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further direct that in case application under Section 30 of the Act is filed which lies before the District Judge, the same shall be disposed of as expeditiously as possible and preferably within six months from the date petitioner puts in appearance or is served. It shall be open to the respondent Corporation to move an application under Order 38 Rule 5 C.P.C. and obtain an order of attachment before judgment. The petitioner Company would not sell/mortgage or dispose of in any manner the land, plant and machinery till such time application under order 38 Rule 5 C.P.C. is filed by the respondent. Thereafter, it shall be in the discretion of the learned District Judge to pass orders so as to protect the interest of the Corporation. Disposed of accordingly.

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**J.S.T.**

*Before H.S. Bedi, J—*

**SANJAY,—Petitioner**

*versus*

**MAHARISHI DAYANAND UNIVERSITY & OTHERS,—  
Respondents**

C.W.P. No. 2707 of 1998

24th August, 1998

*Constitution of India, 1950—Arts. 226/227—Admission—Common Entrance Test conducted for five medical institutions—Prospectus provided that candidates higher in merit to be offered seat for M.B.B.S. course and others in B.D.S. course—Candidates higher in merit to offer admission against 50% free seats—Petitioner got admission in one college in B.D.S. course against payment seat—Advertisement issued by respondent—College on its own level for filling vacant seat in M.B.B.S. course—Unable to attend interview—Notice issued to fill vacant seats in all 5 colleges—Petitioner denied admission on the ground he failed to attend counselling session in Maharaja Agarsen Institute of Medical Research and Education—Challenge thereto—Held, admission to be made by the Admission Committee—Admission made by any other authority would have no legal sanction—Intimation to attend a counselling by such authority could be ignored without peril—Direction issued to admit petitioner & create additional seat to admit respondent.*

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*Held that* the admissions to the medical colleges have to be made by an Admission Committee consisting of the Director of the P.G.I. and some other members. The admission made by any other authority would, therefore, have no legal sanctity and an intimation to attend a counselling by such authority could be ignored without peril.

(Para 3)

*Further held,* that this is a case where an additional seat ought to be created for the MBBS course in respondent No. 3 college. This petition is accordingly disposed of with the direction that petitioner will be granted admission forthwith in the MBBS course in respondent No. 3 college against a payment seat and the concerned respondents shall take immediate steps for the creation of an additional seat to adjust respondent No.5.

(Para 6)

R. K. Gupta, Advocate for the Petitioner

R. S. Chahar Addl. Advocate General, Haryana

Mr. C.P. Sapra, Advocate and

J.K. Puri, Advocate for respondent No. 5.

### JUDGMENT

*H.S. Bedi, J. (Oral)*

(1) Respondent No. 2, the Pt. B. D. Sharma, Post Graduate Institute of Medical Sciences, Rohtak (hereinafter called 'the PGI') conducted a common entrance test for admission to the M.B.B.S./ B.D.S. course for five medical institutions in the State of Haryana for the year 1997. The petitioner being eligible applied for taking the test in both the courses and after the declaration of the result was placed at merit No. 307 as a general category candidate. As per chapter V of the information brochure issued by the University, respondent No.1, the admission was to be made on the basis of merit in the entrance test by an admission Committee consisting of the Director of the PGI as Chairman, and Principals of the five medical colleges covered by the test as members. The brochure further provided that candidates higher in merit would be offered a seat for the MBBS course and those lower in merit in the B.D.S. Course.

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The allotment of the institution was also left to the Admission Committee, the decision to be based on the merit and the preference exercised by the candidate at the time of interview. It was also stipulated that candidates higher in merit would be adjusted/offered admission against the 50% free seats having a much lower rate of fee whereas those lower in merit would be considered against the more expensive payment seats. The first counselling for the admission was held on 18.8.1997 and as the petitioner did not fall within the merit he was not called to attend it. He was however, called for the second counselling on 29.9.1997 and though he attended the same yet he still did not get admission as being low in merit. On 9.10.1997, the B.R.S. Institute of Medical Sciences (Dental College and Hospital), Village Kot Billa, Panchkula respondent No. 4 issued an advertisement at its own level calling candidates for interview on 20.10.1997 for the vacancies in the B.D.S. Course still available. The petitioner attended the interview on that day and got admission therein against a payment seat. On 3.11.1997 respondent No.3 the Maharaja Agarsen Institute of Medical Research and Education, Agroha, District Hisar also issued an advertisement at its own level for filling in some vacant seats in the M.B.B.S. Course. The petitioner however, could not attend this interview for various reasons. In the meanwhile the PGI issued another notice for the counselling scheduled for 5.12.97 to fill the vacant seats in the various Medical Colleges covered by the brochure and though the petitioner appeared at the time of counselling he was denied admission on the ground that he had failed to attend the counselling in the Maharaja Agarsen Institute of Medical Research and Education on 3.11.1997. It is the petitioner's case that despite the third counselling held on 5.12.1997 two more payment seats in the M.B.B.S. Course in the Mahraja Agarsen Institute of Medical research and Education, Agroha had been filled up on 29th Janaury, 1998 and one seat had been granted to respondent No. 5 who stood at serial No.615 in the merit list. The petitioner has accordingly come to this court seeking to challenge the award of a seat to respondent No. 5.

(2) Mr. R.K. Gupta, the learned counsel for the petitioner, has raised two basic arguments before me. He has first urged that there was an obvious distinction between the import of sub-paras (3) and (4) of the Instructions given at page 17 of the Brochure and while the former envisaged that a candidate who failed to attend the Medical Examination on the notified date was liable to forfeit his claim for admission and placement in the waiting list whereas

in the latter there was no forfeiture clause and it was provided that on the failure of the selected candidates to report for admission, the vacancies caused would be filled by candidates from the waiting list in order of merit, and in that eventuality the petitioner could not be penalised, even if he had not attended the counselling. He has then urged that as per the information brochure the admission was to be made by an Admission Committee to be headed by the Director of the PGI and as the offer to the petitioner made on 3rd November, 1997 by the Medical College, Agroha had been at its own level, he was fully justified in ignoring it and viewed in this light the respondent's stand that the petitioner had forfeited his claim to seek admission in any counselling subsequent to 3rd November, 1997 was not justified. The arguments raised by Mr. Gupta have been dealt with in Civil Writ petition No 2134 of 1998 (*Parul Lohra. vs.M.D. University, Rohtak & Others*) decided on 21st August, 1998, wherein it has been held as under :—

“I have heard the learned counsel for the parties at length and have gone through the record with their assistance. The fate of the case would hinge on an analysis of Chapter-V of the information Brouchure (1997) issued by the University dealing with the method of selection and admission to the MBBS/BDS courses. Para 1 of the aforesaid Chapter provides that a merit list of candidates in excess of the number of seats available would be prepared. Paragraph II deals with the method of admission and postulates that the candidates higher in merit list would be offered seats for the MBBS course and the others for the BDS course in order of merit subject to the availability of seats unless a candidate opts exclusively for one of the courses only at the time of interview. Sub-paras (2), (3) and (4) of paragraph II which are relevant, are reproduced below :—

- (2) In case of admissions against free seats and payment seats, the candidates higher in merit list will be considered/offered admission against the 50% FREE SEATS in order of merit and candidates of lower merit will be considered/offered admission against PAYMENT SEATS.
- (3) Candidates who fail to attend the Medical Examination on the notified date are liable to forfeit the claim for admission and placement in the waiting list.

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- (4) On the failure of the selected candidates to report for admission, the vacancies caused would be filled by candidates from the waiting list in order of merit.

A resume of the aforesaid sub-paras would clearly reveal that the substantive portion, i.e. sub-para (2) postulates that free seats would be offered in order of merit to the better candidates whereas the candidates lower in merit would be considered/offered against payment seats. It is evident that the *sine qua non* for determining admission against a free or a payment seat is the merit in the entrance test. Sub-paras (3) and (4) lay down the procedure for admission and can, by no stretch of imagination, be read to supplant or whittle down the effect of sub-para (2). Mr. Balhara's argument that as respondent Nos. 6 to 8 had not accepted the offer made to them at the time of the second counselling on 29th September, 1997 to get admission in Maharaja Agarsen Institute of Medical Research and Education Agroha and BRS Institute of Medical Sciences, Kotbilla, Panchkula, their claim for admission on the third counselling on 5th December, 1997 stood forfeited has to be examined in the above noted situation. Moreover, it is significant that sub-para (3) talks about the forfeiture of a claim for admission on the failure of the candidate to attend the medical examination on the date notified but there is no such forfeiture clause in sub-paragraph (4) and all that this provision postulates is that in case the selected candidate fails to report for admission, the vacancy so caused would be filled up from the waiting list in order of merit. There also appears to be merit in the stand of the respondents counsel that the words "admission" and "waiting list" afore-referred would pertain to an admission made at the time of the first counselling and not thereafter. Viewed in this light and more particularly, in the light of the fact that the substantive sub-paragraph (2) provides that the candidates higher in merit would be offered a free seat in preference to the one lower in merit, it cannot be said that the action of the respondents in granting admission to respondent Nos. 6 to 8 in preference to the petitioner was not justified. To my mind, it would be only just and fair that the Admission Committee should take into account the subsequent developments leading to the counselling after the first one and take a final admission on the basis of merit. This appears to have been done in this case."

(3) The second argument urged by Mr. Gupta has equal merit. It has also been held in Parul Lohra's case (*supra*) that the admissions to the medical colleges have to be made by an Admission

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Committee consisting of the Director of the P.G.I. and some other members. The admission made by any other authority would, therefore, have no legal sanctity and an intimation to attend a counselling by such authority could be ignored without peril.

(4) The learned counsel representing respondent No.3, has however, relied on a Full Bench Judgement of this Court in *Anil Jain M.S. General Surgery and others v. The Controller of Examinations, Maharishi Dayanand University Rohtak and others* (1), to contend that a candidate who could not get a discipline of his choice at the time of the counselling could refuse the same and keep his name alive in the waiting list to await his chance in a better discipline but in case he took admission at the time of counselling such a candidate could not later stake a claim in respect of a seat that might become available in a better discipline. The observations of the Full Bench read in isolation definitely support the respondents case but the court was then considering the admission rules contained in the prospectus issued by M. D.University, Rohtak for the Post-Graduate Medical Courses for the year 1996. The rule before the Court was as under :—

“Candidates, will be called before the interview board according to their respective merit, as notified and they will be required to exercise their choice regarding the course (degree or diploma) and the subject of their choice. Selection to the course and the subject will be according to the availability of seats at their respective ‘turn’ at the interview. Those candidates who do not get the subject of their choice can opt to be wait listed (in writing) for one subject of their choice at the time of interview. If somebody does not wish to join any course and wants to be placed in the waiting list, only for a particular subject, he/she can do so in writing at the time of interview. Subject-wise waiting list in order of merit will be displayed. If any seat (s) falls vacant in any subject within one month from the start of session, the same will be offered in order of merit to those who have been placed in the waiting list for those subjects. No request from any other candidate (even higher in merit) for any change in subject shall be entertained subsequently.”

(5) No provision has been pointed out by the learned counsel for the respondents in the information brochure issued by the

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University for the year 1997. The Full Bench judgement, therefore, cannot have universal application as has been contended by the learned counsel.

(6) It is the admitted case that the syllabi for the 1st year course of study for the MBBS and B.D.S. are the same. It is also evident that respondent No. 5 has now completed almost 8 months of the course. It would therefore, be unfair at this belated stage to put him on the way side by quashing his selection and make him lose a year. I am, therefore, of the opinion that this is a case where an additional seat ought to be created for the MBBS course in the respondent No. 3 college. This petition is accordingly disposed of with the direction that petitioner will be granted admission forthwith in the MBBS Course in the respondent No. 3 College against a payment seat and the concerned respondents shall take immediate steps for the creation of an additional seat to adjust respondent No. 5. It is also directed that respondent No. 4 shall refund the proportionate amount of the fee paid by the petitioner and respondent No. 3 College will be entitled to charge only the fee for the balance of the 1st year course of study. It is also directed that the classes attended by the petitioner in the respondent No. 4 college will be counted towards the petitioner's attendance in respondent No. 3 college as well. There shall be no order as to cost. *Dasti* order.

***J.S.T.***

*Before N.K. Sodhi, J*

NEERAJ SAINI & ANOTHER,—*Petitioners*

*versus*

USHA GOEL & OTHERS,—*Respondents*

C.R. No. 5258 of 1998

26th November, 1998

*Code of Civil Procedure, 1908-S. 92-Application for leave to institute suit-Petitioners residents of Delhi-Claimed that Dharamshala used whenever petitioners visited Rewari-Use of Dharamshala does not create such an interest so as to entitle them to sue-Application rightly rejected.*

*Held that the petitioners are residents of Delhi and it is claimed that whenever they visit Rewari they use the Dharamshala. This*