

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

% *Pronounced on: August 26, 2015*

+ LPA 544/2015 & C.M.No.15694/2015 (*Stay*)

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY

..... Appellant

Through: Mr.Mukul Talwar, Sr.Adv. with
Mr.Vipin Singh and Ms.Anita Sahan, Advs.

Versus

MANI RASTOGI & ORS.

..... Respondents

Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Sunil Dalal, Mr.Sanjeev Narula, Mr.Vipin
Malik, Mr.Ajay Kalra, Ms.Meha Rashmi, Advs.
for R-1 to 16.

Mr.Anil Soni, Adv. for AICTE/R-17.

Mr.Ravi Gupta, Sr.Adv. with Mr.Deepak Vohra,
Mr.Abhinav, Mr.Ajay Gulati, Advs. for
R18/Maharaja Agrasen Institute of Technology.

+ LPA 545/2015 & C.M.No.15692/2015 (*Stay*)

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY

..... Appellant

Through: Sh.Maninder Singh, ASG with
Mr.Mukul Talwar, Sr.Adv with Mr.Vipin Singh
and Ms.Anita Sahan, Advs.

Versus

SUBHAM JAIN & ORS.

..... Respondents

Through: Mr.Anil Soni, Adv. for AICTE/R-4.
Mr.Ravi Gupta, Sr.Adv. with Mr.Deepak Vohra,
Mr.Abhinav, Mr.Ajay Gulati, Advs. for R-
5/Maharaja Agrasen Institute of Technology.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

Ms.G.ROHINI, CHIEF JUSTICE.

1. These two appeals are preferred against the common order dated 14.08.2015 passed by the learned Single Judge in W.Ps.(C) No.7770/2015 and 7788/2015.
2. The said writ petitions were filed by some of the candidates aspiring for admission into B-Tech Course with a prayer to set aside the Caution Notice dated 07.08.2015 issued by Guru Gobind Singh Indraprastha University notifying that any admissions made by the affiliated institutes in deviation from the schedule for filling up the remaining vacancies after 31.07.2015 notified vide University's Note dated 04.08.2015, would not be regularized by the University and to direct the University to admit the writ petitioners in various streams of B-Tech. Course as per their merit against the vacant seats available with Maharaja Agrasen Institute of Technology (arrayed as respondent No.18 in LPA No.545/2015 and as respondent No.5 in LPA No.544/2015). The said writ petitions were disposed of at the threshold by the order under appeal with directions as under:-

“(I) the respondent No.3 College to report to the Office of the Registrar of the respondent No.1 University on Sunday i.e. 16th August, 2015 at 1000 hours to satisfy the respondent No.1 University about the withdrawal of candidatures by those who had obtained admissions and/or the seats being thus

vacant;

- (II) the respondent No.1 University as well as the respondent No.3 College to, on their respective website, forthwith advertise the factum of the counselling scheduled on 17th August, 2015 for approximately 67 vacant seats, subject to verification by the respondent No.1 University, so as to inform all concerned, to participate in the counselling;
- (III) the respondent No.3 College to also insert advertisement in prominent newspapers either on 15th or 16th August, 2015 of the counselling aforesaid scheduled on 17th August, 2015;
- (IV) the counselling to take place at the respondent No.3 College at 1400 hours on 17th August, 2015 and to be completed on the same day;
- (V) the admissions during the counselling to abide by the procedure prescribed in the Schedule dated 4th August, 2015; and
- (VI) the respondent No.3 College to, in accordance with its undertaking aforesaid which is accepted and by which the Director of the respondent No.3 College is ordered to be bound, deposit the entire amount received from the 67 candidates who have withdrawn their candidature from the respondent No.3 College, with the respondent No.1 University on or before 18th August, 2015.”

3. Aggrieved by the same, Guru Gobind Singh Indraprastha University (for short ‘the appellant University’) to which Maharaja Agrasen Institute of Technology (for short ‘the MAIT College’) is affiliated, preferred these two appeals contending *inter alia* that the impugned directions are unwarranted

and unjustified in the absence of any finding that the procedure adopted by the appellant University in regulating the admissions for the Academic Year 2015-16 was illegal or unreasonable on any ground whatsoever. It is also contended that having found that the writ petitioners were acting as proxy for the MAIT College, the learned Single Judge ought to have dismissed the petitions in *limine*.

4. The facts which are not in dispute are as under:

5. In terms of the admission schedule prescribed in ***Parshvanath Charitable Trust v. All India Council For Technical Education (2013) 3 SCC 385***, the appellant University issued the Schedule of online counselling for the candidates qualified in the Common Entrance Test (CET) for the course of Bachelor of Technology (B-Tech.). As per the said Schedule, the first round of counselling was held from 03.06.2015 to 20.06.2015, second round of counselling from 21.06.2015 to 03.07.2015 and third round of counselling from 07.07.2015 to 16.07.2015. Thereafter, the appellant University had also permitted the affiliated Institutes to conduct spot counselling for the seats that remained vacant either because of withdrawal or non-reporting of the admitted students till 25.07.2015. That apart, one more opportunity was given to the affiliated institutes to fill up the vacant seats, if any and accordingly, the appellant University issued the proceedings dated 04.08.2015 declaring the vacancy position in different Colleges/Institutes as specified in the Schedule attached thereto. The Schedule for the proposed counselling was also stipulated therein which reads as under:

Date	Activity to be done
05.08.2015	Constitution of Admission Committee at respective colleges comprising of Director/Chairman – person, two faculty from the institute and University Observer. The institute shall request for the appointment of the University Observer.
06.08.2015	Newspaper Advertisement by Affiliated Institutes/Colleges regarding filling up of vacant seats.
06.08.2015 to 10.08.2015	The eligible candidates shall apply in the respective Affiliated Institutes/Colleges.
12.08.2015	Merit List to be displayed by Affiliated Institutes/Colleges on their website and notice boards.
13.08.2015 and/or 14.08.2015	Counselling to be done at respective Affiliated Institutes/Colleges from the merit list for provisional allotment.
16.08.2015	Files of admitted candidates to be submitted in GGSIP University for verification and admission processing between 10:00 am to 4:00 pm.

6. Admittedly, in the Schedule attached to the said proceedings, the vacancy position in the MAIT College was shown as ‘nil’. However, the MAIT College issued advertisement dated 06.08.2015 stating that altogether 30 vacant seats are available in the said college on account of the students withdrawing their admission as they had secured seats in other Institutes/Universities and accordingly inviting applications from the

students interested to approach the College. Having come to know of the notice issued by the MAIT College, the appellant University issued a Caution Notice dated 07.08.2015 making it clear that any admission in deviation from the Schedule/vacancy position notified by the University in its proceedings dated 04.08.2015 would be viewed strictly and the University shall not permit regularization of such admissions.

7. The said Caution Notice dated 07.08.2015 was assailed in the W.Ps.(C)No.7770/2015 and 7788/2015 filed by the aspirants for admission to B-Tech. Course in the MAIT College. There were 16 petitioners in W.P.(C)No.7770/2015 and 3 petitioners in W.P.(C) No.7788/2015. The learned Single Judge though observed that prima facie it appears that the aspirants for admission filed the petitions as a proxy for the College (MAIT), inasmuch as the grievance urged ought to be of the College and the College itself, if aggrieved, ought to have come before the Court, opined that no valuable seats can be allowed to remain vacant and, therefore, it would be appropriate to fill up the said seats in a phased manner imposing conditions to ensure that the MAIT College does not unduly benefit therefrom. Accordingly, the writ petitions were disposed of with the directions mentioned in Para-2 (Supra).

8. Assailing the said order, it is contended by Sh.Maninder Singh, the learned ASG and Sh.Mukul Talwar, the learned Senior Counsel appearing for the appellant University that the writ petitions filed by the candidate aspiring for admission in the vacant seats stated to be available in the MAIT College are not maintainable at all. It is further contended that the learned Single Judge having rightly found that the petitioners were acting as a proxy for the MAIT College, ought to have dismissed the petitions in limine.

Disputing the claim of the MAIT College that 67 vacant seats are available, it is contended that as per the inputs received by the University, no vacant seats were available at all which can be filled up by conducting fresh counselling. The further submission is that in terms of the decision of the Supreme Court in *Parshvanath Charitable Trust v. All India Council For Technical Education (Supra)*, it was decided by the appellant University that 31.07.2015 shall be the last date for admission for Academic Year 2015-16, i.e., a day before the commencement of the Academic Session and accordingly, admissions against all the seats that remained vacant till 25.07.2015 were filled up in the spot round of counselling that was held before 31.07.2015. It is sought to be explained by the learned ASG that 25.07.2015 was fixed as the cut-off date for determining the availability of vacant seats in view of the fact that there was no provision for withdrawal of admission by the admitted students or non-reporting of admitted students leading to creation of any vacancy of seats in any college after the said date. It is further submitted by the learned ASG that the appellant University proposed to conduct another round of counselling in continuation of the spot counselling since it was found that in some of the affiliated Institutes certain seats still remained vacant in different programmes. It is pointed out by the learned ASG that Clause 7 of Para - 9.4 of Part - D of Admission Brochure of the appellant University empowers the University to issue such notification even after 31.07.2015 and that the Schedule attached to the extended spot counselling proposed vide proceedings dated 04.08.2015 clearly mentioned the Institutes in which the seats still remained vacant. It is further contended by the learned ASG that the MAIT College was not figured in the schedule attached to the proceedings dated 04.08.2015 and

that the said College never raised any objection about the same.

9. Per contra, it is contended by Sh.Sudhir Nandrajog, the learned Senior Counsel appearing for the respondents/writ petitioners that in fact 67 vacant seats are available in the MAIT College and in spite of the fact that the same was brought to the notice of the appellant University seeking permission to fill up the vacant seats, the appellant University had erroneously refused permission. The learned Senior Counsel for the petitioners sought to justify the order under appeal submitting that the learned Single Judge has rightly issued the impugned directions to ensure that no valuable seats remain vacant. It is also submitted by the learned Senior Counsel that the order under appeal warrants no interference on any ground whatsoever since the learned Single Judge has taken every care to ensure that the vacant seats are filled up strictly on the basis of merit and that the MAIT College does not take any undue benefit therefrom.

10. Sh.Ravi Gupta, the learned Senior Counsel appearing for the MAIT College has brought to the notice of this Court that the College addressed a letter on 01.08.2015 itself requesting permission to allow the College to fill up the seats that remained vacant even after the spot counselling and, therefore, there is absolutely no reason to suspect the *bonafides* of the Institute. It is also contended by the learned Senior Counsel that having taken note of the fact that the appellant University, before publishing the Schedule dated 04.08.2015 failed to make any attempt to collect the data of vacancy position after 30.07.2015 from individual Colleges and that the assessment of the vacant seats in the MAIT College was factually incorrect, the learned Single Judge had rightly issued the impugned directions for filling up the vacant seats in the MAIT College by including the said

College also in the fifth round of counselling.

11. As noticed above, the grievance of the writ petitioners was that though 67 vacant seats are available in the MAIT College, the appellant University refused to permit them to be advertised and to conduct counselling for filling up the said vacancies.

12. On the other hand, the specific case of the appellant University is that the cut-off date for considering the vacancies is 25.07.2015 and no vacancy arising after 25.07.2015 can be taken into consideration. It is also their specific case that no college on its own can create any vacancy since all vacancies, either by non-reporting of the candidates or by withdrawal of the admissions, shall be approved by the University. It is also their specific case that against the vacancies available till 25.07.2015, the MAIT College admitted 178 students in the spot round of counselling and that no further vacant seats were available in the said Institute and therefore, the same was not shown in the proceedings dated 04.08.2015 under which the extended spot counselling was permitted fixing the specific Schedule.

13. It may at the outset be mentioned that the first, second and third round of counsellings were, admittedly, conducted online and they were centralized counsellings, i.e., through appellant University and that the spot counselling and the extended spot counselling that was held pursuant to the proceedings dated 04.08.2015 were permitted to be conducted by the Institutes themselves by inviting applications by newspaper advertisement and displaying the merit list on their website and notice boards. It is also not in dispute that the said admissions by spot counselling conducted by the Institutes shall be strictly in accordance with the procedure prescribed by the appellant University and monitored by the University Observer. There is

absolutely nothing on record to contradict the specific case of the appellant University, (i) that the affiliated Institutes do not have the power either to declare vacancy on their own or to allow admission/allotment leading to creation of vacancy and that all the applications for withdrawal of admission are required to be considered by the University, (ii) that 25.07.2015 is the cut-off date for determining vacancies and (iii) that the admissions that were allowed to be made in the spot counselling as well as the extended spot counselling were against the seats that remained vacant till 25.07.2015 only. That being so, we are unable to accept the version of the respondents that the appellant University failed to conduct proper assessment of the vacancy position before publishing the Schedule dated 04.08.2015, particularly, the plea that the stand taken by the appellant University in the proceedings dated 04.08.2015 that no vacant seats were available in the MAIT College was factually incorrect. It appears to us that the fact that both the spot counselling as well as the extended spot counselling held pursuant to the proceedings dated 04.08.2015 of the appellant University were confined only to the seats that remained vacant till 25.07.2015 was not brought to the notice of the learned Single Judge and thus, the learned Single Judge proceeded on the premise that the appellant University failed to collect the data of vacancy position after 30.07.2015 from the Colleges. The fact that the counselling proposed vide proceedings dated 04.08.2015 was only extension of the spot counselling already held but not fifth round of counselling, was also not brought to the notice of the learned Single Judge.

14. It is relevant to note that in response to the request made by the MAIT College dated 01.08.2015 to permit them to directly fill the vacant seats stating that *'it is expected that a number of seats in different courses will fall*

vacant after 05.08.2015’, the appellant University by reply dated 11.08.2015 informed the MAIT College that their request cannot be acceded to for the reasons stated therein. Again by letter dated 13.08.2015, the appellant University directed the MAIT College not to conduct any further counselling stating that there are no vacancies in their College after the end of spot round of counselling. Even prior to that, the Caution Notice dated 07.08.2015 was issued. More particularly on 04.08.2015 when the extended spot counselling was permitted showing the vacancy position, the name of the MAIT College was not figured in the Schedule. Again by order dated 12.08.2015 when the appellant University appointed Observers for the Colleges where the vacant seats are to be filled up as per the Schedule dated 04.08.2015, the name of the MAIT College was not figured. Surprisingly, the MAIT College did not choose to challenge any of the said decisions of the appellant University and allowed the same to become final.

15. Under these circumstances, we are unable to understand as to how any legally enforceable right is accrued to the writ petitioners who are only aspiring for admission. It may also be added that absolutely no case is made out by the petitioners to show that the admission process adopted by the appellant University suffered from any illegality or irregularity much less any allegation of malafides or bias is attributed to the appellant University. As mentioned above, the Admission Brochure of the appellant University for the Academic Year 2015-16 empowers the University to take a policy decision to take steps for filling up the vacant seats even after 31.07.2015. It was also made clear in the Admission Brochure that candidates will be eligible to withdraw after first and second round of online counselling only and not thereafter. The stand taken by the appellant University that

25.07.2015 is the cut-off date for considering the vacancies and both the spot counselling and the extended spot counselling were held only for admission against the seats remained vacant on or before 25.07.2015 is also supported by the Admission Brochure itself and nothing contra could be pointed out by the respondents.

16. For the aforesaid reasons, we are of the considered view that even assuming that some of the seats would remain vacant in the MAIT College, no mandamus can be issued under Article 226 of the Constitution of India, particularly, at the instance of the candidates aspiring for admission, to consider them for admission against the said vacancies since the same would amount to compelling the appellant University to act contrary to their own rules of admission.

17. Hence, we are constrained to interfere with the order under appeal. Accordingly, the same is set aside and both the appeals are allowed.

18. No order as to costs.

CHIEF JUSTICE

JAYANT NATH, J

AUGUST 26, 2015

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