

Dr Santosh Kumari (Mrs) vs Union Of India (Uoi) And Ors. on 17 November, 1994

Equivalent citations: JT1994(7)SC565, 1994(4)SCALE976, (1995)1SCC269, 1995(1)UJ17(SC), 1994 AIR SCW 5057, 1995 (1) SCC 269, (1995) 1 SCT 527, (1994) 5 SERVLR 784, (1994) 7 JT 565 (SC)

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Bench: B.P. Jeevan Reddy, S.B. Majmudar

JUDGMENT

B.P. Jeevan Reddy, J.

1. Leave granted.
2. Heard the learned Counsel for the appellant and the third respondent who appears in-person.
3. The matter pertains to admission to M.S. (Gynaecology and Obstetrics) in the Medical College at Jaipur, in the All-India merit quota, for the academic year 1993-94. 24 per cent of the available seats in the post-graduate medical courses were reserved for being filled from among the candidates allotted by Director General of Health Services on the basis of an All-India Examination keeping in view the preferences indicated by each candidate. According to the orders of this Court governing admissions for the said academic year, any sets remains unfilled on the prescribed date should be surrendered to the State quota.
4. The third respondent, Dr. Summit Mathur, appeared in the All-India Examination expressing her first preference for Jaipur Medical College and for the speciality of Gynaecology and Obstetrics. She also sought admission in the State quota whereas the appellant, Dr. Santosh Kumari, applied for a seat only under the State quota. In the All-India Examination, the third respondent was assigned the merit ranking at 1816. Because there were several candidates above her, she could not be given admission in M.S. (Obstetrics and Gynaecology) degree course. Four other candidates above her in the merit list were allotted. Once of the candidates so allotted to degree course in Obstetrics & Gynaecology in Jaipur College, Dr. Manisha Jitendra Singhi, did not join within the prescribed date, with the result, one seat remained unfilled. While considering candidates for allotment against the said seat, the third respondent was not considered inasmuch as she had joined Obstetrics and Gynaecology diploma course under the State quota. A Full Bench of the Delhi High Court had directed that a candidate admitted in a course shall not be considered for admission to another

course. Thereupon, the third respondent approached the Rajasthan High Court by way of Writ Petition No. 4271 of 1993 seeking admission against the said vacant seat. A learned Single Judge dismissed the said writ petition on January 11, 1993 holding that the writ petitioner (third respondent in this appeal) was not entitled to the said seat for more than one reason recorded by him. The third respondent questioned the correctness of the judgment of the learned Single Judge by filing a special appeal in the Rajasthan High Court. The Division Bench which heard the special appeal observed at more than one place in its judgment that the third respondent was not entitled to admission on the basis of her merit. The Bench observed:

We had called for the records from the respondents on pursuance of the appellant which were made available to the Court for perusal and from the perusal of the said records we do not find any infirmity or violation of the rules having been committed by the respondents. Since the petitioner was neither eligible at the time of first Counselling which took place on 5th May, 1993 or even on the date of second Counselling (which?) took place on 10th June, 1993, the question of the petitioner having been considered for allotment of a seat in the speciality of her choice, does not arise.

5. The Division Bench also expressed its full agreement with the decision of the Full Bench of the Delhi High Court in *Dr. Sandhya Kabra and Ors. v. University of Delhi*. Indeed, the Bench set out the several directions made by the Full Bench of the Delhi High Court including the one relating to automatic surrender of unfilled All-India seats after the prescribed date and the other saying that "no change of course or Hospital is allowable to the candidates who have already secured admission." Even so, the special appeal was allowed in part on the following reasoning: pending the writ petition filed by the third respondent, the learned Single Judge of the Rajasthan High Court had directed that one seat shall be kept reserved pending disposal of the writ petition. The said seat could not, therefore, have been surrendered to the State quota. The Surrender must be deemed to be invalid. The admission of the appellant, Dr. Santosh Kumari, to that seat under the State quota (pursuant to such surrender) cannot be taken notice of. That seat must, therefore, be deemed as still available and must be filled by an appropriate eligible candidate. The concluding portion of the judgment which gives the above direction, reads thus:

In view of the above observations, we are of the opinion that the petitioner was not eligible for admission at the time of first Counselling since she was not in merit. In second Counselling the name of the appellant could not be considered because the order, dated 19th June, 1993 was given effect from 1st June, 1993. It is possible that the petitioner or any other meritorious candidate could have been considered against the vacant seat. Thereafter, the remaining seats were surrendered by the DGHS to the State Government, the order surrendering the seats was withdrawn and the Counselling was directed in accordance with the decision of the Full Bench of the Delhi High Court in which the petitioner being already given admission in diploma course under the State quota was not considered. It is, submitted that in accordance with the directions given by this Court one seat in the Central quota is still lying vacant and this vacancy is said to be on account of the stay order passed by this

Court. Mr. Asopa has submitted that his client has been given admission on the said seat. We do not think that the respondents could/have acted in violation of the stay order granted by this Court. Therefore, we proceed on the assumption that one seat is still lying vacant. The order of surrendering the vacant seat to the State quota subsequently does not affect the stay order passed by this Court and, therefore, candidate having the merit alone could be considered. The respondents are directed to consider the candidature of the petitioner or any other candidate who may deserve the admission or the said seat. Proper notice on the notice Board may be affixed by the respondents in all the colleges giving 15 days' time for making applications and the said seat may be allotted to the meritorious candidates.

Consequently this specially appeal is partly allowed accordingly.

6. Since the above direction had the effect of depriving the appellant of the admission given to her against the said seat (degree course in Obstetrics and Gynaecology) in Jaipur college, she has come forward with this appeal. She submits that she was previously admitted in M.S. (Ophthalmology) but when she was allotted this seat (degree course in Obstetrics and Gynaecology) she left her previous course and joined this one and if she is now deprived of admission to M.S. (Obstetrics and Gynaecology) she will suffer irreparable prejudice. She also questioned the basis on which the Division Bench of the High Court has treated the said seat to be vacant even on the date of its judgment. According to her, the seat was validly surrendered to State and has been filled up in appropriate manner. In any event, the appellant submitted, the third respondent cannot claim that seat.

7. In our opinion, it would be sufficient for us to consider whether the third respondent was or is entitled to the said seat. If it is found that she is not so entitled, no further question arises because it was the third respondent, who had come forward with a writ petition claiming the said seat. According to the Full Bench decision of the Delhi High Court in Dr. Sandhya Kabra, a candidate who has already been admitted in one course is not eligible for being considered for admission to another course. It is on this ground that the third respondent was not considered for the said seat. The Division Bench, however, says that the said direction of the Delhi High Court is not applicable to the vacancy in question on account of the interim orders made by the Rajasthan High Court in the writ petition filed by the third respondent. Firstly, the said direction was made by the learned Single Judge pending writ petition which writ petition came to be dismissed on January 11, 1994. (The aforesaid direction was made on 23rd July, 1993). The Division Bench while hearing the special appeal made a direction on March 15, 1994 to keep that seat vacant but on that very date - and before receiving the said order the seat was allotted to the appellant. Secondly, even if we assume that the said seat is still available in the All-India quota, it has to be allotted in the order of merit among the available candidates. In the counter-affidavit filed in this Court, it has been stated by Professor Girish Tayal that there are six candidates above the third respondent in the merit list who are similarly placed to her and that when letters were sent pursuant to the directions of the Division Bench to the said candidates, two of them, viz., Dr. Vibha Aggarwal and Dr. Shive Prasad Aggarwal have expressed their willingness to take the seat. It is not disputed by the third respondent that all the said six persons including the aforesaid two named candidates have obtained a higher merit

ranking than her in the All-India test.

8. The third respondent who appeared in-person and we must say, she put forward her case with admirable clarity and grace - submitted that inasmuch as none of the said six candidates including Dr. Vibha Aggarwal and Dr. Shiv Prasad Aggarwal have chosen to approach the Court complaining of their non-admission, they should not be considered for admission against the said seat and that she, who had approached the Court at the earliest possible moment, should be admitted to that seat. She relied upon the decision of this Court in Shri Ashok alias Somanna Gowda and Anr. v. State of Karnataka 1991 (4) J.T.160 in support of the said submission. It is not possible to agree. The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the court. Be that as it may, even the Division Bench of the Rajasthan High Court has not directed that the said seat should be given to the third respondent (appellant before them). On the other hand, they have directed the official respondents to "consider the candidature of the petitioner (third respondent in this appeal) or any other candidate who may deserve the admission to that said post." The Division Bench has further directed that "proper notice on the Notice Board may be affixed by the respondents. in all the colleges giving 15 days time for making applications and the said seat may be allotted to the meritorious candidate". It is in pursuance of this direction that notices were sent to six candidates referred to above. The submission of the third respondent cannot, therefore, be accepted. The direction made in Ashok alias Somanna Gowda related to selection to the post of Engineers and was made in the particular facts and circumstances of that case. The direction made therein cannot be treated to be one of general application. As stated hereinabove, there are not only six candidates above the third respondent in the merit list but two of them have indicated their willingness to be admitted against the said vacancy.

9. For the above reasons, the third respondent cannot lay claim to the said vacancy in M.S. (Obstetrics and Gynaecology) - degree course - in Jaipur Medical College. This finding is; sufficient to put an end to the controversy herein.

10. The appeal is accordingly allowed, judgment under appeal is set aside and the writ petition filed by the respondent in the Rajasthan High Court is dismissed.

11. There shall be no order as to costs.