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SUPREET BATRA AND ORS.

v.

UNION OF INDIA AND ORS.

JANUARY 27, 2003

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[S. RAJENDRA BABU, D.M. DHARMADHIKARI AND
G.P. MATHUR, JJ.]

Education:

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MBBS/BDS courses—Admission to—Under 15% All India quota—Scheme framed in Shrawan Kumar's case as modified later—Some States reported to have not done counselling by prescribed dates—Writ petitions filed seeking further modification of the Scheme with a provision for third round of counselling—Held, the detailed Scheme framed by the Court has to be worked out as indicated therein—There is no scope for third round of counselling under the Scheme which need not be altered.

D

In *Shrawan Kumar's* case the Supreme Court framed a Scheme for admission to MBBS/BDS courses under 15% All-India quota in various Colleges in the country. The Scheme was modified by an order made in I.A.No.10 of 2000 in W.P.(C) No. 443 of 1992 whereunder last date of receipt of vacancy position was fixed as 15th July of each year and second round counselling was proposed to be taken between 18th July to 24th July each year.

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Some of the candidates filed writ petitions stating that counselling was not done in some of the States by the dates prescribed in the Scheme and, therefore, they would not be able to take advantage of the second round of counselling. It was submitted that some of the candidates, who were allotted seats in the first round, may not have been given the course or College or place of their choice and later when they get allotment of their choice under State quota they would vacate the seat allotted to them under All-India quota and thus more seats would fall vacant under the All India quota. It was, therefore, contended that a third round of counselling may be permitted so that the seats thus falling vacant can be allotted to candidates under All-India quota and may not be allowed to revert back to the States.

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Dismissing the petitions, the Court

HELD: 1.1. When detailed Scheme has been framed through orders of the Court prescribing also the manner in which it has to be worked out, if in a particular year there in any short fall or certain number of seats are not filled up, the same would not be done by adopting one more round of counselling because there in no scope for a third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are vacant. What is to be borne in mind is that broad equality is to be achieved and not that it should result in any mathematical exactitude. [591-B, C]

Sharwan Kumar etc. etc. v. Director General, Health Sciences and Anr. etc. etc. [1993] 3 SCC 332, explained.

1.2. The primary consideration in formulating the Scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background resulted in the formulation of the Scheme. The Schemes framed by this Court should not be read as if they are Statutes or that inexorable rights are conferred upon the parties. The object of the Scheme was to achieve a broad based equality and as such the Scheme need not be altered. Besides, there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. [590-C, D; 591-E, F]

Dr. Pradeep Jain and Ors. etc. etc. v. Union of India and Ors., etc. etc., [1984] 3 SCC 654 and *Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College and Ors.*, [1986] 3 SCC 727; *Ms. Neelu Arora and Anr. v. Union of India and Ors. and Medical Council of India v. Madhu Singh and Ors.*, [2002] 7 SCC 258, relied on.

2. By an interim order this Court had directed that the seats under the All-India quota should not revert to the States. As a consequence, these seats have not been filled up either under All-India quota or State quota. However, with the dismissal of these petitions, the interim order gets dissolved. In I.A.No 13 filed in W.P. (Civil) No. 393 of 2002, it has been stated that the State of Kerala had extended period of Rank List upto December 31, 2002 only and thereafter applicants would lose their eligibility. It is made clear that period of validity shall stand extended until the appropriate steps are taken by the authorities concerned in that State.

[591-G, H; 592-A]

A CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 393 of 2002.

(Under Article 32 of the Constitution of India.)

WITH

B W.P. (C) No. 473/2003.

K.N. Rawal, Solicitor General, ATM Ranga Ramanujan, Kailash Vasdev, P.H. Parekh, Rohit Alex, Mrs. Gouri K. Das, Ms. Rani Jethmalani, Mrs. Sunita Sharma, D.S. Mahra, Sumita Sharma, R.K. Rathore, Addl. Adv. Gen. for Punjab, Tara Chandra Sharma, Ms. Neelam Sharma, Ajay Sharma, C Anil Nag, R.K. Bansal, K.R. Sasiprabhu, John Mathew, Ms. K. Sangeeta, Sushil Tekriwal, S.S. Shinde, V.N. Raghupathy, Pardeep Gupta, C.M. Kennedy, K.K. Mohan, Ranji Thomas, Mrs. Bharati Upadhyaya, D.K. Thakur, Sanjay Mitra, V.G. Pragasam, Maninder Singh, A. Mariarputtam, Ms. Pratibha M. Singh, Ms. Ankur Talwar, Kirtiman Singh, Angad Chopra, Bhavanishankar V. Gadnis, H.A. Raichura, Ms. Hemantika Wahi, Ms. Sadhna Sandhu, Prakash D Shrivastava, P.K. Chakravarty, Annam D.N. Rao, Ms. Krishna Sarma, Ms. Asha G. Nair, V.K. Sidatharan, for M/s. Corporate Law Group, Ms. Kamini Jaiswal, Ms. Shomila Bakshi, Satinder Singh Gulati, Ranbir Yadav, Naresh K. Sharma, K.H. Nobin Singh, M. Gireesh Kumar, Ms. Revathy Raghavan, Ashok Srivastava, B.S. Banthia and Ms. Geetanjali Mohan, for the appearing E parties.

The Judgment of the Court was delivered by

F **RAJENDRA BABU, J.** These petitions are offshoot of a Scheme framed by this Court in *Sharwan Kumar, etc. etc. v. Director General of Health Services & Anr. etc. etc.*, [1993] 3 SCC 332, prescribing the procedure to complete the process of allotment of 15 per cent of All-India quota for admission to MBBS/BDS courses in various colleges in the country by September [now changed to 7th August] each year. The said Scheme was modified pursuant to an order made in I.A.No.10 of 2000 in WP{C} No.443 of 1992 and the date fixed, as stood altered, as indicated therein and the last G date for receipt of vacancy position is fixed as 7th August of each year and the IInd round of counselling is proposed to be taken between the period from 16th August to 18th August of each year.

H Now in these petitions, it is contended that selection or counselling has not been done in some States and therefore, they would not take full advantage of IInd round of counselling. The details are set forth as under :

- a. The date of the PMT in Punjab has been altered from 23rd June to 21st July, 2002. A
- b. The States of Haryana and Uttar Pradesh have only conducted their PMT on 30th June, 2002.
- c. In the state of Karnataka the counselling sessions for the Karnataka quota will commence on the 31st of August and the counselling sessions for the non-Karnataka quota will commence on 11th September, 2002. B
- d. In the State of Rajasthan, the results of the PMT were declared on 26th June, 2002. However, no counselling schedule has been declared so far. C
- e. In the State of Bihar, the date of the PMT had been shifted from 9th June to 11th July, 2002.
- f. In the State of Jharkhand, the date of the pre-entrance test for screening has been fixed at 7th July, 2002 and no date has been fixed for the main entrance test i.e. the P.M.T. D
- g. In the State of West Bengal, no date has been announced vis-à-vis the counselling sessions.
- h. In the state of New Delhi, the DPMT was conducted on 18th May, 2002 and the date of the counselling is scheduled to be held on 16th and 17th July, 2002. E
- i. In the States of Gujarat and Himachal Pradesh, they have not conducted the PMT yet. F
- j. Vis-à-vis All India All India Institute of Medical Sciences, the test was conducted on 1st June, 2002 and the counselling is scheduled to be held on 29th July, 2002.

It is submitted that the candidates from these States who have been allotted seats in the first round of allotment may not have been given the course or college or place of their choice and in case later on they get the allotment of their choice under the State quota, then they will vacate the seat allotted to them under the All-India Quota. Hence they apprehend that more than 700 seats will fall vacant once the counselling is conducted in the aforesaid States. Therefore, it is submitted that a IIIrd round of counselling G

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A is required to be held in the special features of the case and that the vacant seats, if any, should arise in the 15 per cent All-India Quota seats should not be allowed to revert back to the States/Colleges after 7th August, 2002 and that instead of successful and meritorious candidates in the All-India Quota should be allotted these seats and pass such other orders as may be necessary.

B This Court in *Dr. Pradeep Jain & Ors., etc. etc. v. Union of India & Ors., etc. etc.*, [1984] 3 SCC 654 and *Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College & Ors.*, [1986] 3 SCC 727, while disapproving of the total reservation on different scores in regard to admission of students in medical courses such as MBBS and post-graduate specialities, stated that
C “the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation preferences for students passing the qualifying examination”. The primary consideration in formulating the scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background
D resulted in the formulation of the Scheme, which is sought to be interpreted or modified now. We should not read the Schemes framed this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2002-2003, 1484 seats for MBBS course and 150 seats for BDS course, totaling 1634 seats were made available by the States under the 15% All-India Quota. On the basis of the results declared by respondent
E No.2, 2778 successful candidates were sent call letters. By the end of the first round of counselling, the entire 1634 seats were allotted up to 1835th rank.

The contention of the petitioners is that inasmuch as certain circumstances have arisen in view of change of date in the matter of counselling and date by which intimation of the vacancy position to the Director General of Health Services, the scheme framed by this Court in Sharwan Kumar's case is not being given full effect with the consequence of seats reverting to States thus frustrating the Scheme framed by this Court.

As per clause 14 of the Scheme, if the Dean or the Principal of the
G concerned college does not notify the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein, the seats allotted to the college will be treated as vacant and allotment of candidates will be made against these deemed vacant seats and it shall be the responsibility of the Dean or the Principal of the concerned college to give admission to those candidates. The IInd round of allotment by
H personal appearance will be for candidates who were allotted a seat in the

first round and who wish to change their allotted college/course and wish to join the same against vacancies arising due to non-joining of the candidates allotted in the first round of personal appearance and for candidates on the merit list who could not be considered for allotment in the first round. It is thus the IInd round of counselling by personal appearance was to be concluded by a particular date.

When detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 200 seats are not filled up for various reasons and such not filled up seats were much less in the earlier years, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India Quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. We have taken identical view in the decision in Writ Petition (Civil) No. 407 of 2001 (*Ms. Neelu Arora & Anr. v. Union of India & Ors.*) and connected matters disposed of on 24.01.2003. Moreover, this Court in *Medical Council of India v. Madhu Singh & Ors.*, [2002] 7 SCC 258, has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions. These writ petitions shall stand dismissed.

By an interim order this Court had directed that the seats in the All-India quota should not revert to the States. As a consequent these seats have not been filled up either in All-India quota or State quota and with the dismissal of these petitions, that interim order gets dissolved. In I.A.No.13

A filed in W.P.[Civil] 393 of 2002, it is brought to our notice that the State of Kerala had extended period of Rank List upto December 31, 2002 only and thereafter applicants would lose their eligibility. It is made clear that period of validity shall stand extended until the appropriate steps are taken by the concerned authorities in that State.

B Interlocutory Applications filed shall stand disposed off in view of the order made by us in the main petitions.

R.P.

Petitions dismissed.