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SHAFALI NANDWANI

v.

STATE OF HARYANA

SEPTEMBER 25, 2002

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[G.B. PATTANAİK AND RUMA PAL, JJ.]

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Education/Educational Institutions: Admission in Post Graduate Course in Medicine—Entrance test—Second counselling—Allotment of vacant seat in the subject of choice—Eligibility clause in admission prospectus— Interpretation of—Held, allotment of seat in a particular subject to a candidate lower in rank to the one who vacated the seat is only a fortuitous circumstance which would be in compliance with the rule/eligibility clause—A candidate though senior in merit but accepted admission in another subject in second counselling—Claiming admission in the subject of his first choice—permitting

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such admission in the subsequent academic session would amount to contravening the admission prospectus—It would also amount to increase in the permissible seats for the subsequent years and would be in contravention of Regulation 10(A) of the Medical Council of India Regulations on Graduate Medical Education, 1997.

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Both the appellant and Respondent No.4 were declared successful in the Entrance Examination-2000 for admission to M.D. Course. Appellant was senior to Respondent No. 4 in the merit list. However, in the first counselling both of them could not get admission in the subject of their choice, viz., M.D. (Medicine). As per eligibility clause of the admission prospectus, they

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preferred to be wait-listed for the second counselling though they accepted allotment in different subjects. In the second counselling, Respondent No.4 could not get admission in M.D. (Medicine) and accepted allotment of seat in M.D. (Anaesthesiology). Thereafter, a candidate lower in rank to Respondent No.4 vacated the seat in M.D. (Medicine) which was offered to and accepted by the appellant. Respondent No.4 filed a Writ Petition challenging the admission

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of the appellant. High Court allowed the Petition and quashed the admission of the appellant. In appeal to this Court, by an interim order the operation of the decision of the High Court was stayed.

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At the final hearing, it was contended for the appellant that the seat in M.D. (Medicine) was not available at the respondent's merit position and one

seat became available thereafter and was rightly offered to the next candidate, the appellant, as per term of the admission clause, and respondent was not entitled for the same; and that after closure of admission process there should not be any shifting/granting of admission as this would result in unsettling admissions already finalised. A

On behalf of Respondent No.4, it was contended that he was entitled to a seat in M.D. (Medicine) in preference to the appellant as he had ranked higher in the merit list. B

Allowing the appeal, the Court

HELD: 1.1. Assuming that the construction of the clause in the prospectus gave a right to Respondent No.4 to be offered a seat in M.D. (Medicine) which had fallen vacant on the second counselling, nevertheless the High Court erred in quashing the admission of the appellant and in directing Respondent No.4 to be admitted in the vacancy created thereby. The fact that the subject of choice of a person higher in merit list may go to a candidate who is lower in rank in the merit list was only a fortuitous circumstance which would not negative the reasonableness of the rule which had provided that the vacant seat would be offered to the candidate next in merit list. [553-C, G] C D

Arvind Kumar Kankane v. State of U.P. and Ors., [2002] 8 SCC 355, E
relied on.

1.2. The clause in the prospectus makes it clear that there would be no change in the subject or re-admission into a different course once the last date of admission was over. To permit Respondent No.4 to take admission in M.D. (Medicine) for the subsequent academic session would not only be a contravention of the prospectus but would also amount to an increase in the permissible seats for post graduate students in M.D. (Medicine) for the subsequent year. This is impermissible under Regulation 10(A) of the Medical Council of India Regulations on Graduate Medical Education, 1997. F

[553-H; 554-A, B] G

Dr. Indu Kant etc. etc. v. State of U.P. and Ors., [1993] Supp. 2 SCC 71; *Medical Council of India v. State of Karnataka and Ors.*, [1998] 6 SCC 131 and *Medical Council of India v. Madhu Singh and Ors.*, (2002) 6 Scale 332, H
relied on.

A 2. There is no question of Respondent No.4 'making up' the requisite period necessary to complete the course. The course is for three years which having commenced in May 2000 should be completed in May 2003. Respondent No.4 would be wholly ill equipped to take the examination nor would he have put in the requisite number of years for taking the 2003 examination. There is no provision by which a student who has, for whatever reason, failed to attend the course from the commencement of the session to take supplementary classes in order to be sufficiently equipped for the final examination. To disallow the appellant from completing her M.D. (Medicine) and to grant admission to Respondent No.4 in M.D. (Medicine) at this stage would amount to a colossal waste of effort and expenditure. Hence the decision of the High Court is set aside. [554-D; E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6390\2001.

From the Judgment and Order dated 24.1.2001 of the High Court of Punjab and Haryana in CWP 13390/2000.

D Ashok Kumar, for the Appellant.

R.P. Gupta, Jamshed Beg, P. Gaur, Bharat Singh, Neeraj Kr. Jain and J.P. Dhanda for the appearing parties.

E The Judgment of the Court was delivered by

F **RUMA PAL, J.** The dispute in this case relates to the allotment of a seat to the Post Graduate course of Medicine (MD) (Medicine) for the academic session which commenced on 14th May 2000 in Pandit B.D. Sharma Post-Graduate Institute of Medical Sciences, Rohtak. (hereinafter referred to as 'PGIMS').

G The entrance examination for the academic session 2000 was held on 16th April 2000 by respondent No. 3, Guru Jambheshwar University, Hissar for the M.D. Course under the State quota for the PGIMS. Both the appellant and the respondent No.4 were successful. The Respondent No. 4 was placed 24th whereas the appellant ranked 43rd in the merit list. The first choice of both the respondent and the appellant was admission in M.D. (Medicine) in PGIMS. The first counselling was held on 8th May 2000. The Respondent No. 4 was offered a seat in the M.D. (Anaesthesiology) as there was no vacancy in M.D. (Medicine). The respondent No.4 accepted the allotment but got himself wait-listed for the second counselling. The appellant was allotted a

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seat in M.S. (Obstetrics & Gynecology). Since the appellant did not get the course of her choice she also opted for being wait-listed for the second counselling. The second counselling was held on 13th June 2000. At the start of the second counselling, the respondent No. 4 was again allotted the seat in M.D (Anaesthesiology) which was accepted by him. The candidate who was 42nd on the merit position had been admitted to M.D. (Medicine) course against the seat reserved for the All India quota in the first counselling. The subject of her choice was however M.D. (Pathology). She also opted to be wait listed for the second counselling. When the candidate in merit position 42 appeared before the Counselling Board in the second counselling as there was a seat available for the course of M.D. (Pathology), she opted for the M.D. (Pathology) course. As a result, the seat which was occupied by her in M.D. (Medicine) under the All India quota fell vacant. It was offered to the appellant who was next in the merit list. The appellant accepted the offer and joined the session on 14th June 2000. The admission process was closed on 14th June 2000.

On 25th September 2000, the respondent No. 4 filed a writ petition in the High Court of Punjab and Haryana in which the respondent No. 4 claimed that the admission of the appellant in M.D. (Medicine) was invalid as the respondent No. 4 was higher than that of the appellant in the merit position and the respondent No. 4 had the prior right over a seat in the subject of his choice. The writ application was allowed by the High Court on 24th January 2001 and the admission granted to the appellant in M.D (Medicine) was quashed. The University and the PGIMS were directed to grant admission to the respondent No. 4 against that seat.

The Petition for special leave to appeal from the decision of the High Court was filed in this Court on 8th February 2001 by the appellant. An interim order was passed on 9th February 2001 staying the operation of the High Court's decision. Consequently, the appellant has continued in the M.D.(Medicine) course and the respondent No. 4 has continued in the M.D. (Anaesthesiology) course. The dispute centres around an interpretation of the following clause in the prospectus issued by respondent/University:

"The candidates will be called for counselling before the Board according to their respective merit as notified and they will be required to exercise their choice regarding the course (degree or diploma) and the subject of their choice. Selection to the course and the subject will be according to the availability of the seat(s) at their respective merit

- A at the time of counselling. Those candidates who do not get the subject of their choice can accept one course and they will be free to change to another subject/course at the time of 2nd counselling if such subject/course becomes available at his merit. If somebody does not wish to accept any course at the time of first counselling he/she will be kept in the waiting list for second counselling. If any seat(s)
- B fall(s) vacant in any subject within one month from the start of the session the same will be offered in order of merit at the time of 2nd counselling to be held before the close of admission. Such candidates shall be permitted to take the Degree/Diploma examination with the regular batch. At the time of second counselling candidates will be
- C considered for those seats only which were not available to them at the time of 1st counselling. No one will be permitted to opt for those subjects which were available to him/her at the time of first counselling. If a candidate opts for a course before the Board at the time of 1st counselling but fails to join the course he/she will stand permanently disqualified and will not be considered for 2nd /subsequent
- D counselling. *The admission will close one month after the start of session and under no circumstances a change of subject of fresh admission will be allowed thereafter even if seat(s) remain(s) vacant.*"

In terms of this clause, the last day for admission was 14th June 2000.

- E According to the appellant as also the respondent/University and PGIMS, the language of the clause makes it clear that the allotment of the subject can be made only if a seat is available in the subject of the candidate's choice at his/her merit position at the time of counselling. In this case, at the respondent's merit position the seat in the speciality of Medicine was not available. It was only when the 42nd ranked candidate opted for a seat in M.D. (Pathology)
- F that the seat of M.D.(Medicine) became available. This seat was, therefore, available to the next candidate, who was the appellant, at her merit position No. 43. It is further stated that there was no question of offering the vacant seat in M.D.(Medicine) to persons higher in the merit than the 42nd ranked candidate. It was further stated that there were nine other candidates who were higher in the merit list than the respondent No.4 who had also sought
- G a seat in M.D.(Medicine) so that in any view of the matter the respondent No. 4 was not entitled to the vacant seat. Finally, it was contended that the admission process had closed on 14th June 2000 and that there was no question of shifting or granting admission to any candidate in any other course after this date as this would result in admissions already finalised
- H being unsettled. Reliance has been placed on the decision of this Court in

Arvind Kumar Kankane v. State of U.P. and Ors., [2001] 8 SCC 355 in support of this submission. A

The respondent No.4, while admitting that the academic session had started on 14th May 2000 and that the admissions were closed after 14th June 2000, contended on the basis of the clause in the prospectus which has been quoted above that the respondent No. 4 was entitled to the seat of his choice in preference to the appellant as he had ranked much higher than the appellant in the 'open merit category' of the State quota. It is further contended that even if the respondent No. 4 was admitted to M.D.(Medicine) course today he could still complete the same as the duration of the course was three years and there was no time limit within which the three years course must be completed. B C

In our view, assuming that the construction of the clause in the prospectus gave a right to the respondent No. 4 to be offered a seat in M.D.(Medicine) which had fallen vacant on the second counselling, nevertheless the High Court erred in quashing the admission of the appellant and in directing the respondent No. 4 to be admitted in the vacancy created thereby. A similar clause was construed by this Court in *Arvind Kumar Kankane* (supra). In that case a vacant seat was not included in the initial counselling. On the basis of the first counselling several candidates had accepted the seats offered to them for the different courses. When the vacant seat was offered in the second counselling, it was contended by those candidates who had already accepted the allotment of the seats at the first counselling, that they should be given a chance in order of merit to opt for that seat. This Court rejected the submission stating: D E

“This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counselling. The effect of putting the seat back for counselling for all candidates would, therefore, be to upset the entire counselling which had already taken place.” F

The fact that the subject of choice of a person higher in merit list may go to a candidate who is lower in rank in the merit list was also held to be only a fortuitous circumstance which would not negative the reasonableness of the rule which had provided that the vacant seat would be offered to the candidate next on the merit list. G

The clause in the prospectus makes it clear that there would be no H

- A change in the subject or re-admission into a different course once the last date of admission was over. To permit the respondent No. 4 to take admission in M.D. (Medicine) for the subsequent academic session would not only be a contravention of the prospectus but would also amount to an increase in the permissible seats for post graduate students in M.D. (Medicine) for the subsequent year. This is impermissible under Regulation 10(A) of the Medical Council of India Regulations on Graduate Medical Education, 1997 which provides, inter-alia, that no medical college shall increase its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government. An academic seat is limited to an academic session. It cannot like a vacant government post be “carried-forward” to the next year. [See: *Dr. Indu Kant etc. v. State of U.P. and Ors.*, [1993] Supp.2 SCC 71; *Medical Council of India v. State of Karnataka and Ors.*, [1998] 6 SCC 131 and the judgment delivered on 11th September 2002 in Civil Appeal No. 5166 of 2001 - *Medical Council of India v. Madhu Singh and Ors.*]
- D Besides there is no question of the respondent No. 4 ‘making up’ the requisite period necessary to complete the course. The course is for three years which having commenced in May 2000 should be completed in May 2003. The respondent No.4 would be wholly ill equipped to take the examination nor would he have put in the requisite number of years for taking the 2003 examination. There is no provision by which a student who has, for whatever reason, failed to attend the course from the commencement of the session to take supplementary classes in order to be sufficiently equipped for the final examination. Apart from anything else, the post graduate courses in question are for 3 years. The respondent No.4 and the appellant have already completed two and a half years of their respective courses. To disallow the appellant from completing her M.D. (Medicine) and to grant admission to the respondent No.4 in M.D. (Medicine) at this stage would amount to a colossal waste of effort and expenditure.

For the aforementioned reasons, we allow this appeal and set aside the decision of the High Court without any order as to costs.

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S.K.S.

Appeal allowed.