
(2015) 05 AHC CK 0244

Allahabad High Court

Case No: Civil Misc. Writ Petition Nos. 53775 and 50580 of 2014

Priyanka Dubey

APPELLANT

Vs

State of Uttar Pradesh
and Others

RESPONDENT

Date of Decision: May 25, 2015

Acts Referred:

- Constitution of India, 1950 - Article 142, 15(3), 16, 16(1), 16(4)

Citation: (2015) 7 ADJ 585 : (2015) 112 ALR 600 : (2015) 5 AWC 4808 : (2015) 4 ESC 2286 :
(2015) 3 UPLBEC 2275

Hon'ble Judges: Tarun Agarwala, J; Amar Singh Chauhan, J

Bench: Division Bench

Advocate: Arvind Srivastava and Ashok Kumar Dubey, for the Appellant

Final Decision: Dismissed

Judgement

Tarun Agarwala, J

The petitioner completed her high school in the year 2009 and intermediate in 2011 in 1st division. The petitioner was interested in pursuing a course in MBBS and, accordingly, applied for admission in CPMT-2014 and AIPMT-2014. She appeared in the entrance examination and was successful. The results were declared on 29th July, 2014 in which the petitioner obtained 150 marks out of 200 marks having a rank of 482 in the State of Uttar Pradesh. The State Government issued directions to King George Medical College (hereinafter referred to as KGMC) to conduct the CPMT examination of 2014 in the State of Uttar Pradesh. In this regard, guidelines dated 17th April, 2014 was issued, which was modified by another guideline dated 24th June, 2014. Based on the said directions, the first counselling was held between 2nd August, 2014 to 7th August, 2014. The second counselling from 12th August, 2014 to 14th August, 2014 and the third counselling from 8th September, 2014 to 11th September, 2014. It has come on record that the mop up round was held on 30th September, 2014. The petitioner appeared in the first counselling. 150 seats of KGMC was offered to the candidates who appeared in the first counselling.

The petitioner's first preference for admission to her preferred course and college was MBBS in KGMC. She could not get any seat in KGMC out of 150 seats offered but was given a seat in BRD Medical College, Gorakhpur, which she accepted. The petitioner contends that she also participated in second and third counselling but could not get her choice of college. According to the petitioner, 65 seats of KGMC was not offered to the petitioner in the first, second and third counselling, as a result of which she was deprived for admission in the prestigious institution of KGMC and if offered she would have been selected, on the basis of merit according to her rank in the entrance examination. The petitioner further contended that wrong horizontal reservation policy was adopted by the authority, as a result, the petitioner being a girl candidate though selected on merit should have been given a seat in the appropriate category vertically but was given a seat reserved for girl candidates horizontally. According to the petitioner, the seats reserved for girl candidates horizontally was offered first and thereafter, seats were filled up vertically in accordance with the Government Order dated 4th January, 2003. The petitioner, being aggrieved by the wrong procedure being adopted for reservation, filed Writ Petition No. 50580 of 2014 praying for the following reliefs:

"(i) a writ, order or direction in the nature of Certiorari to quash the impugned G.O. No. 4281/71-3-2002-111/93 dated 4.1.2003.

(ii) a writ, order or direction in the nature of Certiorari to quash the impugned selection proceedings of the 1st, 2nd and 3rd counselling of C.P.M.T.-2014 conducted by the respondent authorities from 2.8.2014 to 7.8.2014, from 12.8.2014 to 14.8.2014 and from 8.9.2014 to 11.9.2014 respectively.

(iii) a writ, order or direction in the nature of Mandamus commanding and directing to the respondent authorities to conduct re-counselling of the C.P.M.T.-2014 for M.B.B.S. Courses and consider the candidature of the petitioner in accordance with the reservation policy adopted for general women category strictly in accordance with law.

(iv) Issue any other writ, order or direction, which this Hon"ble Court may deem, just and proper in the circumstances of the case.

(v) Issue the award cost of this petition to the petitioner."

2. The aforesaid writ petition was entertained and the State was directed to file a counter affidavit indicating the manner in which the horizontal reservation of 20% for women was applied for admission to the medical course in the CPMT examination of 2014.

3. At this stage, it would be necessary to bring certain facts, namely, that the Medical Council of India issued a letter dated 15th July, 2014 restraining KGMC from filling up 65 seats out of 250 seats offered for MBBS course. KGMC filed Writ Petition No. 4262 (MS) of 2014 before the Lucknow Bench of this Court in which an interim order dated 2nd August, 2014 was passed permitting KGMC to fill up the 65 seats. Medical Council of India preferred SLP No. 21514 of 2014 and the Supreme Court by an order dated 12th

August, 2014 stayed the interim order of the High Court. As a result of this order of the Supreme Court, 65 seats of KGMC was not offered for counselling to the candidates in the first, second and third round of counselling between the period 2nd August, 2014 to 11th September, 2014.

4. The Supreme Court being conscious of the fact that there was a shortage of doctors in the country and, as a result of certain interim orders, several seats in medical colleges would remain vacant in the academic year 2014-15, the Supreme Court in another bunch of writ petitions in Writ Petition (Civil) No. 469 of 2014, Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union of India and others, and other companion petitions considering the urgency in the matter and the fact that several seats in medical colleges would remain vacant passed an interim order dated 18th September, 2014 permitting the private colleges to fill up their seats subject to an undertaking being given before the Medical Council of India. The Supreme Court while passing the orders opined that they would reconsider the directions given by the Court in the judgment of [Priya Gupta Vs. State of Chhatisgarh and Others](#), AIR 2012 SC 2413 : (2012) 5 SCALE 328 : (2012) 7 SCC 433 : (2012) AIRSCW 3354 . The Supreme Court made it clear that no admission would be given after 30th September, 2014 and further clarified:

"It is also clarified that there would be no further counselling in respect of the students who are to be given admission, even if it might result into some heart burning among other students, but in the peculiar facts of the case, we give this direction."

5. KGMC filed an interim application in the petition of Hind Charitable Trust Shekhar Hospital Pvt. Ltd. (supra) before the Supreme Court being interim application Nos. 4 and 5. The Supreme Court, by an order dated 25th September, 2014 permitted KGMC to fill up the 65 seats contending that the order dated 18th September, 2014 would also apply to their institution. Based on the said order, 65 seats of KGMC was offered to candidates on 30th September, 2014. The petitioner appeared on 30th September, 2014 and requested the authorities to consider her request for admission on the basis of merit on the 65 seats but her request was not acceded to.

6. Prior to presenting herself before the authorities on 30th September, 2014, the petitioner filed Writ Petition No. 53775 of 2014 on 29th September, 2014 praying for the following reliefs:

"(i) a writ, order or direction in the nature of Mandamus commanding and directing to the respondents authorities to consider the claim/candidature of the petitioner in regard to her admission through the special allotment process (Mop Up Round) for 65 vacant seats of M.B.B.S. Course-2014 of King George Medical University, Lucknow, which to be conducted by the respondents on 30.9.2014 at 10.00 A.M. In SGPGI, Lucknow in compliance of the judgment and order dated 25.9.2014 passed by Hon"ble Apex Court in S.L.P. No. 21517 of 2014 (Medical Council of India v. King George Medal College and others) connected with Writ Petition (C) No. 469 of 2014 (Hind Charitable Trust Shekhar

Hospital Pvt. Ltd. v. Union of India and others).

(ii) a writ, order or direction in the nature of Mandamus commanding and directing to the respondents authorities to consider the candidature of the petitioner in accordance with the reservation policy adopted for general women category strictly in accordance with law during the special allotment process (Mop Up Round) for M.B.B.S. Course-2014 for 65 posts of King George Medical University, Lucknow to be conducted by the respondents on 30.9.2014 at 10.00 A.M. in SGPGL, Lucknow in compliance of the judgment and order dated 25.9.2014 passed by Hon"ble Apex Court in S.L.P. No. 21517 of 2014 (Medical Council of India v. King George Medical College and others) connected with Writ Petition (C) No. 469 of 2014 (Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union of India and others).

(iii) a writ, order or direction in the nature of Mandamus commanding and directing to the respondents to implement and follow the Principle of Reservation Policy i.e. firstly to fill up the vacant seats of open quota under general category and thereafter to fill up the GL Quota (Girl) in general category or any other category during the special allotment process (Mop Up Round) of aforesaid 65 seats of King George Medical University, Lucknow.

(iv) Issue any other writ, order or direction, which this Hon"ble Court may deem, just and proper in the circumstances of the case.

(v) Issue the award cost of this petition to the petitioner."

7. The writ petition was entertained but no order or direction was issued by the Court, as a result 65 seats were offered to other candidates and the seats were filled up.

Subsequently, the writ petition was amended and additional reliefs were added, namely:

"(iii)-b. Issue a writ, order or direction in the nature of certiorari quashing the admission of candidates who have been admitted against the 65 seats for which counselling was due on 30.9.2014 and where rank is lower than the petitioner.

(iii)-c. Issue a writ, order or direction in the nature of mandamus directing the respondents to transfer/adjust the petitioner against the 65 seats for which counselling held on 30.9.2014 according to her state rank.

(iii)-d. Issue a writ, order or direction in the nature of mandamus directing the respondents to transfer/adjust the petitioner against the 1300 seats offered to the students according to her rank.

(iii)-e. Issue a writ, order or direction in the nature of certiorari quashing the condition making the petitioner as ineligible as she had appeared in earlier counselling and has been admitted in the MBBS course mentioned in the public notice dated 29.9.2014."

8. We have heard Sri Arvind Srivastava alongwith Sri Ashok Kumar Dubey, the learned counsels for the petitioner and Sri A.K. Goyal, the learned Additional Chief Standing Counsel for the respondents.

9. The learned counsel for the petitioner contended that the horizontal reservation policy for women candidates was wrongly applied. According to the petitioner, seats reserved for girl candidates horizontally was offered first to the petitioner and, thereafter, seats were filled up vertically, as a result of which, the petitioner could not get her choice of her college in respect of her rank being very high. According to the petitioner, if a girl candidate succeeded on its own merit, she should be considered first in the seats kept vertically and, thereafter, if any vacancy arises, the girl candidate would be considered horizontally. The petitioner further contended that the respondents have adopted a dual standard while applying horizontal reservations. The respondents have applied a different standard for girl candidates and a different standard for physically handicapped candidate.

10. Sri Arvind Srivastava, the learned counsel for the petitioner further contended that in the first, second and third round of counselling, 65 seats of KGMC was not offered on account of stay by the Supreme Court, as a result of which, the petitioner was not offered the seats. The learned counsel submitted that had the seats were offered, the petitioner would have been given the seat as per her choice in KGMC on the basis of her merit. The petitioner contended that when the Supreme Court permitted KGMC to fill up the 65 seats by its order dated 25th September, 2014, KGMC should have offered the seats also to the admitted students instead of offering to the students, who were not admitted, which resulted that a candidate having a lower rank than that of the petitioner got admitted to a prestigious institution, namely, KGMC. This action on the part of KGMC was wholly arbitrary and discriminatory. In the end, the learned counsel placed reliance upon a notification dated 22nd December, 2008 issued by Medical Council of India, which modified the Regulations of Graduate Medical Education, 1997 whereby migration of students from one medical college to another medical college was permitted on genuine grounds subject to availability of vacancy in the college. Relying upon this provision, the learned counsel contended that the petitioner should be transferred to one of the 65 seats of KGMC and a candidate lower to her rank should be transferred on some other college or adjusted in the college where she is presently studying.

11. Before examining whether the reservation policy relating to women has been correctly applied or not, it would be appropriate to refer to the decision of the Supreme Court in [Indra Sawhney Vs. Union of India \(UOI\) and Others](#), (1992) 3 SCC 217 Supp , in which the principle of horizontal reservation was explained as under:

"all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as Vertical reservations" and "horizontal reservations". The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4))] may be called vertical reservations

whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservation in favour of backward class of citizens remains - and should remain - the same."

12. In [Anil Kumar Gupta and Others Vs. State of U.P. and Others](#), (1995) 5 JT 505 : (1995) 4 SCALE 573 : (1995) 5 SCC 173 : (1995) 2 SCR 396 Supp , a special provision for women made under Article 15(3) of the Constitution of India in respect of employment as contrasted from the special reservation under Article 16(4) of the Constitution was explained as under:

"The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)"

13. In [Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others](#), AIR 2007 SC 3127 : (2007) 115 FLR 10 : (2007) 10 JT 154 : (2007) 10 SCALE 50 : (2007) 8 SCC 785 : (2007) 8 SCR 972 : (2007) AIRSCW 5650 , the Supreme Court again considering the issue of horizontal reservation for women held as under:

"6. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be : "For SC : 30 posts, of which 9 posts are for women". We find that many a time this is wrongly described thus : "For SC : 21 posts for men and 9 posts for women, in all 30 posts". Obviously, there is, and there can be, no reservation category of "male" or "men".

7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are Vertical reservations". Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are Tiorizontal reservations". Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), [R.K. Sabharwal and others Vs. State of Punjab and others](#), AIR 1995 SC 1371 : (1995) 70 FLR 985 : (1995) 2 JT 351 : (1995) LabIC 1618 : (1995) 1 SCALE 685 : (1995) 2 SCC 745 : (1995) 2 SCR 35 : (1995) 3 SLJ 227 ; [Union of India and others etc. Vs. Virpal Singh Chauhan etc.](#), AIR 1996 SC 448 : AIR 1995 SC 448 : (1995) 7 JT 231 : (1995) 6 SCC 684 : (1995) 4 SCR 158 Supp and [Ritesh R. Sah Vs. Dr. Y.L. Yamul and others](#), (1996) 2 AD 224 : AIR 1996 SC 1378 : (1996) 2 JT 495 : (1996) 2 SCALE 341 : (1996) 3 SCC 253 : (1996) 2 SCR 695 : (1996) 1 UJ 735 . But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Castes-Women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example."

14. In the light of the aforesaid decision, we are of the opinion that where a special reservation for women is provided within the social reservation, the proper procedure is first to fill up the quota in order of merit in that particular category and then find out the number of candidates among them to belong to the special reservation group for girl candidate. If the number of women in such list is equal to or more than the number in the special reservation quota then there would be no need for further selection towards the special reservation quota and only if there is a short fall that the requisite number from the special reservation quota would be taken. We are of the opinion that the women selected on merit would be adjusted first in the vertical quota and if the requisite number of seats are not filled up then the women from the reserved selected quota would be lifted against

the horizontal reservation.

15. In the light of the aforesaid, the petitioner in both the writ petitions have contended that the seats offered to women candidates have first been filled up horizontally instead of filling them vertically, who have qualified on their own merit. The allegations made in the writ petitions are general allegations and no concrete proof has been filed indicating that no particular girl candidate has jumped the queue or has lost a seat of her choice by wrong application of the horizontal policy. The respondents in their counter affidavit have categorically stated that the candidates were given allotment of the seats in the unreserved category as per the vertical reservation policy of the State Government and where the seats were not available in the sub-category quota then the concerned candidate was allotted the available seat in the open category seats horizontally. In the light of the aforesaid, the contention of the petitioner cannot be accepted.

16. The contention of the petitioner that a dual standard had been adopted in applying horizontal reservation for women candidates and physically handicapped candidates cannot be accepted. The Supreme Court in *Rajesh Kumar Daria's* case (supra) has held that special reservation for women is given under Article 15(3) of the Constitution and special reservation for physically handicapped is given under Article 16(1) of the Constitution and that the principle applicable to vertical social reservation will not apply to horizontal reservation and to that extent horizontal special reservation differs from vertical social reservation. In the light of the aforesaid, we do not find that the respondents have adopted a dual standard and applied different norms for horizontal reservation for women candidates and physically handicapped candidates. The contention of the learned counsel for the petitioner on the issue of reservation cannot be accepted and is rejected.

17. The contention of the petitioner that she was also entitled for admission in the 65 posts of KGMC and if offered would have surely got a seat is well founded and cannot be ignored. The Court does not know whether the petitioner would have been offered a seat if the 65 seats was offered to the petitioner in the first, second and third counselling but assuming that if offered the petitioner would have been given a seat in KGMC is at this moment a wishful thinking. The career of a student depends upon his admission to a particular course and his/her preference of a college. A candidate of a higher merit aspires admission to a course, which is more promising. There is no doubt that a candidate would prefer a course of MBBS in an institution, which is more prestigious and more recognized than another medical college. The authority, no doubt has a primary obligation to see that a candidate of a higher merit is not denied a seat of the course and college as per the preference of the candidate based on the rank. The authorities are expected to perform their functions in a fair and proper manner strictly in consonance with the relevant rules and regulations. The aforesaid observations has been culled out from the decision of the Supreme Court itself in [Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others](#), AIR 2012 SC 3396 : (2012) 6 JT 283 : (2012) 6 SCALE 287 : (2012) 7 SCC 389 : (2012) AIRSCW 4073 : (2012) 4 Supreme 511 . The learned counsel has placed reliance of an observation of the Supreme Court in [Dr. Vinay Rampal Vs.](#)

[State of Jammu and Kashmir and Others](#), AIR 1983 SC 1199 : (1983) 2 SCALE 336 : (1984) 1 SCC 160 :

"..... The sands of time have run out which is inevitable injudicial process. What relief can the Court grant to person unjustifiably refused admission? Post-graduate qualification in medical discipline is highly coveted. We must therefore find a fresh answer."

18. The petitioner contends that if those 65 seats had been offered she would have surely got admission and non-offering of those 65 seats on account of an interim order could not deny admission as no fault could be attributed to the petitioner. The petitioner contends that she was a candidate placed higher in the merit list and that candidates having lower merit have been given admission in the MBBS course in the prestigious KGMC on those 65 seats, which were not offered to the petitioner but were offered to the remaining candidates in the mop up round on 30th September, 2014.

19. One of the contentions is that those 65 seats could not have been offered to the remaining candidates but a chance should have been given to those candidates, who were selected and got admission for the first, second and third round of counselling. The mop up round is only for those candidates who could not get admission in the first, second and third round of counselling.

20. Having given our thoughtful consideration in the matter, we find that the petitioner is not at fault. The petitioner, no doubt was placed higher in the merit list but there is nothing on record to contend that candidates having merit much lower to her have been given admission in MBBS course in a prestigious college to the detriment of the petitioner. Assuming that 65 seats have been filled up by those students, which have lower merit than that of the petitioner, we are still of the opinion that the petitioner is not entitled for any relief. The reason is not far to see. No doubt 65 seats filled up KGMC were not offered to the petitioner or to similarly situated candidates, who were given seats during the first, second and third round of counselling. This is on account of the fact that the Supreme Court had stayed the admission on these seats. The petitioner was accordingly offered a seat as per her merit in the medical college at Gorakhpur, which she has accepted and is pursuing her studies at the moment. When the Supreme Court allowed KGMC to fill up these 65 seats, it would have been appropriate if these 65 seats were offered to the candidates, who had already been admitted but having not offered these seats would not vitiate the admission process, inasmuch as the candidates, who have been given admission to these 65 seats are not before us. In the absence of these candidates, who are not parties to the suit, it is not possible nor feasible to dislodge them on this ground. We are also fortified by the instructions issued by the State Government dated 17th April, 2014. Clause 3 of the instructions dated 17th April, 2014 indicates that a candidate, who has been admitted in MBBS course in the earlier round of counselling will not be entitled to be considered in another vacancy of MBBS in the mop up round. This condition has not been questioned by the petitioner. We are of the opinion that the petitioner having been granted an admission in the earlier round of counselling stood

debarred from applying for admission in another college as per her preference in the mop up round. The mere fact that these 65 seats were not offered to the petitioner is irrelevant.

21. These 65 seats were allowed to be filled up pursuant to the order dated 18th September, 2014 and 25th September, 2014 passed by the Supreme Court in Writ Petition (Civil) No. 469 of 2014, Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union of India and others, and other companion petitions. The Supreme Court itself indicated in the said order that on account of the peculiar facts and circumstances of the case, considering that several seats of medical colleges would likely to remain vacant for the academic session 2014-15, interim directions under Article 142 of the Constitution was issued. One of the reasons which played in the mind of the Supreme Court was that there was a shortage of doctors in the country and because of non-renewal of recognition of several medical colleges the citizens of the country would be deprived of a good number of doctors. The Supreme Court consequently, permitted the vacant seats to be filled up subject to undertaking being given by the colleges and, while permitting these seats to be filled up, the Supreme Court indicated that there would be no further counselling in respect of the students who are to be given admission even if it might result in some heart burning amongst other students. These directions clearly apply to the case of the petitioner. The petitioner was given admission in the first round of counselling and in view of clause 3 of the instructions dated 17th April, 2014 issued by the State Government as well as the directions of the Supreme Court in its orders dated 18th September, 2014 and 20th September, 2014, the students already admitted could not be considered for further counselling for the additional seats so released by the Supreme Court.

22. In our opinion, the mere fact that if these seats were available in the first round of counselling the petitioner would have got a seat of her preferred college is wishful thinking. We are of the opinion that such wishful thinking cannot come in the way for the Court to take a sympathetic view to pass an order in favour of the petitioner.

23. In the light of the aforesaid, we are of the considered view that the contention of the petitioner that she should have been offered counselling for the 65 seats cannot be accepted.

24. The petitioner's reliance on clause (6) of the Graduate Medical Education Regulations, 1997 praying that she should be transferred to a college of her choice, namely, KGMC and adjusted with a student, who is less meritorious than the petitioner cannot be accepted. Clause (6) of the regulation applies in a case where there is an availability of a vacancy in the college and only upon a vacancy, the request of a candidate for transfer from one college to another college could be considered.

25. In the instant case, there is no assertion that a seat is vacant in KGMC. In the absence of any vacancy such request of the petitioner cannot be accepted.

26. In view of the sequence of events narrated aforesaid, the situation has to be accepted as a "fait accompli".

27. We are of the opinion that in view of the aforesaid facts and circumstances of the case, the petitioner is not entitled for any relief. Both the writ petitions fail and are dismissed. In the circumstances of the case, parties shall bear their own cost.