

**(1993) 09 DEL CK 0021**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No"s. 2989, 2990, 3027, 3044, 3089, 3145, 3184, 3185, 3297, 3368, 3473, 3553, 3760, 3812, 3840 and 3842 of 1993

V.K. Shukla and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 03-09-1993

**Acts Referred:**

**Citation :** (1993) 3 AD 1073 : (1993) 27 DRJ 307

**Hon'ble Judges :** P.K. Bahri, J;C.L. Choudhary, J;B.N. Kirpal, J

**Bench :** Full Bench

**Advocate :** Swantantar Kumar, Geeta Mittal, Suman Goyal, Vikash Singh, Yunus Malik, Vijay Chandla, E.X. Joseph, Rajiv Bansal, A.K. Mata and Vivek Kohli, for the Appellant;

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## **Judgement**

B.N. Kirpal, J.

(1) This bunch of writ petitions is concerned with admission to the Post Graduate Course to various disciplines in medicine and concerns allocation of seats in what is commonly known as the All India Quota.

(2) Seats to the Post Graduate Medical Courses used to be reserved entirely for those candidates who fulfilled the residence requirements. The Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, was of the view that reservation of seats should only be to the extent of 50% and the rest of the seats were required to be filled by All India competitive examination to be conducted by the All India Institute of Medical Sciences. By a subsequent order this quota was altered and, as a result there of, 75% of the seats could be filled by local students while 25% of the Post Graduate seats in all the institutions in India were required to be filled on the basis of the aforesaid examination.

(3) The manner in which the seats to All India quota should be filled was dealt with by the Supreme Court in the case of Dr Dinesh Kumar and Others Vs. Motilal

Nehru Medical College, Allahabad and Others, . While directing that there should be a uniform practice with regard to duration of the Post Graduate courses in all the Universities, the Supreme Court also laid down the programme relating to the selection examination. It was, inter alia, envisaged that the examination would be held on the second Sunday of January and the results would be announced within four weeks of the holding of the examination and the admissions were to commence two weeks after the declaration of the results. The said decision further postulated that the admissions should be completed within six weeks of the announcement of the result and the courses were to start throughout the country from May the 2nd.

(4) The aforesaid time schedule was, unfortunately, not adhered to. Some problems arose with regard to filling up of seats from amongst the local students in Delhi. The procedure which used to be adopted for filling the Post Graduate seats for the local students was that subject and college preferences used to be invited and depending upon the merit position the seats were allocated. This used to result in seats falling vacant even after candidates had joined because of the fact that the candidates were permitted to change their course and/or the college where they were studying.

(5) A Full Bench of this Court had an occasion to deal with such a situation in the case of Sandhya Kabra and Others Vs. University of Delhi, . On behalf of the University of Delhi it was stated that the seats would be filled not by issuing 1st, 2nd or the 3rd list but by holding counselling. Because the Supreme Court had held that the All India quota seats should be filled before seats are allocated to the local students, this Court in Sandhya Kabra's case(supra) came to the conclusion that any seat in the All India Quota which remained unfilled by 7th of April must be regarded as being automatically surrendered to the State quota. The reason for holding the same was that in Dr. Dinesh Kumar's case(supra) a time schedule had been laid down with regard to conduct of the All India examination which had envisaged the last date for granting of admission to the candidates as the 31st of March.

(6) With regard to the All India quota the scheme which was in vogue was that various merit lists were being issued from time to time according to the preferences which were given by the candidates. At the time of taking the examination, in the application form, a candidate was required to give preference in respect of six subjects and eight colleges. In this way the maximum number of preferences which could be given by the candidate came to be 48 even though, we are informed, there were approximately 2,000 seats in the All India quota in various disciplines in different colleges.

(7) Even though according to Dr. Dinesh Kumar's and Sandhya Kabra's cases the All India examination for the year 1993 was to be held by mid January, 1993 this was not done. According to the respondents because of the disturbances in the States of Maharashtra and Gujarat the examinations were held only on 28th February, 1993 and the results thereof were declared on 12th April, 1993. We

are informed that the merit list consisted of about 1872 students. The number of seats which were vacant were about 1866. The 1st list which was issued consisted of 1202 names. 322 students, to whom seats had been allotted, did not join and thereafter on 10th June, 1993 a second list of 212 students was issued and, we are informed, that 80 seats still remain unfilled.

(8) In view of the fact that the choice of subjects and colleges was limited there were 664 seats in various colleges in the All India quota for which no preferences had been given by any of the successful candidates. The result was that in respect of these seats no list was ever issued. In addition thereto, in respect of 110 seats, out of the 1st list, which remained unfilled after the issuance of the said list, there were no applicants and these seats were not allotted to anyone in the 2nd list. The position which emerges today, Therefore, is that there are about 80 seats unfilled, which had been allotted in the 1st and the 2nd list but were not filled. 110 seats are those in respect of which allotment was made in the 1st list but which were not filled and in respect of which no allotment was made in the 2nd list. 664 seats are those for which no allotment has been made in any of the two lists because, as already stated, there were no students who wanted to apply for the same.

(9) Before dealing with this aspect it will be appropriate to notice one further decision of the Supreme Court and that is in the case of Anand S. Biji Vs. State of Kerala and Others, . This case dealt with the All India Post Graduate entrance examination of 1992 and it was, inter alia, directed that w.e.f. the year 1994 the All India quota should be filled by counselling and not by issuance of various lists. The time schedule as suggested by the Director General of Health Services, New Delhi with regard to the conduct of the said examination and the holding of the counselling was approved by the Supreme Court.

(10) The effect of the decision of Sandhya Kabra and Anand S.Biji's cases is that w.e.f. 1993 Post Graduate seats in the local quota in Delhi are to be filled by counselling and w.e.f. 1994 seats in the All India quota are also to be filled by counselling. It is now felt by the Director General of Health Services and also recognised by the Supreme Court and this Court that the best and the most equitable manner of filling the Post Graduate seats is by holding counselling. In this way there is no restriction either to the subjects or the colleges and the seats are filled purely on the basis of merit, and that is the intention of holding the examination.

(11) During the course of arguments we were informed that the method of filling seats by counselling in respect of local quota in Delhi has proved more effective inasmuch as very few seats had remained unfilled as compared with large number of seats which used to go begging in previous years. So, it is very important that keeping in view the merits that method of filling seats should be adopted which results in filling of almost all the seats available.

(12) Reverting to the vacant seats which are available in this year the contention

of the Government was that after the issuance of the 2nd list on 10th June, 1993, vide letter dated 21st June, 1993 the un-filled seats of All India quota were surrendered to the respective States. The reason given was that this Court in Sandhya Kabra's case had held that there would be automatic surrender of seats which are not filled by the issuance of various lists.

(13) It is undoubtedly true that this Court in Sandhya Kabra's case had held that there would be automatic surrender of seats of All India quota which were not filled as it was envisaged that the last list is to be issued by 31st of March and the seats are to be automatically surrendered as on 7th April of a year. In the present case, for reasons beyond anyone's control and because of the abnormal conditions which were prevailing in parts of the country the said time schedule was not adhered to. The result was that instead of there being an automatic surrender of the All India quota seats by 7th April, as was envisaged in Sandhya Kabra's case, the result itself was declared after that date, i.e., on 10th April, 1993. It is evident that in this year the question of adhering to the time schedule could not arise. This being so the question which now arises is whether this Court should extend the date for filling up the seats in the All India quota.

(14) When the All India quota was carved out by the Supreme Court in Dr. Pradeep Jain's case (Supra) the intention was that at least 25% of the Post Graduate seats all over the country should be filled on merit judged on All India basis. It has been repeatedly emphasised by the courts that every effort should be made to see that the All India quota seats are filled on merit. It appears to us that by curtailing or limiting the choice to six subjects and eight colleges it has not been possible to fill all the seats. Infact in respect of 664 seats no list was at all issued in spite of successful candidates being available. The reason being that these subjects, co-related with the colleges, were not opted for by them. It is submitted by Mr. Joseph that if counselling had been resorted to, the number of seats which would have remained vacant could be far less. Be that as it may, the first thing which we have to consider is whether there is any justification for extending the date for filling up these seats or should the seats be allowed to lapse to the State quota.

(15) Shri Malta appearing for one of the interveners has submitted that the seats should be surrendered to the State quota and filled up only by local candidates. In substance the contention is that the date for filling up the All India quota seats should not be extended. The client of Mr. Malta is a local student who had also taken the All India examination but her merit position is not very high. It appears to us that the local candidates really do not have any locus standi to challenge the filling up of the All India quota seats from amongst the meritorious students who had taken that examination. These seats have been allocated by the Supreme Court to be filled on the basis of the All India examination. Every effort has to be made to see that successful candidates are accommodated and that no seat lapses to the State quota. The Government feels helpless in this matter only for one reason viz., that because of the principle of automatic lapsing and the

need to commence the courses at an early date the seats have to be surrendered.

(16) We are informed that in a number of States the courses have not yet commenced. Despite the fact that letter dated 21st June, 1993 was written surrendering the seats, a large number of seats have not been allocated to any local candidates. In other words majority of the seats which were sought to be surrendered vide letter dated 21st June, 1993 have not yet been filled up by the local candidates. This being the position and as these seats are meant primarily for the successful candidates of the All India examination, in our opinion the date for filling up should be extended to 15th October, 1993 specially when the examinations could not be held nor the results declared as scheduled because of supervening events which had taken place in Maharashtra and Gujarat. We order accordingly.

(17) The question which now arises for consideration is as to how are these seats to be filled. It is contended by Mr. Joseph that there are three courses which are open. The first is that a 3rd list is issued; the second is that some of the seats are filled by issuance of the list and the other seats, in respect of which no list can be issued are filled by counselling. The third course which is open is that all these seats should be filled by counselling. It has been submitted by the learned counsel for the respondents that looking at the totality of the circumstances the fairest solution would be that all the 856 seats which maybe available as of today are filled by counselling. It is made clear that if any of the seats has been filled by local candidates, after the surrender of seats vide letter dated 21st June, 1993 the same shall not be disturbed.

(18) In view of the aforesaid we direct the Director General of Health Services not to give effect to the aforesaid letter dated 21st June, 1993 and the same be deemed to be withdrawn. This will, however, not adversely affect the rights of any local candidate who may have been allotted a seat which has been surrendered pursuant to the aforesaid letter dated 21st June, 1993. Therefore, the unfilled seats will be regarded as still belonging to the All India quota which will be filled in the manner to be described hereinafter.

(19) We may here notice that pursuant to some of the interim orders which had been passed, the Director General of Health Services had issued on 29th July, 1993 to all the States telegrams to the effect that vacant seats should not be utilised for local candidates till "further orders, and that information should be supplied to the Director General Health Services as to how many seats belonging to the All India quota remain unfilled.

(20) The question which now arises for consideration is as to how are the unfilled All India quota seats to be allotted. By unfilled All India quota seats we mean those seats which have not been filled pursuant to the 1st and the 2nd lists and also those seats which have not been filled by the various States after letter dated 21st June, 1993 had been issued. According to Mr. Joseph the most equitable way of filling up these seats would be to hold counselling. The reason

for this is that in respect of about 774 seats no list at all could be issued because no preferences had been given in respect thereto. List can only be issued in respect of 80 seats. There will be little justification for treating these 80 seats differently from 774 seats which are also unfilled. In view of the fact that counselling is being regarded as the best method for filling up the seats, it will be appropriate, it is contended, to fill the entire remaining seats by counselling.

(21) In our opinion the aforesaid method which is sought to be adopted for filling up the seats is fair and just. It is no doubt true that majority of the seats have, upto now, falling in the All India quota, been filled by issuance of the 1st and the 2nd lists but when nearly 40% of the seats in the All India quota cannot be filled by issuance of any number of lists then a different method should be adopted and that can only be the method of counselling. That method has proved successful as far as Delhi University is concerned and this method has also been approved by the Supreme Court w.e.f. 1994. We are aware that there may be a bit of heart burning because some of the candidates who have already joined pursuant to the 1st and the 2nd list may have wanted counselling to take effect in respect of all the seats but now it is not possible to do so. As far as the candidates who have joined, they have no right to change their subject or college and if the seats are not to be filled by counselling those will revert to the State quota and the candidates of All India quota who have already joined can in any case not be accommodated in any of these seats. The object being that maximum number of seats should be filled from amongst the successful candidates in the All India examination, so we agree with Mr. Joseph that the best way of filling up the seats would be to have counselling. Ordered accordingly.

(22) It has been suggested by Mr. Joseph that list will be prepared of the candidates and letters will be issued to them under registered post during the week of 6th September, 1993. The counselling will take place from 27th September, 1993 and may continue till 1st October, 1993 and the candidates will be allowed to join on or before 15th October, 1993. The Director General Health Services will ascertain the vacancy position from various States and the particulars regarding seats which are vacant in various colleges will be published in the newspapers all over India in the week of 20th September, 1993. Any seat which is not filled by the midnight of 15th October, 1993 shall stand automatically released to the State quota and no further admission will be given on the basis of the All India examination.

(23) The last question which arises is as to who are the candidates who will be eligible to take part in the counselling. There are about 452 candidates to whom no allotment letters were issued. In addition thereto there are about 322 candidates to whom allotment letters had been issued in the 1st list but who chose not to join. Further there are 80 candidates whose names figured in the 2nd list but did not join. In this way the total number of candidates who have not been allocated or who have not joined any Post Graduate course on the basis of the examination are approximately 854. The number of seats which are available

are approximately 856. If some of these candidates have joined any of the Post Graduate courses in the State quota they will not be eligible for taking part in the counselling. The counselling is available to only those candidates who have not joined, out of their own volition or because of non-allotment, any of the Post Graduate courses. The intention being that maximum number of seats should be filled. We are of the opinion that even those candidates who had been allotted seats in the 1st and the 2nd lists but who chose not to join because either the college or the subject was not of their liking even though they might have given the same as one of their choices, should be given an opportunity to take part in the counselling. The Director General Health Services will ensure that no candidate, who has joined any Post Graduate course either pursuant to the 1st and the 2nd lists or in State quota, takes part in the counselling or is allowed any seat in the All India quota. Ordered accordingly.

(24) There will be no order as to costs.

(25) Copy of the order be given dusty to counsel for the parties.