

PETITIONER:
RAJIV MITTAL

Vs.

RESPONDENT:
MAHARSHI DAYANAND UNIVERSITY & ORS.

DATE OF JUDGMENT: 28/11/1997

BENCH:
J.S. VERMA, B.N. KIRPAL, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 28TH DAY OF NOVEMBER, 1997

Present:

Hon'ble the Chief Justice
Hon'ble Mr. Justice B.N. Kirpal
Hon'ble Mr. Justice M. Srinivasan

Manoj Swarup, Adv. for the appellant

K.K. Mohan, Adv. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

KIRPAL, J.

The question which arises for consideration in this appeal relates to the admission to first year M.B.B.S. course for the session 1996-97 to the Rohtak Medical College, respondent No.2.

Seats in different medical colleges in the State of Haryana are filled on the basis of M.B.B.S. entrance examination. Rohtak Medical College, respondent No.2 is affiliated to Maharishi Dayanand University, Rohtak and for the session 1996-97, it had 60 M.B.B.S. free seats to which admission had to be made in the first year of the said course. Out of this, 49 seats were to be filled from the open category candidates while remaining 11 seats were reserved for backward class candidates.

In the entrance examination, one Sunil Yadav, on the basis of his marks, had secured position at serial No.1 in the category of backward class quota while in the general category, he had been placed at merit position No. 62. The seats to the medical colleges are filled on the basis of counselling where candidates are given option to select the college where they want to study. This option is given to the candidates whose names are arranged in the order of merit.

On 9.9.1996, the first counselling for the 49 seats in the open/general category was held. Sunil Yadav did not secure any seat in the general category because of his low merit position. On the following day i.e. 10.9.1996, Sunil Yadav appeared for the first counselling for the reserved seats as he had been placed at serial No. 1 in the category of backward class. He naturally got selected and secured admission to the M.B.B.S. course at the Rohtak Medical

College in the reserved category.

In after the first counselling, certain seats remain unfilled, then second, third or fourth counselling, as the need arise, takes place, inasmuch as few seats in the general category had fallen vacant, second counselling was held on 26.9.1996. Students upto serial No. 60 in the aforesaid merit list were granted admission and there still remained one seat in the general category which remained to be filled. The candidates at merit list No. 61 did not join the counselling, Sunil Yadav, who was at merit list No. 62 having already secured admission, also did not appear for the counselling for the general category. Similarly, candidates at Serial Nos. 63, 64 and 65 also did not join for counselling. This seat was thereupon offered to the appellant herein who was at serial No. 66. He accepted the offer of admission and joined the Rohtak Medical College.

Respondent No. 3 who belonged to the reserved category could not get admission in the Rohtak Medical College inasmuch as his merit position in the reserved category was at serial No. 12 while the number of seats in this category in that college were only 11 and all those seats had been filled. He thereupon filed a writ petition in the Punjab & Haryana High Court contending that Sunil Yadav should have been adjusted against the general category seat, which had been allotted to the appellant herein in the second counselling held on 26.9.1996, and if this is done, one seat in the reserved category would fall vacant which would naturally fall to respondent No. 3.

On behalf of the respondent No. 1, the stand taken was that Sunil Yadav could not be considered in the first counselling in the open category because he did not fall among those open category candidates who had been given admission against 49 open category seats. Candidates upto merit position 53 had been offered admission against these seats at the time of first counselling. Thereupon, Sunil Yadav was called for first counselling for reserved seats and was granted admission against the backward category quota. He having thus secured the seat, lost his claim for open category and, therefore did not attend these second counselling which was held on 26.9.1996.

The High Court, allowed the writ petition filed by respondent No. 3 as it held that it was "settled principle of law that a candidate from the reserved class, if is entitled to get admission to a course of his own merit in the general list, he must be treated on his merit and not accommodated against the reserved vacancy". It thereupon came to the conclusion that Sunil Yadav should have been adjusted against the one seat in the general category which had been offered to the appellant at the time of second counselling and that the reserved seat, which would be so vacating by Sunil Yadav, should be offered and admission granted to respondent No. 3, It however, directed that the seat was occupied by respondent in the Medical College, Agroha, Hissar, Haryana should be given to the appellant herein and writ petitioner should be shifted to the seat which was occupied by the appellant herein in the Medical College at Rohtak. It may be noticed that respondent No.3 had already secured admission at Medical College, Agroha Hissar, Haryana but he wanted to shift to the Medical College, Rohtak just as the appellant herein had already secured a admission in another medical college and he too wanted to shift to the Rohtak Medical College.

On behalf of the appellant, it has been contended that the High Court not direct that Sunil Yadav should be considered as having been given the general category seat in

the second counselling when he had already secured admission in the first counselling in the reserved category. On the other hand, the respondents have relied on the judgment of the High Court and in particular Note 2 of the Information Brochure and contended that Sunil Yadav could only be adjusted against the open category seat and he could not be considered for the reserved category.

In our opinion, the High Court erred in allowing the writ petition and directing that the admission, which had been granted to the appellant, should be cancelled. The system of counselling for the purpose of granting admission to the various medical colleges in the State is now regarded as not equitable one where options are given of various seats to the students in accordance with their overall merit position in the combined entrance examination, which examination is competitive in nature.

If as a result of first counselling, all the seats, which are available, are filled then no further counselling takes place. Where however some seats become available, then it appears that second, third or if then need arise, fourth counselling does take place but in such a manner that normally there should be no delay in the commencement of the course of study. Further more unless and until counselling takes place, no candidate who has been granted admission on the basis of the counselling, is allowed to change his college merely because a seat in another college has fallen vacant. The seats, if any, which fall vacant, can only be filled if and when counselling takes place where the candidates who have already been selected may have an option of shifting to another college. An appropriate analogy of this system is that of booking chart for a dramatic performance which has to take place in the future. The people standing in the queue reserve or book their seats out of those which are available according to their preference. Once the chart fills up the booking closes. Only sometimes, if tickets are returned they may be reissued. But once the dramatic performance starts no one is allowed to enter. Just as counselling for seats to medical colleges must stop once the course of study commences.

The learned counsel for the respondent submitted that Sunil Yadav could only be considered as a general category candidate and placed reliance on the observations of this Court in *Indra Sawhney & Ors. Vs. Union of India* 1992 Supp (3) SCC 212 where at page 735, it was observed as follows:

"In this connection it is well to remember that the reservations under Article 14(4) do not operate like a communal reservation. It may well happen that some members belonging to, say Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

The aforesaid principles has, apparently, been incorporated in Note 2 in the Information Brochure of the Maharshi Dayanand University Rohtak which reads as follows:

"A candidate who applies either for reserved category or for both reserved and open will be considered first in open category. In case he/she is not selected in

open category, he/she will be considered for reserved category."

The aforesaid Note 2 has been constructed by the High Court to mean that Sunil Yadav who was also in the merit list for the seat in the open category should be considered as having been selected to the open category seat and he should not be considered as having been selected for the reserved category seat.

The aforesaid Note 2 has not been correctly construed by the High Court. This note, in a case like the present, will have application only when a reserved category candidate is in a position to secure, and secures admission to a seat in the general in the same counselling in which seat is available to him in the reserved category. It is for this reason that the first counselling for the general category candidates was held on 9.9.1996 while the first counselling for the reserved category candidates was held on 10.9.1996. In other words the first counselling was spread over two days so that if any reserved category student had managed to secure admission to the general category seat then will not be entitled to adjustment against the reserved seat. Had Sunil Yadav secured admission to any one of the 49 seats in the first counselling held on 9.9.96, then could not have been called or considered for admission against any of the 11 reserved seats in the counselling which was held for the backward class candidates on 10.9.1996. As Sunil Yadav's position in the open category was at serial number 62 and the last candidate who had secured admission at the first counselling against the 40th seat was at serial No. 53, therefore, having failed to secure admission on 9.9.1996, Sunil Yadav was rightly allowed to take part on the second day of the first counselling for the backward class candidates which was held on 10.9.1996. It is in that counselling that he was selected and granted admission to the Medical College at Rohtak. Once Sunil Yadav has secured admission in the reserved category quota at the first counselling, there would be no occasion for him to take part in the second counselling for the general category seat for the same college which held on 26.9.1996. The seat which had fallen vacant was one of the 49 seats which was required to be filled by the general category candidates. As the aforesaid Note 2 was not applicable to a case like the present, where Sunil Yadav having failed to secure admission to a seat in the open category in the first counselling for that category but had secured admission to there served seat in the same counselling, the question of his being shifted or being regarded as a candidate to the open category seat which had become available only after he had secured admission did not and could not arise and, consequently, the appellant was rightly granted admission to the general category seat in the Rohtak Medical College.

For the aforesaid reasons, we allow the appeal and set aside the Judgment of the High Court, the result of which would be that the writ petition filed by the respondent No. 3 before the High Court would stand dismissed. There will be no order as to costs.