

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA No.51-52 in CIVIL APPEAL NO(s). 4060 OF 2009

MODERN DENTAL COLLEGE & RES.CEN. & ORS.

Appellant (s)

VERSUS

STATE OF MADHYA PRADESH & ORS.

Respondent(s)

(for modification and clarification of court's order dated 27.5.2009
and office report)

Date: 01/08/2011 This Appeal was called on for mentioning today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Applicant(s) Mr. C.A. Sundaram, Sr. Adv.
in IA 51/2011 Mr. Sushil Kumar Jain, Adv.
Mr. Puneet Jain, Adv.
Ms. Rohini Musa, Adv.

For Applicant(s) Ms. Pragati Neekhara, Adv.
in IA 52/2011 Mr. Suryarnaryana Singh, Adv.

For Respondent(s) Mr. B.S.Banthia, Adv.
Ms.Vibha Datta Makhija, Adv.
Mr. Vikas Upadhyay, Adv.

Mr. Amit Kumar, Adv.
Mr. Jawahar Narang, Adv.
Ms. Rekha Bakshi, Adv.

Mr. Gaurav Sharma, Adv.
Ms. Surbhi Mehta, Adv.
Ms. Prathiba Singh, Adv.for
Mr. Abhinav Mukerji, Adv.

Mr. Dharmendra Kumar Sinha, Adv.

Mr. Bhupender Yadav, Adv.
Mr. S.S.Shamshery, Adv.for
Mr. R.C. Kohli, Adv.
Mr. Sunil Kumar Jain, Adv.

Mr. Arun Kumar Beriwal, Adv.

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Mr. Sanjay K. Agrawal, Adv.

Mr. Harish Pandey, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the appearing parties.

The applicants in these interlocutory applications have prayed that the N.R.I. seats in Medical Colleges lying unfilled be permitted to be filled in by the applicants.

We are of the opinion that there appears to be some conflict, prima facie, between the observations made in para 28 of the judgment of the two Judge Bench rendered in the case of R.D.Gardi Medical College & Another vs. State of Madhya Pradesh & Others (2010) 10 SCC 225, quoted below:

"28. A plain reading of the above leaves no manner of doubt that unfilled NRI seats had to be transferred to the general pool to be filled up on the basis of the merit of the candidates in the State-level common entrance test conducted by the Madhya Pradesh Vyavsayik Pariksha Mandal or by any other agency authorised by the State Government for that purpose. The unfilled seats in the NRI quota were, therefore, to be treated as a part of the general pool and once that was done the share of the college in terms of the order passed by this Court would be 50% out of the said seats. The High Court has, in that view, rightly held that while the management was justified in filling up 5 unfilled seats in NRI quota, the remaining 5 could not have been filled up otherwise. Then on the basis of the entrance test referred to in rule 8."

and the observations made in para 27 (1), quoted below, of T.M.A. Pai Foundation vs. State of Karnataka (1995) 5 SCC

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220 which is a three Judge Bench decision:

"27(1) So far as NRI quota is concerned, it is fixed at fifteen per cent for the current academic year. It shall be open to the management to admit NRI students and foreign students within this quota and in case they are not able to get the NRI or foreign students up to the aforesaid specified percentage, it shall be open to them to admit students on their own, in the order of merit, within the said quota. This direction shall be a general direction and shall operate in the case of all the States where admissions have not been finalised. It is, however, made clear that by virtue of this direction, no student who has already been admitted shall be disturbed or removed."

In view of the above, let the matter be referred to a larger Bench to resolve this issue.

Since, the admissions are about to start shortly, Registry is directed to place the papers before Hon'ble the Chief Justice forthwith and we would request Hon'ble the Chief Justice to constitute a larger Bench at a very early date.

(Parveen Kr. Chawla) (Indu Satija)
Court Master Court Master