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

+ W.P.(C) 3043/2014 & CM APPLs. 7179/2014 & 18012/2014

DR. SANDEEP DHAMA ..... Petitioner  
Through Mr. R.K. Tarun, Advocate.  
Petitioner in person.  
versus

THE STATE & ANR ..... Respondents  
Through: Mr. Sanjay Jain, ASG with Mr.  
Jasmeet Singh, CGSC and Ms.  
Kritika Mehra, Advocate for UOI.  
Ms. Nikhita, Proxy Counsel for  
Ms. Nidhi Raman, Advocate for  
R-1/State.  
Mr. Vaibhav Kalra, Advocate  
for R-2/GGSIPU.  
Mr. Tanoobhav. Singhdev, Advocate  
for MCI.

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Date of Decision: 16<sup>th</sup> April, 2015

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. In the present matter the petitioner had appeared in the CET held on 29<sup>th</sup> March, 2014 by the respondent no. 2-University for admission to various post graduate medical courses. The petitioner had applied under the OBC category. After the first round of counselling held on 30<sup>th</sup> March,

2014, another OBC candidate Dr. Saurav Verma who had initially opted for a seat against roster point 80; had thereafter surrendered his seat before the second round of counselling. Thus this seat as surrendered by Dr. Saurav Verma was offered during the second round of counselling held on 8<sup>th</sup> May, 2014.

2. The grievance of the petitioner is that the seat surrendered by Dr. Saurav Verma was against roster point reserved for a OBC candidate but during the second round of counselling, the same was included in the existing seats and now offered to the next candidate as per the roster point who was a general category candidate. The petitioner states that the seat vacated by an OBC candidate must be offered to the next OBC candidate in the merit list and ought not to be relegated to the General pool.

3. The petitioner further states that during the third round of counselling held between 20<sup>th</sup> June, 2014 to 25<sup>th</sup> June, 2014 again the seats were offered to the candidates without having a regard to the fact whether such seats had been offered to reserved category students in the earlier rounds. The petitioner states that the process and method of counselling adopted by the respondent no. 2 is faulty. The petitioner further states that when any candidate belonging to an OBC is offered a seat against a reserved roster point and he after opting for the said seat, surrenders the same, the said seat in the future rounds of counselling must necessarily be offered to a same category student, i.e., OBC as per order of merit.

4. From the records of the respondent no. 2, it emerges that the mechanism where under a seat surrendered by an OBC category candidate is added to the remaining seats, inclusive of non-OBC seats for the next round of counselling, despite being initially allotted to an OBC candidate as per the

roster point, would need a closer scrutiny.

5. I had requested Mr. Sanjay Jain, learned Additional Solicitor General to look into the matter. I am informed that Mr. Jain along with Mr. Jasmeet Singh, CGSC held meetings with the petitioner as well as Mr. Tanoobhav Singhdev, learned counsel for Medical Council of India and Mr. Vaibhav Kalra, learned counsel for respondent no. 2-University. Mr. Jain has submitted that the method of counselling adopted by the respondent no. 2 to add the surrendered seat in the general pool for the next round of counselling, upon the same being surrendered by a reserved category student, is clearly not the best method for counselling, since a seat which is once offered to a reserved category student as per the roster point and is subsequently surrendered, must be offered to the next same category student as per merit in the next round of counselling. If the same is accepted then the baton rests at the last person selected in the category, in question and if the same is not accepted the baton continues to be passed till the last eligible candidate of the same category accepts the offer. In the event the last such candidate also declines to accept the seat to surrendered, then it would revert to the General category from the roster point next to the first such reserved category candidate, who had refused to accept such surrendered seat in the second round.

6. The counsel appearing for the respondent no. 2-University had fairly stated that the University was open to revisit the method of counselling as adopted by them.

7. Pursuant to the order dated 23<sup>rd</sup> December, 2014 passed by this Court, respondent no. 2-University had filed an additional affidavit on 3<sup>rd</sup> February, 2015 placing on record copy of the minutes of the meeting dated 13<sup>th</sup>

January, 2015 and revised procedure for counselling for Post Graduate Medical Course being conducted by the University 2015-16. The relevant paragraphs 3 and 4 of minutes of meeting are reproduced as under:-

*“3. In case, no vacancy arises on account of withdrawal or otherwise as explained above, after the first counselling, the second counselling will be conducted only for the candidates who had registered but were absent or not opted/allotted any seat during the first counselling in the order of CET merit/rank and only the left over seats of first counselling will be offered to such candidates. The second counselling will start from the next roster point, at which first counselling was closed.*

*4. In case of vacancy arises on account of withdrawal or otherwise after the first counselling, the following procedure will be adopted.*

*“From the allotted seats, from whatever roster point, the vacancy has arisen, in any particular category, then the seat shall be offered to the same category eligible candidate merit rank-wise till all eligible candidates of that category are exhausted, after which the conversion of seat shall be done as per GOI rules.”*

8. The said minutes of the meeting were forwarded to the Director General Health Services vide letter dated 22<sup>nd</sup> January, 2015 for their concurrence and/or suggestions. The Director General Health Services gave its concurrence vide letter dated 5<sup>th</sup> February, 2015 which was taken on record on 11<sup>th</sup> February, 2015.

9. Subsequently, vide order dated 11<sup>th</sup> February, 2015 the respondent no.2-University was directed to file a supplementary affidavit in order to place on record an illustration to explain the procedure for conducting second round of counselling and matter was adjourned to 20<sup>th</sup> February,

2015. In compliance thereof, the respondent no.2-University placed on record the illustration vide supplementary affidavit dated 18<sup>th</sup> February, 2015.

10. However the Court was not satisfied with the contents of the supplementary affidavit dated 18<sup>th</sup> February, 2015, accordingly, the respondent no. 2-University was directed to file another appropriate affidavit in terms of order dated 20<sup>th</sup> February, 2015. In compliance of the said order, another supplementary affidavit was filed by the respondent no.2-University on 27<sup>th</sup> February, 2015 amending para 3. The amended para 3 is as under:-

*“3. That if pursuant to the first round of counselling, any student who vacates the seat allotted, during the first round of counselling then the second round of counselling will start from the Roster Point at which the first withdrawal comes from. It is further submitted that while conducting the second round of counselling the category of the student vacating the seat shall be considered and all those students who belong to the said category shall be called first merit-wise and once the list of such category of students is exhausted, the seat shall be converted in terms of the Government of India Rules i.e. if a student who was allotted a seat at Roster Point 85 in the category of OBC, vacates the seat after the first round of counselling, the second round of counselling will start from roster point 85. It is further submitted that while filling up Roster Point 85, all students belonging to the OBC category who were allotted the seat at the various roster points after roster point 85 (for example at roster point 90, 95) during first round of counselling shall also be called and offered the said vacated seat in the second round of counselling. It is further clarified that before calling all the OBC candidates who were allotted seat during first round of counselling i.e.90 and 95, the vacated seat shall first be offered to OBC candidate who is higher in the OBC merit list than the one who was allotted the seat at Roster Point 85 as per their CET ranking but had not opted for any seat in the first round of counselling. In case he*

*accepts the seat then the second round of counselling shall start from Roster point 121 when the first round of counselling ended at roster point 120, however if he does not accept the seat then the seat shall be offered to the OBC candidate who come after the Roster Point 85 i.e. Roster Point 90 of 95 till all the OBC students are called and offered the seat. If none of the students belonging to OBC category accepts the said seat, the said seat shall thereafter be converted in terms of the Government of India guidelines. However, in case, any OBC candidate who was already allotted a seat in first round of counselling accepts the said seat, the second round of counselling shall continue from the next roster point i.e. Sl.No. 86 but in case the said vacated seat is accepted by an OBC candidate who was not allotted any seat in the first round of counselling then the second round of counselling shall continue from roster point 121.”*

11. The counsel for Union of India sought time to look into the affidavit filed by the respondent No.2 University. Thereafter the respondent No.2 has filed/placed on record another affidavit dated 9<sup>th</sup> April, 2015 further amending the para 3 of the additional affidavit the relevant portion of the amended para 3 is as under:-

*“3. That if pursuant to the first round of counselling, any student who vacates the seat allotted, during the first round of counselling then the second round of counselling will start from the Roster Point at which the first withdrawal comes from. It is further submitted that while conducting the second round of counselling the relevant category of the student vacating the seat shall be considered and all those students who belong to the same category shall be called after the vacated position on the basis of their placement in the merit list of the relevant category. Once the list of such category of students is exhausted, the seat shall be converted in terms of the Government of India Rules. For example, if a student who was allotted a seat at Roster Point 85 in the category of OBC, vacates the seat after the first round of counselling, the second round of counselling will start from*

*roster point 85. It is further submitted that while filling up Roster Point 85, all students belonging to the OBC category who come after the student who was offered/allotted the seat at Roster Point 85, will be called merit wise irrespective of whether they were allotted or offered the seat during first round of counselling or not (for example at roster point 90, 95, 100, 119) during second round of counselling till all the OBC students are called and offered the seat. If none of the students belonging to OBC category accept the said seat, the said seat shall thereafter be converted in terms of the Government of India guidelines.*

*In case, any OBC candidate who comes in the merit list after the student at Roster Point 85 who did not opt for the seat offered to him during the first round of counselling but is higher in the merit than the student who was allotted the seat on the next roster point during first round of counselling (i.e. 90, 95, 100....) then that student shall be offered the seat so vacated prior to the such student who was already allotted the seat on the next roster point in terms of merit. If such a student who was offered a seat but he did not opt for the seat accepts the vacated seat the second round of counselling shall proceed from roster point 121. However, if he does not accept the seat the procedure as mentioned below shall be adopted.*

*In case, any OBC candidate who has already been allotted a seat in first round of counselling accepts the said seat vacated by the OBC candidate for e.g. at roster point 90, the seat of the roster point 90 now vacated shall be offered to the next OBC candidate, i.e., 95. If 95<sup>th</sup> accepts the offered seat, then the seat of the 95<sup>th</sup> Roster point shall be offered to student at Roster Point 100. If 100<sup>th</sup> accepts the offered seat, then the seat of the 100<sup>th</sup> Roster Point shall be offered to the student at Roster Point 119. Since the student at Roster Point 119 is the last selected candidate in the first round of counselling in the said category the seat so surrendered by him shall be offered to the next OBC candidate as per merit. If the next student as per merit, accepts the seat then the second round of counselling will proceed from Roster Point 121 as the first round of counselling ended at Roster Point 120. However, if he refuses to accept the seat, the said seat shall be offered to the next OBC in the merit list till such time the said seat is accepted by an OBC candidate. However, if no OBC candidate accepts the seat surrendered by 119, then it shall be*

*converted in terms of Government of India Guidelines and shall be offered to a student of such converted category next on the merit list, irrespective of him being allotted a seat at a lower roster point wise in the first round of counselling.*

*That if student at roster point 90 refuses/rejects the stream vacated at the roster point 85 then the same shall be offered to student at Roster Point 95 and so on (100, 119..... till the last OBC candidate merit wise) and in case any student accepts the vacated stream, the procedure as above shall continue. However, if the seat is accepted by a student who was not allotted any seat in the first round of counselling, the second round of counselling shall begin from roster point 121 as the first round of counselling ended at 120.”*

12. The said method of counselling as contained in the affidavit dated 9<sup>th</sup> April, 2015 filed by respondent no. 2-University, elucidated in paragraph 11 of this order is the most fair and transparent method of granting admissions to the various Post Graduate Medical courses of respondent no. 2 from academic year 2015-16.

13. However, I may hasten to add the petitioner at this stage cannot be granted any relief for the current academic year 2014-15 since as per the time schedule for admission to various post graduate courses, the date for commencement of academic session was 30<sup>th</sup> June, 2014.

14. Before parting with the case, this Court places its appreciation on record as the petitioner had flagged an important issue and pursued it even though he had no chance for relief.

15. With the aforesaid observations, present petition and applications are disposed of.

Order dasti under the signature of Court Master.

**MANMOHAN, J**

**APRIL 16, 2015/nk**