

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

**Date of decision: 28<sup>th</sup> August, 2012**

+ **W.P.(C) No. 5185/2012**

% **DR. SWAMINATHAN. G** **....Petitioner**

Through: Mr. Nand Kishore, Adv.

Versus

**ALL INDIA INSTITUTE OF MEDICAL  
SCIENCES & ANR**

**.... Respondents**

Through: Mr. Sumit Babbar & Mr. Mehmood  
Pracha, SLC, AIIMS.

**AND**

+ **W.P.(C) No.4788/2012**

% **DR. VISHNU B. CHANDRAN** **....Petitioner**

Through: Mr. Raghenth Basant, Adv.

Versus

**ALL INDIA INSTITUTE OF MEDICAL  
SCIENCES**

**..... Respondents**

Through: Mr. Sumit Babbar & Mr. Mehmood  
Pracha, SLC, AIIMS

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. W.P.(C) No. 5185/2012 is filed impugning Clause (ii) of the following clause:-

**“Open Selection (to be held on 27.07.2012)**

- i) There will be open selection if any of the seats (as indicated on page 7-8 in the prospectus only) remain vacant during the 2<sup>nd</sup> counseling i.e. not opted the confirmed PG seats in the 1<sup>st</sup> or 2<sup>nd</sup> counseling, these seats only will be notified for the open

selection. These seats will be notified/advertised in the leading newspapers. **The status of these vacant seats will also be available on the Notice Board at AIIMS, Academic Section as well as AIIMS website [www.aiims.ac.in](http://www.aiims.ac.in) [www.aiims.edu](http://www.aiims.edu) and [www.aiimsexams.org](http://www.aiimsexams.org).**

- ii) **The candidates who opts confirmed PG seats in the 1<sup>st</sup> Counseling or 2<sup>nd</sup> Counseling or joined in July, 2012 session and leaves the PG seats, the same will be notified in the next session i.e. July, 2012.**

in the prospectus of the respondent All India Institute of Medical Sciences (AIIMS) for admission to the Postgraduate and Post-Doctoral Courses for the July-2012 session. The challenge is predicated on our judgment dated 30<sup>th</sup> July, 2012 in W.P.(C) No.4206/2012 titled ***D.K. Chopra Vs. AIIMS*** holding the aforesaid clause to be arbitrary and irrational and setting aside/quashing the same and issuing further direction to AIIMS to admit the petitioner therein to the course in which he was seeking admission.

2. The petitioner (in W.P.(C) No.5185/2012) herein had appeared in the Entrance Test held on 6<sup>th</sup> May, 2012 and was in the result declared, ranked at no.62. He is desirous of admission into M. Ch. Neuro Surgery course. However in the July-2012 session, there was only one seat available for the said course and which was taken by one Dr. Kishore in the first round of counseling. The petitioner was admitted to MD/MS/MDS course in Opthamology. However, Dr. Kishore resigned from the M. Ch. Neuro Surgery seat before the commencement of the July- 2012 session. Notwithstanding the seat having fallen vacant, the same was not included in the open counseling held on 27<sup>th</sup> July, 2012 for the reason of the clause

aforesaid in the prospectus.

3. The petitioner contends that since Dr. Kishore had vacated the said seat, though after the second counseling but before the open selection on 27<sup>th</sup> July, 2012, the petitioner resigned from the seat occupied by him in Opthamology and also paid the charges therefor. He further contends that none of the other 61 candidates ahead of him in merit participated in the open selection held on 27<sup>th</sup> July, 2012. His argument is that now that this Court has already quashed the aforesaid clause, he is entitled to be admitted to M.Ch. Neuro Surgery course.

4. We had, at the outset, on 24<sup>th</sup> August, 2012 when this petition (i.e. W.P.(C) No.5185/2012) first came up, enquired from the counsel for the respondent AIIMS appearing on advance notice as to why the petition be not allowed. The counsel for the respondent AIIMS contended that the academic session having begun, admissions ought not to be permitted in as much as it will lead to a chain reaction. It was further argued that the M.Ch. Neuro Surgery was not put to counseling in the open selection owing to the clause aforesaid and that others ahead of the petitioner in the merit list had not participated in the said open selection owing to the seat having been filled and not available in open selection, even if had been vacated as aforesaid. He thus contended that if at all a chance has to be given, it should be given to all desirous and not to the petitioner alone and the same would result in delays. It was further disclosed that another writ petition being W.P.(C) No.4788/2012 entailing the same question is pending before a learned Single Judge of this Court. We had accordingly directed W.P.(C) No. 4788/2012 to be also listed before us today, along with W.P.(C) No.

5185/2012.

5. The petitioner in W.P.(C) No. 4788/2012 had in the entrance test held, secured rank no.248 and has not been able to secure admission in any course and has filed the petition averring that the seats in a number of courses, after having been opted for, had been vacated and seeking a direction for holding open selection contending that he stands a chance to be admitted therein.

6. We have heard the counsels for both the petitioners. Though we have as aforesaid in our judgment dated 30<sup>th</sup> July, 2012 already held the aforesaid clause in the prospectus to be arbitrary and irrational and have quashed the same but we find merit in the contention of the counsel for the respondent AIIMS that any direction to give effect to the said quashing in the July, 2012 session at this stage is impractical, not feasible, would have a cascading effect and would delay the July- 2012 session. It is significant that the petitioner in our judgment dated 30<sup>th</sup> July, 2012 had approached this Court prior to the open selection on 27<sup>th</sup> July, 2012 and the judgment itself was pronounced on 30<sup>th</sup> July, 2012 being the last date for admission. The present petitions have been filed after acquiring knowledge of the judgment dated 30<sup>th</sup> July, 2012. The counsel for the petitioner in W.P.(C) No.4788/2012 has argued that the petitioner was in Kerala and for this reason could not have filed the petition earlier. However the fact remains that the last date for admission is over and the Supreme Court has repeatedly emphasized the importance of abiding by the last date for admission, particularly in relation to courses in the field of medicine.

7. Faced with the aforesaid, the counsel in W.P.(C) No. 4788/2012 has invited our attention to the recent judgment dated 10<sup>th</sup> July, 2012 of the Supreme Court in *Asha Vs. Pt. B.D. Sharma University of Health Sciences* 2012 (6) SCALE 287 where a two Judge Bench of the Supreme Court has held that an exception can be carved out to the rule of strict adherence to the last date in the matter of admission to medical courses where the delay is not attributable to the student and the student is not at fault. It is contended that once the Clause aforesaid in the prospectus, on the basis whereof the respondent AIIMS, instead of filling up the vacant seats, is carrying forward the same to the next session, has been declared to be arbitrary and illegal, the action of AIIMS of not putting the said seats in open selection held on 27<sup>th</sup> July, 2012 is not attributable to the petitioner and even if the academic session has begun, the petitioner has a right to admission.

8. We are afraid, the present is not a matter of one or two seats only. Though the petitioner in W.P.(C) No.4788/2012 could not get admission in any course, the petitioner in W.P.(C) No.5185/2012 had, as aforesaid got admission in Opthamology course. He claims to have vacated the Opthamology seat. As per the clause aforesaid, even the said Opthamology seat could not be filled in the current session and must have been carried forward. However, if we allow the counseling as aforesaid, somebody else may want to opt therefor also. Similarly, a large number of other candidates who have taken admission to courses which were not at the top in their priority, may also want to so take their chance for the seats which have fallen vacant. The seats which they vacate would then have to be filled up and the process is likely to go on de-railing the academic session. We are

therefore not inclined to allow the same. We cannot allow admission to the petitioners before us without giving equal opportunity to others.

9. The counsel for the petitioner in W.P.(C) No.4788/2012 at this stage contends that since we have quashed the clause aforesaid of the prospectus, the same may be construed by AIIMS as also quashing of the provision carrying forward the seats to the next session. He contends that the petitioner would then be deprived of seeking admission thereto in the next session also.

10. Though in our opinion our judgment dated 30<sup>th</sup> July, 2012 is incapable of any such interpretation but by way of abundant caution we clarify that the said judgment is not to be construed as coming in the way of such vacated seats being carried forward to the next academic session.

11. Thus, while dismissing these petitions, we direct the respondent AIIMS to, subject to its right to challenge our judgment dated 30<sup>th</sup> July, 2012, formulate proper scheme of counseling for filling up of all seats vacated till the date of open selection.

No costs.

**RAJIV SAHAI ENDLAW, J**

**ACTING CHIEF JUSTICE**

**AUGUST 28, 2012**

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