

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

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W.P.(C) 6303/2010

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Date of decision: 4th October, 2010

ADITYA INSTITUTE OF TECHNOLOGY Petitioner

Through: Mr. Aseem Mehrotra, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. ... Respondents

Through: Mr. N. Waziri, Standing Counsel
with Mr. Shoaib Haider, Advocate
for GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | yes |
| 2. | To be referred to the reporter or not? | yes |
| 3. | Whether the judgment should be reported
in the Digest? | yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner Institute, imparting education for Diploma Courses in Electronics & Communication Engineering, Computer Engineering and Medical Lab Technology, has filed this writ petition pleading that for the academic session 2010-11, there are still 6, 6 and 13 seats respectively vacant in each of the said three courses and seeking a direction to the respondents to permit the petitioner Institute to fill up the vacant seats on the basis of the merit list drawn up by the respondents.

2. Notice of writ petition was issued on the basis of the judgments in *Educate India Society Vs. State of Haryana* (2004) 13 SCC 701 and *Islamic Academy of Education Vs. State of Karnataka* (2004) 13 SCC 704 cited by the counsel for the petitioner Institute and in view of the time schedule laid down in *Mridul Dhar Vs. Union of India* (2005) 2 SCC 65, the matter taken up for priority hearing.

3. Though vide order dated 28th September, 2010, the matter was adjourned on the request of the counsel for the respondents to 7th October, 2010 but the counsel for the petitioner Institute mentioned the matter on 30th September, 2010 again expressing urgency and whereupon the date was preponed to today.

4. Insofar as the order in *Educate India Society* (supra) is concerned, the same is relating to the management quota seats. The counsel for the petitioner Institute admits that the 25 seats remaining vacant in the petitioner Institute are not the management quota seats. He however invites attention to *Islamic Academy of Education* (supra) in which the directions were issued for filling up of the management quota as well as the government quota seats. The counsel for the petitioner Institute has argued that the seats should not be allowed to go waste and should be permitted to be filled up. He states that the necessary advertisements informing candidates as per merit, shall be published by the petitioner

Institute at its own expenses and to make up for the loss of time, the petitioner Institute will hold special classes. Reliance in this regard is also placed on the judgment dated 27th November, 1997 of this Court in CW No.3994/1997 earlier preferred by the petitioner Institute and in which such directions for holding extra classes were issued. Since the date of 30th September, 2010 as prescribed by *Mridul Dhar* (supra) is over, reliance is placed on the order dated 23rd September, 2010 of the Apex Court in SLP No.23830-23832/2010 titled *Kerala Pvt. Medical College Management Association Vs. Noorbina Banu K.* whereby the time for admissions was extended till 25th October, 2010. It is thus argued that the Court is empowered to extend the time.

5. The counsel for the respondents though has not had a chance to file the counter affidavit, has contended that the time schedule prescribed for admission is over and the academic session for the courses aforesaid has commenced on 9th August, 2010. It is further informed that the first session is of thirteen and a half weeks and the examinations of first session are already over. It is further informed that the State Level Committee had held four rounds of counselling and in each of the said rounds, all the seats which were reported to be vacant in the petitioner Institute, were allotted to students and there was no vacancy. It is stated that if the students, though allocated to the petitioner Institute have failed to join and/or have left, the process of admission cannot be elongated

and made an endless exercise. He further informs that the students who had been allocated the petitioner Institute, have complained/represented against the petitioner Institute, that it does not have the necessary infrastructure for the students and for this reason also it is also contended that the petitioner Institute is not entitled to the relief.

6. It is further informed that out of 25 candidates admitted during the first round of counselling, 18 candidates after fulfilling the enrolment formalities and depositing complete tuition fees but after seeing the pathetic condition of the Institute of the petitioner opted for migration during the second round of counselling. It is suggested that the petitioner Institute has itself to blame for the students being not attracted to it.

7. I have enquired from the counsel for the petitioner Institute whether the vacant seats are owing to any fault in counselling attributable to the respondents. The counsel for the petitioner Institute has fairly stated that it is not so.

8. The question which thus arises is whether an Institute/College which has failed to attract students in the prescribed admission procedure, can be permitted to vary the said procedure. In my opinion, no. The Institute when it is affiliated to the respondent or to any University is bound by the calendar fixed by the said

respondent/University and cannot be permitted to vary therefrom. If the same is permitted, the same would put the entire academic calendar to a naught and interfere in the academic merit. The Supreme Court in ***Arvind Kumar Kankane Vs. State of UP*** AIR 2001 SC 2800 held that if counselling goes on continuously for a long period it will upset the course of study. Had the available seats been not filled up for the fault of the respondents, a case for allowing the Institute/College to admit students even after the due date may be made out. In such cases, the fault being not attributable to the Institute/College, it cannot be deprived of its full strength. However, not so when no defect in the procedure can be shown.

9. The Full Bench of this Court in ***Veena Gupta Vs. University of Delhi*** AIR 1994 Delhi 108 held that a seat remaining vacant mistakenly i.e. by not being put to counselling may be put to the waitlisted candidates even after the last date for admission. A Division Bench of this Court again in ***Maharaja Agarsen Institute of Technology Vs. GGSIP University*** 116 (2005) DLT 290 held that once the dramatic performance starts, no one is allowed to enter—similarly counselling for seats must stop once the courses of study commence; third counselling was held to be unreasonable in that case. Again in, ***Miss Sunint Kaur Vs. GGSIP University*** ILR (2005) 1 Del 215, this Court held that even if seats are unfilled that cannot be a ground for making mid-session

admissions.

10. The question of filling up of the vacant seats came up before this Court in *M.I. Hussain Vs. N. Singh* 125 (2005) DLT 223 in the context of choice of stream of subjects. The Division Bench of this Court held that the seats cannot be ordered to be filled up at the cost of merit and just because seats may remain vacant, is no reason to fill them up by admitting non meritorious students. The Supreme Court in *Ms. Neelu Arora Vs. UOI* (2003) 3 SCC 366 held that when a detailed scheme has been framed and the manner in which it has to be worked out is also indicated therein, merely because a certain number of seats are not filled up is not a reason enough for adopting one more round of counselling if there is no scope therefor under the scheme. It was held to be not advisable to go on altering the scheme as and when seats are found vacant. In my view, the same logic applies in the present case also.

There is no merit in the writ petition, the same is dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

4th October, 2010
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