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

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Date of Decision: 22nd April, 2021

+ LPA 156/2021

SHRI BABA MASTNATH
AYURVEDIC COLLEGE

..... Appellant

Through: Mr.Puneet Mittal, Sr. Advocate with
Mr.Akshay Bansal, Advocates.

Versus

UNION OF INDIA

..... Respondent

Through: Ms. Archana Pathak Dave, Mr.Kumar
Prashant, Ms.Vanya Gupta & Mr.Parmod Kumar
Vishnoi, Advs. for Central Council for Indian
Medicine

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

C.M.No.15127/2021 (exemption)

Allowed, subject to all just exceptions.

The application is allowed.

LPA 156/2021 & C.Ms.No. 15126/2021 (Stay) & 15128/2021 (additional documents)

1. Being aggrieved and feeling dissatisfied by the judgment and order dated 18th March, 2021 in W.P.(C) 3629/2021 (Annexure A-1 to the memo

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of this LPA) passed by the learned Single Judge, the appellant (original petitioner) has preferred the present Letters Patent Appeal. The learned Single Judge has not granted the relief to the original petitioner for admission of students for the Academic Year 2020-2021 for UG (BAMS) Course beyond 30 intake capacity for the academic year 2020-21. This appellant had preferred an application for increase in the intake capacity upto 60 UG (BAMS) seats, but the respondent authority, after examining the College in terms of the approved criteria and policies exclusively relaxed for academic year 2020-21, has given its finding to the effect that the college is eligible for 30 seats (instead of 60 seats) vide letter dated 12th February, 2021 (Annexure A-5 to the memo of the writ petition). Aggrieved with the aforesaid decision, this appellant (original petitioner) approached the learned Single Judge by way of a writ petition and the learned Single Judge also refused to grant relief to the appellant and did not permit them to admit students beyond the intake capacity of 30 seats for the academic year 2020-21.

2. The appellant had earlier filed W.P.(C) No.2248/2021 before this Court and the same was partially allowed and disposed of by learned Single Judge along with a batch of similarly placed writ petitions vide order dated 1st March, 2021. In the said writ petition a status note was filed by the Union of India enumerating the proposed detailed modalities for resolution of the grievances with regard to admission in several Ayurveda Colleges. The said status note, which has been reproduced in the aforesaid order dated 1st March, 2021, contemplates that the impugned show cause notices and denial orders would stand withdrawn and detailed show cause notices would

be issued afresh to the concerned institutes in terms of the conditions stipulated therein.

3. Relying upon paragraph 3(a) of the said status note filed by Union of India, the contention of the appellant (original petitioner) before the learned Single Judge was that no show cause notice ought to have been issued to it as it had permission to admit students for each of the preceding five academic years. Paragraph 3(a) of the said status note reads as under:-

“3. That, in addition, to obviate further difficulties/complexities as a result of the Covid-19 pandemic and to allay any/all reservations (without prejudice to the AYUSH Ministry/CCIM's stand before this Hon'ble Court), the Respondent -Union of India now proposes the following one-time measures by treating the academic year 2020-2021 as an exceptional/unprecedented year:

a. The AYUSH Ministry will grant a conditional approval/permission for the academic year 2020-21 to those institutions which have continuously received permission from Ministry of AYUSH for the preceding 5 academic years, on the basis of the affidavits/ documents already submitted by them. The existing show cause notices and any consequent orders issued against such institutions will stand withdrawn, and no fresh show cause notices will be issued to such institutions.”

4. It has been observed in the impugned order that as far as the academic years 2015-16, 2016-17, 2017-18 and 2019-20 are concerned, the copies of the permission by Union of India are annexed with the writ record by the petitioner, however, the order dated 24th September, 2018 vide which the Union of India denied permission for the academic year 2018-19 has not been annexed to the writ petition. The said order dated 24th September, 2018 was challenged before the Punjab and Haryana High Court by way of

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W.P.(C) No.26681/2018 which was disposed of by order dated 29th October, 2018 with the following observations:-

“Learned counsel for the petitioner has virtually made his submissions on the lines which were urged in C.W.P. 26273 of 2018 decided on even date, i.e. 29.10.2018 and therefore, we are of the opinion that the reasoning set out by us in C.W.P.26273 of 2018 will be attracted to the present case as well.”

5. Relevant part of the said order dated 29th October, 2018 passed in W.P.(C) No.26273/2018 reads as under:-

“On due consideration, we are of the opinion that the stand of the respondents is highly arbitrary and discriminatory. No worthwhile explanation has been given as to why certain colleges have been treated differently and why the government colleges have been treated benevolently.

If a window of three months had to be provided to the government colleges subject to an undertaking, then it could have been applied uniformly particularly, when we notice at least in the present case that the deficiencies pointed out to the petitioner are far more insignificant than the ones existing in the government colleges, evident from the Annexure A to our order.

We, therefore, would afford a similar opportunity to the petitioner to clear the deficiencies by 31.12.2018 and become compliant in all respects and extend the decision of the C.C.I.M. as also the Union of India in the matter of admissions qua the government colleges to the petitioner as well.

We do not intend to rest the matter here because we feel that C.C.I.M. has acted arbitrarily and would consequently seek the report of an officer responsible for the affairs of C.C.I.M. to file its response on the afore-extracted issues which have persuaded us to record that the decision of the C.C.I.M. and Union of India is arbitrary and discriminatory and we make it clear that in case the explanation is found to be unsatisfactory,

we would not hesitate to comment upon the conduct of the Council and its members. We are strongly of the opinion that such a conduct as the one displayed by the Council clearly acts detrimentally not only to the institution imparting education in all important courses, but also affects the career of the students as it lends uncertainty to the admission process, flooding the courts with unwarranted litigation of issues which are at best to be decided by the regulatory bodies provided they have a commitment to ensure the purpose for which they have been created.

To carry out the orders, the University will include the petitioner/college in the list of institutes to enable them to make admissions in the current session subject, however, to what has been stated above i.e. an undertaking that they will be compliant.

With these observations, we dispose of the present petition.”

6. Though, a copy the aforesaid order dated 29th October, 2018 passed in W.P.(C) No.26723/2018 by Punjab & Haryana High Court was annexed with the writ petition by the petitioner, a copy of the order dated 8th February, 2019 passed by the Hon’ble Supreme Court in SLP(C) No.3073/2019 was not placed on record in the writ petition. The order dated 8th February, 2019 reads as under:-

“Though the High Court could not have invoked the concept of negative equality vis-a-vis to the Government Institutions and could not have granted the relief in the method and manner it has been granted and the reasons employed for that purpose.

However, the order was passed by the High Court on 29.10.2018 and time for admission was extended up to 31.12.2018. It is not disputed by the learned Additional

Solicitor General of India, appearing on behalf of the Union of India, that by now the admissions have been given.

In case the Union of India was serious to question the aforesaid order, it ought to have come at an early date. Now by virtue of the fact that the students have been given admission, we are not inclined to interfere with the order. Otherwise, we are not happy with the kind of order which has been passed. The impugned order(s) shall not be treated as a precedent for any other case in future.

The special leave petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.”

7. Looking to the aforesaid facts and the order dated 8th February, 2019 of the Hon’ble Supreme Court, the learned Single Judge observed as under:-

“13. On merits also, as a result of the order of the Supreme Court specifically holding that the judgment of the Punjab & Haryana High Court in C.W.P. No. 26723/2018 was erroneous and cannot be treated as a precedent in any case in future, disentitles the petitioner to a finding that it had permission to admit students for the preceding five academic years. Paragraph 3(a) of the Status Note requires the institution to have such permission. In the light of the order of the Supreme Court, it cannot be held to be arbitrary or unreasonable for the petitioner to be denied the benefit of that clause, as its permission for the year 2018-2019 has been held to have been wrongly granted.

14. The petition is, therefore, dismissed.”

8. The Hon’ble Supreme Court in *Asha Vs. Pt.B.D Sharma University of Health Sciences & Ors.*, (2012) 7 SCC 389 held as under:-

“38.2. 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September,

of the relevant academic year (in terms of the decision of this Court in *Priya Gupta*). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the Courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of current academic year. This, however, can only be done if the conditions stated by this Court in *Priya Gupta* and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the Court of competent jurisdiction.”

9. Further, the Hon’ble Supreme Court in the case of ***S.Krishna Sradha Vs. The State of Andhra Pradesh & Ors., (2019) SCC Online SC 1609***, analysed upheld the said judgment delivered in the case of *Asha (supra)*, and observed as under:-

“33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate

has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30 September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30 October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.”

10. In view of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge while passing the order dated 18th March, 2021 in W.P.(C) 3629/2021. We are in full agreement with the reasons given by the learned Single Judge in the impugned order, hence there is no substance in this Letters Patent Appeal and the same is, therefore, dismissed. The pending applications also stand disposed of.

11. At this stage learned Senior Counsel appearing for the appellant requested to waive the costs imposed by learned Single Judge vide judgment

and order dated 18th March, 2021. The reasons for imposing the costs are enumerated by learned Single Judge in paragraphs 6 to 13 of the impugned order dated 18th March, 2021 and we are in full agreement with the learned Single Judge with regard to costs imposed. Therefore, the request for waiver of costs is declined.

12. Needless to say that on complying with the requisite criteria within prescribed time by the appellant the concerned respondent authorities shall consider the request of the appellant for the next academic year, i.e., 2021-2022.

CHIEF JUSTICE

JASMEET SINGH, J

APRIL 22, 2021

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