

(1991) 02 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 1 to 16, 18, 34, 56 and 57, 215, 228, 229 to 239, 241, 243, 244 and 1256 of 1991

Purshottam Dass and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1991) WLN 9

Hon'ble Judges : Y.R. Meena, J; Jasraj Chopra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These 36 special appeals filed u/s 18 of the Rajasthan High Court Ordinance, 1949 - arise out of common Judgment rendered by a learned Single Judge of this Court in S.B. Civil Writ Petition No. 397 of 1990 Ashok Kumar Jangid v. State of Rajasthan and 91 others connected Writ Petitions decided on November 5, 1990 and, therefore, they were heard together and are being disposed of by a common judgment.

2. Actually, 49 special appeals were filed but 13 special appeals have been dismissed as not pressed because those 13 appellants have been granted admission in Rajasthan General Nursing Course (for short "the RNRC Course") during the pendency of their special appeals.

3. The facts necessary to be noticed for the disposal of these special appeals are: that one Ashok Kumar Jangid filed a Writ petition before this Court bearing No. S.B. Civil Writ Petition No. 397 of 1990, where in it was claimed that Barmer and Jaisalmer Districts being backward areas, the applicants belonging to Barmer and Jaisalmer Districts should be given preference in admission to the RNRC Course at the Barmer Centre because the other applicants who came from other parts of the State, although the get education at Barmer Centre, never try to serve the Barmer & Jaisalmer Districts and, therefore, these districts have always been

short of qualified persons for occupying the posts of Male and Female Nurses. Such a letter was Written by the local M.L.A., Zila Pramukh and the Collector. However, no response was coming forth and, therefore, he prayed that in pursuance of the decision of their Lordship of the Supreme Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . Preference on the basis of the residence should be given to the resident of Barmer and Jaisalmer Districts so far as the admission to Rajasthan General Nursing Training Course is concerned. In this respect, while relying on the aforesaid decision of their Lordship of the Supreme Court, ad-interim stay order was granted by this Court on 23.1.1990 in the following words:

In the mean while, the respondent No. 3, while deciding the applications of the candidates for admission to the course of R.N.R.C. should give preference to the candidates who are bonafide residents of Barmer district to the extent of 70% of the general quota till further....

The aforesaid ad-interim order granted by this Court remained in force and the Government or any of the appellants did not move an application under Article 226(3) of the Constitution for cancellations/vacation of that ad-interim order. Rather, the State Govt. was pleased to issue an order (Annexure-4) dated 6.1.1990 where by it has been ordered that it has been brought to the notice of the State Govt. that in Barmer and Jaisalmer Districts, trained nurses are not available and even if they are made available, then those persons seek transfer to their home districts and, therefore, so many posts of Nurses remain vacant in these two districts and that affects the work adversely and hence, the State Govt. has decided that the persons belonging to Barmer and Jaisalmer districts should be given preference in admission to the RNRC Course at Barmer Centre and when the persons of these districts are not available then alone, training should be imparted to the persons of other districts at Barmer Centre. It was further ordered that the persons who get their training at Barmer Centre should give an undertaking that they will serve these two districts for at least five years.

4. However, persons belonging to other districts filed lot of Writ petitions before this Court claiming that the residence was never made a condition of the advertisement and therefore, the State Govt. should not have issued orders giving preference in admission to the RNRC Course to the residents of Barmer and Jaisalmer Districts. It was submitted that a number of persons who are more meritorious have been left out where as they had a right to be admitted in RNRC Course at Barmer Centre. It was further submitted that the residence or backwardness of the area should not have been made a criteria for providing reservation to the candidates of these two districts in admission to the RNRC Course. Such a course has not been authorised by the Indian Nursing Council functioning under the Indian Nursing Council Act, 1947 as also by the Rajasthan Nurses, Midwives, Health Visitors and Auxiliary Nurses-Midwives Registration Act, 1964 and the Rajasthan Nursing Council Registration, 1964. It was submitted that such a reservation was not the part of the advertisement that was

issued and therefore, that reservation was not possible. As many as 91 Writ petitions were filed to challenge this reservation in favour of the residents of Barmer and Jaisalmer districts, It was also claimed that no reservation can be made for female nurses and that also is not provided by the Indian Nursing Council Act, 1947, as also by the Rajasthan Nurses, Midwives, Health Visitors and Auxiliary Nurses-Midwives Registration Act, 1964 and the Rajasthan Nursing Council Regulation, 1964 and, therefore, all the admissions that have been made in RNRC Course at Barmer Centre are against the advertisement and the Rules and they (Petitioners) deserve to be admitted to this Course.

5. A reply to the writ petition was filed on behalf of the State Govt. in S.B. Civil Writ Petition No. 4267 of 1990 Shiv Chandra Sharma v. State of Rajasthan and that was adopted in all the writ petitions. It was submitted that for admission in the RNRC Course at Barmer Centre, the total number of seats allotted by the State Govt. were 60 and out of which, 36 seats were for the male and 24 seats were for the female candidates. It was further submitted that this Court in S.B. Civil Writ Petition No. 397 of 1990 Ashok Kumar v. State of Rajasthan granted an ad-interim order on 23.1.1990 that preference should be given to the candidates who are bonafide residents of Barmer district to the extent of 70% of the general quota, while granting admission to the RNRC Course at Barmer Centre. Almost more than 4000 applications were received but out of them, only 839 candidates were such who had Physics, Chemistry and Biology as their subjects. 71 lady candidates also applied. The merit list of the male candidates was prepared on the basis of the marks obtained by them in Physics, Chemistry and Biology subjects. From the merit list so prepared, in pursuance on the orders of this Court, 18 persons were admitted from Barmer and Jaisalmer districts, 8 candidates were given admission on the basis of their merit in the general quota and the rest of the admissions in the male category were given to the persons from reserved quota i.e. Scheduled castes and Schedule tribes. Out of 24 seats available for women candidates, certain seats were kept reserved for Scheduled castes and Scheduled tribes and for the 70% seats, preference was sought to be given to the residents of Barmer and Jaisalmer districts but sufficient number of the residents of Barmer and Jaisalmer districts were not available and so, all the 24 seats were shifted to the general quota and all the 24 candidates were granted admission as per their position in the merit list of such category. Thus, no reservation was provided so far as the women candidates are concerned. They were admitted purely on the basis of their merit. The list of selected candidates published has also been filed as Annexures R-5 and 6. This was done by scrutinizing the forms by the Board constituted for selecting the candidates as per the directions of the Joint Director. Medical & Health Services. The selections were finalised on 26.6.1990 and the list was declared on 28.6.1990. Copies of the lists for male and female candidates have been marked as Annexures R-5 and 6 respectively. All these candidates were required to join on 15.7.1990 but that period was extended upto 31.7.1990 because of the flood and the candidates who have been admitted to R.N.R.C. course at Barmer are getting

their training since 1.8.1990.

6. It was submitted that sufficient facilities for imparting training to more than 60 candidates were not available at the Barmer Centre but still, under the orders of this Court certain persons were accommodated for training. The learned Single Judge, after hearing both the parties, decided all these Writ petitions by a common order, against which, these appeals have been filed.

7. As regards the candidates belonging to Barmer and Jaisalmer districts, it has been held by the learned Single Judge that as they have been given admission under the orders of this Court and they are not parties to this litigation, their admissions cannot be disturbed. However, it was observed by the learned Single Judge that it was wrong on the part of the State Govt. that it did not move any application under Article 226 of the Constitution for vacation of the interim order dated 23.1.1990 passed in S.B. Civil Writ Petition No. 397 of 1990 and it issued the Order Annexure-4 dated 8.1.1990 that preference should be given to the residents of Barmer and Jaisalmer districts in granting admission to the RNRC Course at Barmer Centre. However, it was held that as the candidates have suffered on account of the interim order passed by this Court, 36 more seats be filled in the basis of merit alone. As regards the women candidates are concerned, the learned Single Judge has held that they are not parties to the proceedings and, therefore, their selections cannot be cancelled.

8. It was contended that before the learned Single Judge, it was submitted that there may be cases where persons have applied for grant of admission to the RNRC Course at two centres and, therefore, their forms should be rejected but about this submission, no finding has been recorded by the learned Single Judge. As regards the persons who have Agricultural Science (Physics, Biology and Chemistry) as their subjects, the Court ordered that if they are eligible then their cases be considered on merit. Certain appellants have filed applications for amendment of their memo of appeals to challenge admissions of these persons, who had agricultural Physics, Chemistry and Biology as their subjects but when admissions of those persons were cancelled and they were admitted to the RNRC Course, they abandoned that plea for amendment and some of them who got admissions in RNRC Course, to their appeals dismissed as having become infructuous. The others who did not get there relief also abandoned this plea because the admissions of those candidates were cancelled by the C.M.H.O., Banner.

9. Aggrieved against this judgment, all these appellants have preferred these special appeals.

10. We have heard Mr. M. Mridul, Mr. M.L. Shreemali, Mr. M.R. Singhvi, Mr. U.K. Parihar, Mr. A. Advani, Mr. M.S. Singhvi and Mr. S.N. Kalla, the learned Counsel appearing for the appellants and Mr. R.P. Dave, the learned Additional Govt. Advocate appearing on behalf of the respondents and have gone through the record of the case.

11. It was contended by Mr. R.P. Dave, the learned Additional Govt. Advocate that in pursuance of the judgment of this Court dated November 5, 1990, 36 person from the general merit list have already been given admissions in addition to 36 persons already admitted, which not only included 10 persons from the reserved quota and 8 persons from the merit list and but the also included 18 persons from the residents of Barmer and Jaisalmer districts. According to him, as per the advertisement, total 60 seats were allocated for Barmer Centre (36 seats for male and 24 seats for female) and out of 36 seats for male, 70% reservation was given to the residents of Barmer and Jaisalmer districts from the general category and that came to 18 because after deducting 10 seats for the reserved quota for SC and ST, 70% of the remaining 26 seats came to 18 and seats of the 8 seats were filled in from the merit list. He has submitted that the learned Single Judge has erred in increasing the general quota by 36 more seats. At best, he could have increased the general quota by 18 seats and not by 36 seats. He has further submitted that much more seats than what could be made available for the general quota have already been allocated under the orders of the learned Single Judge. Actually, as per the advertisement, only 26 seats could have been made available to the general category of persons whereas, now, under the orders of the learned Single Judge, after deducting 10 seats reserved for SC and ST, 44 persons have been admitted from the general category on the basis of merit and 18 persons have been admitted in the general category, who belong to Barmer and Jaisalmer Districts. Thus, the RNRC Course at Barmer centre has already been overburdened.

12. It was submitted by the learned Counsel appearing for the appellants that if admissions given to the petitioner Ashok Kumar Jangid and others who belong to Barmer and Jaisalmer Districts could be protected because they have been given admissions under the orders of this Court then similar treatment should be meted out to the other candidates who have been provisionally admitted in RNRC Course under the orders of this court.

13. On the other hand, it was submitted by Mr. R.P. Dave the learned Additional Govt. Advocate that in some of the Writ petitions, orders were passed that the petitioners be admitted in RNRC Course at their own risk and in others, it was ordered that they on admitted in RNRC Course in any of the Centres where ever vacancy exists. How ever, as per the directions of this Court in its Judgment dated 5.11.1990 all the 36 candidates have been admitted to the RNRC Course at Barmer Centre because other Centres were neither parties to the writ petitions not they were accepting candidates of Banner Centre. It was further submitted that when the persons who have been admitted on the basis of their residence in a particular District, actually double to that number of seats in RNRC Course at Barmer Centre have been allocated in the general category under the orders of the learned Single Judge then no grievance can raised that any injustice has been...out to the candidates on account of such reservation.

14. Mr. D.K. Parihar and Mr. B.N. Kalla, the learned Counsel appearing for the

appellants and even to some extent, Mr. M.L. Shreemali have submitted that although, it may be true that reservation has not been provided for the residents of Barmer and Jaisalmer districts in the Advertisement that has been issued but such an order can be given by this Court before the selections are finalised keeping in view the conditions prevailing in that...and that is what has been realised by the State Govt. when it has issued the Circular (Annexure-4) dated 8.1.1990, in which, it has been mentioned that the posts of Nurses remained vacant in Barmer and Jaisalmer Districts for at least five years. They have further submitted that not only such reservation is permissible as per the decision of their Lordships of the Supreme Court in Dr. Predeep Jain's case (supra) but such a preference is in consonance with the provisions of law to mitigate the regional imbalances and to bring the backward areas in line with the advance districts. In this respect, Mr. D.K. Parihar draw our attention to a decision of their Lordships of the Supreme Court in State of Kerala Vs. Kumari T.P. Roshana and Another, , wherein certain reservations were made on the basis of residence for the persons belonging to Malabar area. The State of Kerala came into being by amalgamating Travancore-Cochin and Malabar regions. Their Lordships of the Supreme Court felt that there were gaping disparity of development, which could not be wished away by political fusion into one State and determined efforts at equalisation of human conditions, economic and cultural, alone land living validity to geopolitical homogeneity. Malabar being admittedly laggard in the educational field, the State endeavoured to wipe out this weakness by starting or supporting new colleges in this neglected...and one such institution was the Medical College at Calicut. Their Lordships further observed in para 7 of the Judgment as follows:

The Malabar area has been regarded as notoriously backward from the point of view of collegiate education so much so, the number of colleges which provide pre-degree courses necessary by way of qualification for entrance into medical colleges are relatively fewer and on the contrary, the remaining part of the State thanks to many factors, has been on a higher level with colleges more numerous and pre-degree students more prolific. Geographic justice, a component of special justice has to take note of these comparative imbalances. Rightly, therefore, the State Govt. based on certain reports of Commissions, considered the two territorial divisions as separate Units and regulated seat allocations to medical colleges in the State on an equitable basis. The social thrust of the classification based on geographical dissimilarities, was the core factor in formulation of that scheme of admissions. This principle found favour with the High Court in its Full Bench ruling in State of Kerala and Another etc. Vs. Miss Rafia Rahim etc., :

In para 9 of the Judgment, their Lordships further observed:

The rule of law runs close to the rule of life and where social life, as between one part of the State and another, is the victim of die-hard disparities, the Constitutional mandate of equal Justice under the law responds to it pragmatically and permits classification geared to eventual equalisation. We,

therefore agree with the High Court that current conditions warrant the classification of the student community on the Zonal basis-not as a legitimating of endless perpiation but as transient panacea for a...human heandicap which the State must actively strive to undo.

They have, therefore, submitted that such a classification ordered by the Court or by the State Govt. was such valid and should have been sustained.

15. In this respect, our attention was also drawn to a decision of this Court in *Knahaiyalal v. State of Raj.* 1987 (1) R.L.R. 893, where in a learned Single Judge of this Court observed that the principle enunciated in the various cases referred to above indicates that it is not in all cases that Region-wise or District-wise admission may be discardes. How ever, for such a reservation, there should be some sound basis and it should not amount to denial of equal opportunity to all similarly placed.

16. It was submitted that reservation was granted to the residents of Barmer and Jaisalmer Districts looking to the backwardness of their area further looking to the fact persons do not want to serve these districts. It was further submitted that residents of other district get admissions at Barmer Center only cause they do not get admissions anywhere else. Always, they try to run away to their home districts and, therefore, the posts of Nurses in Barmer and Jaisalmer Districts remain vacant and the work of Hospitals/Dispensaries suffer. It was also submitted that in granting admission to the RNRC Course at Barmer Centre, equal opportunity was provided to all and sundry, who belong to Barmer and Jaisalmer Districts.

17. In para 52 of the Judgment in *Kanhaiyalal's* case (supra), it was further observed with regard to this trend of Nurses, Midwives, Health Visitors and Auxilary Nurse-Midwives that upon looking to the scheme of establishment of Centre with regard to particular districts, it does appear that the State has kept in view the geographical criteria in view. In para 53 of the Judgment, it was hold as follows:

The system adopted for certain admission such as PMT and PET has been referred to by the learned Counsel for the petitioners. There is one general test and option is left to the successful candidates to get admission for study in a particular University. If such a course would have been followed for Nursing Training bourse also, the restriction for bonafide residents of a particular district would not have been there and that would not have caused grievance to the applicants, because in that case the list prepared for all the centres would have been on the basis of all the applications. How ever, in view of the circumstances, the course adopted by the State, restriction admission at a particular Center to the residents of the district attached, to that Center cannot he said to be se prejudicial to the interests of the candidates so as to necessitate the disturbance of the admission on this ground and it would not be proper or prudent to disturb the training course being imparted at various Centres on this count alone.

Although, there is a great force in this submission but this submission has now become academic and will have to be scrutinised and decided thread bare at some appropriate moment. So far as this case is concerned, the learned Single Judge has been pleased to allocate 36 more seats for general category on account of the fact that certain preferences have been given to the residents of Barmer and Jaisalmer Districts and, therefore, when 36 more seats have been allocated for general category under the orders of the learned Single Judge and these 36 candidates have already been admitted to RNRC Course at Barmer Centre and further, there is no challenge that their admissions should be cancelled, this proposition now acquired academic overtones and it does not remain a live issue. In this respect, Mr. Parihar has further submitted that even in filling up these 36 more seats under the orders of the learned Single Judge, preference should have been given to the residents of Barmer and Jaisalmer Districts. Since these 36 admissions have already been made from the general category on the basis of merit and the persons who have been admitted to the Course are not parties to these special appeals, no orders can be passed on their back affecting adversely their rights of training.

18. Having dealt with this aspect of the matter, now was proceed to deal with the next most worthy submission made by the learned Counsel appearing for the parties. They have submitted that the Indian Nursing Council Act, 1947. The Rajasthan Nurses, Midwives, Health visitors and Auxiliary Nurses-Midwives Registration Act, 1964 and the Rajasthan Nursing Counsel Regulation, 1964 do not provide for any reservations for ladies and, therefore, it was wrong on the part of the State Govt. to have reserved 24 seats for the females. According to them, even some of the females candidates, who have been granted admissions to the RNRC Course do not have physics, Chemistry and Biology as their optional subjects. It was submitted that even some of them are less meritorious than the persons who intend to seek admission to this Course through these special appeals.

19. Mr. R.P. Dave, the learned Additional Government Advocate has submitted that it is not at all a case of reservation. There are two different courses: one for the Males and the other for the Females. According to him, seats for admission to the RNRC Course at a particular Center are being advertised keeping in view the requirements of Male and Female Nurses. He has submitted that in the State of Rajasthan, there are several Women Hospitals, where the cases of Gynaecological diseases are treated. Even in the Central Hospitals, Gynaecological problems are being looked into and for females there are separate Medical & Surgical works therefore, lot of Females Nurses are called as Nurses. Thus, according to him, it is a case of requirement and not a case of reservation. He has submitted that requirement cannot be termed as reservation.

20. In this respect, Mr. B.P. Dave, the learned Additional Government Advocate has drawn our attention to the Rajasthan Medical & Health Subordinate Service (Amendment) Rules, 1983. Schedule-I of the aforesaid Rules provides for

number of posts and Group-A (Medical Side) deals with separate cadres of Males and Females and it provides for Nursing Superintendent Gr. I, Nursing Superintendent Gr. II, Public Health Nurse Instructor, Instructor, Nursing Tutor, Nurse Gr. I, Nurse Gr. II, Pharmascistcum Compounder and Psychiatric Nurse. A note has been appended to Group-A which provides that the cadres of Male and Female Nursing Personnel on the Medical side for promotional avenues upto the post of Nursing Superintendent Gr. I shall run separately and concurrently providing equal opportunities of promotional avenus to both the cadres and the total cadre stringth to be decided by the Medical Department. It was, therefore, claimed that it is a of case requirement and not at all a case of reservation and the State Govt. cannot be prohibited from advertising the posts keeping in view its own requirement of these two separate cadres. The State Govt. has every authority to accurate the cadres of Nurses into Male Nurse and female Nurse. This classification of Male Nurse and Female Nurse was under challenge before their Lordships of the Supreme Court. State of Rajasthan and Another Vs. Shantilal Jain and Others, , where in it has been observed as follows:

that even if we assume that to coming into force of the Rules, there was a combined cadre of nurses and compounders, Articles 14 and 16 of the Constitution do not forbid the State Govt. from creating new cadres, bifurcating one cadre into two or more or uniting two or more cadres into one. The creation of cadres in the Service of the State is a matter which has to be left entirely to the State Govt. In Reserve Bank of India Vs. N.C. Paliwal and Others, , this Court observed as under:

It is now well settled, as a result of the decision of this Court in Kishori Mohanlal Bakshi Vs. Union of India, that Article 16 a fortiori also Article 14 do not borbid creation of different cadres for government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause.

Mr. R.P. Dave, the learned Additional Govt. Advocate has submitted that in the advertisement, it has no where been mentioned that these seats are reserved for ladies. Only requirement of posts for Male and Female Nurses was advertised. The State Govt. wanted to impart training to Male Nurses as well as Female Nurses so that its needs may be fulfilled and, therefore, it is wrong to suggest that it is a case of reservation for ladies. Both these cadrae have been described separately. Even separate age requirement have also been prescribed for Male and Female candidates and certain other conditions have been imposed so far as the Female Candidats are concerned. So much so, the Rules provide that the State Govt. may open separate training Centre for the female Nurses. The Rules and Regulations for admission to the General Nursing Training Course were conveyed by the Deputy Secretary to the Govt. Medical and Health (Group-III) Department, Jaipur to the Director, Medical and Health Department, Government

of Rajasthan, Jaipur prescribing certain guidelines. They only provide reservations for SC and ST and not for females candidates. It was submitted that in the Regulations, it was provided that duration of RNRC Course will be of three years for Male and Female candidates both. Thus, it is a case of requirement and not at all a case of reservation. It was on the basis of this requirement that two cadres were advertised separately. Their merit lists were prepared separately and therefore, the Male candidates cannot turn round and may that they should be adjusted against the vacant seats to female Candidates. It is true that sufficient number of female candidates were not available with Science subjects and, therefore, some of the ladies who did not have science subjects have also been given admissions to the RNRC Course and that too was done by scrutinising their comparative merit among the Female Candidates. Thus, it cannot be claimed that it is a case of reservation. When it is not a case of reservation then it cannot be said that it is against the Rules and, therefore, no relief can be claimed by the appellants on this ground.

21. We are entirely agree with the admissions of Mr. R.P. Dave, the learned Additional Govt. Advocate. It actually turntum out to be a case of requirement and these two cadres are separate. It has been held by their Lordships of the Supreme Court that if there are two different cadres, seats can be allocated on the basic of requirement of both separate cadres. This is a case of allocation of seats based on requirement and not at all a case of reservation and, therefore in such discretionary matters, the Courts are less inclined to interfors. More over, the learned Single Judge has also held that woman candidates are not parties to these Writ petitions and therefore, no orders can be passed on their back and their rights cannot be jeparadised in their absence. Thus, to this extent, the submission of the learned Counsel appearing for the appellants cannot be sustained.

22. It was next contended by the learned Counsel appearing for the appellants that it was agrued by them before the learned Single Judge that there may be cases where persons have applied for grant of admission to the RNRC Course at two centers and, therefore, their forms should have been rejected by the respondents but no finding was recarded by the learned Single Judge as to which of those persons have filled up forms at more than one place. It is true that in the advertisement, it has been mentioned that candidates will not be allowed to fill up their forms at more than one Center. If they fill up their forms at more than one centre than it is likely that their candiature may by rejected. Thus, this is only an enabling provisions. Unless it is shown and proved by the petitioners appellants that so and so candiate has filled up his form at more then one Centre, no admission granted to any body can be cancelled on that count. Moreover what is provided in the advertisement is that it is likely to be cancelled. It is not a mandatory provision and when a provision is directory, one has to show that any of the candidates has filled up his form at any other Centre and his name finds place in the select list of that Centre. That burden lies on the petitioners appellants. When they have boiled to prove this fact, no body"s

candidature can be cancelled on a more supposition or surmises. It is not the duty of the court to fish out evidence for them.

23. It was contended on behalf of the appellants that according to the advertisement, persons having subjects of Physics, Chemistry and Biology were to be given preference but in matters of females candidates, that has not been done. So far as the Male Candidates are concerned, admissions have been given strictly in order of merit on the basis of the marks obtained by them in the subjects of Physics, Chemistry and Biology but so far as Female Candidates are concerned, sufficient number of female candidates were not available and, therefore,, their merit was scrutinised on the basis of their qualifying marks and as such, they have been given admissions on the basis of their merit. As stated above, none of the appellants are female candidates and, therefore, they cannot have any grouse so far as this aspect of the matter is concerned.

24. In this respect, reliance has been placed on a decision of this Court in O.R. Nathawat v. State of Rajasthan S.B. Civil Writ Petition No. 657 of 1985, decided on October 29, 1985. Thus was a case where a particular qualification was prescribed which was not prescribed other by the Indian Nursing Council or by the Rajasthan Nursing Council and, therefore, the prescription of that qualification was held to be beyond the competence of the authorities. Here, in this case, no qualification has been relaxed so far as the Female Candidates are concerned. All persons who are eligible according to the Rules have been given admission to the RNRC Course at Barmer Centre and in importing and training, preference has been given to the Candidates who have Physics, Chemistry and Biology as their subjects. Thus, O.S. Nathawat's case (supra) has no application to the facts of this case. It is true that in this case, all the female candidates having Physics, Chemistry and Biology subjects were given admissions on the basis of their comparative merit, as per the Rules and the unfilled were given to other women candidates in order & merit. As stated above, none of the appellants is a female candidate and therefore, no grounds can be raised by them to this aspect of the matter.

25. It was further submitted that sufficient number of female candidates are not available and still some seats are lying vacant. In this respect, Mr. H.P. Dave, the learned Addl. Government Advocate drew our attention to the list of female candidates published by the Department. The required number of female candidates have been granted admission to the RNRC Course, and therefore, this ground is also of no avail.

26. It was lastly contended by the learned Counsel appearing for the appellants that the appellants have been admitted to the RNRC Course at Barmer Centre under the orders of this Court and, therefore, they should be allowed to prosecute their further studies because they have also studied for about 2-3 months in this Course. In this respect, reliance has been placed on a number of authorities.

27. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, their

Lordship of the Supreme Court have been pleased to observe that once the candidate is allowed to take the examination, rightly or wrongly, then the Statute which empowers the University to withdraw the candidature of the applicant has worked itself out then the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. This is not a case where any examination not taken place and the appellants have been allowed to appear in the examinations and, therefore, this case has no application to the facts of the present case.

28. Reliance was also placed on a decision of their Lordships of the Supreme Court in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, . That was a case where the students were given admission pursuant to the High Court's order, which was challenged before their Lordships of the Supreme Court. Meanwhile, the students so admitted were already prosecuting their studies sine last three months. Such students were not made parties in proceedings before the Supreme Court. Although, admissions were declared invalid by their Lordships of the Supreme Court and the petitioners were held to have been unjustifiably denied admission. But on facts, instead of disturbing the admissions already made, petitioners were directed to be omitted. In this case, the petitioners are not prosecuting their studies, The RNRC Course is a three years course, in which, the petitioners have studied only for 2-3 months. This Course started from 1.8.1990 and after the judgment of the learned Single Judge dated 5.11.1990, they were not allowed to prosecute their further studies in this course. Thus, when they are not prosecuting their studies at present and further they are parties to these proceedings this authority cannot help their case. At best, the appellants could have been allowed to be admitted to RNRC Course to the extent of 36 more seats, which have already been filled up as per the directions of this Court. Thus, the double number of requisite seats for Male candidates have already been filled. The educational institutions have to import education by a particular method, to students whom they can conveniently accommodate. They cannot be flooded with students who have no right to be admitted. Simply making of an offer by a candidate for his admission to a particular course does not bind the concerned Institution to accept his candidature. When almost double the number of the requisite candidates have been granted admission to the RNRC Course and they are getting their training, that number cannot be increased in order to jeopardise the entire training schedule of the Institution. It has been held by their Lordships of the Supreme Courts in *State of U.P. and Others Vs. D.K. Singh and Others*, that Courts cannot dislocate the live schedule of the University merely for the convenience...few students. In this case, admissions granted to these appellants have been cancelled not only on the ground that they are below in merit to 36 candidates who have been additionally admitted to the RNRC Course under the orders of this Court but some of the candidates who were provisionally admitted have not filled up their forms for admission to the RNRC Course and some of them do not possess the requisite qualification in science Subjects viz., Physics, Chemistry and Biology. Although, in

five cases, of affidavits have been filed by clients to Mr. B.N. Kalla that the petitioners have filled up their forms but this fact has been controverted by Mr. R.P. Dave is clients the respondents. It is trite law that such disputed questions of fact cannot be gone into in the Writ jurisdiction under Art. 226 of the Constitution. The parties can avail any other civil remedy available to them.

29. Reliance has also been placed on a decision of the Punjab & Haryana High Court in *Trilochan Singh Vs. The Maharshi Dayanand University, Rohtak and another*, . That case relates to the admission to B.Ed. Correspondence Course, in which, students were not required to attend the entire Session. This is not a case of that type. More, attendance is compulsory and minimum attendance required is 75%. Thus, this authority has no application to the facts of this case.

30. In *A. Sudha Vs. University of Mysore and Another*, , the petitioner had completed first MBBS, was innocent and had relied on representation of college authorities that she as a candidate was eligible have secured more than 50% marks in B.Sc., the admission was not cancelled. Facts of that case are totally different from the facts of the present case, and, therefore, this authority has no application to the facts of this case. Here no body has completed 1 years course.

31. Reliance was also placed on a decision of their Lordships of the Supreme Court in *State of Madhya Pradesh v. Indian Medical Association, M.P. and Ors.* 1961 4 S.C.C. 516, where in the; students who were prosecuting their studies were not allowed to be removed from the rolls of the college, where they were study. Here, the petitioners have already been removed. They are...not prosecuting their studies and therefore, for the reasons aforesaid, we are unable to allow them to prosecute their further studies afresh.

32. In *R.K. Khandelwal Vs. State of Uttar Pradesh and Others*, the appellants were prosecuting their studies under the orders of the Court and have appeared in the examinations and, therefore, the Institution was directed to continue them to prosecute their further studies and to declare their results. As stated above, in this case, the appellants have not appeared in the examinations and therefore, this authority has no application to the facts of the present case.

33. Our attention was next drawn to a decision of their Lordships of the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, , where in the Karnataka University admitted certain students from Rajasthan who did not pass 10 + 2 course. It was held that as the University submitted the applicants for the sake of capitation, for, the students who were pursuing course or account four years under orders of the High Court and Supreme Court were allowed to continue their studies. It was further held that College giving admissions were responsible for wrongful admission. Here, the appellants were allowed to prosecute their studies for 2-3 months under the orders of this Court and thereafter, their studies have been discontinued because their admissions have been cancelled in pursuance of the decisions of the learned Single Judge. Thus, this authority too has no application whatever to the facts and

circumstances of this case.

34. It was submitted by Mr. R.P. Dave, the learned Additional Govt. Advocate that in this case, under the orders of the learned Single Judge, persons higher in rank have already been granted admission to the RNRC Courses at Barmer Centre and, by increasing 36 more seats for the Male Candidates, under the orders of this Court, double the number of requisite persons have already been granted admission to this Course and, therefore, this Court cannot direct to grant a admission to the persons who are disentitled to be admitted. Simply because the appellants have prosecuted their studies for 2-3 months under the orders of this Court, although some of these have not filled up their forms and some of them were not eligible to be admitted to this Course because they were not having Physics, Chemistry and Biology as their subjects, they cannot be admitted to this Course, In this respect, he has placed reliance on a desicion of their Lordships of the Supreme Court in Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, . that case admission to the course in certain Institutes was made on the basis of merit list prepared on basis of...entrance test by the University. The High Court directed admission of students in question even after pointing out that students places higher in merit list were there. That was held to be as act leading to injustice and such an act has been deprecated.

35. Mr. Dave further placed reliance on a decision of this Court in Kanhaiyalal's case (supra), where in it was observed as follows:

Provisional admission in General Nursing Course were allowed to some of candidates (petitioners) at their own risk. According to the directions in judgment, only those who come within fresh merit list would be entitled to admission. Held, provisionally admitted students shall have no right to continue the courses by virtue of order of court.

This case fully applies to the facts of the present case. Here, under the order of the Court, the persons who stand higher in merit have already been admitted and therefore, the perosns lessor in merit than those who have been admitted cannot be allowed to continue their studies because of the interim oredr granted in their favour by this Court.

36. Mr. R.P. Dave, the learned Additional Govt. Advocate has submitted that appellants Rajkumar Gangawat, Bhairulal Pareek, Ravindra Kumar, Arun Kumar Sharma, Praveen Kumar and Qdharam Pal have not applied for admission to this Course and appellants Prabhat Joel Thomas, Ajay Kumar are the students who have Writ subjects and, therefore, these persons are even otherwise not entitled to any relief.

37. Keeping in view all these facts and circumstances of this case, we are inclined to hold that these appeals have no merit and, therefore, they are here by dismissed without any order as to costs.