Kabra and Ors. v. University of Delhi* (Supra), the University was obliged to defer the counselling to a date after the lapsed seat of All India quota became available. It was urged that in Madhya Pradesh as a result of the lapsed seats of "All India quota" not being available the final counselling has been ordered to be reconducted with the lapsed seats being offered to all candidates.

Mr. Dhingra submitted that the petitioners and others were going to be gravely prejudiced firstly by merit being compromised and secondly their career being marred by being offered only diploma seats, while candidates with lesser merits, getting the degree seats. Further, that this would debar the petitioner and other applicants from getting admission to any super speciality as the same is not available to post graduate diploma holders.

8. Mr. Dhingra summing up his arguments submitted that the Delhi University was fully in the knowledge that lapsed seats of All India quota were going to be made available in future. In these circumstances, the holding of the final counselling on 30.6.2002, without including the lapsed seats, was wholly improper and illegal. Mr. Dhingra also reiterated that candidates, who had not opted or chosen any subject in the final counselling had forfeited their right to be considered for the counselling on 8.8.2002. He, however, submitted that if the counselling of 30.6.2002 is held to be vitiated and fresh counselling is ordered to be held, petitioners and other applicants would have no objection, if all those, who had not exercised their option on 30.6.2002 in the final counselling are considered along with the rest and seats allocated to all in accordance with merit. Relying on the cases of Dinesh Kumar, Dr. Sandhya Kabra and Dr. Veena Gupta (Supra), he submits that the final counselling and admission to local seats should be done after the All India quota seats, had been filled up and lapsed seats were made available. He submits that the non deferring of the final counselling on 30.6.2002, by Delhi University had vitiated the entire selection process, where merit has been compromised contrary to the ratio of Dr. Sandhya Kabra and Ors. v. University of Delhi (Supra). He submitted that once the final counselling was held to be vitiated, all candidates even those, who had exercised their option under pressure at the time of final counselling, ought to be included along with the wait listed candidates, as also those candidates, who had not exercised their option. He would distinguish Dr. Veena Gupta's case as it did not consider the availability of such a large number of lapsed seats and in the said case it was only one seat, which was available as a result of a fortuitous circumstance.

9. Mr. K.L. Budhiraja, counsel for the petitioners in CW. No. 5010/2002, adopted the arguments of Mr. Dhingra. By way of illustration to urge as to how merit had been disregarded, he submitted that his client Ms. Jhumi Kulshreshtha with rank 165, could get in the final counselling only a diploma course in Ophthalmology, while one Dr. Himanshu with rank 169, as a result of the counselling on 8.8.2002, got M.S. in Ophthalmology. Similarly, Dr. Aditya Verma with rank 241 got diploma in Tuberculosis and Chest diseases, while a person similarly placed in or about 240 rank, could get MD in Pharmacology and MD in Microbiology. Counsel reiterated the submissions made in paras 7, 8 and 9 of the writ petition relating to final counselling to be held after the lapsed seats of All India quota seats were available.

10. I have heard learned counsel for the University, Mr. Mariaputham in opposition to the writ petitions and C.Ms. as also Mr. Prag Tripathi, senior counsel on behalf of the applicants, in CM. Nos. 8824/2002 & 8847/2002 in CW. No. 3978/02 and Ms. Kamini Jaiswal, counsel for the applicants in CM. 8825/2002 in CW. No. 3978/2002.

11. Mr. Mariaputham objected to the maintainability of the C.Ms. moved in writ petition No. 3978/2002, without the applicants having challenged in appeal the

decision in the writ petitions. He submitted that there is no challenge to any of the rules. There is no challenge to the counselling already carried out on 30.6.2002. In the writ petition, as filed, only prayer made was to offer the already lapsed seats and other seats of All India quota, to the petitioners so as to prevent their wastage. The Court by its order date 23.7.2002, disposed of the writ petition, directing the University to fill up the All India quota lapsed seats, by extending the last date for closing of admission in accordance with the rules. The Relief now being sought in the applications namely, that the petitioners be offered the said seats had not been granted. The relief granted in the writ petition was that the seats surrendered from All India quota would be filled up by Delhi University in accordance with the rules. No appeal had been preferred against the order dated 23.7.2002. In CM. 7709/2002 filed on 27.7.2002, again there is no challenge to the counselling held on 30.6.2002. The relief sought is that even candidates, who participated in the counselling of 30.6.2002, should be allowed to take part in the counselling of 8.8.2002 for filling up the lapsed seats irrespective of the fact whether they had taken admission in the subject or not on 30.6.2002. Counsel contended that the relief, as claimed, would be beyond the scope of the writ petition and was not maintainable.

12. There is merit in the submission of the counsel for the respondent that in the writ petition in CWP No. 3978/2002, there was no specific challenge to the counselling of 30.6.2002 and the relief sought in CM. 7709/2002, goes beyond the scope of the present writ petition. At this stage, it may be noted that while this writ petition was being heard, CW. No. 4914/2002 was filed, wherein the final counselling held on 30.6.2002 was labelled as illegal and vitiated and prayer was made that the lapsed seat of All India quota be filled by offering them to wait listed and all candidates, who participated in the final counselling irrespective of whether they picked up the seats or not. Similar prayer has been made in CW. No. 5010/2002.

13. In view of challenge to the counselling of 30.6.2002 being included in CW. No. 4911/2002 and CW. No. 5010/2002, no useful purpose would be served by disposing of C.Ms. moved in CW. No. 3978/2002 on technical objections. Besides, the matter has been extensively argued and counsel heard on merits. Accordingly, I propose to dispose the C.Ms. moved in CW. No. 3978/2002 on merits and not on preliminary objections, raised by the respondent that it does not include a challenge to the counselling of 30.6.2002.

14. The University Authorities were directed to produce the records as also file a statement, showing the seats allocated to the general candidates in the initial counselling between 10.4.2002 to 12.4.2002, final counselling on 30.6.2002 and the counselling held on 8.8.2002. The said statement has been filed. Records have also been produced by the University. Out of 7 petitioners in CW. No. 3978/2002, 5 petitioners have already taken admission in different subjects on the counselling held on 30.6.2002 and it was only 2 petitioners, who had not taken admission.

15. Under the rules governing admission, a candidate if he takes admission in any subject, he/she is not entitled to seek any change or be considered for any admission to another seat or course, which may be offered to candidates later or becomes available later. Only those candidates, who have not taken admission in any subject and are eligible to be considered for such seats as become available are considered. 5 of the petitioners have taken admission already and as such are not eligible to be considered for admission in other courses. A salient feature of the rules is that a candidate who takes admission in any subject, he force-closes his admission and his right to admission comes to an end. He is not entitled to be considered for admission to any other subject or course, when future counselling is held for filling up drop out or surrendered seats. Reference in this connection may be made to the following observations in *Dr. Sandhya Kabra v. University of Delhi* (Supra):-

"75.....When a candidate opts not to accept a degree or diploma course, which is offered to him and in first instance prefers to be placed on the waiting list, there is no reason then as to why he should be subject to any further restriction. All candidates, who are on the waiting list should be treated at par. A candidate who has never been offered any subject and was not called for counselling but is placed on the waiting list is entitled to seek admission to any of the seats which fall vacant thereafter. He has a choice out of various seats which may be available due to drop outs. Just as such a candidate on the waiting list, is not restricted to any one or two subjects, similarly a candidate who, during counselling, expresses his desire to be placed on the waiting list and not to be allocated any subject, should be given an option of choosing the seats as and when they fall vacant and are made available to candidates who are in the waiting list in order of merit. To this extent only, the scheme is arbitrary and it must follow from this that those candidates, whose names have been placed on the waiting list or will be placed in the waiting list in future, they shall be free to choose any of the subjects or institutions, which may become available in order of merit. The restriction of the subject, in other words, which is indicated by them at the time of counselling will no longer be binding on them."

16. Again in *Dr. Veena Gupta v. University of Delhi* (Supra), the Court dealt with the question if a seat was by mistake not included in the initial counselling then how the said seat should be filled. The Court also considered as to who should be regarded as a wait listed candidate. It would be relevant to reproduce the decision of the Full Bench, as recorded in para Nos. 11, 12, 13, 14 and 15.

"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 counselling. Normally, when a seat is available, the same should be included in the initial counselling. If by mistake a seat is not included in the initial counselling 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 counselling, the result would be that all the candidates who took part in the first counselling, 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 counselling. There again a chain reaction will start leading to the third counselling. The effect of putting the seat back for counselling for all candidates would, Therefore, be to upset the entire counselling 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 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 counselling 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 counselling 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 counselling 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 counselling 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 counselling 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."

17. To similar effect are the observations by the Full Bench of this Court in *Shri V.K. Shukla and Ors. Union of India and Ors.*, CW. No. 3297/93 and other

connected writ petitions. The Court considered the question whether the candidates, who had joined pursuant to the first and second counselling should be permitted to take part in the counselling and secondly who are the candidates, who should be eligible for counselling. The Full Bench observed as under:-

"We are aware that there may be a bit of heart burning because some of the candidates who have already joined pursuant to the 1st and 2nd list may have wanted counselling to take effect in respect of all the seats but now it is not possible to do so. As far as the candidates, who have joined, they have no right to change their subject or college and if the seats are not to be filled by counselling those will revert to the State quota and the candidates of All India quota who have already joined can in any case not be accommodated in any of these seats."

If some of these candidates have joined any of the post graduate courses in the State quota, they will not be eligible for taking part in the counselling. The counselling is available only to those candidates, who have not joined, out of their volition or because of non-allotment, any of the post graduate courses. The intention being that the maximum number of seats should be filled. We are of the opinion that even those candidates who had been allotted seats in the 1st and the 2nd lists but who chose not to join because either the college or the subject was not of their liking even though they might have given the same as one of their choices, should be given an opportunity to take part in the counselling. The Director General Health Services will ensure that no candidate, who has joined any post graduate course either pursuant to the 1st and the 2nd list or in State quota, takes part in the counselling or is allowed any seat in the All India quota. Ordered accordingly."

The Court had also considered the plea and submissions that the candidates, who have already taken admission were higher in merit and they should be permitted to participate in the counselling for the seats now being available to the All India Quota seats. The Court had rejected the same holding that the candidates who have taken admission are not entitled to participate even though the number of seats was 856.

18. From the foregoing clear pronouncements of the Full Bench of this Court, it would be seen that a candidate, who has exercised his option and opted for admission and joined a course, is not to be permitted to either change that course or appear in any subsequent counselling, where surrendered or drop out seats become available. 5 of the 7 petitioners in the instant case are stated to have already joined their courses. The other two had also opted and had been granted admission. The petitioners, accordingly, are not entitled to ask for change in their courses or to participate in the subsequent counselling as a result of the lapsed seats being available.

19. There is a good reason and rationale for the aforesaid, as there has to be a

finality to the admission process. Coming to the second objection raised by the petitioner with regard to the counselling of 30.6.2002, having been vitiated by non-inclusion of the lapsed seats. It is true that as per the dictum in Dr. Sandhya Kabra and Anand S. Biji's case, the lapsed seats of All India quota are to be included in the local quota seats. It is for this reason that All India quota admissions are to be completed by 31.3.2002 and course is to commence on 2.5.2002. Keeping these dates in mind, the last date of counselling for Delhi University was scheduled on 10.4.2002. The admissions were to be closed on 2.7.2002. The University is obliged to follow the schedule of dates as given in the prospectus. In the normal course, the unfilled seats from the All India quota would have been available to the State candidates in the first counselling in April itself. However, for factors, which were beyond the control of Delhi University, namely, declaration of results of the All India Entrance Examinations, which were challenged on ground of leakage of question paper. There was an interim stay granted by the High Court of Allahabad, which resulted in the counselling of All India Entrance Examination seats being interrupted. Even though, the Division Bench had vacated the stay on 20.3.2002, the counselling was not resumed and it was only after the decision in CW. No. 1535/2002 on 6.6.2002 that the counselling was resumed and completed on 24.7.2002. On 11.3.2002, The Director General Health Services notified the University of Delhi that no seats in the "All India quota" shall be treated as deemed to be surrendered to the State quota and shall not be filled up from the State quota, even if the same remained unfilled beyond 7.4.2002. In view of this, Delhi University, could not have included any of the lapsed seats from the All India quota in the counselling held on 10.4.2002. Similarly, in view of the letter of the Director General of Health Services dated 20.6.2002, that no seat from the All India quota be treated as surrendered. These could not thus be included in the counselling held on 30.6.2002. The surrender of lapsed seats came about after 9.7.2002 i.e. after the counselling of 30.6.2002.

20. From the foregoing, it would be seen that it was not any act on the part of the Delhi University that the surplus seats from All India quota were not available at the time of initial and final counselling of 30.6.2002. The challenge to the All India Entrance Examination on ground of leakage of papers and stay on counselling and its non-completion were facts which were widely reported in the media and would have been known to all including the petitioner and others, who have vital interest in the matter. Petitioners and other applicants, who have chosen to take admission and opt for courses cannot now be heard to say that the counselling stands vitiated on account of non-inclusion of the lapsed seats of the All India Entrance Examination, which became available after the counselling. Petitioners had consciously taken a decision to opt for the courses in the counselling of 30th June, 2002 and take admission. This cannot now be sought to be retracted on the basis that the said decision was taken under pressure and permit petitioners and similarly placed persons to undo the counselling and admission process already completed.

21. The submission of the petitioners that all those, who had not opted for admission in the final counselling of 30.6.2002, had forfeited their right to be considered for subsequent admission are debarred from being considered in future for admission is not based on a correct interpretation of the rules, as given in the prospectus.

The relevant provisions dealing with the initial counselling and final counselling as given in the Bulletin of Information Session 2002 of the University of Delhi are reproduced below:-

"If any seat falls vacant in any subject in any Institution during the course of counselling or thereafter, the same would be filled up in the Final counselling from the waiting list and merit position 601 to 700 strictly in order of merit in the same manner, as mentioned above.

While filling up vacant seats on account of drop out or surrender of seats, candidates, who have already joined the allotted subject and Institution will not be considered and only candidates in the waiting list and merit position 601 to 700 will be considered in the Final counselling.

The candidate who has been offered a seat in the initial counselling and has accepted the offer but has not surrendered his seat (in writing) before the stipulated date and has also not joined the said course, he/she will not be entitled to be placed on the waiting list and will also be debarred in the subsequent Screening Examinations till the duration of the Course concerned is over. It is clarified that the candidates offered admission in the final counselling have no right to surrender their seats and no extension for joining will be given beyond 2-07-2002 and if they do not join the Course concerned on 2-07-2002 they will be debarred in the Screening Examination till the duration of the Course concerned is over.

A candidate who does not wish to be admitted to any of the subjects available at the time of his/her counselling may give in writing to the said effect. He/she will be placed in the waiting list and will be considered for admission to the vacant seats, if any, in the final counselling in order of merit."

22. From the foregoing reproduction of the rules, it would be seen that a candidate, who has been offered a seat in the initial counselling is required to notify before the stipulated date his intention to surrender, failing which he would not be placed on the waiting list and debarred from subsequent screening examinations. A similar benefit is not available to a candidate to surrender his seat after opting for a course, in the final counselling. This is because no further time is to be given for exercising an option. There is nothing in the rule which debars a candidate, who in the final counselling does not opt for any course and prefers not to take admission. Such a candidate would, Therefore, be eligible for any future seats that may be available on account of any fortuitous circumstances or on account of any other circumstances.

The Delhi University with the leave of the Court had accordingly offered the surplus seats from All India quota examination, to only those candidates, who were in the waiting list either on account of not having been offered admission or having not opted to take any of the subjects. It cannot, Therefore, be said that the counselling which was conducted on 8.8.2002, was contrary to or in negation of the rules.

23. Coming to the question of merit being compromised, it may be noted that in the system of counselling, merit is to be reckoned and compared only among those candidates, who are eligible at that particular time and date. Accordingly, petitioners and other applicants cannot contend that there was any derogation of merit, when the first counselling was held. Similarly, it cannot be said the merit was not inter se maintained among those, who participated in the second counselling. There is no requirement either theoretically or in fact of merit being maintained qua those, who exercised their option in the first counselling vis-a-vis, those who exercised their option in the subsequent counselling. It may happen that a candidate, who is lower down in the merit list yet takes the option of remaining in the waiting list after the initial counselling. He may in subsequent counselling get a seat of his choice. Likewise, any person, who may be high in merit list but may not be willing to remain in the waiting list may accept a seat, which may not be to his liking in the initial counselling itself. Such a person cannot raise a grievance that others who may be lower in merit to him but took the risk of remaining in waiting list got a subject of their choice and may be of a better discipline, than him. It may also be noticed that at least 4 of the 7 petitioners are lower in the order of merit, than many of 51 persons, who have been offered admission pursuant to the release of seats from the All India quota.

24. In view of the foregoing discussion, and keeping in mind the decisions of the Full Bench in *Dr. Veena Gupta v. University of Delhi*, *Dr. Sandhya Kabra v. University of Delhi (Supra)* and *Shri V.K. Shukla and Ors. v. Union of India and ors. (CW.No. 3297/93)*, and the extracts as quoted candidates who exercised their option and took admission, are not entitled to change their course or be permitted to participate in the counselling held on 8.8.2002. No ground is made out to direct fresh counselling by undoing the process of admission completed by counselling in accordance with the principles and ratio as laid down in the above cited judgments. The candidates, who have already been admitted acquired vested rights and legitimate expectation of completing their courses without being subjected to any fresh counselling at the behest of candidates who had earlier exercised their option and now want to improve their prospects.

25. The holding of the counselling on 8.8.2002 with a view to avoid the lapsing and wasting of All India quota seats rendered surplus was in public interest. The counselling of 30.6.2002 cannot be said to be vitiated at the instance of those, who had opted for a subject of their choice even though they may be higher in merit than those, who have been offered seats in the counselling of 8.8.2002. As noted, the question of comparative merit arises between the candidates who are

there in the counselling at the same time and not between the candidates who exercised their option and participate in counselling at different point of time. Merit is comparable only among those candidates who are eligible at that particular time and not with those who have become ineligible on account of joining the course.

26. There is nothing on record or even otherwise to support the petitioners' bald allegation of the University having selectively advised some of the candidates not to opt for seats in the initial and final counselling and to await the availability of All India quota seats or for that matter, the allegation that because of the such selective counselling, the medical seats have been sold. There is nothing on record to support the above allegation or the allegation of nepotism and favoritism and the same remain bald and reckless allegations.

C.M.Nos. 7709/2002, 8089/2002, 8129/2002 and 8478/2002 in CWP No. 3978/2002 are dismissed. C.M.Nos. 8824, 8825 & 8847/2002, accordingly, stand disposed of. The writ petition Nos. 4911/2002 and 5010/2002 have also no merit and are dismissed.