

A

ARVIND KUMAR KANKANE

v.

STATE OF U.P. AND ORS.

AUGUST 3, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

*Education*

C *Post-Graduate Medical Courses—Admissions—Rules—Framing of—*  
*Counselling process—Allotment of subjects after option exercised by candidates*  
*to be final and subject to no change—Seats falling vacant subsequently—To*  
*be filled in from candidates wait listed as per merits—On challenge, Single*  
*Judge of High Court holding that subsequently fallen vacant seats should also*  
*be offered to all candidates—On appeal, Division Bench of High Court holding*  
D *that if subsequently fallen vacant seats are offered to all candidates, it would*  
*upset the entire counselling process—On appeal held, Division Bench of High*  
*Court was justified in its findings.*

E Government framed certain Rules for admission to post-graduate  
medical courses. The said Rules provided that option exercised by a candidate  
in first counselling regarding allotment of subject and college would be final  
and not subject to change. Candidates who did not exercise their option at  
the time of counselling would be kept in the waiting list and if at any  
subsequent stage a seat falls vacant, the same would be allotted to them. On  
challenge, Single Judge of High Court held that subsequently fallen vacant  
seat would be offered to all candidates; and candidates already allotted seats  
F in first counselling would also be permitted to exercise their option. However,  
on appeal, the Division Bench of High Court set aside the order of Single Judge  
holding that any seat which was available and which was not included in any  
of the counselling by mistake would be filled in, in order of merit amongst  
the wait listed candidates and if it was offered for candidates, a chain reaction  
G would start which would upset the entire counselling process. Hence, the  
present appeal.

Dismissing the appeal, the Court

H HELD : 1.1. Division Bench of High Court was justified in holding that  
any seat which is available and which has not been included in any of the

counselling by mistake should be filled in, in order of merit amongst the wait listed candidates. Once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counselling and his seat becomes vacant, the process of counselling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period.

[264-F; 265-C, D]

*Dr. Veena Gupta v. University of Delhi*, AIR (1994) Delhi 108 (FB) and *Anil Jain v. The Controller of Examinations*, (1998) 3 E.S.C. Cases 2016, approved.

2. The grievance that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list, is only a fortuitous circumstance depending on so many contingencies like the student, who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the rule.

[265-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2649-51 of 2000.

From the Judgment and Order dated 11.2.2000 of the Allahabad High Court in S.A. Nos. 1282, 1301 and 1374 of 1999.

WITH

C.A. No. 4752 of 2000 and SLP (C) No. 5151/2000.

Ms. Shobha Dikshit, Subodh Markandaya, Yatish Mohan, Pankaj Kumar Singh, K.L. Janjani, Pradeep Misra, Ms. Indu Misra, Ms. Chitra Markandaya, Ms. Feroze Bano, Dr. I.B. Gaur, D.S. Mahara and Ms. Sunita Sharma for the appearing parties.

The Judgment of the Court was delivered by

**RAJENDRA BABU, J. :**

**C.A. Nos. 2649-2651/2000**

In relation to admission to post-graduate medical courses, Rules were framed under the Government order issued on March 30, 1994; it was provided

- A therein that the allotment of subject [speciality] and college of study made on the basis of option exercised by a candidate is final and no candidate can be permitted to change the subject or the college. A candidate who does not exercise his option at the time of counselling will be kept in the waiting list and if at any subsequent stage a seat falls vacant the same shall be allotted on the basis of the option exercised by those who are in the waiting list. Writ petitions were filed in the High Court challenging the validity of these Rules.

- C A learned Single Judge of the High Court interpreting the rules directed that when after the first counselling any subsequent counselling is decided to be held for allocation of remaining seats including those which have fallen vacant subsequent to the first counselling, the same shall be notified to the public and the first date of each subsequent counselling will be reserved for the candidates who were allotted seats at the earlier counselling and who wish to change their seats and out of the candidates, who were allotted seats at the first counselling, who turn up for subsequent counselling on the first date which is served for such students, distribution of seats which have fallen vacant subsequent to the first or earlier counselling will be done according to merit. The change of seat to these students who have been allotted seats during the first and earlier counselling will be permitted only in respect of seats which have fallen vacant after the first counselling and not of the left over seats.

- E Aggrieved by these directions, an appeal was preferred by the Director General of Medical Education and Training. The Division Bench, after considering the scheme of admission and conditions imposed therein and the decisions of the Full Bench of Delhi High Court in *Dr. Veena Gupta v. University of Delhi*, AIR (1994) Delhi 108 (FB) and of High Court of *Punjab & Haryana in Anil Jain v. The Controller of Examinations*, [1998] 3 E.S.C. Cases 2016, held that any seat which is available and which has not been included in any of the three counselling by mistake should be filled in, in order of merit amongst the wait listed candidates. Normally, when a seat is available, the same should be included in the initial counselling. If by mistake a seat is not included in the initial counselling then the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for counselling, the result would be that all the candidates who took part in the first counselling should be given a chance, in order of merit, to opt for the same seat. This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counselling. There again a chain reaction will start leading to the third

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. *Prima facie* though it appears to be somewhat unfair, there is no alternative, apart from leaving the seat unfilled, but to offer the said seat to the wait listed candidates. It was also noticed that once the academic course commences the same will have to be completed within a period of three years and if the counselling goes on continuously for a long period then it may not be possible to fulfill that condition and thereby upset the course of study itself. On this basis, the Division Bench set aside the order made by the learned Single Judge and allowed the appeal. It is against this order and connected matters that the present appeals are filed by special leave.

We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the Division Bench and Delhi High Court in *Dr. Veena Gupta's* case [supra] and the High Court of *Punjab & Haryana in Anil Jain's* case [supra] is in accord with reason and stands the test of rationality. It is clear that once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counselling and his seat becomes vacant, the process of counselling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period.

The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student, who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the rule.

In that view of the matter, we find absolutely no merit in the appeals and the same stand dismissed. No costs.

**C.A. No. 4752/2000 & SLP(C) No. 5151/2000]**

For the reasons given in C.A. Nos. 2649-2651/2000, this appeal and SLP also are dismissed. No costs.

S.V.K.

Appeals and SLP dismissed.