

(9) The other argument of learned counsel for the petitioner that Barsati portion which was vacated by Ved Parkash Sharma during the pendency of the petition, is now available with the respondent and is sufficient for his requirement, is also devoid of any merit as in a petition under section 13-A of the Act, the learned Rent Controller cannot go into the question of sufficiency or insufficiency of the accommodation available with the landlord. Even otherwise this ground was taken by the petitioner in his amended petition under section 18-A of the Act but the petitioner has not filed any affidavit in support of this ground. Sub-section (4) of Section 18 of the Act provides that the tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. Petitioner having failed to file an affidavit in support of the additional ground, the learned Rent Controller was justified in not taking into consideration the said ground.

(10) Under the circumstances, the civil revision fails and is dismissed with costs. However, petitioner-tenant is allowed one month's time to vacate the premises provided he deposits the entire arrears of rent with the Rent Controller within fifteen days from today.

*Before : N. C. Jain, J.*

SUMEDHA KALIA (MS.) AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 11980 of 1989.*

22nd January, 1990.

*Constitution of India, 1950—Art. 226 and 227—Maharishi Dayanand University, Rohtak Prospectus for M.B.B.S./B.D.S. Entrance Examination, 1989—Note 1 p. 6, Ch. II, Ch. 5, Reg. No. 4—Admission to M.B.B.S./B.D.S. on the basis of Combined Entrance Test—C.B.S.E. not sponsoring candidates on All India basis—Seats lying vacant—Legal obligation to fill such seats—Because of paucity of time vacant seats to be offered to petitioners on merit.*

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*Held*, that the petitioners have got a legal right to be admitted to the seats which are lying vacant. The respondents have got a legal obligation to perform its part of the duty to fill up the vacant seats. The regulations for admission to the M.B.B.S./B.D.S. course are always contained in the prospectus which are issued every year. In the prospectus issued by the University for admission to M.B.B.S./B.D.S. course, the number of seats been specified in Chapter II. They are to be filled up on the basis of a combined entrance examination. As per regulation No. 4 in Chapter 5 of the prospectus, all the seats are to be filled up by admitting the candidates on the basis of a combined entrance examination and this regulation envisages the preparation of a common merit list for M.B.B.S./B.D.S. course in the order of merit and according to the preference given in the application form and subject to the availability of seats for the individual course. In the considered view of this Court, legal right of the petitioners flows from the very provisions made in the prospectus issued by the University. It is only after the issuance of prospectus that a candidate appears in the examination and, therefore, it would be much too much to ask such a candidate that the University will not give him admission even if he is entitled to be admitted and even if he has acted on the basis of the prospectus. In the view of this Court, making of provisions in the prospectus thus casts a legal duty upon the University to give admission to the students who otherwise fulfil all qualifications. In other words, the University binds itself by the terms of the prospectus and cannot be justified to contend that there is no legal duty cast upon it to give admission to the students even if they are fulfilling all qualifications.

(Para 8)

*Held*, that the argument that the University cannot be compelled to divert the seats meant for C.B.S.E., New Delhi to open category is devoid of any merit. Once the Director General of Health Services, New Delhi has informed the authorities that C.B.S.E. is not sponsoring any seat to Agroha Medical College Institute, the same can be thrown open for admission to the candidates on the waiting list, on the first principle that no seat should go waste.

(Para 9)

*Held*, that the time for admission for the academic session was over long time back and none of the wait-listed candidates other than the petitioners has come forward to press his or her claim. There is no denying the fact that ordinarily more meritorious candidates should be given preference but since long time has elapsed, the petitioners who have approached this Court, they should not be made to suffer more on account of delays. It is, therefore, ordered that the candidates who have approached this Court upto now be admitted in the order of their merit. This is

the only way which, this Court has been able to think of, would be appropriate to grant complete relief to the petitioners who have agitated their rights before this Court.

(Para 11)

*Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to:—*

- (i) *send for the records of respondents Nos. 2 and 3;*
- (ii) *Issue a writ of mandamus directing the respondents to fill up the 21 Seats in M.B.B.S. Course in Medical College, Rohtak and Medical Institute, Agroha and Dental College, Yamunanagar for the year 1989-90 out of the Merit List prepared by the University after holding PMT—Test for M.B.B.S. & B.D.S. Entrance Examination and the petitioners be admitted to the respective courses;*
- (iii) *issue any other appropriate Writ, Direction or Order deemed fit and proper in the circumstances of this case;*
- (iv) *dispense with the prior service of notices of Motion on the respondents as the insistence thereof would render the Writ Petition infructuous;*
- (v) *dispense with the filing of Certified Copies of the documents appended as Annexures;*
- (vi) *award costs of this Writ Petition to the Petitioners.*

H. L. Sibal, Sr. Advocate with I. S. Balhara, Advocate, for the Petitioners.

J. L. Gupta, Advocate with Jaswant Singh, Advocate and Vikrant Sharma, Advocate, for the Respondents.

Madan Dev, Advocate, for A.G. Haryana.

#### JUDGMENT

*Naresh Chander Jain, J.*

(1) This judgment of mine will dispose of Civil Writ Petition Nos. 11980, 14858, 14904, 15645, 12658, 12627, 12794, 13569, 13448, 13945, 14903, 14252, 15067, 16113, 16640, of 1989 and 48 of 1990 as common question of law and facts are involved in all these writ petitions. This Court has been told that in Civil Writ Petition No. 48 of 1990

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notice has been issued very recently and the counsel has not been able to obtain the instructions from the University. This must be true, but this Court is not inclined to adjourn any writ petition as whatever relief is going to be granted in these writ petitions, the petition in the aforesaid writ petition would be entitled to the same subject to the condition that the petitioner has depicted correct factual position as regards his merit in the open entrance examination. The parties' counsel are agreed that the basic facts of the case for determining the questions in controversy can be picked up from Civil Writ Petition No. 11980 of 1989 *Miss Sumedha Kalia and others v. The State of Haryana and others*.

(2) Respondent No. 2 the Maharishi Dayanand University, Rohtak, in C.W.P. No. 11980 of 1989 *Miss Sumedha Kalia and others v. The State of Haryana and others* conducted a combined entrance examination for admission to the M.B.B.S./B.D.S. Courses for the year 1989-90. The number of seats to be filled up by the University for admission to M.B.B.S./B.D.S. Courses as has been given in the prospectus is as under :—

**“M.B.B.S. COURSE : ”**

**(i) Medical College, Rohtak :**

115 seats (98 to be filled by the University and 17 seats (13 open + 4 for SC/ST) by the CBSE, New Delhi, on All India Basis).

Reserved = 49 seats.

Open merit = 49 seats.

**(ii) Agroha Medical Institute, Agroha.**

50 seats (42 to be filled by the University) and 8 (6 open +2 for SC/ST) by the CBSE, New Delhi, on All India Basis).

Reserved = 21

Open Merit = 21.

**B.D.S. COURSE**

(i) *Dental College, Rohtak :*

20 seats (17 seats to be filled by the University and 3 seats (2 open +1 for SC/ST) by the CBSE, New Delhi on All India Basis).

Reserved = 6 seats.

Open Merit = 11 seats

(ii) *D.A.V. Centenary Dental College, Yamuna Nagar :*

22 seats

Reserved = 8 seats

Open = 14 seats"

From the above-mentioned table, it is clear that the total number of seats for admission to the M.B.B.S. Course is 165 out of which 115 seats are meant for the Medical College Rohtak and 50 seats are meant for Agroha Medical Institute, Agroha. Out of the 115 seats meant for the Medical College Rohtak, 98 are to be filled up by the University while 17 seats are to be filled up on all-India basis by the Central Board of Secondary Education (for short, CBSE), New Delhi. In turn, out of the said 17 seats, 13 are meant to be filled up from the open category while 4 seats are meant to be filled up from SC/ST candidates. As regards Agroha Medical Institute, Agroha, out of the said 50 seats, 42 are to be filled up by the University and 8 seats are to be filled up by the CBSE, New Delhi, on an All India basis. Out of said eight seats meant to be filled up by the CBSE six seats have been thrown open to the open category while two have been reserved for SC/ST candidates. As regards the BDS course, 20 seats are meant for the Dental College, Rohtak whereas 22 seats are to be filled up by the DAV Centenary Dental College, Yamunanagar. Agroha Medical Institute Agroha does not have the college and, therefore, the seats meant for it are to be filled up and were filled up in the past by the Medical Institute, Rohtak. There is no doubt as regards this factual position. There is further no dispute that in the list of institutes mentioned in the CBSE, the name of Agroha Medical Institute, Agroha, does not find any mention. Out of the 115 seats in the Medical College, Rohtak, 9 seats from the All India quota are lying vacant and one seat has fallen vacant after the

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shifting of one student Sanjay Duhan on account of the acceptance of his writ petition. Out of the 50 seats in Agroha Medical Institute, 10 are admittedly lying vacant which have not been filled uptill now. According to the learned counsel for both the parties, 5 seats in the BDS course at Rohtak are lying vacant. Out of these five seats, three are to be filled up by the CBSE on an All India basis and one seat is to be filled up through the Government of India nominee whereas the remaining one has to be filled up from the category of SC/ST, as contended before me by learned counsel for the respondents.

(3) The above-mentioned factual position was by and large conceded before this court but at the same time it was contended by the counsel for the respondents that the availability of seats is lesser than what was being claimed by the counsel for the petitioners, whereas the counsel for the petitioners were of the view that the availability of seats is much more. However, the controversy on factual position would not detain this court, as the admission would actually be made against the available seats only. This court has to determine the rights of the petitioners only and thereafter law would take its own course as regards the admission of the petitioners is concerned.

(4) After the admission of the writ petitions, some of the petitioners were granted provisional admission at their own risk and responsibility. The grouse of some of the petitioners who were not given provisional admission was that by declining provisional admission to them, the respondents have committed contempt of court. At the time of hearing the writ petitions and the contempt petitions, the counsel for the parties crossed their swords on the point whether the respondents are guilty of committing the contempt of this court or not. The initiation of contempt proceedings and the dispute on factual position therein would also not detain me as regards the determination of the rights of the petitioners is concerned, because ultimately this court has only to decide the rights of the petitioners to be admitted to the seats which have remained un-filled. Once it is decided that the petitioners are entitled to be admitted to the M.B.B.S./B.D.S. course in the Medical College, Rohtak and Agroha Medical Institute, Agroha, it would hardly be material as to whether the authorities have not been able to comply with the orders on account of some confusion regarding the availability of seats which could possibly be there on account of various

adjustments of seats to be done in view of the CBSE quota, etc. It is for this reason alone that this court is not inclined to initiate contempt proceedings against the authorities and with one stroke of pen it can be held that there was no disobedience, what to speak of wilful disobedience, of the orders of this court.

(5) Before advertng to the merits of the case, it is necessary to notice that in Agroha, there is no medical institute and the Medical College Rohtak admits 50 students. This was done in the past. In other words, Agroha Medical Institute Agroha could well be described as a guest institute. Even in the current academic year, approximately 40 seats have already been filled up. The filling up of the remaining seats has yet to be done.

(6) Advertng to the merits of the case, it has been argued by the learned counsel for the petitioners that the candidates who competed for the entrance test and are on the waiting list as notified by the respondents are entitled to be admitted against the seats now lying vacant. In other words, the argument is that the petitioners are entitled to be admitted to all the seats lying vacant, whether the same are in the Medical College Agroha wherein they are lying vacant on account of the CBSE not having sponsored any student. In a nutshell, the argument of the counsel for the petitioners is that once the Director-General (Health Services) has not sponsored any student on an all India basis, the University has to admit the students from the waiting list by treating those seats in the open category. It has further been contended that all the seats meant for various reserved categories, other than the CBSE quota, are liable to be filled up from the open merit candidates in view of Note 1 at page 6 of the Prospectus for the M.B.B.S./B.D.S. Entrance Examination, 1989, issued by Maharishi Dayanand University, Rohtak, which is reproduced below :—

“Competition for reserved seats will be among candidates belonging to the categories for which the seats have been reserved. Reserved seats remaining vacant on account of non-availability of eligible candidates would be placed under ‘Open Merit’ seats.”

It has further been argued that even in the past years, all such seats which became available on account of some category or the other not coming forward, were thrown open to the candidates in the open merit, and this was done as the mandate of law is that no seat should

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go waste and if any seat is going waste, the same should be utilised by the candidates who are entitled to admission in the open merit.

(7) While defending the writ petitions, it has been contended by learned counsel for the respondents that the students do not have any statutory or legal right to claim issuance of a writ of *mandamus* against the University and that there is no statutory duty cast on the University which can compel it to admit the students. It has further been contended that even if the University is to be bound by the prospectus, the seats at Agroha can not be claimed by the students, because they were reserved by the University for being filled up only out of the candidates who took the CBSE examination; that in any case no direction or *mandamus* can be issued for the purpose of compelling the University to divert the seats from the CBSE quota to the general category. It has also been argued that the University had fixed a cut-off date keeping in view the academic necessity and also the recommendations of the Medical Council of India, and long after the expiry of that date, the students should not be ordered to be admitted in the institute. It has further been argued that out of ten seats at Agroha Medical Institute, Agroha, eight were to be filled up out of the CBSE quota, one from the category of scheduled castes/tribes and another by admitting a student to be nominated by the Government of India. All the seats, the learned counsel for the respondents contend, could not be thrown open to the general category. At this stage, it may be noticed that it has not been disputed by the counsel for the respondents that the Government of India has not sent any name against the aforementioned seats. On the other hand, it has been admitted, that the Director-General, Health Services, New Delhi, has written that the CBSE, New Delhi is not claiming any seat out of the 50 seats of Agroha Medical Institute, Agroha. May be, the stand of the counsel for the respondents that the CBSE is not sponsoring any seat on account of non-recognition of Agroha Medical Institute is correct yet the fact, however, remains that the CBSE is not sponsoring any seat out of the CBSE quota, and, therefore, on these premises it has to be decided by this Court whether these seats can be thrown open to the open category and be made available to the students on the waiting list.

(8) Having given my thoughtful consideration to the arguments of the counsel for the parties, this Court is of the considered view that the petitioners have got a legal right to be admitted to the



seats which are lying vacant. The respondents have got a legal obligation to perform its part of the duty to fill up the vacant seats. The regulations for admission to the MBBS/BDS course are always contained in the prospectus which are issued every year. In the prospectus issued by the University for admission to MBBS/BDS course, the number of seats has been specified in Chapter II. They are to be filled up on the basis of a combined entrance examination. As per regulation No. 4 in Chapter 5 of the prospectus, all the seats are to be filled up by admitting the candidates on the basis of a combined entrance examination and this regulation envisages the preparation of a common merit list for M.B.B.S./B.D.S. course in the order of merit and according to the preference given in the application form and subject to the availability of seats for the individual course. In the considered view of this Court, legal right of the petitioners flows from the very provisions made in the prospectus issued by the University. It is only after the issuance of prospectus that a candidate appears in the examination and, therefore, it would be much too much to ask such a candidate that the University will not give him admission, even if he is entitled to be admitted and even if he has acted on the basis of the prospectus. In the view of this Court, making of provisions in prospectus thus casts a legal duty upon the University to give admission to the students who otherwise fulfil all qualifications. In other words, the University binds itself by the terms of the prospectus and cannot be justified to contend that there is no legal duty cast upon it to give admission to the students even if they are fulfilling all qualifications. In somewhat similar circumstances, the State Government was held bound by the terms of the prospectus by Hon'ble Supreme Court in *State of Orissa v. Dr. Asim Kumar Mohanty* (1), and specific observation was made to this effect in *Dr. Jeevak Almast v. Union of India and others* (2), also. The apex Court issued directions for filling up the vacant seats which remained vacant on account of required number of candidates not passing the examination. The relevant observation of the Supreme Court can be noticed and reproduced as below:—

“The question for consideration is as to whether these unfilled seats should revert back to the respective States and/or institutions or what other method should be adopted to fill

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(1) A.I.R. 1989 S.C. 1801.

(2) A.I.R. 1988 S.C. 1812.

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the vacancies. It has been contended on behalf of the petitioner, and there is total unanimity amongst all the parties that no seat should go unfilled. It is well known that our country does not have sufficient number of qualified doctors and every step should therefore, be taken to turn out as many doctors with Post Graduate qualification as possible. The problem to be resolved, therefor, is as to what method should be adopted to fill up these unfilled reserved seats."

Similar view was expressed by the Hon'ble Supreme Court in yet another decided case reported in *Amanjit Singh Gill v. Directorate General of Health Services* (3). The ratio in all the decided cases seems to be this that no seat should go waste and in view thereof, it is futile to contend that the petitioners do not have any legal right to claim writ of *mandamus* for filling up the vacant seats. The argument of the counsel for the respondent that the University is not bound to give admission after the cut off date has expired, is equally untenable. If the seats are available, and they have remained unfilled for some reason or the other, whether those reasons were within the control of the authorities or beyond their control, it cannot successfully be argued that such seats should go waste. The principle of not granting admission after the cut off dates has not been approved by any judicial pronouncement. On the other hand the ratio of law laid down in several rulings and more particularly in the case of *Viney Shankar etc. v. Director General Health Services* (4) by the Hon'ble Supreme Court seems to be this that the court can always order admission and this is what precisely has been done in *Viney Shanker's case* (supra). The apex court has fixed several dates for transfer of students and their admission etc. etc.

(9) Having settled the rights of the petitioners to seek admission to the seats lying vacant, it needs to be decided by this Court whether the seats lying vacant in Agroha Medical College Institute and which have not admittedly been sponsored by the Director General of Health Services, New Delhi, can be thrown open to the petitioners who are waiting in the open merit. In this respect th

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(3) A.I.R. 1989 S.C. 386.

(4) C.W.P. 1253 of 1989 decided on 20th December, 1989.

argument of counsel for the respondent that the University cannot be compelled to divert the seats meant for C.B.S.E., New Delhi to open category is devoid of any merit. Once the Director General of Health Services, New Delhi has informed the authorities that C.B.S.E. is not sponsoring any seat to Agroha Medical College Institute, the same can be thrown open for admission to the candidates on the waiting list, on the first principle that no seat should go waste, as has been observed by the apex court in *Dr. Jeevak Almast's case* (supra). Following the principles laid down in various judicial pronouncements and more particularly in *Dr. Jeevak Almast's case* (supra) it can be safely held on a point of law that no seat should go waste and, therefore, the court can order that unfilled seats be thrown open for admission to the candidates who are on the waiting list in the open category. It was contended by the counsel for the petitioners and rightly so that even in the past unfilled seats were thrown to the open category and the students on the waiting list were admitted. This stand was not countered but it was submitted that the University is facing de-recognition of the College. As regards the question of de-recognition on account of having admitted more students than what the Rohtak Medical College was entitled *ibid.* this theory has been least appreciated by this Court. In the past also the seats meant for Agroha Medical Institute, Agroha were being filled up by the Medical College Rohtak. Even in this year 40 seats have admittedly been filled up. If the disqualification of de-recognition has been incurred, it has already been done. The admission of more students would not mean incurring of any fresh disqualification.

(10) Now it remains to be seen as to what relief the petitioners are entitled to. In the considered view of this Court the petitioners are entitled to be admitted to the seats in the Agroha Medical Institute, Agroha as they have not been sponsored by the Director General of Health Services, New Delhi. As regards other seats which do not fall in All India quota on the basis of All India Competitive Entrance Test and which are not to be sponsored by the C.B.S.E., New Delhi, they can also be filled up forthwith. In other words, the petitioners should be admitted to the seats reserved by the respondents for the C.B.S.E. in Agroha Medical Institute from the open category candidates. As regards those seats which are not lying vacant in the Rohtak Medical College, Rohtak and the list of which has yet to come in the light of the directions of the Supreme Court in *Viney Shanker's case* (supra) the authorities would fill up those seats after 8th February, 1990 which are not

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sponsored by C.B.S.E., New Delhi. In other words, whatever seats are available after 8th February, 1990 after the filling up of the seats in pursuance of the sponsoring by the C.B.S.E., New Delhi, the same would be filled up after 8th February, 1990. Any seat which remains vacant or becomes vacant in case of non-joining of a particular candidate for any reason, the same be also filled up by the University. In the view which has been taken above a writ of *mandamus* is issued directing the respondent-authorities to admit the students forthwith on the basis of the merit drawn by the University in pursuance of the result of the competitive examination against the seats which are lying vacant as at present. A writ of *mandamus* is also issued that whatever seats remains vacant after the compliance of the directions of the apex court in *Viney Shankar's case* (supra) after 8th February, 1990, the same be also filled up without any further delay. It is further directed that any seat which has become available to the authorities on account of any reason would also be filled up without any delay. These observations shall apply to all the Institutes.

(11) Before parting with the judgment, it has to be determined as to whether the students in the open merit wait listed have to be offered seats or is it that the admission has to be granted to the petitioners only who have approached this Court. In this respect it is observed that the time for admission for the academic session was over long time back and none of the wait-listed candidates other than the petitioners has come forward to press his or her claim. There is no denying the fact that ordinarily more meritorious candidates should be given preference but since long time has elapsed, the petitioners who have approached this Court, they should not be made to suffer more on account of delays. It is, therefore, ordered that the candidates who have approached this Court uptill now be admitted in the order of their merit. This is the only way which this Court has been able to think of, would be appropriate to grant complete relief to the petitioners who have agitated their rights before this Court.

(12) Yet another question which falls for determination before this Court is "whether the petitioners are entitled to the condonation of shortage of lectures in view of the peculiar facts and circumstances or not?" On this aspect of the matter it can straightaway be observed that whatever delays have been caused, the same cannot be attributed to any lapse on the part of the petitioners. The delay

has either been caused on account of the attitude of the authorities not to fill up the seats lying vacant in the Agroha Medical Institute, Agroha in spite of the fact that C.B.S.E. was not laying any claim on those seats. No fault can be found with the petitioners on account of C.B.S.E. not sponsoring candidates within the reasonable time in the Rohtak Medical College, Rohtak. In view thereof, the judicial discretion would better be utilized by making clear cut observations that the petitioners should not suffer on account of late admission. The petitioners may be allowed condonation of shortage of lectures by the University or the College authorities or they may approach the Medical Council of India or any other higher authority for making any provision which is deemed fit for condoning the lectures if the university or the College authorities do not have any such power.

In the light of the observations made above, the writ petitions are allowed. The petitioners be admitted to the M.B.B.S./B.D.S. Course in the light of the observations made in para 10 and 11 of the judgment. No costs. Copy of the judgment to be given *Dasti* on payment of requisite copying charges.

P.C.G.

Before : A. L. Bahri, J.

GURBACHAN KAUR AND ANOTHER,—Appellants.

*versus*

PARAMJIT SINGH AND ANOTHER,—Respondents.

*Regular Second Appeal No. 2796 of 1983*

25th March, 1991.

*Hindu Adoption and Maintenance Act, 1956 (78 of 1956)—S. 19(1)—Hindu Succession Act, 1956 (30 of 1956)—Ss. 14(1) & 14(2)—Right of wife to maintenance—Wife—Whether entitled to maintenance during life time of her husband from her father-in-law—Property bequeathed under will by father-in-law in favour of daughter-in-law to enjoy usufruct—No power of alienation allowed—Case covered by S. 14(2) and not S. 14(1).*

*Held*, that a perusal of Section 19 of the Hindu Adoption and Maintenance Act, 1956 would show that it is only after the death of her husband that his wife/widow is entitled to be maintained by