

**(1993) 11 DEL CK 0016**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 3943 of 1993

Rajive Goyal and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

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**Date of Decision :** 10-11-1993

**Acts Referred:**

**Citation :** (1993) 3 AD 1140 : (1993) 27 DRJ 242

**Hon'ble Judges :** V.K. Jain, J;D.P Wadhwa, J

**Bench :** Division Bench

**Advocate :** Maldeep, D.D. Sharma and S.K. Kaul, for the Appellant;

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## **Judgement**

D.P. Wadhwa, J.

(1) By this petition filed under Article 226 of the Constitution the seven petitioners, who are students and have qualified for admission to M.B.B.S. Course in Delhi University seek a declaration that seats falling vacant in the medical colleges in Delhi be given on merit to them as per their choice and not to those students who are on the waiting list and are less meritorious.

(2) We issued notice to the respondents, who number five, to show cause as to why rule nisi be not issued. Respondents 2, 3 and 4 are respectively the Vice Chancellor, the Registrar and the Dean, Faculty of Medical Sciences of the University of Delhi, and the fifth respondent is the Union of India through the Secretary in the Ministry of Health and Family Welfare. Answer to show cause notice has been filed by respondents I to 4. We have heard the matter, issue rule D.B. and proceed to dispose of the matter at this stage itself.

(3) Bulletin of Information for the session 1993 for under-graduate degree courses issued by the Faculty of Medical Sciences of the University of Delhi contains details as to how admission to first year M.B.B.S./B.D.S. Course for the year 1993-94 is to be made. It is not necessary for us to give the details of all the provisions given in this bulletin of information except to note the procedure for admission and assignment of colleges which is as under:- IV. Procedure for

Admission and Assignment of Colleges: (A) Admission to the MBBS/BDS Courses would be made strictly on the basis of merit determined by the marks obtained by the candidate in the written entrance examination. Candidates in the order of merit would be called for counselling by a Committee constituted by the Medical Courses Admission Committee for the said purpose. At the counselling by the said Committee, the candidate would be informed of the availability of seats indifferent Colleges. From among the colleges where seats are available at the time of counselling of the candidate concerned, he/she would be entitled to select one College and he/she would be admitted to the same. The selection of the College by the candidate and his/her admission to the same would be final and binding on the candidate. If a candidate does not wish to opt for any college where seats are available at the time of his counselling he may opt for remaining in the waiting list. A candidate once admitted to a particular College will not be entitled to seek any transfer or shifting to any other College under any circumstances. No request in this regard would be entertained at any time. If any seat falls vacant in any College after the commencement of the course, the same would be filled up from the waiting list. While filling up such vacant seats candidates already admitted in any College will not be considered."

(4) There are three medical colleges in Delhi, namely. Lady Hardinge Medical College (LHMC), Maulana Azad Medical College (MAMC) and University College of Medical Sciences (UCMS). LHMC is a medical college exclusively for girls. The boys are distributed in MAMC and UCMS on the basis of merit and as per choice given by them. Mostly students seek admission to MAMC. But it so happens that LHMC after being exclusively girls' college some adjustment is to be made that some boys and even girls get admission in UCMS though MAMC was their choice. After the counselling was done in the present case all the seats in the three colleges were filled in. Session for MBBS Course could start only after we gave our Judgment on 10 August 1993 in C.W.P. No. 3556/93. The petitioners who in the merit list appeared after the entrance examination for admission to MBBS Course though much higher in merit were assigned UCMS and have joined that college. Their grievance is that the students who are much below in merit and were in the waiting list are being assigned MAMC which was the first choice of college of the petitioners.

(5) It is not disputed by the respondents that the petitioners are more meritorious, but they rely on last two paras of the procedure for admission and assignment of colleges mentioned above. To justify this procedure Mr. Kaul, learned counsel for the Delhi University, said that session has already started in UCMS and the petitioners are already undergoing their study there and they should, Therefore, not be shifted. This argument, to our mind, is just stated to be rejected. Strange enough that students who are undergoing the session are being put at a disadvantageous position to those who have not attended a class for a single day. Merit has been completely given a go-by. The justification given by the University authorities appears to be unfair, unjust and unreasonable. A similar matter came up before this Court in the case of Swati Sharma v.

University of Delhi (CWP 2592/92, decided on 11 August 1992) where in similar circumstances this Court directed that a girl student in LHMC who had given her choice for MAMC and was higher in merit must have prior right to get admission in MAMC than a student on the waiting list. The university authorities are interpreting this judgment as confining to shifting the students from LHMC to MAMC. This is a wrong reading of the judgment. The principle laid in that judgment is quite clear. In spite of Clear pronouncement of this Court on this question the university authorities are still insisting on the aforementioned procedure and has no consideration for merit. We are unable to appreciate as to what difficulty university authorities would face if a student undergoing a session in one college in Delhi is shifted to another on the basis of merit in the circumstances as mentioned in the present case. After our judgment in Swati Sharma's case we would have expected the university authorities not to insist on its procedure that there would be no shifting whatever be the case. Merit cannot be made a casualty by adopting such an arbitrary procedure.

(6) We, Therefore, allow the petition and direct that students who are higher in merit and even though they are admitted in a college not of their choice be allotted seats in the college of their choice and those seats should not be given to the students on the waiting list. We find unnecessary trouble has been caused to the petitioners. They will be entitled to costs. Counsel fee Rs.2,000.00 . Rule is made absolute.