

**Neutral Citation No. - 2023:AHC-LKO:70577-DB**

**Chief Justice's Court**

**Case :-** SPECIAL APPEAL No. - 501 of 2023

**Appellant :-** Sri Sai Jansewa Nyas , Mau Thru. Its Trustee Sri Akhilesh Kumar Rai And Another

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Deptt. Of Technical Education U.P.Civil Sectr. Lko. And Others

**Counsel for Appellant :-** Lalta Prasad Misra, Prafulla Tiwari

**Counsel for Respondent :-** C.S.C., D.K. Singh Chauhan

**Hon'ble Pritinker Diwaker, Chief Justice**

**Hon'ble Jaspreet Singh, J.**

1. Heard Dr. L. P. Misra, learned counsel alongwith Shri Praful Tiwari for the appellants, Shri D. K. S. Chauhan, learned counsel appearing for the respondent no.3 and Shri Amitabh Rai, learned counsel for the State-respondents no.1 and 2.

2. The instant intracourt appeal has been filed assailing the order dated 12.10.2023 passed by the learned Single Judge in Writ-C No.8558 of 2023 whereby the application moved by the appellants seeking interim relief has been rejected while time has been granted to the parties to exchange the pleadings.

3. Dr. L. P. Misra, learned counsel for the appellant states that the learned Single Judge has erred in rejecting the application for interim relief especially in light of the fact that the counseling for admissions in Engineering and Pharmacy Courses was being done from amongst candidates who have appeared in the Uttar Pradesh Joint Entrance Examination. The counseling was held in several stages and later even those candidates who had not appeared in Uttar Pradesh Joint Entrance Examination were given admissions directly on payment of registration charges on the portal of the respondent no.3 followed by choice for filling and locking of vacant seats and the final seat allotment.

4. It is urged that this was done repeatedly over the past years including up to the academic session 2022-2023. It is further urged that in context with the academic year 2023-2024 the State has issued a Govt. Order dated 26.06.2023 in

terms whereof it is provided that no direct admissions would be made and it is only through counseling the students/candidates can be admitted.

5. It is further urged that in so far as the course for engineering is concerned, the date of the counseling has been extended up to 30.10.2023 in compliance of the orders passed by the Hon'ble Supreme Court dated 13.10.2023 passed on Miscellaneous Application No.2139 of 2023 in Civil Appeal No.9048 of 2012 and the copy of the order has been filed as annexure no.2 with the writ petition. It is further stated that counseling for the Pharmacy Course will go on till December 2023.

6. It is further submitted that in the instant case, the writ petitioners' institution has a sanctioned strength of 330 students for the Engineering Course against which 150 candidates have been allocated. It is submitted that large number of seats are still vacant and earlier the counseling was uptill 15.09.2023 which has been extended by the Apex Court till 30.10.2023 and in this view of the matter, the respondents be directed to open a portal as was being done for the previous years so that all such students who are eligible may take direct admission as has been the practice over the past years. It is for the aforesaid reason that the writ petitioners have also challenged clause 9 (xvi) of the Govt. Order dated 26.06.2023.

7. Since the writ petitioners were allotted only 150 students against the total intake of 330 and once the Apex Court had extended the time schedule for counseling till 30.10.2023 hence, it is in the aforesaid circumstances that cause of action arose to the writ petitioners and thereafter they had filed the petition before the learned Single Judge, who while entertaining the petition and directing the parties to exchange pleadings refused to grant interim order solely on the ground that the writ petitioners have approached the writ court at the eleventh hours, even though the Govt. Order was in the knowledge of the writ petitioners since June

2023.

8. In the aforesaid factual matrix, it is urged that the appropriate interim order be granted by the Court, failing which, the writ petitioners shall suffer irreparable injury and there shall be colossal waste of resources and man power including it would violate the observations made by the Apex Court in ***Index Medical College, Hospital and Research Centre Vs. State of U.P. 2021 SCC Online SC 318*** that as far as possible, all the seats of an institution be filled up and vacant seats is not a desirable scenario, especially, relating to technical courses.

9. Shri D. P. S. Chauhan, learned counsel appearing for the respondent no.3 has primarily urged that the State Government is bound by the Govt. Order of 26.06.2023 wherein there is a clear stipulation that no admission on direct basis is permissible. Unless and until the said clause is declared ultra vires and the writ petition of the appellants succeeds till then the counseling is to be done in accordance with law and no such permission can be granted to the writ petitioners to take direct students which would violate not only the provisions of the Govt. Order but would also be against the mandate of the Apex Court in the case of ***Parshvanath Charitable Trust and others Vs. All India Council for Technical Education and others, (2013) 3 SCC page 385***. In the aforesaid circumstances, the special appeal against rejection of the interim order is not maintainable and the writ petitioner may agitate their rights before the learned Single Judge on merits, accordingly the appeal deserves to be dismissed.

10. Shri Amitabh Rai, learned counsel for the State also adopts the submissions of Shri Chauhan.

11. The Court has heard learned counsel for the parties and also perused the material on record.

12. What we find is that admittedly there is an embargo contained in Clause

9(xvi) of the Govt. Order dated 26.06.2023. From the perusal of the writ petition, it reveals that the writ petitioners had claimed the following two reliefs which read as under:-

*"(a) To issue a writ, order or direction in the nature of Certiorari quashing paragraph 9 (xvi) of the Govt. Order dated 26.06.2023 in so far it allows admissions in Engineering and Pharmacy Courses only through counseling and does not allow direct admissions on seats left vacant after counseling, the true of which is contained as annexure no.1 to the writ petition.*

*(b) To issue a writ, order or direction in the nature of Mandamus commanding and directing the opposite parties to allocate students to the Institution run and managed by the petitioners by holding a fresh counseling by allowing all the candidates who have requisite qualification for the concerned course of Engineering and Pharmacy to appear in counseling for the academic session 2023-2024 or to allow the Institutions run and managed by the petitioners to undertake admissions upto the specified intake in concerned course of Engineering and Pharmacy for academic session 2023-2024 from amongst the candidates who have requisite qualification for the concerned course of Engineering and Pharmacy."*

13. Unless and until the first relief as prayed by the writ petitioners is granted till then the second relief cannot be permitted. Only if the Court comes to the conclusion that Clause 9(xvi) of the Govt. Order dated 26.06.2023 is bad in the eyes of law and is set aside till then the writ petitioners cannot be granted the second relief as it would be permitting the writ petitioners to undertake an exercise which is prohibited in terms of the Govt. order.

14. This Court further finds that the condition preventing any institution to fill up vacant seat by direct admission is looked down by the Govt. Order dated 26.06.2023. To say, that the cause of action accrued only to the writ petitioners once it revealed at the time of clouser of the counseling that they had only been allotted 150 seats against 330. However, the fact remains that the State is competent to legislate or issue executive direction to take a policy decision and issue Govt. Order. The said policy was known to all institutions and the entire

admission process has been regulated in terms thereof. Merely because, perchance the schedule of counseling has been extended by the Supreme Court upto 30.10.2023 in respect of some particular institute that does not by itself creates any cause of action in favour of the writ petitioners especially when the Govt. Order dated 23.06.2023 clearly stipulated that no such admissions will be permitted directly.

15. Filing a petition, challenging the validity of the particular clause of the Govt. Order at the last moment and while the learned Single Judge has taken note of the aforesaid scenario and found that the writ petitioners have approached the Court at eleventh hour and is not entitled for interim relief cannot be faulted for the reason that no misplaced sympathies are to be extended especially where it relates to the future career prospects of the large number of students.

16. Grant of an interim order is in the discretion of the Court. Non granting of interim order is not a jurisdictional error nor in the given facts and circumstances of the instant case be termed to be patently illegal for this Court to intervene in an intra court appeal especially when the matter is still to be adjudicated on merits.

17. In light of the aforesaid, this Court does not find that the learned Single Judge committed any error in rejecting the application for interim relief and this Court further finds that by allowing any interim relief, the same would have the effect of bypassing the Govt. Order especially the specific stipulation that no direct admission can be taken by the institution. There is another way to look at entire situation i.e. the counseling is still going on till 30.10.2023 and there may be a chance that certain students may opt for the petitioners' institution, who would then be entitled to seek their admission but permitting direct admission to such students, who have not appeared or taken the Uttar Pradesh Joint Entrance Examination and merely on the basis of their Class 10th scores if granted admission would necessarily be inequitable and discriminatory in context with

those students who have taken the competitive examination. In ***Parshvanath (supra)*** the Apex Court has noticed and given certain strict guidelines in para 46.1 to 46.6 which read as under:-

*"46.1. Both grant/refusal of approval and admission schedule, as aforesaid, shall be strictly adhered to by all the authorities concerned including AICTE, the University, the State Government and any other authority directly or indirectly connected with the grant of approval and admission.*

*"46.2. No person or authority shall have the power or jurisdiction to vary the schedule prescribed hereinabove.*

*46.3. While dealing with the application for grant of approval to new colleges or additional seats, AICTE shall inform the applicant within three weeks from the date of receipt of its application or date of inspection, as the case may be, the shortcomings/defects, who, in turn, shall remove such shortcomings/defects within 15 days from the date of such communication or within such period as AICTE may grant and re-submit its papers without default. The process of grant of approval has to be transparent and fair. AICTE or the University or the State Government concerned shall take disciplinary action against the person who commits default in adherence to the schedule and performance of his duties in accordance therewith.*

*46.4. The reports submitted by the Expert Committee visiting the College should be unambiguous and clear, and should bear the date and time of inspection and should be sufficiently comprehensive and inspection be conducted in the presence of a representative of the institute.*

*46.5. The students of the appellant College shall be re-allocated to the recognised and affiliated colleges in terms of the judgment [WP (OS) No. 460 of 2011, decided on 22-8-2012 (Bom)] of the High Court; and AICTE and the university concerned shall ensure that the academic courses of these students are completed within the balance period of the academic year in all respects. For this purpose, if extra classes are required to be held, the institute concerned, the University and AICTE are directed to ensure holding of such extra classes.*

*46.6. If the appellate authority decides the matter prior to 30th April of the year concerned and grants approval to a college, then alone such institution will be permitted to be included in the list of colleges to which admissions are to be made and not otherwise. In other words, even if the appellate authority grants approval after 30th April, it will not be operative for the current academic year. All colleges which have been granted approval/affiliation by 10th or 30th April, as the case may be, shall alone be included in the brochure/advertisement/website for the purpose of admission and none thereafter."*

18. The same propositions have also been reiterated with approval by the Apex

Court in ***Varun Saini Vs. Guru Gobind Singh Indraprastha University, (2014)16***

**SCC 330** and the relevant portion reads as under:-

*"28.7 The time schedule originally fixed in Parshvanath Charitable Trust shall remain in force and be religiously followed in the subsequent years."*

19. The record further indicates that the Apex Court has extended the time vide order dated 13.10.2023 on a miscellaneous application move by some institute as revealed from the order, the copy of the said order has been placed on record as annexure no.2. The record further indicates that the said order has been passed on miscellaneous application filed in the case of ***Parshvanath Charitable Trust and others Vs. All India Council for Technical Education and others, (2013) 3 SCC page 385*** and the guidelines as noticed on the preceding paragraphs were laid down in the said case of ***Parshvanath (supra)*** and reiterated in ***Varun Saini (supra)***. Accordingly, in case if the writ petitioners have any grievance they may also move an appropriate application before the Apex Court.

20. It is to be noted that the instant intra court appeal is against an order by which the application for interim relief is rejected and in case if the desired relief is granted it would amount to granting final relief at interim stage which may not be desirable. Hence, this Court is not inclined to interfere. However, we request the learned Single Judge that in case if the writ petitioners make an appropriate application for expediting hearing, the same may be considered and an endeavour be made to expedite the hearing after affording opportunity of hearing to all the parties concerned.

21. For all the aforesaid reasons, this Court does not find that there is any merit in the appeal which is accordingly dismissed. In the fact and circumstances, there shall be no order as to costs.

**Order Date :- 28.10.2023**  
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**(Jaspreet Singh, J)      (Pritinker Diwaker, Chief Justice)**

