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PRINCIPAL, MOTI LAL NEHRU MEDICAL COLLEGE AND ORS. ETC. ETC.

v.

DR. VANDANA SINGH AND ORS. ETC ETC.

AUGUST 21, 1990

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[S. RANGANATHAN AND K.N. SAIKIA, JJ.]

Education—Admission to Professional Colleges: Postgraduate course in Obsterics and Gynaecology—Particular Medical College—Filling up all seats with institutional candidates—Not considering external candidates—Effect of—Directions issued.

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For the academic year 1989-90, the appellant College had 8 seats in the post-graduate course in Obsterics and Gynaecology. Of these, six were reserved for institutional candidates, and two for external candidates. The Principal filled up all the eight seats by admitting institu-
D **tional candidates without considering the case of any external candidate. One of the external candidates approached the High Court by way of a Writ Petition. The High Court set aside the admission of two institutional candidates who were admitted against the quota for external candidates, and directed the Principal to consider the case of the petitioner and other external candidates who were eligible for admis-**
E **sion to the 'open' 25% seats on merits, in accordance with law. Aggrieved, the Principal and the two institutional candidates whose admission was set aside by the High Court, have preferred these appeals, by special leave.**

Disposing of the appeals,

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HELD 1. The appellant College, took the view that since no All-India candidates were available on the basis postulated in the Residency Scheme it would be appropriate to throw open the entire 100% to institutional candidates. It is not suggested that this proposal was actuated by any *mala fides*. In that the State claims that this course of
G **action has been approved by the decision of the High Court in a case before it. It may be that this is not the only view possible and that it is also possible to take the view that the college should have advertised these posts and filled them up by external candidates on the basis of merit. If this be so, such advertisement cannot be confined to persons who are residents of U.P. as was envisaged by the notification dated**
H **26th April, 1986. That notification had been issued at a time when the**

concept of All-India reservation for 25% of the seats had not been adumbrated by this Court. Even if it is assumed that the High Court was right in saying that external candidates were eligible for admission, that eligibility cannot be restricted only to those who had already applied but should be thrown open to all external candidates fulfilling the qualifications. This process cannot be completed within two weeks, as directed by the High Court. To call for applications from all external candidates and select them, either on the basis of an examination or otherwise, will be a very lengthy and time-consuming process. The State Government and the college cannot be faulted for having decided to fill up the vacancies by offering these seats also to institutional candidates. This is a decision taken only for a transitional period, because, from 1990 onwards, admissions will be regulated on the basis of an All-India examination, and such an examination is conducted by the All India Institute of Medical Sciences every year for all medical colleges in India. The decision taken by the State Government and the college was a practical one to tide over a transitional difficulty and there is no justification to upset the same on the basis of a solitary application from an external candidate. [881A-F]

2. On a proper interpretation of Para 5 of the Residency Scheme the eligibility for admission of institutional candidates is not confined to those who were on house jobs as on 22.8.89 but would also extend to these institutional candidates who have been in house jobs since 1.8.87. The result of these two judgments read together will be that the entire 100% of the institutional seats should be filled up from out of all such applicants, subject to their fulfilling any other qualifications and requirements that may be in force. Earlier, the admission of the six candidates to 75% of the seats as well as the admission of the two candidates to 25% of the seats had been made by excluding institutional candidates who had completed their house jobs between 1.8.87 and 22.8.89. This will need to be reviewed now. The entire process of admission will now have to be redone in the light of these decisions. The selection of the two institutional candidates in question will be valid only if they come through successfully on merits on such reconsideration. The High Court was right in holding that their admissions should be set aside. The admission be redone in the light of the observations in these two judgments. [882B-E]

Dr. Harihar Prasad Singh & Ors. etc. v. *Principal, Moti Lal Nehru Medical College & Ors. etc.*, [1990] 3 SCR 895 referred to.

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4339-4341 of 1990.

From the Judgment and Order dated 30.5.90 of the Allahabad High Court in W.P. No. 1841 of 1990.

B Kapil Sibbal, Satish Chandra, Ms. Shobha Dikshit, R.K. Virmani and N.D. Garg for the appearing parties.

The Judgment of the Court was delivered by

RANGANATHAN, J. These three petitions can be disposed of by a common order. Since we have heard counsel at some length we C grant special leave in these petitions and proceed to dispose of the appeals.

In the Moti Lal Nehru Medical College (M.L.N. College) at Allahabad there are 8 seats for a post-graduate course in Obstetrics D and Gyanecology. Of these, 6 seats are reserved for institutional candidates and two are reserved for external candidates. The principal of the college has filled up all the 8 seats by admitting institutional candidates and without considering the cases of any external candidate. Among the institutional candidates Dr. Juhi Jain and Dr. Padma Panjwani, who had obtained the highest percentage of marks, have E been admitted and Dr. Vandana Singh, who had applied for admission as an external candidate, was not considered. Dr. Vandana Singh, therefore, approached the Allahabad High Court, which upheld her contention and held that the two seats in question should have been filled up in accordance with a notification published by the State Government on 26th April, 1986 (amending a previous notification F dated 15.12.1982) which provided as follows:

> "In every speciality, seventy five percent seats in a particular medical college shall be reserved for the candidates who have passed the M.B.B.S examination from that college and against the remaining twenty five percent seats, G candidates who have passed M.B.B.S. examination from other Medical Colleges and are *bona fide* resident of Uttar Pradesh, shall be eligible for admission on the basis of merit along with the candidates who have passed the M.B.B.S. examination from that very college.

H The court, therefore, set aside the admission of Dr. Juhi Jain and

Dr. Padma Panjwani and directed the principal of the Medical College to consider the cases of Dr. Vandana Singh and other external candidates, who were eligible for admission to the "open" twenty five per cent seats on merits and in accordance with law.

The Principal of the Medical College, Dr. Juhi Jain and Dr. Padma Panjwani have preferred these appeals. It has been submitted that the High Court has overlooked that the admissions in question were to the second year or the post-graduate degree course and were being considered under the terms of a residency scheme dated 22.8.89. As per the terms of this scheme, 25% of the seats in the course (here, two seats) were to be filled in by candidates on the basis of an examination conducted by the All India Institute of Medical Sciences. However, no such examination had been conducted by All India Institute and the college instead of leaving the seats vacant, decided to fill them up by internal candidates on the basis of merit. In doing this, the principal of the college was only complying with the terms of a decision rendered by the Allahabad High Court in the case of *Dr. R.P. Pandey*, (Writ Petition No. 8181 of 1989) and a precedent approved by the Directorate General of Health Services, Medical Examination Cell, Nirman Bhavan, New Delhi, which in a letter to the principal of an Agra College, had, when unable to recommend candidates on the basis of an All-India examination for a particular course released these seats in favour of internal candidates. It has been submitted on behalf of Dr. Juhi Jain that, even assuming that the application of Dr. Vandana Singh had to be considered, the High Court should have restricted itself to quashing the admission to one of the two seats and upheld the admission of Dr. Juhi Jain, who had secured higher marks than Dr. Padma Panjwani. It is submitted on behalf of Dr. Padma Panjwani that even assuming that Dr. Vandana Singh's application merited consideration, the interests of all the three candidates could have been safeguarded by directing the State Government to create one additional seat and accommodate all the three candidates. Reliance is placed in this respect on certain observations made by this Court in the case of one *Mridula Avasthi*, [1988] 3 S.C.R. 762. Finally, it has also been submitted, on behalf of the appellants, that Dr. Vandana Singh was not eligible for admission even on the terms of the notification dated 26.4.86 since she was not a *bona fide* resident of Uttar Pradesh. It is stated that she had passed her M.B.B.S. examination from the State of Bihar and had also taken admission in a post Graduate Diploma Course in Gynaecology and Obstetrics at Darbhanga Medical College, Laneriasarai, Bihar, a fact which she had concealed from her writ petition.

A We have today passed a detailed judgment in regard to certain admissions made pending implementation of the residency scheme introduced by the State of U.P. in our judgment in a batch of appeals preferred by *Dr. Harihar Prasad Singh & Ors.* as well as the *State of Uttar Pradesh,* [1990] 3 SCR 895 (Civil Appeal, Nos. and, for reasons that will be apparent later, the judgment in the present appeals will B have to be read along with the judgment in the said appeals for a full and proper understanding of the issues involved. That other decision turned on the interpretation of paragraph 5 of the residency scheme and also pertained to admissions to the second year of the post graduate degree course. The scheme contained a transitory provision in para 5 in respect of certain persons who were house officers between C 1987 and 1989. the related batch of appeals raised a controversy pertaining to 75% of the seats in the second year of the post-graduate courses which were reserved for institutional candidates. Here the question arises in respect of the remaining 25% of the seats reserved for "external" candidates. To understand the point at issue, we shall briefly touch upon those aspects of the residency scheme which we had D no occasion to consider in the batches of appeals above referred to but which are material for the purposes of these appeals.

By the notification dated 22.8.89 a scheme called the residency scheme was introduced, which dealt, *inter alia*, with the question of E admission to post graduate specialities in medicinal courses. These cases, like the other batches, have proceeded on the assumption that, so far as institutional candidates are concened, admissions to the second-year of a degree course could be granted to persons like Dr. Juhi Jain and Dr. Padma Panjwani who had completed the M.B.B.S. degree examination, done one year of internship and had been work- F ing as house officers in the State of U.P. on 22.8.89. There was a further conroversy in those cases as to whether even persons who had been working as house officers since 1.8.1987 would be eligible for admission to this course and we have, by our judgment in the connected appeals, answered this question in the affirmative. That question would become relevant here only if we do not agree with the view taken by the High Court here. We shall, therefore, keep that issue G aside for the time being and shall deal with it later.

To continue the narration regarding the scheme, it provided for admission, to the three year post graduate course, of candidates who had passed the M.B.B.S. examination and completed one year's H internship. Seventy five per cent of the admission to these courses was

to be available to institutional candidates on the basis of an entrance examination; the balance of twenty five per cent of the seats was to be filled up on the basis of an all-India entrance examination. This provision was in tune with certain directions given by this Court from time to time for regulating admission to medical colleges in various parts of the counry. This Court had in particular directed that while 75% seats in each medical college all over the counry could be filled in by local or institutional candidates, the balance of 25% should be filled up on an all India basis. Elaborate directions were also given by this Cout to enable the All India Medical Insitute (A.I.I.M.S.) to conduct a competitive test for selecting the candidates for these seats reserved on an all India basis. The scheme obviously referred to the all-India competitive entrance examination to be conducted by the A.I.I.M.S. every year. Indeed such an examination had been held by he A.I.I.M.S. in January-February 1989 and the candidates recommended had been taken into the medical colleges in U.P. as per the regulations then existing. However, since the new scheme came into being in the middle of the year, there was no possibility of either a local entrance examination nor an all-India examination being held to regulate the admissions to the new course. Cl. 3(f) however provided that, for the 75% institutional seats, competitive entrance examination shall be enforced from the fresh batch and that before its enforcement the admission to institutional seats in residency shall be done on the basis of the merit of the M.B.B.S. examination. It was, however, silent in regard to the balance 25% seats. The question arose, therefore, as to what was to be done in respect of the remaining 25% seats. To meet the situation, the Direction of Medical Education issued directions, on 3.10.89, to the following effect:

> "Since there will be no admission of external students this year against 25% open seats, therefore, after merging these open seats with 75% additional seats, the admission of students of 1982 supplementary batch and 1983 regular batch should be done against the entire 100% seats by making their combined merit."

Accordingly, it seems admissions to 100% seats in the first year of the three-year post-graduate scheme was thrown open fully to internal candidates, the admissions being decided on the basis of their merit in the M.B.B.S. examination. We are, however, not concerned with that issue here.

We are here concerned with admissions to the second year of the

A residency scheme. The scheme made a provision in the second sub-para of para 5 for the adjustment of persons serving in U.P. as house-officers by absorbing them into the second-year of the residency scheme. The provision has been set out and its implications discussed elaborately in our judgment in the allied batches of appeals and need not be repeated here. It is not quite clear whether the second sub-para B of para 5 of the scheme covers all the seats in the second year of the course or only 75% thereof. However, it is apparently understood only as pertaining to the 75% seats reserved for institutional candidates and, as there was no other provision in regard to the balance of 25% of the seats, it was decided that those seats should also be filled in only by institutional candidates. However, in the meanwhile, an advertisement had been issued by the Principal of M.L.N. Medical College, C Allahabad on 21.9.89. This advertisement pertained only to the filling up of the seats comprising the 75% reserved for institutional candidates. There was no advertisement regarding the rest Dr. Vandana Singh applied for admission to the second year of the degree course. In this state of affairs it is perhaps possible to dispose of the matter before D us by holding that the application of Dr. Vandana Singh can only be treated as one in response to the advertisement of 21st September, 1989 and so could not have been entertained as she was not an institutional candidate and that she has no locus standi, on the basis of that application, to challenge the admission of other institutional candidates. It is also possible to interpret the scond sub-para of para 5 of the E scheme as covering the entirety of the seats for the second year of the course and not merely 75% of them. In this view also, the application of Dr. Vandana Singh would have to be rejected.

It could, however, be argued that as the High Court has proceeded on the footing that para 5 pertains only to 75% of the seats, F quite irrespective of the basis of her application, Dr. Vandana Singh has a right to insist that under the scheme 25% of the seats should be thrown open for all India competition and that the admissions based on a different basis were rightly quashed. If we assume this postulate to be correct and go strictly by the terms of the notification, admissions should be on the basis of an all-India examination. There was, how- G ever, no immediate possibility of any such examination being held for admission to the course for 1989-90. In this state of affairs, one possible view which the High Court has taken is that these seats must be kept reserved for external candidates and the college must now take steps to invite external candidates—in accordance with the terms contained in the notification dated 26.4.86 if that notification were applic- H able—and select them in the order of merit. The college, however,

took the view that since no all India candidates were available on the basis postulated in the scheme, it would be appropriate to throw open the entire 100% to institutional candidates. It is not suggested that this proposal was actuated by any *mala fides*. In fact the State claims that this course of action has been approved by the decision of the High Court in the case of *Dr. R.P. Pandey*. It may be that this is not the only view possible and that it is also possible to take the view that the college should have advertised these posts and filled them up by external candidates on the basis of merit. If this be so, such advertisement cannot be continued to persons who are residents of U.P. as was envisaged by the notification dated 26th April, 1986. That notification had been issued at a time when the concept of all-India reservation for 25% of the seats had not been adumbrated by this Court. Even if we assume that the High Court was right in saying that external candidates were eligible for admission, that eligibility cannot be restricted only to those who had already applied—indeed, Dr. Vandana Singh appears to have been the only one who had applied to the course in the M.L.N. College—but should be thrown open to all external candidates fulfilling the qualifications. This process cannot be completed within two weeks, as directed by the High Court. To call for application from all external candidates and select them, either on the basis of an examination or otherwise, will be a very lengthy and time-consuming process. In our opinion, the State Government and the college cannot be faulted for having decided to fill up the vacancies by offering these seats also to institutional candidates. This is a decision taken only for a transitional period, because, from 1990 onwards, admissions will be regulated on the basis of an all-India examination, and such an examination is conducted by All India Institute of Medical Sciences every year for all medical colleges in India. In our opinion, the decision taken by the State Government and the college was a practical one to tide over a transitional difficulty and there is no justification to upset the same on the basis of a solitary application from an external candidate.

For the reasons stated above, we are of the opinion that the High Court erred in quashing the admissions made on the grounds given by it. We uphold the rejection of Dr. Vandana Singh's application. In the view we have taken it is not necessary to express any opinion as to whether, even on the basis of the notification dated 26.4.86, Dr. Vandana Singh is eligible for consideration for admission to the course or she disqualified from such consideration for the reasons urged on behalf of the State, Dr. Juhi Jain and Dr. Padma Panjwani.

A For the reasons mentioned above, we set aside the order of the High Court and hold that the application of Dr. Vandana Singh was rightly rejected by the college. We should, however, like to point out that, in the connected batch of appeals, we have upheld that interpretation by the High Court of Para 5 of the scheme and held that the B eligibility for admission of institutional candidates is not confined to those who were on house jobs as on 22.8.89 but would also extend to those institutional candidates who have been in house jobs since 1.8.87. The result of these two judgments read together will be that the entire 100% of the institutional seats should be filled up from out of all such applicants, subject to their fulfilling any other qualifications and requirements that may be in force. Earlier, the admission of the six C candidates to 75% of the seats as well as of Dr. Juhi Jain and Dr. Padma Panjwani to 25% of the seats had been made by excluding institutional candidates who had completed their house jobs between 1.8.87 and 22.8.89. This will need to be reviewed now. The entire process of admission will now have to be redone in the light of these D decisions. The selections of Dr. Juhi Jain and Dr. Padma Panjwani will be valid only if they come through successfully on merits on such reconsideration. We have, therefore, to agree with the High Court that the admissions of Dr. Juhi Jain and Dr. Padma Panjwani should also be set aside but direct that the admissions be redone in the light of our observations in these two judgments. These appeals are disposed E of accordingly. We, however, make no order as to costs.

G.N. Appeals disposed of.