

(2012) 09 SHI CK 0109
In the High Court Of Himachal Pradesh
Case No : CWP No. 5587 of 2012-I

Richa Kaushik

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : (2012) 09 SHI CK 0109

Hon'ble Judges : Kurian Joseph, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; R.K. Bawa, Advocate General with Mr. Ankush Dass Sood, Addl. A.G. and Mr. J.K. Verma, Dy. A.G. for respondents No. 1 to 3, Mr. B.C. Negi, Advocate for respondent No. 4 and Mr. Naresh Kaul, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Justice Dharam Chand Chaudhary, J.—After having gone through the judgment of My Lord the Hon"ble Chief Justice, I wish that I could have agreed with the same, but my judicial conscience does not permit me to do so, as my views are at variance with that of His Lordship, therefore, for the reasons to be recorded hereinafter I would like to differ therewith and proceed to deal with the matter in my own way. The point in issue in this writ petition pertains to the admission in postgraduate degree courses (MDS) in H.P. Government Dental College and Hospital, Shimla and three other privately managed dental colleges and hospitals situated in the State. The postgraduate courses (MDS) are in the specialty of Oral & Maxillofacial Surgery, Paedodontics, Prosthodontics, Orthodontics, Periodontics, Conservative Dentistry and Oral Pathology etc.

2. On the day of 2nd counselling, i.e. 25th June, 2012, the petitioner being last in merit could get admission in the specialty of Oral Pathology in the 3rd respondent-college. She was required to deposit the requisite fee and other charges on or before 27th June, 2012 and there being no option available to her, she deposited fee etc. online.

3. After deposit of fee etc. by the petitioner, one Dr. Mani Sharma, already admitted in 1st counselling to undergo postgraduate course in Prosthodontics, surrendered the seat and an intimation to this effect given by her was further forwarded by the Principal of the 3rd respondent-College to the 2nd respondent, vide letter No. HIDS/PAC/3029 dated 27.6.2012 annexed to his affidavit dated 13.8.2012 filed pursuant to our order of the same date.

4. As the representation Annexure R-IV to the reply filed on behalf of respondents No. 1 and 2 reveals, against the seat surrendered by Dr. Mani Sharma, admission was straightaway given to the 5th respondent without notifying the same. Dr. Akanksha Kanwar, again a student of 3rd respondent-College anyhow or the other came to know on 29th June, 2012 that against the seat fell vacant in Prosthodontics stream in the 3rd respondent-College, on surrender by Dr. Mani Sharma, the 5th respondent lower in merit has been given admission, she being higher in merit faxed the representation Annexure R-IV to the 2nd respondent which was considered by the Counselling Committee in its meeting held on 29.6.2012 itself. As per its proceedings Annexure R-V while Dr. Akanksha Kanwar aforesaid was allowed to change her specialty from Periodontics to Prosthodontics, the 5th respondent was straightaway recommended to be admitted against the resultant vacant seat in the specialty of Periodontics, admittedly, without notifying the seat so fell vacant.

5. The petitioner, who was interested to change the specialty i.e. oral pathology in which she was given the admission in the 2nd counselling to Periodontics, was not aware of such intervening development i.e. the admission of Dr. Akanksha Kanwar in Prosthodontics and the admission of the 5th respondent against the resultant vacant seat in Periodontics, may be not attending the classes and interested to attend the classes from 2nd July, 2012, after the last date of admission viz. 30.6.2012. When the petitioner came to know about such subsequent development, she made a representation Annexure P-5, highlighting therein that she being higher in merit should have been given an opportunity to change her specialty and admission in Periodontics in preference to the 5th respondent who was lower in merit i.e. at Sr. No. 31. The respondents, however, seem to have not considered the representation, which has led to the filing of the present petition.

6. The facts even have been discussed by us also in our order passed on 7.8.2012, which reads as follows:

The 5th respondent, Dr. Meetali Guleria submitted an application, dated 25th June, 2012 to the Chairman of the Counselling Committee stating that she was the next candidate in the waiting list after the 2nd round of counselling and "if any seat is found vacant after 27th June, 2012, I am ready to take it." On 27th June, 2012, a seat in Prosthodontics fell vacant in the 3rd respondent-College. According to the Principal, who is present before us, the vacancy in Prosthodontics was notified in the notice board. Apparently, on account of such notification, one Dr. Aakanksha submitted a representation on 29th June, 2012 to

the Chairman of the Counselling Committee that her rank is 26th and she is interested in changing her specialty from Periodontics to the available vacancy in Prosthodontics. It appears, on 29th June, 2012, her request was considered. Resultantly, there arose a vacancy in Periodontics. The vacancy in Periodontics, admittedly, was not notified in the notice board either of the Directorate or of the College on 29th or 30th June, 2012.

2. According to the petitioner, she did not get an opportunity to change her specialty of Oral Pathology to Periodontics for want of any information regarding the vacancy which arose on 29th June, 2012 in Periodontics.

3. It appears, the Counselling Committee on 29th June, 2012 itself, without notifying the vacancy, allotted the seat to the 5th respondent, Dr. Meetali Guleria and she was admitted in the college on 30th June, 2012 in Periodontics, in view of her representation, dated 25th June, 2012. According to the petitioner, had this vacancy in Periodontics been notified either in the College or in the Directorate or in the website or in any other mode of publication, she would have made a representation for option to the vacancy since the candidates ranking 27th and 28th are already in Periodontics.

4. The prospectus provides for procedure for filling-up of the vacancies after the 2nd round of counselling. The vacancy position has to be displayed on the college notice board, initially on the last day of counselling and on the day previous to the last day of admission. Having not got an opportunity to express her desire for change in specialty, it is submitted that the seat allotted to the 5th respondent is to be considered for allotment to the petitioner and only the resultant seat in oral Pathology is to be granted to the 5th respondent, since the question of filling-up of any seat from the waiting list is only after giving chance for change in specialty.

5. Learned Counsel for the 5th respondent seeks time to get further instruction. There will be a direction to the petitioner, 5th respondent and the Principal of the College to be present before this Court on the next date of hearing.

7. It is in this backdrop, on the very 1st day of hearing, this Court, in the interim, has ordered as follows:

CMP No. 7996/2012

Notice in the above terms. Till further orders, allotment of MDS seat in the subject of Periodontics in favour of respondent No. 5 shall not be treated as finalized.

8. If adverting to the arguments addressed on both sides the same revolve around the issue of cut off date prescribed for admission to the course in question and the entitlement of the petitioner for admission in alteration thereof as the only case argued before us is that the seat in Periodontics, which fell vacant in 3rd respondent-College on 29.6.2012 consequent upon Dr. Akanksha Kanwar having been allowed to change her specialty from Periodontics to Prosthodontics, should have been notified and given due publicity and filled up

purely on merits, as per the following principles laid down by the Hon"ble Apex Court in SLP (C) No. 27089 of 2012, titled Priya Gupta Vs. Sate of Chhatisgarh and others, after discussing the true import of the terms "cut of date" and "rule of merits" in a case of this nature:

30. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above stated principles. Keeping in view the contemptuous conduct of the relevant stake holders, their cannonade on the rule of merit compels us to state with precision and *esemplastically*, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned. i) to v) xxxx xxxxx xxxxxx

vi) all admission through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in the case of Ms. Neelu Arora and Another Vs. Union of India (UOI) and Others, and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional course.

vii) If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic course by 30th September of the academic years.

viii) No college may grant admissions without duly advertising the vacancies available and by publicizing the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is *ex-facie* arbitrary and casts the shadow of favouritism.

9. Learned Counsel has also placed reliance on the judgment of the Apex Court

in SLP (C) No. 7440 of 2012 titled Asha Vs. Pt. B.D. Sharma University of Health and others, wherein while elaborating the scope of term "cut off date" and "rule of merit", further it is held as under:

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cutoff date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.

10. No doubt the judgments in Priya Gupta's and Asha's cases cited supra have been rendered by the Hon'ble Apex Court in the cases which pertain to admission to MBBS and BDS courses and not to the admission in postgraduate courses, however, the broader guidelines and the principles laid down therein are applicable to a case of this nature also.

11. Learned Counsel for the petitioner while further contending that in view of the seat in Periodontics having fallen vacant on 29.6.2012 and that the last date of admission being 30.6.2012, respondents had ample time for notifying the seat in question and filling up the same on merits by extending an opportunity to those interested in change of their specialty, has relied upon that part of the judgment of the Hon'ble Apex Court in Asha's case supra, reproduced by My Lord the Hon'ble Chief Justice below para 8 of His Lordship's judgment in this writ petition. Learned Counsel has thus vehemently argued that the petitioner being higher in merit is entitled to admission in the specialty of Periodontics in

preference to the private respondent and that in the given facts and circumstances and there being no exception to the rule of merit, the representation she submitted on 1.7.2012, immediately on coming to know about the admission of the private respondent a less meritorious candidate in this course, should have been considered sympathetically and admission given to her in the specialty of Periodontics.

12. On the other hand, the learned Additional Advocate General, representing the 1st and 2nd respondents while conceding fairly the case of the petitioner to the extent of the seat, which fell vacant on 29th June, 2012 not notified either by displaying a notice to this effect on the notice board or through any other mode, has further urged that it so happened due to time constraint and there being no option exercised by the petitioner for change; the seat was allotted to 5th respondent by the Counselling Committee on that day (29th June, 2012) itself. It is contended that like Dr. Akanksha Kanwar, the petitioner should have also made the representation for change of her specialty to the competent authority and as she failed to do so, the private respondent has rightly been admitted to the course, in question. Learned Additional Advocate General further submits that in the event of the representation now submitted by the petitioner being entertained, all the 28 candidates higher in merit to her already admitted in different courses are required to be associated and their options in the changed circumstances also obtained and considered which according to him is not legally permissible in view of there being no provision of third counselling.

13. Learned Counsel, representing the 4th respondent has adopted the arguments addressed on behalf of the respondent-State whereas the Learned Counsel, representing the 5th respondent while supplementing the same, has further contended that she (5th respondent) is attending the classes w.e.f. 5.7.2012 regularly and as such any interference by this Court at this stage would amount to upsetting of entire counselling process, which according to him is not legally permissible. In order to buttress such submission reliance has been placed on the judgments of the Hon"ble Apex Court in Arvind Kumar Kankane. Vs. State of U.P. and Others, and. Sharwan Kumar and Vs. Director General of Health Services and another etc.,

14. At this juncture, I deem it proper to discuss the procedure of counselling prescribed under the prospectus, which reads as under:

5.1. xxxx xxxx xxxx xxxxx xxxx

The candidate not reporting for counselling as per schedule will forfeit their claim for admission without any further notice. No further opportunity will be given. Hence, appearance in the 1st round of counselling is mandatory for consideration of candidature for further counselling. Joining time is as per the schedule prescribed in the prospectus. The selected candidates will be required to join latest by 25.5.2012, failing which their candidature will be cancelled. The academic session will start from 31.5.2012. In case of any vacancy arising on or

after 25.5.2012 for any reason, the vacancy position will be displayed on the college notice board on 25.5.2012 (afternoon) and finally on 30.5.2012. The available vacancies will be filled-up purely on merit from amongst the candidates desiring the change of subject/specialty and thereafter from the waiting list. The interested candidates will report to the Principal H.P. Govt. Dental College & Hospital Shimla at 10.00 AM on 31.5.2012 alongwith original documents and requisite fee. No admission will be made after 31.5.2012 (including change of subject/specialty) and seats still remaining vacant will not be filled-up in compliance of directions of DCI/GOI as per the judgment of Hon"ble Supreme Court of India.

15. From the provisions contained under this para, it is crystal clear that the seat(s) if any, available on the day of 2nd counselling, i.e. 25.6.2012 or even fell vacant thereafter were required to be notified on the college notice board on 25.6.2012 (afternoon) and finally on 30.6.2012 (the dates 25.6.2012 and 30.6.2012 substituted for 25.5.2012 and 31.5.2012 in prospectus in view of circular dated 16.5.2012 (Annexure R/I) issued by the Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India, New Delhi).

16. True it is that on the day of 2nd counselling i.e. 25.6.2012, no seat was lying vacant and rather all the seats got filled up on that day. However, on 27th June, 2012 Dr. Mani Sharma, who was admitted in specialty of Prosthodontics in 3rd respondent-College in 1st counselling, had surrendered the seat, which became available for being filled up in terms of the provisions contained under para 5.1 of the prospectus, supra. I have reason to believe that only an intimation qua availability of this seat was given through fax on 28.6.2012 by the Principal of the 3rd respondent-College to the 2nd respondent vide letter dated 27th June, 2012 annexed to his affidavit dated 13.8.2012 and it was never notified on the notice board of the college. This document amply demonstrate that the same cannot be treated to be a notice by any stretch of imagination. The Principal of 3rd respondent-College has only stated that communication dated 27.6.2012 annexed to the affidavit, was affixed on the college notice board and not that he had affixed the notice.

17. Although there appears to be force in the submissions made on behalf of the petitioner that no notice was ever displayed qua the seat in the specialty of Prosthodontics which became available on 27.6.2012 either in the 3rd respondent-College or anywhere else, yet even if for the arguments sake it is believed that the communication dated 27.6.2012 was affixed by the Principal of the 3rd respondent, I am of the firm opinion that the same being in the form of a letter could have not attracted the attention of any one to take notice of the fact that a seat in the specialty of Prosthodontics fell vacant.

18. Further, if coming to the so called notice displayed on the notice board of H.P. Government Dental College & Hospital, Shimla which is available in the record produced before us (copy retained), the same is dated 28th May, 2012 and not

28th June, 2012. How the notice of a seat in the specialty of Prosthodontics having become available on 27.6.2012, could have been taken from such a defective notice dated 28.5.2012, is again a million dollar question which remained unexplained on the record. No doubt in the last line of the notice the candidates if interested for change of their specialty were asked to exercise their option in writing and inform the 2nd respondent in this behalf by 29.6.2012 upto 2 p.m., however, as per normal human behaviour it is the date on the top of a notice which is generally seen and not the contents, that too of its last line. Thus no notice qua the seat in Prosthodontics, could have been taken from this document.

19. In such a scenario, it would not be improper to conclude that the availability of vacancy on 27.6.2012 in the specialty of Prosthodontics was never notified in the manner as contemplated under para 5.1 of the prospectus and rather was being allotted straightaway to the private respondent. However, Dr. Akanksha Kanwar, who anyhow or the other, when came to know about it made the representation Annexure R-IV and could get this seat in change of the seat in the specialty of Periodontics she had already occupied. The resultant vacant seat in Periodontics however was erroneously allotted to the 5th respondent in utter disregard of the procedure prescribed under the prospectus.

20. The representation dated 1.7.2012 Annexure P-5 has been submitted by the petitioner on coming to know that 5th respondent has erroneously been given admission against the seat in question. Why the seat in question was not notified, no plausible explanation is forthcoming. The only explanation that the last date for admission was 30.6.2012 is neither satisfactory nor can be taken as reasonable or plausible in view of there being two days i.e. 29th and 30th June, 2012, available with the respondents for giving due publicity and displaying the vacancy in question on the notice board of the 3rd respondent-College and also on the notice Boards of the remaining dental colleges.

21. It is immaterial whether pursuant to the notice so displayed or the publicity given, the petitioner or other candidates already admitted would have exercised her/their option for change of their respective specialty. It was, however, not possible for the petitioner to have gone on hunting for a seat of her choice having fallen vacant by way of surrender etc. in dental colleges, situated at different and distant places in the State. If the respondents intend to say that Dr. Akanksha Kanwar had submitted representation pursuant to notifying the vacancy in Prosthodontics, it will be a misnomer because fortunately anyhow or the other she came to know about it on 29.6.2012 and made representation Annexure R-IV on that very day.

22. True it is that the Apex Court while answering question (b) vide Para 36 in Asha's case *supra*, has held that admission beyond the cut off date can be granted in a very rare and exceptional case of unequivocal discrimination or arbitrariness or pressing emergency, however, only by the Court of competent jurisdiction.

23. No doubt the representation made by the petitioner being beyond the cut off date, respondent No. 2 may not have considered the same, however, if the order passed on 1.6.2012 by the Hon''ble Apex Court in Anand S.Biji Vs. State of Kerala and others in IA Nos. 3&4 in M.A. No. 16 in Civil Appeal No. 1944 of 1998 (a case which pertains to admission to postgraduate courses), which reads as follows:

This is an application for modification/clarification of this Court order dated 23.3.2012 to enable the State Government/private self-financed Medical Colleges to fill up the vacancies which might arise in case the candidates of all India quota do not join the Post Graduate course in the various medical colleges. Such a prayer was made since we have granted further time for third counselling to all India quota which began on 1st May, 2012. As per the revised order and it can go on for sixty days i.e. upto 30th June. Candidates have to be given at least seven days for joining. On non-joining those vacancies would go to the State quota as per the rules which have to be filled up, otherwise those vacancies would remain vacant.

Considering the above facts, we are inclined to extend the time upto 15.7.2012 for filling up the vacancies which might arise after the third counselling. We make it clear that this order will apply only for the present year 2012-2013 and will not have any future application.

circulated by the 2nd respondent on 2.7.2012, vide circular No. HFW(DME)H(III)G-40/2009 (P.G. Prospectus) (copy retained) amongst all the Principals of Medical/Dental Colleges situated in the State is seen, the time for granting admission was extended upto 15.7.2012. Thus, in view of the order *ibid*, had the representation made by the petitioner on 2.7.2012 beyond 30.6.2012 the last date of admission been considered by the 2nd respondent, she would have committed no illegality or irregularity while doing so because the last date for admission was already ordered to be extended by the Hon''ble Apex Court by way of interim order passed in this case upto 15.7.2012 and the order so passed was well within the knowledge of the said respondent.

24. Furthermore, had the respondents been vigilant to the procedure prescribed under the prospectus, and notified the vacancy in question on 29.6.2012, i.e. well before the cut off date, the petitioner would have been saved from the discriminatory treatment and rather would have got the seat of her choice i.e. in Periodontics.

25. In view of what has been stated *supra*, I am of the considered opinion that the present is a rare and exceptional case as contemplated under the judgment of Apex Court in Asha's case cited *supra*, because the petitioner irrespective of being higher in merit as compared to the 5th respondent did not get seat of her choice without there being any fault on her part and rather deprived of it due to the negligent and callous attitude attributable to the respondents.

26. In Asha's case *supra*, where she (the appellant) being at Sr. No. 13 in the

merit list of ESM category had appeared for counselling and marked her attendance also in the attendance sheet, but her name and roll number were not declared and to the contrary the candidates lower in rank were given admission, Hon"ble Apex Court has held that she was not at fault and termed the said case a rare and exceptional.

27. In the light of the facts of this case discussed hereinabove, the petitioner, who on coming to know that the 5th respondent has been granted admission in violation of the provisions in the prospectus had made the representation without any delay and thereafter filed the present petition in this Court, cannot be said to be at any fault and as such in my considered opinion the present is also a rare and exceptional case. Thus to allow the 5th respondent to pursue the course in Periodontics would not only be harsh and oppressive to the petitioner, but also a misplaced sympathy towards the 5th respondent and nothing else. The petitioner being higher in merit as compared to the 5th respondent will be deprived of forever from undergoing a course of her choice, which is not at all approved by the Hon"ble Apex Court in Asha"s case supra while dealing with the term "rule of merit" in the following manner:-

22. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a causality. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta Vs. State of Chhatisgarh & Anr. [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012], Harshali v. State of Maharashtra and Others [(2005) 13 SCC 464], Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, Sharwan Kumar and etc. Vs. Director General of Health Services and another, , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, Guru Nanak Dev University v. Saumil Garg and Others [2005 (13) SCC 749], A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others,

25. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high-competitiveness in the present times, where on a fraction of a mark, the admission to course could vary. Higher the competition, greater is the duty on the part of the concerned authorities to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to

the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The concerned authorities are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations.

28. Even if the over all conduct of the 5th respondent as emerges from the record is seen, vide her application Annexure R5/1 she submitted to the Counselling Committee on 25.6.2012, she had exercised option to get a seat if fell vacant in any specialty. However, during the course of hearing when the matter was referred to Shri S.C. Sharma, Advocate/Ld. Mediator for mediation, she flatly refused to surrender the seat in the specialty of Periodontics at the pretext that now she is pursuing the classes and that no admission after the cut off date against this seat can be granted to the petitioner or any one else. On being asked by us whether she is ready for exchange of her seat with the petitioner, she firmly maintained the very stand so taken by her. Thus, I feel that it will be travesty of justice if the 5th respondent, who being a less meritorious candidate is allowed to retain the seat in question in preference to the petitioner who admittedly is more meritorious as compared to the said respondent.

29. The conduct and behaviour of the 5th respondent that she is not prepared to vacate the seat itself speaks in plenty about the manner in which she got herself admitted in the course.

30. Above all, admission of the 5th respondent to Periodontics course is not yet final as she is pursuing her course pursuant to the interim orders passed in this petition by this Court. She cannot claim equity as well. While arriving at such a conclusion this Court is again supported by the judgment in Asha's case cited supra. Relevant portion thereof reads as follows:

37. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta's case (supra) that the courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction.

31. The record on which I could lay hand reveals that there were only five seats in Periodontics, i.e. one in Himachal Dental College & Hospital, Sundernagar, Mandi, two in Bhojia Dental College & Hospital, Nalagarh, Solan and two in the 3rd respondent-College. As per the record, Atika Mahajan, ranking 23 in merit, has been admitted at Sundernagar, Prem Lata, ranking 17 and Alka Sharma ranking 28 in merit have been admitted at Nalagarh whereas Varun Sharma, ranking 27 and Mitali Guleria the private respondent) ranking 31 in merit, have

been admitted in the 3rd respondent-College. They all, except the 5th respondent, were higher in merit as compared to the petitioner.

32. Thus, the last two candidates admitted in the specialty of Periodontics were ranking in merit at Sr. No. 27 and 28 viz., immediately above the petitioner, who is at Sr. No. 29 in merit. It is thus the petitioner who alone is entitled to claim change of her specialty for the reason that the candidates at Sr. No. 27 & 28, her immediate toppers, had already taken the admission in the specialty in question i.e. Periodontics, whereas the other meritorious candidates and her toppers in other specialties of their choice(s). Thus, the arguments addressed on behalf of the respondent-State that the option is required to be obtained from all the 28 candidates higher in merit as compared to the petitioner, are also without any substance.

33. The contention that for want of sufficient time, the seat which fell vacant on 29.6.2012 could not be notified, cannot also be believed to be true by any stretch of imagination, especially when the interim order in Anand S. Biji's case supra, whereby the Apex Court had extended the time for grant of time for postgraduate courses upto 15.7.2012, was well within the knowledge of the respondents.

34. The law laid down in Arvind Kumar Kankane. Vs. State of U.P. and Others, and in Sharwan Kumar and Vs. Director General of Health Services and another etc., is not at all attracted in the present case, hence hardly of any help to the respondents.

35. In the light of what has been said hereinabove, it would not be improper to conclude that the admission of the 5th respondent in the specialty of Periodontics is not only contrary to the procedure for admission prescribed under Para 5.1 of the prospectus, but also against all canons of natural justice and fair play, besides being violative of the law laid down in Priya Gupta's and Asha's cases, discussed supra.

36. Consequently, the admission of the 5th respondent in the course of Periodontics is hereby quashed and set aside with a direction to the 2nd respondent to convene a meeting of the Counselling Committee within 24 hours of the receipt of a copy of this judgment and take a decision on the representation Annexure P-5 in the light of the observations hereinabove and allot the seat in the specialty of Periodontics in 3rd respondent-College to her in exchange of seat in the specialty of oral pathology occupied by her in the said college which may be offered simultaneously to the 5th respondent pursuant to the option Annexure R-5/4 she exercised to accept any available seat. The writ petition stands allowed in the aforesaid terms. The interim order dated 16.7.2012 is vacated. Pending application(s), if any, shall also stand disposed of.