

**(1999) 03 DEL CK 0081**

**In the Delhi High Court**

**Case No : CW No. 633/99**

G. Senthil Kumar (Dr.)

APPELLANT

Vs

All India Institute of Medical Sciences

RESPONDENT

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**Date of Decision :** 09-03-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1999) 2 AD 850

**Hon'ble Judges :** Cyriac Joseph, J

**Bench :** Single Bench

**Advocate :** Mr. Shyam Moorjani, for the Appellant; Mr. Mukul Gupta, for the Respondent

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## **Judgement**

Cyriac Joseph, J.—The petitioner applied for admission to the Post Graduate Course in the All India Institute of Medical Sciences for the Session January 1999. He appeared in the written examination held on 6.12.98 and got rank No. 24 in the merit list. The petitioner participated in the First Counselling on 28th December, 1998 for allocation of disciplines. Though the petitioner wanted a seat in M.D. (General Medicine), no seat was available in the said discipline at his rank. Hence the petitioner provisionally took a seat in M.D. (Psychiatry), thinking that a seat in M.D. (General Medicine) might become available in the Second Counselling or thereafter. But during the Second Counselling also no seat was available in M.D. (General Medicine) at his rank. However, he did not confirm the seat in M.D. (Psychiatry) which he had taken provisionally during the First Counselling. As per the Prospectus the last date for admission was 31st January, 1999. On 16.1.99, the respondent advertised a notice in the Indian Express announcing that some seats in certain disciplines (other than General Medicine) remained vacant after the Second Counselling and that the selection for filling up those seats would be held on 25th January, 1999. It was also stated in the said notice that all those candidates who had appeared in the Entrance Examination on 6th December, 1998 irrespective of their rank in the Entrance Examination and who were interested in those discipline should report to the Academic

Section on 25th January, 1999 along with the original certificates. It was further stated that allocation of seats would be made strictly as per the rank/merit in the Entrance Examination on the terms and conditions as mentioned in the Prospectus for January 1999 Session. In the meanwhile, the petitioner came to know that two seats in M.D. (General Medicine) and one seat in M.S. (Orthopaedics) had fallen vacant and were available. One Dr. Girish who had been admitted to M.D. (General Medicine) resigned and surrendered the seat on or about 23.1.99. The other seat in M.D. (General Medicine) had fallen vacant as one Dr. Manju Singar did not join the course. Hence on 25.1.99, the petitioner submitted a representation to the respondent requesting for allotment of the seats of M.D. (General Medicine) which had fallen vacant. However, the respondent did not include the seats in M.D. (General Medicine) among the seats to be filled up on 25.1.99. No action was taken by the respondent to fill up the said seats thereafter also. The petitioner submitted a further representation dated 29.1.99 requesting the respondents to give him an opportunity to opt for the available seat in M.D. (General Medicine). Since there was no favourable response from the respondent the petitioner has filed this writ petition praying for a direction to the respondent to allot the vacant seat in M.D. (General Medicine) to the petitioner forthwith.

2. The respondent has filed a reply opposing the prayer in the writ petition. The respondent has admitted that one Dr. Girish who was at rank No.12 had opted for the seat of M.D. (General Medicine) in the First Counselling but he left the seat after the Second Counselling. According to the respondent. The said seat became vacant only after the resignation of Dr. Girish was accepted on 23.1.99. The respondent has denied the existence of any vacant seat in M.S. (Orthopaedics). According to the respondent on the date of filing the reply there was only one vacant seat of M.D. (General Medicine) and it was vacated by Dr. Girish. The respondent has admitted the filling up of certain vacant seats in other disciplines pursuant to the notice dated 16.1.99 published in the Indian Express. However it is clarified in the reply affidavit that in the said advertisement only those seats which were available all through to all the candidates (including the petitioner but) were not opted by anybody, were sought to be filled up. According to the respondent there was no Third Counselling and a Third Counselling was also not contemplated in the Prospectus. It is further stated in the reply affidavit that when the decision to hold the selection for the left over seats was taken, the seat in M.D. (General Medicine) had not fallen vacant and hence it could not have been included in the selection which took place on 25.1.99. The representation dated 25.1.99 and 29.1.99 of the petitioner were considered by the respondent and a reply dated 2.2.99 was sent to the petitioner. A copy of the said letter dated 2.2.99 has been produced as Annexure I to the reply affidavit. Through the said letter date 2.2.99 the petitioner was informed that the above mentioned vacant seat of M.D. (General Medicine) would be advertised for the July 1999 Session. It is contended in the reply affidavit that in view of the judgment of the Hon"ble Supreme Court on the subject, the respondent is required to place the

available seat in the slot for everyone and hence the said seat has to be renotified afresh and Therefore it has been carried forward to the next academic session.

3. In the light of the abovementioned rival contentions of the parties the question to be considered is whether the petitioner has got a right for admission to the seat of M.D. (General Medicine) which fall vacant after the Second Counselling. The rules relating to admission and the method of selection and counselling were published in Annexure P1 Prospectus issued by the respondent. The petitioner has no case that admissions to the various courses were made in violation of the provisions contained in the Prospectus. As per the Prospectus there were only two Counsellings. Admittedly the petitioner participated both in the First Counselling and in the Second Counselling but no seat of M.D. (General Medicine) was available at his rank. The petitioner also has no grievance about the allotment of seats made during the First and the Second Counsellings. A Third Counselling was not contemplated in the Prospectus. The Prospectus also did not say anything about filling up of the seats which might fall vacant subsequent to the Second Counselling due to reasons like the resignation of candidates after taking admission. A copy of the guide-lines issued by the respondent for allotment of seats by personal appearance and counselling has been produced as Annexure P4 to the writ petition. As per the said guide-lines if any candidate who joined the MD/MS/MDS course leaves the said course before the expiry of one year of joining he shall be liable to pay a sum of Rs.50,000/- and if any candidate who joined the course leaves after one year of joining he shall be liable to pay a sum of Rs. 1 lakh by way of compensation/losses incurred by the AIIMS due to such midstream departure. However, nothing is mentioned about the filling up of seats which fall vacant due to such mid stream departure. Therefore, as per the Prospectus or the guide-lines for allotment of seats by personal appearance and counselling, the respondent was not bound to fill up a seat which fell vacant after the Second Counselling due to the resignation of a candidate who had taken admission during the First or the Second Counselling. Hence respondent was not liable to fill up the seat of MD (General Medicine) which fell vacant due to the resignation of Dr. Girish.

4. Learned counsel for the petitioner contended that the last date for admission was only 31.1.1999 and hence the seat of MD (General Medicine) which fell vacant on 23.1.1999 could have been filled up by the respondent without carrying forward the seat to the July 1999 session. However, the learned counsel for the respondent pointed out the difficulty in filling up the seat. During the first and the second counselling candidates who were placed above the petitioner in the merit list had opted for allotment of seats in different disciplines and had accepted the seats available then. As per the prospectus and the guide-lines for allotment they were bound to take a confirmed seat at least during the second counselling. Having taken a confirmed seat in a discipline they are not given any further chance to opt for a seat which may fall vacant a subsequent to the second counselling. If a seat falling vacant subsequently due to the resignation of

a candidate who had joined the course has to be filled up, the said seat has to be offered to all the candidates in the merit list according to the rank in the merit list. It will imply that allotment already made will have to be disturbed and fresh allotments will have to be made. It is to avoid such continuous and unending process of exercising options and making allotment that the respondent decided to stop with the second counselling and to provide that all the seats allotted during the second counselling will be only confirmed seats. The said procedure followed by the respondent is to ensure that the seats are allotted according to merit and a fair opportunity is given to the candidates to make their options. The decision of the respondent not to have a third counselling for filling up the seats which might fall vacant due to resignation of candidates who had taken confirmed seats during the first or the second counselling cannot be said to be illegal or arbitrary or unfair. It may be observed that if seats falling vacant subsequently are to be filled up by remaining candidates in the merit list who had not taken any confirmed seat during the first or the second counselling, such candidates will get an undeserved advantage in the matter of allotment of seats. A candidate above them in the rank list might have opted for a seat in discipline A because at that time no seat was available at his rank in discipline B which was his preference. The seat in discipline B falling vacant subsequently will not be offered to him since he has already taken a confirmed seat whereas the said seat will become available to candidates below him in the rank list. For example, in this case when candidates who were placed above the petitioner in the merit list took the confirmed seats in other disciplines the present vacant seat in M.D. (General Medicine) was not available and hence even if they had preferred a seat in M.D. (General Medicine) they could not get one. At the same time they are not eligible to make any further option as they have taken confirmed seats. If the present vacant seat of M.D. (General Medicine) is offered to the petitioner only on the ground that he had not taken any confirmed seat during the first or the second counselling he is getting an undeserved advantage over such persons who were ranked above him in the merit list and had preferred a seat in M.D. (General Medicine). That will be unjust and unfair to the candidates ranked higher in the merit list. Hence in my view there is some purpose and logic behind the decision of the respondent not to fill up the seats which fall vacant subsequent to the second counselling and to carry forward such seats to the next session of July 1999.

5. It is to be noted that even if the respondent decided to fill up the seat which fell vacant due to the resignation of Dr. Girish the respondent had to offer the seat to all the candidates in the merit list according to their rank irrespective of their taking a confirmed seat in another discipline. That would have unsettled the admission already made and the admission process could not have been completed before the last date of admission. It is also to be noted that any candidate ranked below the petitioner in the merit list has not been given a seat or M.D. (General Medicine) and hence the petitioner cannot have any legitimate grievance.

6. Learned counsel for the petitioner pointed out that even if a third counselling was not contemplated in the prospectus the vacancies arising before the last date of admission should have been filled up by the respondent. He also pointed out that as per Annexure P5 advertisement dated 16.1.1999 the respondent sought to fill up vacancies which remained vacant after the second counselling. According to the learned counsel, if those vacancies could be filled up the vacancy caused by the resignation of Dr. Girish also could have been filled up. However, the learned counsel lost sight of a significant difference in the nature of the vacancies in question. The vacancies mentioned in Annexure P5 notice dated 16.1.1999 were the vacancies which were available for allotment during the first counselling and also the second counselling but were not taken by anyone. All the candidates had the opportunity to opt for those seats. The said seats remained vacant only because there was none to take those seats during the first and the second counselling. Hence those who were ranked above in the merit list and who had taken confirmed seats in other disciplines could not complain that they had not got an opportunity to take those seats. On the other hand, the seat which fell vacant due to the resignation of Dr. Girish was not available for allotment to other candidates above the petitioner as it had been taken by Dr. Girish. As already pointed out the seat fell vacant only on 23.1.1999. Hence it is possible for other candidates who are ranked above the petitioner in the merit list to complain that they also should get an opportunity to opt for the said seat even if they have already taken a confirmed seat in another discipline. It is clear from Annexure P5 notice as well as from the reply affidavit filed by the respondent that the seats mentioned in Annexure P5 notice dated 16.1.1999 were remaining vacant after the second counselling as nobody had opted for those seats. The filling up of the seats mentioned in Annexure P5 will not in any way violate the principle of merit followed in the matter of selection and admission. A seat subsequently falling vacant due to the resignation of a candidate who had taken a confirmed seat and had joined the course cannot be equated with seats which remained vacant as there was nobody to opt for those seats during the first and the second counselling. Hence merely because the respondent chose to fill up the seats mentioned in Annexure P5 notice, it cannot be said that the respondent was bound to fill up the seat which fell vacant due to the resignation Dr. Girish. It may also be mentioned that the seat in question is not going to be wasted and that it is being carried forward to the July 1999 session.

7. Learned counsel for the petitioner contended that Dr. Girish was rank No. 20 in the merit list and that persons ranked between the petitioner and Dr. Girish would not be interested in the seat of M.D. (General Medicine) now available. It cannot be assumed or presumed by this court that rank numbers 21 to 23 would not be interested in the seat. Whether they were interested or not, if the seat had to be filled up they also had to be given a chance to make their options according to their relative merit. The respondent had objection to such a course of action because such a course of action was not contemplated in the

prospectus. Moreover it was practically difficult to carry out such an exercise before the last date of admission.

8. By deciding not to fill up the seat which fell vacant due to the resignation of Dr. Girish, the respondent has not violated any of the provisions contained in the prospectus relating to selection and admission of candidates and the respondent has not committed any illegality in the matter. The impugned action of the respondent is neither arbitrary nor unjust. There is neither violation of any fundamental right nor denial of any vested right of the petitioner. I do not find any sufficient justification for invoking the extraordinary jurisdiction of this court to direct the respondent to admit the petitioner to the M.D. (General Medicine) course. Hence the writ petition is dismissed. No order as to costs.