

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+23 LPA 394/2009

ZINI CHAURASIA Appellant
Through Mr. R.K. Garg, Mr. Ashish Garg, Advs.
versus

UNIVERSITY OF DELHI & ORS. Respondents
Through Mr. Mohinder Rupal, Adv. for R-1/DU
Mr. Anshul Narayan and Mr. Ashok Mathur, Advs. for R-3.

24. LPA 396/2009

UNIVERSITY OF DELHI & ANR. Appellant
Through Mr. Mohinder J.S. Rupal, Adv. for DU.
versus

SANIYA SIDDIQUI Respondent
Through Mr. Anshul Narayan and Mr. Ashok Mathur,
Advs. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

% **ORDER**
01.09.2009

These LPAs have arisen out of order dated 30th July, 2009 passed by the learned single Judge in Writ Petition (Civil) No. 10322/2009 directing the University of Delhi to consider the writ petitioner Ms. Saniya Siddiqui for admission against the vacant seat to the appropriate course according to her category and merit ranking with other waitlisted candidates for admission in MBBS/BDS course. LPA No.396/2009 is filed by University of Delhi whereas LPA No. 394/2009 is filed by one Ms.Zini Chaurasia, who has been admitted to the vacant seat in question i.e. MBBS seat at University College of Medical Sciences (UCMS). Ms. Zini Chaurasia was given admission in MBBS course vide letter dated 30.07.2009. Prior to this admission, she was admitted in Guru Gobind Singh Indraprastha University but she cancelled her admission in Guru Gobind Singh Indraprastha University as she had been admitted in UCMS.

2. The facts are that the University of Delhi conducted Annual Entrance Examination known as DUMET for admission to MBBS / BDS courses for the Academic Session 2009-2010 on behalf of the various medical colleges affiliated to Delhi

University. The rules of admission were notified in the Bulletin of Information issued for the Academic Session 2009-2010. The result of DUMET-2009 was notified on 26.05.2009. Following the declaration of result of the DUMET-2009, the qualified candidates were required to appear for counseling as per the schedule already declared in the Bulletin of Information. The OBC candidates upto the Rank-100 were required to appear for counseling on 09.07.2009. The Bulletin of Information, inter alia, provides as follows :

“2.8.4 If any candidate is unable to appear on the date and time specified above, he/ she may send his / her representative with appropriate authorization on prescribed proforma (Appendix V).

2.8.5 If a candidate or his / her representative is absent on his / her turn at the time of counseling and comes late on the same day before the end of the counseling, he / she may be allowed to appear in the counseling on his / her written request and on payment of Rs.500/- in cash as a penalty for late coming. Such candidate / representative shall appear in the counseling just after the batch, for which counseling was going on, at the time when he / she submitted his / her request and deposited the penalty for late coming. He / she may opt for a course / institution, which is available to him / her at that time only. He / she will have no claim on the seats / institutions already allotted.

2.8.6 In a case a candidate or his / her representative does not report before the end of counseling session on the specified date, he / she shall forfeit his / her claim for admission to any course.

2.8.11 The candidates who were present for counseling and were not offered any seat due to allotment of all seats before their turn of counseling shall be waitlisted and will be required to submit their options in respect of course and college on the prescribed proforma. The candidates who were absent on the specified date of counseling shall not be waitlisted. The candidates who have not opted any seat at the time of counseling shall also be waitlisted.

2.8.12 The vacancies arising after the counseling shall be filled-up according to the merit cum choice basis from waitlisted candidates. The candidates, already admitted, may be shifted to the college / course of their choice according to merit.”

3. The writ petitioner Ms. Saniya Siddiqui, who was an applicant in the category of OBC, was supposed to appear for counseling on 9.7.2009. She did not appear for the counseling nor she deputed any representative to appear on her behalf. As per the rules, the candidate on account of non-appearance forfeits his / her claim for admission to any course and the name of such candidate was not liable to be included in the waitlist. The

appellant in LPA No. 394/2009, Ms. Zini Chaurasia got admitted to the vacant seat in UCMS as per her ranking in the waitlist on 30.7.2009.

4. The case of the writ petitioner was that on 7.7.2009, when she was visiting her parents at Ambikarpur, District Surgaja, Chhattisgarh, she fell ill and she was put on medication and was advised by her family not to commence her journey for Delhi. On 8.7.2009 she started her journey for Anuppur situated at a distance of 200 km to catch the train for coming to Delhi for counseling. However, it is claimed by her that she suffered from “Gastroentitis Shock” due to dehydration and that she had to return to Ambikarpur where she was treated in the District Government Hospital where she remained under medical treatment till 10.7.2009. She could fax the relevant documents only on 10.7.2009 and on 11.7.2009 she reached Delhi and made a representation to the University of Delhi for seeking permission to be considered for admission. As the University failed to respond to her representation, the writ petitioner approached this Court by filing the writ petition, which came to be allowed by the learned single Judge by order under appeal. The learned single Judge, inter alia, held as follows:

“For admission to the medical courses the primary consideration is merit ranking of the candidates. The next requirement is appearance for counseling which appears to be the process of verifying the testimonials of the candidates and offering such a candidate an available seat in the medical colleges. This administrative step of ‘counseling’ cannot be raised to such a level so as to completely negate the merit ranking which is sine qua non for admission to courses in the medical colleges. In order to give finality to admission in courses in medical college, the admissions already done are not to be changed on account of merit ranking of candidates who do not appear for admission on the date and time fixed for the process of admission. But on account of non appearance for any sufficient and justifiable reason, the merit ranking of a candidate cannot be completely ignored. If a candidate who is not given the intimation of counseling within time and a candidate who is not considered at the time of counseling for any other reason, can be considered for unfilled seats or the seats which fall vacant on account of certain students not joining after counseling, then even those students who are not able to attend counseling on account of sufficient reasons should be considered for the unfilled seats or the seats which become vacant on account of certain students leaving the courses after getting admission. The plea of the counsel for the respondent that only the wait listed candidates i.e those who had appeared for counseling and who had been offered seat but who did not opt for the same and those who did not get the seat on account of their low

merit ranking, are to be considered for unfilled and vacant seats, does not appear to be rational and reasonable nor is it in consonance with the criteria for admission which is unequivocally merit ranking. The plea of the learned counsel for the respondent that the orders of this Court relied on by the counsel for the petitioners are distinguishable, therefore, cannot be accepted. In all the cases relied on by the counsel for the petitioners, the candidates who could not appear on the day fixed because of sufficient reason, had been allowed to be considered for admission later on, on the basis of their merit ranking without disturbing the admissions already done by the authorities.”

5. In the light of the above finding, the learned single Judge directed the Delhi University to consider the petitioner for admission against the vacant seat to the appropriate course according to her category and merit ranking with other waitlisted candidates.

6. Mr. Rupal, learned counsel appearing for the University of Delhi, strenuously contended that the impugned order has been passed totally ignoring the rules which have been formulated by the experts taking into consideration the practicalities and balance of interest so as to streamline the admission process. As a result of the impugned order these rules have virtually stood nullified creating an anomalous situation where the University cannot fill up the vacant seats according to the procedure provided by the rules. He submitted that a bare perusal of the rules would demonstrate that the absence of the candidate and / or her representative would forfeit the right to claim admission and such candidate is not entitled to be included in the waitlist. He also pointed out that these rules are based on the draft rules suggested by the Supreme Court in the case of *Sharwan v. Director General of Health Services & Another*, (1993) 3 SCC 332. He also drew our attention to the observations made by the Supreme Court in *A.P. Christians Medical Educational Society v. Government of Andhra & Anr*, (1986) 2 SCC 667 that :

“.....we cannot by our fiat direct the University to disobey the statute to which it owed its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than the directions by the Court to disobey the laws.”

Further, he drew our attention to the observations in the *State of Maharashtra v. Vikas Sahebrao Roundale*, (1992) 4 SCC 435, where the Supreme Court observed that :

“Selecting the standard and judicial fiat of control mode of education and examining system are detrimental to the efficient management of the education.”

Mr. Rupal submitted that time and again the Supreme Court has emphasized that the admission process is purely an academic matter which is regulated by the experts in the field constituting Medical Courses Admission Committee and it will not be appropriate for the Court to tamper with the process of admission merely on account of sympathy for the candidates.

7. Learned counsel appearing for the appellant in LPA No. 394/2009 submitted that his client had already been admitted and she had surrendered her earlier admission in the Guru Gobind Singh Indraprastha University.

8. In reply, the learned counsel appearing for the writ petitioner contended that the merit should be the only criteria for admission and in justifiable cases the candidate who had remained absent due to unavoidable circumstances should be considered along with other waitlisted candidates.

9. Having considered the rival submissions of the learned counsel appearing for the parties, we are of the view that the LPAs are liable to be allowed on the short ground that the seat in question is already filled up by admitting Ms. Zini Chaurasia, i.e., the appellant in LPA No. 394/2009. Prior to this admission, she was admitted in Guru Gobind Singh Indraprastha University, but she cancelled her admission in Guru Gobind Singh Indraprastha University as she had been admitted in UCMS. Learned counsel appearing for the University stated that all the seats are filled up and it is not possible to grant admission to the writ petitioner. We, however, clarify that we do not agree with the observations of the learned single Judge that the rules are irrational, unreasonable or not in consonance with the merit based criteria. The rules have been framed in pursuance of the guidelines issued by the Supreme Court in the case of **Sharwan Kumar v. Director General of Health Services & Another** (supra). If the candidate remains absent, he / she would naturally forfeit his / her claim for admission. Whether in a particular case the University authorities should be directed to consider the case of the candidate would

depend upon the facts of the case. In the present case no relief can be granted to the writ petitioner as the seat is already filled up. Consequently, the appeals are allowed. The impugned order of the learned single Judge is set aside. However, there shall be no order as to costs.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 01, 2009

Dk/nm