

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.605 of 2015 (O & M)
Date of decision: 10.02.2016.

Tushaer Manocha and anotherAppellants

Vs.

Pandit Bhagwat Dayal Sharma University
of Health Sciences and others ...Respondents

AND

LPA No.602 of 2015 (O & M)
Date of decision: 10.02.2016.

Advanced Institute of Pharmacy and othersAppellants

Vs.

Pandit Bhagwat Dayal Sharma University
of Health Sciences and anotherRespondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Harkeerat Singh, Advocate for the appellants in
LPA No.605 of 2015.

Mr. Abhimanyu Tiwari, Advocate for the appellants in
LPA No.602 of 2015 and respondent No.3 in
LPA No.605 of 2015.

Mr. Ramesh Hooda, Advocate for respondent No.1 in
LPA No.605 of 2015 and LPA No.602 of 2015.

None for respondent No.2.

S.S.SARON,J.

Mr. Harkeerat Singh, Advocate learned counsel for

Tushaer Manocha (appellant No.1 in LPA No.605 of 2015) has

submitted a copy of the order dated 05.02.2016 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 2405/2016 requesting this Court to dispose of LPA No.605 of 2015 within one month regard being had to the nature of the suffering that the said appellant is likely to undergo if the result is not declared. The appeal in fact has been on the board of this Bench and it is learned counsel for the appellants in LPA No.605 of 2015, who had not appeared in the case on 10.09.2015, 19.09.2015 and 09.10.2015. Thereafter on 19.10.2015, a proxy counsel appeared for him. Be that as it may, the appeal is taken up for hearing.

The said appellants Tushaer Manocha and Saurabh are indeed affected by the impugned order as it is their admissions to the B.Pharmacy Course that they were undergoing in the Advanced Institute of Pharmacy, Palwal ('Advanced Institute' – for short) (appellant in LPA No.602 of 2015 and respondent No.3 in LPA No.605 of 2015) have been invalidated by the Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak (respondent No.1 in both the LPAs) ('Pt. B.D. Sharma University' – for short) (respondent No.1). The reason given for setting aside their admissions to the said B.Pharmacy course is that they were admitted to the said course on 16.08.2014 while the last date for the grant of admissions was 15.08.2014.

Their case was being pursued by the appellant - Advanced Institute and it had filed CWP No.1702 of 2015 which

has been dismissed by the impugned order passed by the learned Single Judge. Therefore being affected by the order, they are entitled to file the appeal.

This order will dispose of LPA No.605 of 2015 titled 'Tushaer Manocha and another v. Pandit Bhagwat Dayal Sharma University of Health Sciences' and LPA No.602 titled 'Advanced Institute of Pharmacy and others v. Pandit Bhagwat Dayal Sharma University of Health Sciences.' Both the appeals arise out of the same judgment and order dated 13.04.2015 passed by the learned Single Judge in CWP No.1702 of 2015. Tushaer Manocha and Saurabh (appellants in LPA No.605 of 2015) were not parties before the learned Single Judge; however, since they are affected by the impugned judgment they have filed CM No. 1234 - LPA of 2015 for leave to appeal.

Accordingly, CM No.1234 - LPA of 2015 for leave filed by applicants Tushaer Manocha and Saurabh appeal is allowed.

The Advanced Institute (appellant in LPA No.602 of 2015 and respondent No.3 in LPA No.605 of 2015) has filed separate LPA No.602 of 2015 which arises out of the same judgment and order dated 13.04.2015. The said Institute had filed the writ petition seeking quashing of the order dated 12.01.2015 (Annexure P-1) passed by the Pt. B.D. Sharma by which the admissions of the said two students Tushaer Manocha and Saurabh was invalidated.

The Advanced Institute imparts courses in B.Pharmacy

and M.Pharmacy to students. The said Advanced Institute, it is represented is a premier educational institute managed by Shri Banky Bihari Educational Trust registered under the Trusts Act, 1882. It is affiliated to the Pt. B.D. Sharma University. Till the academic Session 2012-13, the admissions to the B.Pharmacy course in the Advanced Institute were conducted in accordance with the admissions schedule that was set by the Haryana State Technical Education Society, Panchkula ('HSTE Society' – for short) (respondent No.2). It was earlier known as Haryana State Counselling Society. The HSTE Society used to announce the admissions schedule for B.Pharmacy courses in all the Pharmacy Institutes of Haryana and fix the last date for admissions. The left over seats were thereafter filled by the Pharmacy Institutes at their own level adhering to the last dates given by the HSTE Society. The HSTE Society thereafter from 2013-14 onwards transferred the responsibility of conducting admissions to B.Pharmacy courses to Pt. B.D. Sharma University (respondent No.1).

The Advanced Institute received a letter from Pt. B.D. Sharma University (respondent No.1) on 10.05.2013 (Annexure P-2) intimating that from the academic Session 2013-14 onwards, the University would designate a representative, who would be associated with the admission process. Despite the said letter, admissions to the B.Pharmacy course for the academic year 2013-14 were conducted in accordance with the admissions

schedule (Annexure P-3) of the HSTE Society (respondent No.2). According to the said schedule, last date for admissions was 15.08.2013. It is submitted that the Pt. B.D. Sharma University (respondent No.1) was aware that the Advanced Institute was following the admissions schedule of the HSTE Society (respondent No.2). The Pt. B.D. Sharma University, however, designated Shri Manish Dhall, Assistant Professor, College of Pharmacy, Pandit B.D. Sharma Post Graduate Institute of Medical Sciences (PGIMS), Rohtak for counselling who was even present at the time of counselling for the academic Session 2013-14, which was held on 15.08.2013.

During the academic Session 2014-15, the Pt. B.D. Sharma University (respondent No.1) did not announce any admissions schedule and no key dates were communicated for admissions of the courses to the Advanced Institute. Therefore, like the previous years, the appellant - Advanced Institute conducted the admissions to its B.Pharmacy courses in accordance with the admissions schedule (Annexure P-5) set by the HSTE Society (respondent No.2) where the last date of admissions for the academic Session 2014-15 for all types of admissions by the Pharmacy Institutes was mentioned as 16.08.2014. The appellant – Advanced Institute conducted the first counselling for the academic Session 2014-15 at its premises on 26.07.2014. The counselling was conducted in the presence of Mr. Naveen Khatri, Observer of Pt. B.D. Sharma University

(respondent No.1). The appellant – Advanced Institute then on 09.08.2014 (Annexure P-6) wrote to the Pt. B.D. Sharma University (respondent No.1) requesting the latter for confirmation of the dates of second counselling for admissions to the B.Pharmacy courses. The Observer of the Pt. B.D. Sharma University (respondent No.1), who was present at the time of first counseling had in fact himself suggested that the second round of counselling be held in the second week of August, 2014. However, Pt. B.D. Sharma University (respondent No.1) vide letter dated 11.08.2014 (Annexure P-7) informed the appellant – Advanced Institute that the last date of counselling for admissions to B.Pharmacy course was 29.07.2014. According to the appellant – Advanced Institute, the said date was never communicated to it and it is uncertain as to how this date originated. It is submitted that despite the said communication by the Pt. B.D. Sharma University (respondent No.1), admissions in other Pharmacy Colleges affiliated with it continued even after the said date. The appellant – Advanced Institute in the circumstances went ahead with the admissions after finishing the second and third round of counselling.

After completion of the entire admissions process as on 15.08.2014, the appellant – Advanced Institute admitted 98 students. Two students namely Tushaer Manocha and Saurabh (appellants in LPA No.605 of 2015) were, however, admitted on 16.08.2014 against two vacancies that had arisen at the last

minute on the said date. Without wasting any time and within the last date as fixed by the HSTE Society (respondent No.2) vide Annexure P-5, the admissions were made. The said admissions of two students was intimated by e-mails (Annexure P-8 colly.) to Pt. B.D. Sharma University (respondent No.1) on 16.08.2014 itself. A list of 100 students, who had been admitted along with their Registration Fee was submitted to the Pt. B.D. Sharma University (respondent No.1) vide letter dated 27.08.2014 (Annexure P-9).

The Pt. B.D. Sharma University (respondent No.1) vide letter dated 10.10.2014 (Annexure P-10) disallowed the admissions of the two students namely Tushaer Manocha and Saurabh (appellants in LPA No.605 of 2015), who were admitted on 16.08.2014 on the ground that the last date of admissions was 15.08.2014. The appellant – Advanced Institute vide letter dated 27.10.2014 (Annexure P-11) clarified to the Pt. B.D. Sharma University (respondent No.1) that the admissions were done on time and in accordance with the admissions schedule (Annexure P-5) of the HSTE Society (respondent No.2), which had since been extended to 16.08.2014 and thereafter vide letter (Annexure P-12) upto 05.09.2014. Pt. B.D. Sharma University (respondent No.1) did not reply to the representation (Annexure P-11) dated 27.10.2014 of the appellant – Advanced Institute. The Institute followed up the matter with two additional letters dated 17.11.2014 and 05.01.2015 reiterating the validity of the

admissions of the two students.

The Pt. B.D. Sharma University (respondent No.1) then vide impugned letter dated 12.01.2015 (Annexure P-1) responded to the appellant – Advanced Institute stating that the admissions of the two concerned students i.e. Tushaer Manocha and Saurabh could not be allowed on the grounds that the B.Pharmacy courses were not within the purview of the HSTE Society (respondent No.2) and the extension of the last date for admission to 05.09.2014 was not available to the appellant-Advanced Institute as it was not a party to the concerned dispute before the Supreme Court where such relief was granted.

The appellant – Advanced Institute aggrieved against the action of respondent No.1 - Pt. B.D. Sharma University, assailed the said letter by way of Civil Writ Petition No.1702 of 2015.

Reply was filed by the Pt. B.D. Sharma University (respondent No.1) stating that the appellant – Advanced Institute was allowed by the Pharmacy Council of India for intake of 60 students to the B.Pharmacy Course upto Session 2016-17. The appellant - Advanced Institute then applied to the All India Council for Technical Education (AICTE) for increase in intake from 60 to 120 seats for the year 2014-15, which was allowed by the AICTE. However, Pt. B.D. Sharma University (respondent No.1) and the Pharmacy Council of India did not allow the increase as the University Grants Commission (UGC) had not allowed the increase of intake for the reasons that (i) UGC had

not allowed the increase intake for the session 2014-15; (ii) The Pharmacy Council of India had approved the sanction for 60 seats upto 2016-17; (iii) the Advanced Institute applied for increase in intake after the last date of submission of application i.e. 31.03.2014 with 100% late fee and (iv) the appellant - Advanced Institute had shown Maharshi Dayanand University, Rohtak as the affiliating University instead of Pt. B.D. Sharma University (respondent No.1) in the declaration form attached for the approval from AICTE.

The appellant - Advanced Institute aggrieved against the declining of approval for the increase in intake of seats filed CWP No. 12261 of 2014. This Court vide order dated 05.08.2014 (Annexure P-13) allowed the writ petition and quashed the impugned order declining approval for the increase in the intake of seats; besides, directed the Pt. B.D. Sharma University to grant approval and for Pharmacy Council to follow suit and secure to the petitioner Advanced Institute its right to obtain an increase in intake from 60 to 120 students. Thereafter, CM No.9828 of 2014 was filed in the said CWP No.12261 of 2014 by which it was clarified that reference to 120 seats shall be taken as 100 seats. Therefore, permission was directed to be given by the Pt. B.D. Sharma University and the Pharmacy Council of India for increase in intake of seats to the B.Pharmacy Course being conducted by the appellant - Advanced Institute from 60 seats to 100 seats. Pt. B.D. Sharma University (respondent No.1) filed LPA No.1027

of 2014 against the order dated 05.08.2014.

As regards Tushaer Manocha and Saurabh (appellants in LPA No.605 of 2015), it is submitted by Pt. B.D. Sharma University (respondent No.1) that they were admitted on 16.08.2014 (beyond the admission date) on those 40 increased seats, which had been allowed by this Court in addition to the sanctioned 60 students intake. The last date for admissions of B.Pharmacy, it is submitted, had already been fixed by the Supreme Court as 15.08.2014, in the case of Parshavnath Charitable Trust v. All India Council and others (2013) 3 SCC 385. It is stated that it was an admitted fact that the said two students were admitted on 16.08.2014 by the appellant – Advanced Institute. On seeking the clarification by the Pt. B.D. Sharma University (respondent No.1), the HSTE Society (respondent No.2) in its letter dated 04.12.2014, Annexure A of Annexure P-1, mentioned that the admissions of B.Pharmacy course was not in the purview of the HSTE Society (respondent No.2).

The other plea of the appellant - Advanced Institute regarding extension in the last date of admissions to 05.09.2014, it is stated that the appellant – Advanced Institute was not a party in IA Nos.50, 25, 52 to 56 of 2014 in Civil Appeal No.9048 of 2012 decided by the Hon'ble Supreme Court i.e. Parshvanath Charitable Trust and others v. All India Council for Technical Education and others, (2013) 3 SCC 385 and the said decision

was applicable only for those Colleges/Institutes who had filed applications for impleading them as parties in the said appeal. The appellant - Advanced Institute, it is submitted, was duly informed by the Pt. B.D. Sharma University (respondent No.1) regarding the said fact vide Annexure P-1. However, instead of approaching the Pt. B.D. Sharma University (respondent No.1) with any clarifications on the above facts, the appellant - Advanced Institute had approached this Court. It is, therefore, submitted that the denial of admissions to the said two students after the last date of admissions by the Pt. B.D. Sharma University was justified.

The learned Single Judge by its impugned judgment and order dated 13.04.2015 has dismissed the writ petition filed by the appellant - Advanced Institute. It was observed that much emphasis had been laid by the learned counsel for the appellant - Advanced Institute that the matter with regard to number of seats to be filled by the appellant - Advanced Institute was finally adjudicated upon on 14.08.2014 and there was hardly any time available with it to meet the situation like the one, which had arisen in the case by an order by which the total number of seats were reduced which were filled up on 15.08.2014. Thereafter two students withdrew their admissions and in order to fill up those two seats, the appellant - Advanced Institute on the next day i.e. 16.08.2014 gave admissions to two students namely Tushaer Manocha and Saurabh. It was held that the arguments

appeared to be attractive but was to be rejected because the cut off date had been given by the Supreme Court to fill up the seats by 15.08.2014. It was further observed that in the present case, the dispute was that all 100 seats given to the appellant - Advanced Institute were filled up on 15.08.2014 but due to some reason, two students out of 100 students vacated the seats, which did not mean that the appellant - Advanced Institute had the competence to fill up those vacant seats after the cut off date even without the presence of the University representative, which was otherwise required. Accordingly, the writ petition was dismissed. The appellant - Advanced Institute aggrieved against the said decision has filed LPA No.602 of 2015.

Tushaer Manocha and Saurabh who are the affected students have filed CM No.1234 of 2015 in LPA No.605 of 2015 for leave to appeal against the impugned judgment and order dated 13.04.2015 stating that they being affected by the impugned decision be granted to permission to file the appeal. They were not parties before the learned Single Judge and it was the appellant - Advanced Institute that was pursuing their claim.

At the time of motion hearing on 23.04.2015, it was contended on behalf of the appellants that 15.08.2014 being a national holiday, the next working day would be a permissible day for admission. Notice of motion was issued for 27.04.2015. In terms of order passed on 27.04.2015, the two students i.e. Tushaer Manocha and Saurabh (appellants), who had been

admitted on 16.08.2014, in the meantime were permitted to appear in the examinations at their own risk without creating any equity in their favour. Both the appellants have since appeared in their examinations, however, their results have not been declared.

We have given our thoughtful consideration to the matter.

The dispute in the present case is whether the admission of two students namely Tushaer Manocha and Saurabh to the B.Pharmacy Course by the Advanced Institute on 16.08.2014 after the cut off date on 15.8.2014 in the facts and circumstances of the case can be said to be justified.

It is to be noticed that there was a dispute between the appellant – Advanced Institute and Pt. B.D. Sharma University with regard to the increase of intake of seats from 60 students to 100 students. Even though the AICTE had given necessary permission to the appellant – Advanced Institute for the increase in seats from 60 to 100; however, this was not accepted by the Pt. B.D. Sharma University as also the Pharmacy Council of India. The appellant - Advanced Institute by way of CWP No.12261 of 2014 assailed the action of Pt. B.D. Sharma University (respondent No.1) in not allowing the increase in the intake of seats even though the same had been allowed by the AICTE. The appellant - Advanced Institute had the affiliation and necessary approval from Pt. B.D. Sharma University (respondent No.1) as

well as AICTE and Pharmacy Council of India for the academic Session 2013-14 to conduct B.Pharmacy with an intake capacity of 60 students. The appellant-Institute, however, was desirous of increasing the intake capacity in the B.Pharmacy Course from 60 seats to 120 seats in the year 2013. At that time, the procedure was uncertain. There was then a dispute whether the private colleges that were governed by the University Grants Commission Act, 1956 and the State University Acts and not by the All India Council for Technical Education Act, 1987 were required to seek approval from the AICTE for their courses. The Supreme Court in Association of Management of Private Colleges v. All India Council for Technical Education and others, (2013) 8 SCC 271 on 25.04.2013 inter alia held that AICTE had no authority to grant of approval for any new course or approval for enhancement of seats. It was held that the role AICTE was only advisory and recommendatory in the sense that it can set standards of technical education and if there is non-compliance with the standards that were set, it could bring the same to the notice of the University Grants Commission. However, the AICTE by itself could not enforce or issue any sanction to or penalize Universities or their constituents and affiliated colleges, including private aided and unaided colleges. It was held that the power of AICTE was limited to the purpose of ensuring proper maintenance of norms and standards in technical education system and compliance therewith but with no further or direct control over

the Universities and their constituents and affiliated colleges, including private aided and unaided colleges. The competent authority, therefore, for grant of increase in seats was to vest in view of the said decision in the University Grants Commission ('UGC' – for short).

In view of the said decision, the UGC took a policy decision on 27.05.2013 that it would not be granting approval to any new college or enhancement of seats in any technical colleges in the academic year 2014-15.

The Supreme Court thereafter in Orissa Technical Colleges Association v. AICTE and others, SLP (Civil) No.7277/2014 passed an interim order dated 17.04.2014, which is as follows:-

“In the counter affidavit filed on behalf of respondent No.1, i.e. All India Council for Technical Education (AICTE), it is stated that Approval Process Handbook (2013-14) is presently in force and the same has been extended and made applicable for the Academic Year 2014-15 as well. AICTE shall now proceed in accordance with the Approval Process Handbook for the Academic Year 2014-15 insofar as the members of the petitioner Association and all colleges and institutions situated similarly to the members of the petitioner

Association are concerned and necessary orders shall be issued by AICTE within ten days.

Prayer for interim relief is ordered accordingly."

In view of the above order the AICTE was to continue to grant approval to any new college and also undertake the process for enhancement of seats. Thereafter by another interim order dated 09.05.2014, a four Judges Bench of the Hon'ble Supreme Court in the same SLP clarified the order dated 17.04.2014 (supra) and directed that prior approval of AICTE was compulsory and mandatory for conducting technical courses/MBA/ Management Courses by an existing technical college and also new technical college which would require affiliation by an University for the conduct of its technical courses/programs for the academic year 2014-15. The time given in the order dated 17.04.2014 (supra) was extended till 10.06.2014. As a result of the said order dated 09.05.2014 of the Hon'ble Supreme Court, primacy of approval for technical education was shifted from the UGC to the AICTE.

In view of the aforesaid position, the appellant - Advanced Institute on 16.05.2014 i.e. before 10.06.2014 applied to the AICTE for seeking extension of approval of existing courses as well as additional intake of 60 students in B.Pharmacy course. A copy of the letter was also submitted to the Pt. B.D. Sharma University (respondent No.1). The request of the appellant -

Advanced Institute was declined by the Pt. B.D. Sharma University vide letter dated 04.06.2014, which was subject matter of challenge in CWP No.12261 of 2014, which has been allowed in favour of the appellant - Advanced Institute vide order dated 05.08.2014.

The learned Single Judge in its order dated 05.08.2014 observed that the delay had occurred in view of the Supreme Court order; besides, the Supreme Court itself had granted extension of time for seeking approval from AICTE upto June, 2014 i.e. 10.06.2014. Pt. B.D. Sharma University (respondent No.1) filed LPA No.1307 of 2014 against the order dated 05.08.2014 passed by the learned Single Judge, which has been dismissed by a separate order passed today and the order of the learned Single Judge has been upheld.

The appellant - Advanced Institute filed CM No.9828 of 2014 in CWP No.12261 of 2014 seeking clarification regarding the direction for approval so that it was able to admit the students before 15.08.2014. The necessary clarification was given by the learned Single Judge on 14.08.2014 which is as follows:-

“The clarification sought is that this Court has directed the approval to be issued before 15.08.2014 so that the institute is able to admit students. The grievance is that the respondents have not issued such a permission

and the University has not granted the approval for the Pharmacy Council to follow suit and hence, the order that was passed on 05.08.2014 itself is likely to be rendered infructuous.

I clarify that the permission which I have directed is only to ensure that the process of admission is not stifled. The students can be provisionally admitted but it shall be clearly stated in the admission order that the students are admitted only subject to the final outcome of the writ petition and any other proceedings that may be pursued against the said decision in CWP No.12251 of 2014.

Learned counsel for the respondent states that the application itself had been only for 100 seats and the Court has granted an order for 120 seats. Although no specific application has been filed by the respondent to make any modification at the time when the clarification is issued, I only take it as appropriate that the reference to 120 seats shall be taken as 100 seats and the provisional admission shall be only for 100 persons. I have the consent of the counsel appearing on behalf

of the petitioner as well that it can be reduced to 100 seats instead of 120 as originally ordered.

The application is disposed of as above.”

In terms of the above order, it was clarified that the appellant – Advanced Institute was given permission to admit intake of 100 seats. Thereafter admissions were conducted on 15.08.2014. For two vacant seats admissions were made on 16.08.2014 i.e. of Tushaer Manocha and Saurabh. It may be noticed that the entire admission process was quite uncertain as regards the number of seats as also regards the last date for admissions. In fact the Supreme Court itself in the case of Varun Saini and others v. Guru Gobind Singh Indraprastha University, (2014) 16 SCC 316 observed as follows:-

“First, we shall dwell upon the courses that are regulated by the 1987 Act and the 1994 Regulations. It is submitted by the learned counsel for the petitioners, namely, the institutions and the students, that AICTE did not adhere to the schedule as far as the counselling is concerned and the University played possum with the schedule and further created a chaos by allowing the students who had already taken admissions in certain institutions to participate

in the supplementary counselling which is impermissible on the fact of the prospectus issued by the University. Mr. Rohatgi, learned Attorney General would submit that AICTE, after the pronouncement of the judgment in Assn. Of Management of Private Colleges case was uncertain of its jurisdiction/authority till it was conferred the power although by an interim order on 9.5.2014 in Orissa Technical Colleges Assn. Case, and that uncertainty caused delay. We have been apprised that the matter is pending before a three-Judge Bench and AICTE has proceeded solely on the basis of the interim order. As far as the issuance of the notification in respect of ten courses having access to all candidates including the students who had already taken admission, the learned Attorney General submitted, that such inclusion was contrary to the prospectus and also erroneous on many a score.

Let it be clearly stated that we appreciate that for the academic year 2014-15, there were certain unforeseen circumstances. First, a question mark was put on the authority of AICTE, second, there was bifurcation of the

State of Andhra Pradesh to two States, namely, State of Andhra Pradesh and State of Telangana, and third, number of seats had remained vacant despite students having qualified and desirous of taking of the courses.”

(Emphasis added)

Therefore, the admission process being uncertain, it cannot really be faulted that the appellant - Advanced Institute had committed any illegality in admitting the two students namely Tushaer Manocha and Saurabh (appellants) on 16.08.2014. In fact the HSTE Society (respondent No.2) vide Annexure P-5 had fixed 16.08.2014 as final cut off date for all types of admissions by the institutes. The said HSTE Society (respondent No.2) though has now taken the stand vide Annexure A of Annexure P-1 that admissions to the B.Pharmacy is not in its purview; however, admittedly the schedule being set by the HSTE Society (respondent No. 2) was being followed earlier.

It is in the case of Parshvanath Charitable Trust and others v. All India Council for Technical Education and others (Supra) that the schedule for admissions to B.Pharmacy course for the academic calendar 2014 was fixed in which the last date for admissions was fixed as 15.08.2014. Admittedly, 15.08.2014 was a holiday being Independence Day. Therefore, in terms of Section 10 of the General Clauses Act, the next date for

admission would be the last date.

In Mohd. Ayub v. State of U.P. and others, (2011) 1 SCC (L&S) 580 it was held that the underlying object of Section 10 of General Clauses Act is to enable a person to do what he should have done on a holiday, on the next working day. Reliance was placed on the case of Harinder Singh v. S. Karnail Singh, AIR 1957 SC 271 wherein a four Judge Bench of the Hon'ble Supreme Court explained the object of Section 10 of the General Clauses Act as follows:-

“Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.”

It was observed by the Supreme Court in Mohd. Ayub v. State of UP (Supra) that the decision in Harinder Singh's case (Supra) was rendered in the context of an election dispute but the general principles explained therein apply to all cases.

Therefore, in case the appellants Tushaer Manocha and Saurabh have been admitted on 16.08.2014, the same cannot be

faulted. Besides, the Supreme Court in Asha v. Pt. B.D. Sharma University of Health Sciences & Ors. (2012) 7 SCC 389 has held that the strict adherence to the time schedule is sacrosanct like the rule of merit and all the stakeholders including the concerned authorities should adhere to it and should in no circumstances permit its violation but where no fault is attributed to candidates and the admission is denied for arbitrary reasons, the cut off date is not to operate as a bar to admissions to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate. It was held that there could 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 in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued his/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, it was held 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.

In the present case, as has already been noticed that there was uncertainty in the intake of the admissions in view of the Court order; besides, the intake of 100 students was also a

subject matter of dispute. Thereafter, two students left the seats and the appellants - Tushaer Manocha and Saurabh were admitted against the seats that were left on the very next day i.e. 16.08.2014. Had they not been admitted, their career would have been spoiled; besides two seats of the appellant - Advanced Institute would have gone waste. Therefore, we are of the view that there is no infirmity of the course adopted by the appellant - Advanced Institute and no fault can be said to be there as regards their admissions to the B.Pharmacy Course that were made on 16.08.2014.

In the circumstances, the appeals are allowed and the judgment and order of learned Single Judge are set aside and the writ petition filed by the appellant – Advanced Institute is allowed and the order/letter dated 12.01.2015 (Annexure P-1) issued by Pt. B.D. Sharma University (respondent No.1) invalidating the admissions of Tushaer Manocha and Saurabh is set aside and quashed and their admissions are held to be valid. There shall, however, be no order as to costs.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

February 10, 2016
A.Kaundal/amit

Note: Whether to be referred to the Reporter: Yes