

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.21920 of 2015
Decided on :21.12.2015**

Arshdeep Singh
... Petitioner

Versus

Union of India and others
... Respondents

(2)

CWP No.19413 of 2015

Nandini Singh
... Petitioner

Versus

Panjab University and others
... Respondents

(3)

CWP No.22965 of 2015

Ananya Talwar
... Petitioner

Versus

Union of India and others
... Respondents

(4)

CWP No.22992 of 2015

Himangini Sharma
... Petitioner

Versus

Union of India and others
... Respondents

(5)

CWP No.21923 of 2015

Shivai Goel

... Petitioner

Versus

Union of India and others

... Respondents

(6)

CWP No.21931 of 2015

Pravir Pratap Singh

... Petitioner

Versus

Union of India and others

... Respondents

(7)

CWP No.24304 of 2015

Ashna Bansal

... Petitioner

Versus

Union of India and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Gaurav Chopra, Advocate, for the petitioner
in CWP Nos. 21920, 21923, 21931 and 24304 of 2015.

Mr. Rupinder Thakur, Advocate for
Mr. Vikram Punia, Advocate for the petitioner
in CWP No.22965 of 2015.

Mr. S.S. Chadha, Advocate for the petitioner
in CWP No.19413 of 2015 and
for respondent No.5 in CWP No.21920, 21923 and
21931 of 2015.

Mr. Anurag Goyal, Advocate for the petitioner
in CWP No.22992 of 2015.

Mr. B.S. Kanwar, Sr. Standing Counsel,
Mr. Ajay Kumar Gupta, Advocate and
Dr. Ashwinie K. Bansal, Advocate
for respondent UOI.

Mr. Arun K. Bakshi, Advocate
for respondent-University.

Mr. Inder Pal Singh Doabia, Advocate
for respondent No.3.

Mr. Nitin Thatai, Advocate
for respondent No.4.

G.S. Sandhawalia , J. (Oral)

The present judgment shall dispose of seven writ petitions i.e. CWP Nos. 21920, 19413, 22965, 22992, 21923, 21931 and 24304 of 2015. The facts are being taken from CWP No.21920 of 2015.

The petitioners challenge Clause 5.6.3 of the Information Brochure-2015 issued by the Joint Admission Committee of respondent-University, whereby 5 seats were reserved out of the total sanctioned strength of 40 in the respondent No.3-Chandigarh College of Architecture for the Bachelor of Architecture 5 years Degree Course for the Academic Session 2015-2016.

The additional 5 seats were reserved for the nominees of States/Union Territories deficient in technical education facilities and the case of the petitioners is that the reservation was over and above the sanctioned strength of 40 seats and not part of the

sanctioned strength. Reliance was placed upon the judgment passed by this Court in **LPA No.1372 of 2015** titled as '**Sukrti Bhutani Vs. Punjab University and others**' decided on **18.09.2015** (Annexure P-11), for the earlier academic session 2014-2015. Since, a similar issue had also arisen for the last year also.

Out of this bunch of cases, two writ petitions i.e. **CWP Nos. 22992 and 24304 of 2015 filed by Himangini Sharma and Ashna Bansal**, respectively pertain to two seats, which have become available on account of two of the students leaving their course after joining out of the sanctioned strength of 40 of the respondent-college.

The case of the petitioners is thus mainly that on account of the 5 supernumerary seats having not been filled up from the students who belonged to States/Union Territories deficient in technical education facilities, the petitioners are entitled for admission against those said seats on the strength of their merit and the same should not go vacant.

The same issue had also arisen before this Court for the last academic session as noticed in **CWP No.7252 of 2015** titled as '**Kanav Arora and another Vs. Union of India and others**' decided on **01.07.2015**. The contention of the petitioners in that case that the said seats were in addition to the 40 seats

which was the sanctioned strength was rejected. It was held that the additional 5 seats could not be filled in by candidates from Chandigarh from the General Category and even if seats remained unfilled and no direction could be issued for filling up the seats beyond 40.

However, in **LPA No.1339 of 2015** titled as '**Kanav Arora and another Vs. Panjab University and another**' decided on **11.09.2015**, the Division Bench noticed that there was a communication dated 21.07.2015 wherein it had been clarified that the seats for the States/Union Territories deficient in technical education facilities were over and above the sanctioned strength being supernumerary seats. Accordingly, the impugned order dated 01.07.2015 passed in CWP No.7252 of 2015 was set aside and the appellants were allowed to continue in that course. One of them fell in the merit of 5 seats and other was adjusted in the seat falling vacant on account of migration of the students.

The same issue was again discussed in **Sukrti Bhutani's case (supra)** and the relevant observations read as under:-

“Therefore, evidently a mistake had indeed occurred in the Information Brochure-2014 in counting the sanctioned strength of 40 seats for intake of students to the B.Arch. five years degree course by including 5 seats of the Ministry of Human Resource Development (Department of Secondary and Higher Education), Government of India

for nominees of States/Union Territories deficient in technical education facilities. These in fact were to be excluded from the sanctioned strength of 40 seats as is evident from the Government of India communication dated 21.7.2015 (Annexure A/1), wherein it has been clarified that the seats for States/Union Territories deficient in technical education facilities are over and above the sanctioned strength being supernumerary seats. Besides, the Chandigarh Administration, Technical Education Department has vide communication dated 14.8.2015 (Annexure A/4) addressed to the Principal of respondent No. 3 -College has further made it clear that the said College is free to admit students upto the sanctioned strength.”

In the present case also similar correspondence has ensued from the Ministry of Human Resource Development, which was addressed to the Principal of the respondent-college, wherein it had been clarified that the seats are supernumerary in nature and do not affect the total strength/intake of students. The letter dated 07.09.2015 (Annexure R-2/3) reads as under:-

“Sub: Reservation of seats in Degree level technical courses for States/Union Territories lacking in such facilities and for foreign and other categories of students for academic session 2014-15-regarding.

Sir,

The undersigned is directed to refer to your letter no.59-Arch.College-2015/4494 dated 18.08.2015 on the subject mentioned above and to clarify that these seats are supernumerary in nature allotted by the Government of India and do not affect the total strength/intake of students.”

A similar correspondence dated 17.09.2014 (Annexure R-2/4) to the same effect from the Principal of Chandigarh College of Architecture, Chandigarh to the Registrar, Council of Architecture would also go on show that the college itself is treating the 40 seats as the sanctioned strength and the 5 seats are over and above that. Relevant portion reads as under:-

“Subject: Reservation of seats in Degree level technical courses for States/Union Territories lacking in such facilities and for foreign and other categories of students for academic session 2014-15-regarding.

.-.-.-.-.

Sir,

Enclosed please find a copy of letter No.32-1/2015-TS II/TC dated 7.9.2015 received from the Under Secretary (Govt. of India), Ministry of Human Resource Development, New Delhi, on the subject cited above.

In this connection it is submitted that at present the total sanctioned intake of this College is 40 seats including five seats allocated by the Ministry of Human Resource Development (Department of Secondary & Higher Education), Government of India for nominees of States/U.T.'s deficient in technical education facilities. But in view of above-mentioned Govt. of India's letter dated 7.9.2015, seats allocated by the MHRD shall be of supernumerary in nature and do not affect the total strength/intake of students which is 40 at present. Therefore, from the next 2016-17 academic Session, the College shall admit total sanctioned intake i.e. 40 + Supernumerary seats (if allocated by the MHRD).

This is for your kind information and record only.

Thanking you.”

In such circumstances, it would be clear that the

petitioners would be entitled for admission against the vacant seats which have not been consumed by the students from the States/Union Territories deficient in technical education. Thus, they are liable to be filled up, since the infrastructure which is admittedly there is liable to be utilized and need not go waste.

The two petitioners, namely, Himangini Sharma and Ashna Bansal in a similar situation are also liable to be admitted on account of two vacant seats having arisen on account of two students admittedly leaving the said course. The provisional admissions were granted in the present bunch of cases and the first admission was granted on 05.10.2015, though the petitioner had immediately approached this Court on 15.09.2015 for the redressal of her grievances.

The counsel for the College has submitted that since the cut-off-date was 15.08.2015, therefore, the admissions are not liable to be granted. However, the said submission is not liable to be accepted. As noticed the controversy is carrying on for the last two years. There was some confusion regarding the number of sanctioned seats, whether the seats were 35 or 40 and on this account the students cannot be faulted. The judgment of the Apex Court in ***Asha Vs. Pt. B.D. Sharma University of Health Sciences and others'*, 2012 (7) SCC 389** can be relied upon for the said proposition, where it has been held that the Courts can

exercise their power where they feel that the admission may be permissible where the ends of justice would be subverted and the purpose of law would stand frustrated. There is no fault which can be attributed to the petitioners and on account of the cut-off-date, the admission cannot be denied to them. The relevant part of the observations made read as under:-

“29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh and Others [(2002) 7 SCC 258], Ms. Neelu Arora and Another v. Union of India and Others [(2003) 3 SCC 366], Aman Deep Jaswal v. State of Punjab and Others [(2006) 9 SCC 597], Medical Council of India v. Naina Verma and Others [(2005) 12 SCC 626], Mridul Dhar and Another v Union of India and Others [(2005) 2 SCC 65], Medical Council of India v Madhu Singh and Others [(2002) 7 SCC 258].

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].

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38.2. Question (b) 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 extraordinary 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.”

The judgment has also taken into consideration the earlier judgments of the Apex Court in ***'Mridul Dhar Vs. Union of India'* 2005 (2) SCC 65** and in ***Priya Gupta Vs. State of Chhattisgarh and others'* 2012 (3) RSJ 340** and, and therefore this Court get the strength from the said observations which has been reproduced above to ensure that infrastructure is well utilized and and the students who were present and agitating for

their rights are granted the benefit of admission. Apart from their being present they immediately approached this Court within the first week itself of October and therefore no fault cannot be found with them.

Resultantly, in view of the above communications and the admission made by the respondents themselves, Clause 5.6.3, does not need to be struck down. The present writ petitions are allowed. The interim orders are confirmed and the provisional admissions granted to the petitioners are regularized.

It is not disputed that the petitioners have also sat in the examination of 1st semester. Accordingly, the result of the said semester will also be declared.

With the above observations, the present writ petitions are disposed of.

DECEMBER 21, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE