

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WA.NO. 186 OF 2015 () IN WP(C).27408/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 27408/2013 OF HIGH COURT OF
KERALA DATED 09-01-2015

APPELLANT(S)/APPELLANTS/PETITIONERS:

1. ARYAKRISHNA U.R. AGED 18 YEARS
D/O RADHAKRISHNAN A., AYILOT HOUSE, MOKERI P.O.
KAKKATTIL, KOZHIKODE, PIN:673507.

2. NEETHU V. AGED 18 YEARS
D/O VENUGOPAL A.V., ARTHANAT HOUSE
MULLACKAL TEMPLE ROAD, MNRA 152, EROOR (W)
THRIPUNITHURA P.O., PIN:682306.

3. NIMISHA VISWAM T.K. AGED 18 YEARS
D/O VISWAMBHARAN T.K., THEKKUMKATTIL HOUSE
EDAKKARA P.O., CHELANNUR, CALICUT
PIN:673 616.

4. SANA K.P. AGED 19 YEARS
D/O KUNHI MOHAMMED K.P., BHAGAVATHIYALINGAL HOUSE
VALLYAPARAMBA P.O., PULIKKAL, MALAPPURAM
PIN:673 637.

5. AMRUTHA P. AGED 19 YEARS
D/O DASAN P., ANUGRAH, PUTHALATH KUNNUMMAL
PANTHALAYANI, KOYILANDI, PIN:673 305.

6. THAHSEENA T.S. AGED 19 YEARS
D/O SHAMSUDHEEN T., THALUKKASSERY MUKKALIKKAL HOUSE
MAMANGHAT, THRISSUR PIN-679563.

WA.NO. 186 OF 2015

7. ANU MOL SHAJI AGED 18 YEARS
D/O VALSAMMA SHAJI, VELLAM KUNNIL HOUSE
KARUKACHAL P.O., KARUKACHAL, PIN:686540.

BY ADV. SRI.JINU JOSEPH

RESPONDENT (S) /RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE, SECRETARIAT
THIRUVANANTHAPURAM, PIN:695001.

2. THE KERALA UNIVERSITY OF HEALTH SCIENCES (KUHAS)
THRISSUR REPRESENTED BY ITS REGISTRAR PIN:680596.

3. THE PRINCIPAL
MALABAR DENTAL COLLEGE & RESEARCH INSTITUTE
MODAKKALLUR, ATHOLI, KOZHIKODE
PIN:673 315.

R2 BY ADV. SRI.P.SREEKUMAR,SC,KERALA UTY.HEALTH &
R BY GOVERNMENT PLEADER SHRI C.R. SHYAMKUMAR
R BY SRI.P.SANJAY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
20.02.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, Ag. C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.186 of 2015

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Dated this the 20th day of February, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

This Writ Appeal has been filed by the appellants who filed W.P(C) No.27408 of 2013 seeking a direction to the 2nd respondent-University to permit the petitioners to continue undergoing their course in the 3rd respondent's college for BDS Course 2013-14 and also to direct the University to permit enrollment of petitioners for BDS Course 2013-14 and intimate the Dental Council the same. Writ Petition filed by the petitioners was dismissed by a learned Single Judge on 09.01.2015 against which judgment this Writ Appeal has been filed.

2. Brief facts giving rise to the Writ Appeal are:
The 3rd respondent College was permitted enhancement

of seats from 50 to 100 by order dated 04.09.2013 by the Central Government. The College could obtain approval from the University only on 25.09.2013 to take 50 more students for the BDS Course 2013-14. Under the notification issued by the University, all Colleges were to complete their admission by 30.09.2013 and upload the details on the website of the University on or before 12 midnight of 30.09.2013. The College by 12 midnight of 30.09.2013 could upload details of only 67 students admitted by the College. The College on 03.10.2013 reported that it could not complete the online registration of all the students admitted by it and there were 9 students more admitted on 30.09.2013. The University by letter dated 10.10.2013 communicated that since the cut off date for admission to BDS Course was 30.09.2013 which was informed to the Colleges sufficiently early, hence registration of students beyond the prescribed time

cannot be performed by the University. It was further stated that the College had made online registration upto 11.54 p.m on 30.09.2013 and even if the online link was disconnected, the College could have submitted details before the University before 5.00 p.m on 01.10.2013. The University rejected the prayer for registration of the 9 students.

3. Petitioners filed W.P(C) No.27408 of 2013 in this Court in which interim order was passed on 10.07.2014.

4. In the Writ Petition the University filed a statement stating that the College had made 67 admissions on 30.09.2013 which have been uploaded in the online portal and 9 students were admitted belatedly and there are justifiable reasons to doubt the veracity of the application form and the admission card produced along with the Writ Petition. The College did not submit the details even on the next day and the excuse given

by the College that the Principal was on leave is not acceptable. Other pleas were also raised in the statement which would be referred hereinafter.

5. The College also filed a counter affidavit stating that the College got very little time to complete the admission since the University gave the final order only on 25.09.2013. It is stated that the hard copy of the details could not be given to the University on 01.10.2013 since the Principal was not available in the forenoon. The next day being holiday, entire details were handed over on 03.10.2013. Reference of an interim order passed by the Apex Court has also been made, in favour of the students who were admitted even after 30.09.2013.

6. Learned Single Judge by judgment dated 09.01.2015 dismissed the Writ Petition holding that the admissions were not carried on or before the cut-off date i.e., 30.09.2013. Referring to the judgments of the

Apex Court it was held that schedule of the admission has to be strictly adhered to by the College and there are no reasons to regularise the admissions even after the cut-off date.

7. Learned counsel for the appellants contended that the students were given admission by the College on 30.09.2013 and the appellants should not be made to suffer on the fault of the College in not uploading the details on the website of the University. It is submitted that the students who were admitted after 30.09.2013, i.e., on 2nd and 3rd October, 2013 had approached this Court by filing W.P(C) No.27933 of 2013 wherein this Court on 13.11.2013 has declined to pass an interim order, against which order of the learned Single Judge rejecting the interim prayer, W.A. No.1762 of 2013 was filed which too was rejected on 21.11.2013 against which a Special Leave to Appeal (C) No.37004 of 2013 was filed by students in the Apex Court wherein the

Apex Court on 06.12.2013 has passed an interim order directing that the students who were already admitted in BDS Course will not be disturbed. It is submitted that those students are still continuing their BDS Course, hence the present appellants also be permitted to continue the course. It is submitted that the appellants have completed their first year Course and were also permitted to write the examination although results have not been published.

8. Learned counsel for the University refuting the submissions of the learned counsel for the appellants contended that there was no material placed before the University to come to the conclusion that students were admitted on 30.09.2013, rather all circumstances and events indicate that students were admitted after 30.09.2013. Even if the College could not upload the details of petitioners on 30.09.2013, they could have very well submitted the hard copy of the

details on 01.10.2013 upto 5.00 p.m. which was the next day as was already notified by the University. It is submitted that no details of the fee paid by them at the bank were produced so that some light could be shed on the admissions made by the College. It is further submitted that the College had filed a Special Leave Petition against the judgment and order of the High Court dated 07.10.2013 in W.P(C) No.15832 of 2013 wherein the College authorities have pleaded that they could not fill up 33 seats in BDS Course due to the delay caused in getting affiliation. The Special Leave to Appeal (C) No.32713 of 2013 praying for extension of time was dismissed by the Apex Court by order dated 22.10.2013. It is submitted by the learned counsel for the University that case of some students who were admitted after 30.09.2013 and are continuing the Course on the strength of the interim order passed by the Apex Court is on a different footing since the

students and the College did not claim that they were admitted on 30.09.2013. Appellants cannot take the benefit of the interim order passed by the Apex Court since case of the petitioners and College that the petitioners were admitted on 30.09.2013 could not be substantiated.

9. Learned counsel for the College supported the case of the petitioners that on 03.10.2013 all details were submitted to the University which should have been accepted. It is submitted that the University delayed the issue of affiliation order which was issued only on 25.09.2013 giving very short time to the College which was also a reason for not completing the admission. It is submitted that on the next day, i.e., 01.10.2013, Principal was on leave hence the hard copy could not be submitted to the University. It is submitted that students similarly situated who were admitted on 2nd and 3rd October, 2013 are continuing the Course in

view of the interim order passed by the Apex Court, hence the appellants should also have been allowed to continue.

10. Learned counsel for the parties have placed reliance on the judgments of the Apex Court which shall be referred to while considering the submissions in detail.

11. We have considered the rival submissions and perused the records.

12. The issue to be considered in the present case is as to whether the University committed an error in declining registration of the appellants whose details could be submitted by the College only on 03.10.2013. As noted above, the University by letter dated 10.10.2013 has intimated the College that the College had made online registration upto 11.54 p.m on 30.09.2013 and could upload details of only 67 students and even if the online link of the College was

disconnected, they could have submitted the details to the University upto 5.00 p.m on 01.10.2013. The University in its statement has stated that schedule of admission is to be strictly adhered to by the College. It is useful to quote paragraphs 6 to 8 of the statement of the University:

"6. *It is respectfully submitted that in exhibit P9 request made by the college authorities to the university it was pointed out that the online facility was down from 12 am on 30.9.2013. In the statement filed by the 3rd respondent in the present writ petition it is averred that the link to the website of the university got snapped by late evening on 30.9.2013. Thus the main reason pointed out for the non registration of the petitioners in the online web portal of the university was the defect in the online link. The said submission is utter false hood as the 3rd respondent made entries in the online portal till 11.54 pm on 30.9.2013. Out of the 67 entires of online registration made by the 3rd respondent college 27 were made on 30.9.2013 and the registration process commenced at 3.45 pm and ended at 11.54 pm on the said date. A true copy of the details of online registration made by the 3rd respondent in respect of BDS course for the current academic year is produced herewith and marked as Exhibit R2B. Exhibit R2 B shows that the petitioners have not come up before this Hon'ble court with clean hands.*

The petitioners could have produced the detail of the fee paid by them at the bank so that the same could have shed some light on the date and time of admissions effected.

*7. It is also submitted that the trustee of the management of the 3rd respondent's college filed W P [C] 15832 of 2013 seeing directions to the Dental Council of India to grant permission for the enhanced number of seats. Later on 7.10.2013 the writ petition was closed on the submission made by the petitioner college therein to the effect that the Dental Council has granted permission for 100 seats and since the last date for admission was already over the petition need not be considered for the academic year 2013-14. But thereafter on 18.10.2013 the petitioners in W P [C] 15832 of 2013 filed a special leave petition against the said judgment passed on 7.10.2013 in W P [C] 15832 of 2013 before the Hon'ble Supreme Court. In the said Special Leave Petition the contention of the college authorities was that as on 30.9.2013 they could not fill up 33 seats in BDS because of the delay caused in getting the affiliation. Though the reliefs sought for in the writ petition was different the 3rd respondent sought extension of time for effecting the admissions. But the Special Petition filed by the 3rd respondent was dismissed. A true copy of the order in SLP No 32717 of 2013 is produced herewith and marked as **Exhibit R2C**.*

8. The 3rd respondent though filed a statement before this Hon'ble court has not divulged the above stated aspects before this Hon'ble court. It is also to be

noted that in W P [C] 27933/2013 another set of students approached this Hon'ble court seeking directions to register them, though they were admitted after 30.9.2013. This Hon'ble court did not grant the interim order permitting them to continue in the course and the writ appeal filed by them against the rejection of the interim relief was also dismissed in W A No 1762 of 2013. Against the said judgment in W A No 1762 of 2013 the petitioners therein filed S L P No 37004 of 2013 before the Hon'ble Supreme Court. The Hon'ble Supreme court issued notice to this respondent and also directed not to disturb the petitioners. This respondent has entered appearance in the said Special Leave Petition and has filed the Counter affidavit. The case was listed on 10.2.2014 and the same adjourned for the filing of the reply by the petitioners therein. It is to be noted that in the said case the petitioners have admitted that the admissions were effected on 1.10.2013 and 2.10.2013, but in this writ petition the contention of the petitioners is that they were admitted on 30.9.2013 itself. Considering this there is no similarity between the matter presently pending before the Hon'ble Supreme Court and this writ petition."

13. The College in its counter affidavit has reiterated its stand. It is relevant to quote paragraph 8 of the counter affidavit which is to the following effect:

"8. It is submitted that this respondent was hard pressed for time to carry out that admissions within such a

short period of time. Receipt of applications, scrutiny of the documents, receipt of fee and other amounts payable and accounting of the same, allotment of seats and hostel facilities etc., all had to take place within a span of 4 days, It is submitted that uploading of the details of all students could not take place on 30-09-2013 because despite the staff sitting over time and trying to upload the details the link to the website got cut off late at night. Details of petitioners could not therefore be uploaded on 30-09-2013. The hard copy of the details could not be taken to the University in Thrissur on 1-10-13 because the Principal was not available in the forenoon. The next day (2-10-13) was a holiday on account of Gandhi Jayanti. This respondent has handed over the entire details of petitioners to the University on the very next working day, i.e. 3-10-13 but the University authorities were adamant."

14. The learned Single Judge after considering the materials and pleadings on record has returned a finding that admissions were not carried on or before the cut-off date, i.e., 30.09.2013. Findings recorded by the learned Single Judge in paragraph 16 of the judgment are to the following effect:

"16. True, on the 2nd it was a holiday and the details of the 7 students herein were forwarded on 3.10.2013, but however after the date prescribed by the

University. The delay caused, though of two days, with an intervening holiday, on the facts stated above would commend this Court to take only the view that the admissions were not carried on or before the cut-off date ie.30.9.2013 . A delay of even one day would do violence to the prescription made by the Honourable Supreme Court and frustrate the intention behind such prescription."

15. From the materials on record and the submissions made by the learned counsel for the parties, there is no dispute that details of admission of the appellants were neither uploaded in the website on 30.09.2013 nor informed by any means to the University either on 30.09.2013 or by the next day, ie., 01.10.2013 by 5.00 p.m. The University has already informed all the Colleges by notice published in the Mathrubhumi daily dated 27.09.2013 that even if for any reason details cannot be registered by night, 12'O Clock, details with records can be furnished directly to the University by 5.00 p.m in the evening on 01.10.2013. The English Translation of the above news item has been brought on record as Ext.R2(a) which is to the

following effect:

"Students admission: 30th is the last date

30th shall be last date for admission of students for Medical (graduate/super speciality), Dental and Nursing (graduate/postgraduate) courses in the Colleges affiliated to the Kerala University of Health Sciences. Basic details of the students admitted can be registered online in the University till nigh 12'O Clock on 30th. The Registrar informed that if for any reason, the details cannot be registered within the aforesaid time, the details with records can be furnished directly to the University till 5'O Clock in the evening on 01st of October. Thereafter, online registration would not be permitted."

16. According to the petitioners details of the students were submitted to the University by letter dated 03.10.2013. Thus admittedly, details were not submitted to the University by 30.09.2013 or by 5.00 pm on 01.10.2013. The University in its statement has clearly stated that no details of the deposit of fee by the students in the bank have been submitted to shed sufficient light on the events and circumstances under which the admission was taken. We have also enquired

from the learned counsel for the College as to whether fee was paid by draft or by deposit in bank. No satisfactory reply could be given by the learned counsel. Excuse for not submitting the details on the next day, i.e., 01.10.2013 that the Principal was not available in the College does not inspire any confidence. Even if the Principal was not available there was no difficulty in sending the details by any other official of the College which was not done.

17. Learned counsel for the College contended that only a short time was available for the College to complete the admission of the increased seats since affiliation was granted by the University only on 25.09.2013. The above submission or reason cannot be a ground to accept the case of the College for not registering the students within the time allowed by the University or submitting the hard copy by 01.10.2013 before 5.00 p.m. The learned Single Judge thus did not

commit any error in taking the view that the admissions were not carried on or before the cut-off date, i.e., 30.09.2013.

18. Much emphasis has been laid by the learned counsel for the appellants and the College that those students admitted on 2nd and 3rd October, 2013 are continuing the Course by virtue of the interim order passed by the Apex Court in the Special Leave to Appeal (C) No.37004 of 2013. Following was the interim order passed by the Apex Court on 06.12.2013 in the Special Leaver Petition filed by the students:

"Taken on board.

Application seeking permission to place additional documents on record is allowed.

Issue notice.

Prayer for impleadment is allowed. Cause title be amended accordingly.

Notice be issued to the newly added respondent.

In the meanwhile, the petitioners who are already admitted in BDS Course will not be disturbed."

19. Learned counsel for the University submitted

that the case of those students who claimed admission on 2nd and 3rd October, 2010 was different from the case of the appellants who claimed their admission on 30.09.2013 and could not succeed to prove the said case.

20. The Apex Court in **Mridul Dhar v. Union of India** ([2005] SCC 65), a three Judge Bench has laid down the schedule for completion of admission for medical and dental courses. Directions were issued in paragraph 35 by the Apex Court which are to the following effect:

"35. Having regard to the aforesaid, we issue the following directions:--

1. All participating States and Union Territories, Board of Secondary Education shall declare 10 + 2 result by 10th June of every year and make available the marksheet to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, the West Bengal would make available to the concerned students the marksheets by 15th June, 2005. Heads of Boards would be personally liable to ensure compliance.

2. *The time table mentioned in Notification dated 25th February, 2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State Medical/Dental Entrance Examination shall be declared before 15th of June.*

3. *The States/Union Territories shall complete the admission process of first round of State Level Medical/Dental College admission by 25th July i.e. a week before start of second round counseling or allotment of seats under All India Quota. The correct vacancy position shall be intimated by the Chief Secretary to the DGHS by 26th July. It shall be verified by the Head of the Institution/or Head of the Medical Institution/ Health Department in the State.*

4. *It shall be the responsibility of all concerned including Chief Secretaries of each State/ Union Territories and / or Health Secretaries to ensure compliance of the directions of this Court and requisite time schedule as laid down in the Regulations and non compliance would make them liable for requisite penal consequences.*

5. *All seats in All India Quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.*

6. *By 31st October, the State through Chief Secretaries/Health Secretaries shall file a report in regard to admissions with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant*

States, particularly officers personally will have to face consequences for violation.

7. The DGHS shall file by 31st January, 2005 report in regard to feasibility of conducting counseling through the process of video conferencing.

8. The DGHS shall file report within three months on the aspect of S.10A seats being subjected to 15 per cent All India Quota and about the increase of the quota from 15 per cent to 20 per cent.

9. The DGHS shall also file a report within three months on the aspect of constitution of high power Committee/Ombudsman.

10. The seats allotted upto 15th July, shall also be subjected to respective State Quotas.

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

12. The time schedule for grant of admission to Postgraduate Courses shall also be adhered to.

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. *Time schedule provided in Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with.*

16. *Copy of the judgment shall be sent to Chief Secretaries of all States/Union Territories for compliance."*

21. Again the Apex Court in **Priya Gupta v. State of Chattisgarh** ([2012] 7 SCC 433) has laid down the following in paragraphs 40, 41(1) and 78.4:

"40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Art.141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41(1). Delay and unauthorized extension of

schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of Muskan Dogra and Others v. State of Punjab and Others, 2005 (9) SCC 186.

78.4 With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit."

We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in the case of Medical Council of India v. Rajiv Gandhi University of Health Sciences [2004 (6) SCC 76, para 14] in this regard."

22. To the same effect is the judgment in **Chandigarh Administration v. Jasmine Kaur** ([2014] 10 SCC 521) which reiterated the principle laid down by the Apex Court regarding medical admission. The following was laid down in paragraph 33:

"33. Having noted the various decisions relied upon by the Appellant in SLP (C) No. 18099 of 2014 and the contesting Respondent, we are able to discern the following principles:

(1) The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the Courts or the Board and midstream admission should not be permitted.

(2) Under exceptional circumstances, if the Court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

(3) If a candidate is not selected during a particular academic year due to the fault of the Institutions / Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his / her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

(4) When a candidate does not exercise or pursue his / her rights or legal remedies against his / her non - selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

(5) If the candidate takes a calculated risk / chance by subjecting himself / herself to the selection process and after knowing his / her non - selection, he / she cannot subsequently turn around and contend that the process of selection was unfair.

(6) If it is found that the candidate acquiesces or waives his / her right to claim relief before the Court promptly, then in such cases, the legal maxim vigilantibus non dormientibus aequitas subvenit, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

(7) No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he / she does not fulfil the criteria of the prospectus he / she cannot be heard to state that, he / she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

(8) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re - apply

next academic year.

(9) There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

(10) Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

23. Learned counsel for the appellants as well as the learned counsel for the College has placed heavy reliance on the judgment of the Apex Court in **Asha v. Pt.B.D. Sharma University of Health Sciences and Others** ([2012] 7 SCC 389). In the above case the candidate whose name was included under the Ex-servicemen category at Sl. No.13 was not given admission in MBBS Course in the second counselling whereas candidate having lower marks at Sl. No.14 was given admission in the MBBS Course. In the above circumstances Writ Petition was filed which was allowed by the learned Single Judge which judgment was set

aside by the Division Bench against which the matter was taken by the candidate before the Supreme Court. It is useful to quote paragraphs 6 to 9 containing the facts and judgment delivered by the High Court which are to the following effect:

“6. The appellant cleared her Secondary examination (medical stream) with 75% marks and was eligible for taking medical entrance examination as she fulfilled the requisite criteria to take that exam. Pt. B.D. Sharma University (for short 'the University') issued a notification / advertisement for the entrance examination for MBBS, BDS and BAMS to be held in the first week of May, 2011. The appellant applied for the same in the Backward Class 'B' (for short 'BCB') and dependent of Ex - Serviceman (ESM) category. Her application was accepted and roll number was issued to her. The date of the examination was fixed for 12th June, 2011 by the University. The appellant was declared successful in the entrance examination having secured 832 marks. The appellant was at serial number 13 of the ESM category. All concerned were informed that the first counseling for allotment of seats was to be held on 14th - 15th July, 2011. In this counseling, the appellant was not admitted to MBBS Course as she was lower in merit. Consequently, she took admission in the BDS Course on that very day.

7. Thereafter, a declaration was made by the

respondents that the second counseling for allotment of seats in the MBBS course would be held on 20th September, 2011. The appellant again participated in the counseling but her name and roll number was not declared by the respondents for the said admissions. However, when the list of allocation of seats was displayed, it came to light that though the appellant had not been admitted to the MBBS Course, candidates who ranked below her in the merit list, including the respondent no.3, Vineeta Yadav, who had obtained 821 marks and was at serial number 14 of the ESM Category, had been given admission to the MBBS Course.

8. On the above facts, the learned Single Judge of the High Court of Punjab and Haryana at Chandigarh, observed that according to the respondents, the 'appellant left the counseling place' without appearing before the Counseling Board. Resultantly, her candidature was not considered for admission to the MBBS course under the ESM category and the candidate next in merit was given the admission. It was the opinion of the Court that it would be too far fetched to accept that the appellant, though was physically present at the time of taking of attendance, thumb impressions and photography, did not respond to the call for counseling at the relevant time. Further, the Court observed that no reason whatsoever could be seen for absence of the appellant at the relevant moment from the record before the Court. In view of the fact that the appellant had filed the writ petition within a week of the second counseling, the Court accepted the facts averred in

the writ petition and directed the respondents to admit the appellant to the MBBS course while further directing that it would be open for the respondents to see that admission of other students lower in merit is not cancelled, if so permissible and possible under the relevant Rules.

9. Upon appeal, the Division Bench of that Court upset the judgment of the learned Single Judge and held as under: -

"We find that such directions could not have been issued on the basis of possibilities. In view the process of counseling, we find that the writ petitioner herself has failed to appear before the counseling board at the relevant time. It is not that she has not got admission. She is pursuing BDS course at Rohtak whereas, the other two candidates are pursuing their courses at PGI Rohtak and Medical College Agroha. At this stage, to disturb the entire admission process would not in the interest of academics when there is no substantive allegation in respect of admission process."

24. The Apex Court in paragraph 4 framed 4 questions to be considered in the case. One of the questions was question (b) which was to the following effect:

"b) Whether the cut - off date of 30th September of the relevant academic year is a date which admits any exception?"

The Apex Court after considering the earlier judgments laid down that the authorities cannot grant admission

beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, exception can be made. The following was laid down in paragraphs 30, 31 and 32:

"30. There is no doubt that 30th September is the cut - off date. The authorities cannot grant admission beyond the cut - off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut - off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut - off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have

already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut - off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru and Others v. State of J & K and Others 1981 (2) SCC 484; Chavi Mehrotra v. Director General Health Services, 1994 (2) SCC 370; and Aravind Kumar Kankane v. State of UP and Others 2001 (8) SCC 355.]

25. Question No.(b) was answered by the Apex Court in paragraph 38.2 which is to the following effect:

"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 (supra)]. 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 extra - ordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

26. The Apex Court thus laid down that only in exceptional cases, unequivocal discrimination or arbitrariness or pressing emergency admission may be permissible and it was held that it is only where the ends of justice would be subverted or the process of law would stand frustrated that the court should exercise their discretion of admitting candidates to the courses after the deadline of 30th September of the relevant academic year. Further the conditions stated by the

Apex Court in **Priya Gupta v. State of Chattisgarh** (supra) also to be satisfied. Thus the ratio of the above judgment is that authorities are bound to adhere to the cut-off date, i.e., 30.09.2013 and only in exceptional cases where unequivocal discrimination or arbitrariness or pressing emergency is found, discretion can be exercised by the court. From the facts of the case as noted above, the present is not a case where there is unequivocal discrimination or arbitrariness on the part of the University in not receiving the details of the students which details were submitted for the first time on 03.10.2013. No materials could be placed before the learned Single Judge to prove that admissions were completed on 30.09.2014. In view of the findings recorded by the learned Single Judge that admissions were not made on or before 30.09.2013, we do not find that this a fit case for exercise of discretion by this Court. The judgment in **Asha v. Pt.B.D. Sharma**

University of Health Sciences and Others was on its own facts and on being satisfied the Apex Court granted relief in the said case where direction was issued to admit students in the MBBS Course in the next academic year 2012-13. The above case does not render any help to the appellants in the present appeal.

In view of the forgoing discussion, we are satisfied that no error has been committed by the learned Single Judge in dismissing the Writ Petition.

The Writ Appeal is dismissed.

ASHOK BHUSHAN, Ag. C.J.

A.M. SHAFFIQUE, JUDGE.