

(2000) 01 SC CK 0063

In the Supreme Court Of India

Case No : Writ Petitions (C) No. 429 Of 1999 With No. 559 Of 1999

Vikas Sharma and Others

APPELLANT

Vs

DG, Health Services and Others

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Citation : (2000) 1 ACR 836 : (2000) AIRSCW 2020 : (2000) AIRSCW 1058 : (2000) 1 ALD(Cri) 738 : (2000) 101 CompCas 278 : (2000) CriLJ 1799 : (2000) 3 JT 466 : (2000) 2 LW(Cri) 920 : (2000) 2 SCALE 532 : (2000) 3 SCC 745 : (2000) 2 SCR 566 : (2000) 2 Supreme 520 : (2

Hon'ble Judges : M. Jagannadha Rao, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In WP (C) No. 429 of 1999, there are 73 petitioners and in the second Writ Petition (C) No. 559 of 1999, there is one petitioner.
2. Vacancies have arisen in the 15 per cent seats of the all-India quota for MBBS course, consequent to migration of those who were allotted seats under the 15 per cent all-India quota to the seats under the 85 per cent quota of the States.
3. Learned counsel appearing on behalf of the petitioners submits that these seats in the all-India quota should not be allowed to go waste and get surrendered to the State quota. He further submits that this anomaly has arisen only in the year 1999, inasmuch as this year filling up of the 85 per cent of the quota by the States took place subsequent to the filling up of the 15 per cent seats under the all-India quota, whereas in the previous years, the 85 per cent quota was filled up later and there was no migration of candidates from the all-India 15 per cent quota to the State quota.
4. Learned counsel further pointed out that, in the earlier years, if any seats in the all-India quota were surrendered to the States that was done after all the merit candidates in the all-India quota stood allotted in the said 15 per cent of

the all-India quota. There was thus no grievance in the earlier years.

5. Learned counsel also points out that, so far as the year 1999 is concerned, though vacancies have arisen in the 15 per cent of the all-India quota consequent to migration to the States' quota, several candidates in the merit list of the 15 per cent of the all-India quota could not be allotted seats in the all-India quota. The candidates who had been previously allotted seats in BDS course are not able to get these resultant vacancies of the all-India quota, because these seats are getting surrendered to the States. Learned counsel for the petitioner points out that in such a situation, it will be unreasonable to allow the resultant vacancies of the all-India quota to get surrendered to the States, thus depriving the merit candidates in the all-India quota of their right to get seats in MBBS course. Learned counsel, therefore, submits that the surrender of the seats of the 15 per cent of the all-India quota to the States should remain stayed and the States should not be allowed to fill them up until further orders.

6. It may be noticed that, on 28/9/1999, this Court ordered the application for impleadment of five States, namely, State of U.P., Rajasthan, Bihar, Madhya Pradesh and State of Kerala, in the first case WP (C) No. 429 of 1999.

7. It is also to be noticed that a three-Judge Bench of this Court, on 14-9- 1999 in Amit Singh Rawal v. D.G.H.S. passed the following order, staying surrender of the seats to the States:

"LEARNED Additional Solicitor General shall cause a copy of the application served on the Medical Council of India as well as on the Dental Council of India for their response. In the meanwhile, we direct that the seats lying vacant in various medical colleges throughout the country for admission in MBBS/BDS courses from the all-India quota, 1998 shall not be appropriated till further orders from this Court. At this stage, Mr Maninder Singh, Advocate appears and accepts notice on behalf of the Medical Council of India and Dental Council of India. List the matter after two weeks."

In our view, in the circumstances mentioned by the petitioners, a case is made out for a similar direction to the various States impleaded in these two writ petitions, subject to what we state below.

8. However, learned counsel appearing on behalf of the various States in the two writ petitions have submitted that, pursuant to the directions issued by this Court in the main case, Sharwan Kumar v. Director General of Health Services the States have already filled up the resultant vacancies of the 15 per cent of the all-India quota which stood surrendered to the States by 30/9/1999.

9. We may make it clear that we do not intend to disturb the candidates to whom the States might have already allotted the resultant vacancies of the all-India quota consequent to surrender of the same to the States. We, however, direct that the States will not fill up the surrendered MBBS seats if any such surrendered seats remain unfilled in the States.

10. It is no doubt true, as already submitted, that on 28/9/1999 in WP (C) No. 429 of 1999, this Court passed an order stating that any filling up of the seats will be subject to the result of the said writ petition. That order reads as follows:

"APPLICATION for impleadment allowed. Issue notice to the original first respondent and to the parties impleaded. Any surrender of these unfilled seats to the State Government will be subject to the result of the writ petition and the State Government will make it clear to those selected by the State Government that the selection will be subject to the result of the writ petition. The petitioner is permitted to serve the notice by dasti in addition to the Director General of Health Services,"

Now it may be recalled that only five States are parties to the said order. The order was passed two days before the cut-off date (30/9/1999). It is not clear when the said order was served on those five States.

11. It may be that the said order dated 28/9/1999 was served on the Director General of Health Services. But as stated above, it is not clear by what date the above order stood communicated to the States. The respondent States will file affidavits in this Court mentioning the dates on which the surrendered seats have been filled. However, as stated already, if the seats are not filled, there will be stay on filling up of the said seats. We direct accordingly.

12. In view of the fact that similar questions appear to have been raised in *Amit Singh Rawal v. D.G.H.S.* before a three-Judge Bench, we deem it appropriate to direct that these writ petitions be tagged with the said matter. May be listed along with IA No. 7 of 1999 in WP (C) No. 475 of 1998.