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

% *Date of Decision : October 05, 2016*

+ **W.P.(C) 8575/2016**

CHAUHAN ABHINAVSINGH
ABHIMANYUSINGH AND ANR. Appellants
Represented by: Mr.Gautam Narayan & Mr.R.A. Iyer,
Advocates.

versus

ALL INDIAN INSTITUTE OF MEDICAL
SCIENCES Respondent
Represented by: Mr.R.K. Gupta & Mr.M.K. Singh,
Advocates for AIIMS.
Mr.T.Singh Dev, Ms.Puja Sarkar &
Ms.Biakthansangi, Advocates for
R-2/MCI.
Mr.Anurag Kalavatiya, Advocate
with Mr.Susshil Daga, Adv.for
Dr.Vipul Agarwal, Appellant in
S.A.Writ (SAW) 1021/2016 before
High Court of Judicature for
Rajasthan at Jaipur Bench, Jaipur.

+ **W.P.(C) 9130/2016**

JHULANA KUMAR JENA Appellants
Represented by: Mr.Gautam Narayan & Mr.R.A. Iyer,
Advocates

versus

ALL INDIAN INSTITUTE OF MEDICAL
SCIENCES AND ORS. Respondents
Represented by: Mr.R.K.Gupta & Mr.M.K.Singh,

Advocates for AIIMS.

Mr.T.Singh Dev, Ms.Puja Sarkar &
Ms.Biakthansangi, Advocates for
R-2/MCI.

Mr.Anurag Kalavatiya, Advocate for
Dr.Vipul Agarwal, Appellant in S.A.
Writ (SAW) 1021/2016 before High
Court of Judicature for Rajasthan at
Jaipur Bench, Jaipur.

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D.B.SPECIAL APPEAL (WRIT) NO.1021/2016

DR.VIPUL AGARWAL

....Appellant

Represented by: Mr.Anurag Kalavatiya, Advocate

versus

PRINCIPAL OF MSM COLLEGE & ORS.

....Respondents

Represented by: Mr.R.K.Gupta & Mr.M.K.Singh,
Advocates for AIIMS

Mr.T.Singh Dev, Ms.Puja Sarkar &
Ms.Biakthansangi, Advocates for
R-2/MCI

Mr.Gautam Narayan & Mr.R.A. Iyer,
Advocates for Dr.Jhulana Kumar Jena
and Dr.Chauhan Abhinavsingh
Abhimanyusingh

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.37023/2016 in WP(C) 8575/2016

1. The writ petitioners pray that Medical Council of India and Vipul Agarwal be impleaded as respondents No.2 and 3.
2. Vipul Agarwal is the appellant before the High Court of Judicature for

Rajasthan at Jaipur in D.B.S.A.Writ (SAW) No.1021/2016, which intra-court appeal has been directed by the Supreme Court to be transferred to this Court vide order dated September 30, 2016 in SLP(C) No.27681/2016. Mr.Anurag Kalavatiya, Advocate appears for Dr.Vipul Agarwal. Mr.T.Singh Dev, Ms.Puja Sarkar and Ms.Biakthansangi appear for the Medical Council of India.

3. Keeping in view the controversy in the writ petition and its inter connection with D.B.S.A. Writ (SAW) No.1021/2016 with consent of learned counsel for the parties the application is allowed as prayed for. The amended memo of parties be filed within a day.

CM No.37025/2016 in WP(C) 8575/2016

1. Events subsequent to the filing of the present writ petition with reference to Annexure-10 to Annexure 15 are prayed to be brought on record.

2. Learned counsel for the non applications do not oppose the application which is allowed

CM No.35305/2016 in WP(C) 8575/2016

Allowed subject to just exceptions.

CM No.36954/2016 in WP(C) 9130/2016

Allowed subject to just exceptions.

W.P.(C) 8575/2016, W.P.(C) 9130/2016 & S.A.Writ (SAW) No.1021/2016

1. The two captioned writ petitions were listed before the learned Single Judge of this Court on October 04, 2016 who, had directed listing of the said petitions before a Division Bench of this Court after obtaining the orders from the Chief Justice because of an order dated September 30, 2016

passed by the Supreme Court in SLP(C) No.27681/2016 laying a challenge to orders passed by the Division Bench of the High Court of Judicature at Rajasthan Jaipur Bench in S.A.Writ (SAW) No.1021/2016, directing the said writ appeal to be transferred to the Delhi High Court and heard by a Division Bench along with the two captioned writ petitions.

2. The Chief Justice directed listing of the two writ petitions before this Bench that is how the two writ petitions were placed before this Bench at 3:45 PM yesterday.

3. Unfortunately, we could not proceed to hear the two writ petitions for the reason record of S.A.Writ (SAW) No.1021/2016, directed vide order dated September 30, 2016 in SLP(C) 27681/2016 by the Supreme Court, had yet to be received in this Court.

4. Suffice it to note that on April 26, 2016, All India Institute of Medical Sciences (AIIMS) issued the final result notification No.35/2016 listing therein the names of successful candidates selected in each departments of AIIMS for admission to, amongst others, M.Ch.(Cardiothoracic and Vascular Surgery) Course, which is a Super Speciality Course. Six vacancies being available in the said course, names of six successful candidates in order of merit were notified; with two names in the wait list. The two wait listed candidates were Chauhan Abhinavsingh Abhimanyusingh and Jhulana Kumar Jena. Amongst the six successful candidates : Anurag Goel and Vipul Agarwal found themselves at serial No.4 and 5.

5. The two were undergoing Post Graduate Course Studies in Surgery under the aegis of Rajasthan University of Health Sciences. They were students of SMS Medical College, affiliated to the said University. The

grievance of the two concerns the university not holding the examination by July 2016 for the course batch 2013-2016. This affected the two inasmuch the eligibility prescribed by AIIMS for the course in question was a Post Graduate Degree from a recognized University in Surgery to be obtained by 31st July, 2016.

6. The writ petitions filed by Vipul Agarwal and Anurag Goel were dismissed by a learned Single Judge. Whereas Anurag Goel accepted his fate, Vipul Agarwal carried the matter forward to the Division Bench and obtained an order favourable to him. The result was certain interim orders passed by the Division Bench as a consequence of which AIIMS issuing a letter in favour of Vipul Agarwal and the result was Jhulana Kumar Jena being ousted. Fearing that Anurag Goel may obtain similar order as were obtained by Vipul Agarwal, Chauhan Abhinavsingh Abhimanyusingh and Jhulana Kumar Jena filed WP(C) 8575/2016 in this Court. Jhulana Kumar Jena also filed WP(C) 9130/2016 in this Court.

7. AIIMS preferred SLP(C) 27681/2016 before the Supreme Court against the order passed by the Division Bench of the Rajasthan High Court in which Dr. Chauhan Abhinavsingh Abhimanyusingh and Dr. Jhulana Kumar Jena sought intervention. The intervention was allowed.

8. Vide order dated September 30, 2016, the Supreme Court transferred S.A. Writ (SAW) 1021/2016 pending before the Division Bench of the Rajasthan High Court to the Delhi High Court with a direction that said writ petition along with WP(C) 8575/2016 would be taken up for hearing on October 04, 2016 by a Division Bench of this Court.

9. It is in the backdrop aforesaid that the two above captioned writ petitions were listed before this Bench yesterday.

10. Sh.Anurag Kalavatiya, Advocate appeared on behalf of Dr.Vipul Agarwal. Unfortunately the record had not been received from the Rajasthan High Court. We had expressed the willingness to proceed ahead with the matter provided counsel could supply to us a copy of S.A.Writ (SAW) 1021/2016 but neither counsel had the same.

11. Sh.Anurag Kalavatiya, Advocate stated that by today i.e. October 05, 2016, he would be able to bring a copy of S.A.Writ (SAW) 1021/2016 so that hearing is facilitated.

12. Today Sh.Anurag Kalavatiya, Advocate has handed over two sets of D.B.S.A.Writ (SAW) 1021/2016 which he has filed before the High Court of Judicature for Rajasthan at Jaipur Bench. Copy thereof has been supplied to learned counsel for the writ petitioners of WP(C) No. 8575/2016 and WP(C) No.9130/2016.

13. When we had completed hearing and proceeded to dictate the judgment the Registry of this Court has brought the record of D.B.S.A.Writ (SAW) 1021/2016.

14. Relevant facts to decide the two captioned writ petitions and the appeal would be that All India Institute of Medical Sciences is a body corporate established under the All India Institute of Medical Sciences Act, 1965. Amongst others, the Institute admits doctors for Super Speciality Courses under its DM/M.Ch./ Fellowship Programmes. Dispute in the present proceedings concerns admission to M.Ch. (Cardiothoracic Vascular Surgery) Course for July 2016 Session.

15. On February 19, 2016, AIIMS invited applications for Post Doctoral Super Speciality Courses for the July 2016 Session. Pertaining to the Post Doctoral Degree of M.Ch. in Super Speciality of Cardiothoracic Vascular

Surgery, six seats were notified. Educational qualifications stipulated for the said course was a M.S. Degree in Surgery from a university recognized by the Medical Council of India. Amongst others, it was stipulated in the prospectus that the Post Graduate Degree in Surgery had to be obtained on or before July 30, 2016. It was additionally stipulated that the last date for joining the course shall be July 31, 2016 and none would be permitted to join the course thereafter. Relevant would it be to highlight that in the prospectus, under the column : **ELIGIBILITY**, It was highlighted:-

*The candidates, who are likely to complete three years requisite tenure and degree by **30th July , 2016** may also apply. However, the candidates who complete their three years requisite tenure after **30th July 2016** will not be eligible to appear in this examination.*

16. Further, in the prospectus under the column : **METHOD OF SELECTION**, vide note II and III it was indicated:-

“II Candidates who fail to attend any of the two stages mentioned above will not be eligible for admission.

Selected candidates are required to join on 01/07/2016 or before 15/07/2016. The last date of joining of selected candidates shall be 15th July, 2016. No Extension will be given. In case of failure to join course by 15th July, 2016, the offer will be given to wait listed candidate. No further correspondence will be entertained in this regard.

III The last date for joining the DM/M.Ch/Fellowship Programme/MD (HA) will be 31st July, 2016. No candidate, in any circumstances, shall be allowed to join after 31st July, 2016.”

17. Vide Clause 25 of the prospectus it was stipulated:-

“Any dispute in regard to any matter referred to herein shall be subject to the jurisdiction of Delhi Courts alone.”

18. For the various Super Speciality Courses a written test was held on April 02, 2016.

19. On April 26, 2016 AIIMS published the list of candidates selected in different departments of AIIMS for admission to DM/M.Ch./Fellowship Programmes for July 2016 Session, and as noted above, for the six vacancies available in M.Ch.(Cardiothoracic Vascular Surgery) Course for July 2016 Session. It published the names of the six successful candidates in order of merit as under:-

Sl.No.	Roll No.	Name
1	6423009	Arun Basil Mathew
2.	6423008	Niwin George
3.	6423029	Sumit Agasty
4.	6423033	Anurag Goel
5.	6423036	Vipul Agrawal
6.	6423028	Nikhil Bansal

20. The two wait listed candidates were Chauhan Abhinavsingh Abhimanyusingh and Jhulana Kumar Jena, the writ petitioners of the two captioned two writ petitions.

21. Vipul Agarwal and Anurag Goel faced a problem, the origin whereof was interim orders passed by the Supreme Court in a petition filed by Christian Medical College which resulted in the decision reported as 2014

(2) SCC 305 *Christian Medical College vs. UOI & Ors.* being passed. Suffice it to note that due to the interim orders passed by the Supreme Court the National Eligibility Entrance Test (NEET) got delayed in the year 2013 and the result was that in the various medical colleges affiliated to the University of Rajasthan, the admission process for Post Graduate Courses in the discipline of Medicine and Surgery which had to otherwise take place by July 31, 2013 got delayed to September, 2013. Other Universities in India manage to complete the admission process by July 31, 2013. Having joined Post Graduate Course i.e. M.S.Surgery in the SMS Medical College, Jaipur in the year 2013, the three years' course would come to an end in the year 2016 and because students were admitted by the said college between July 2013 to September, 2013, the University of Rajasthan had taken a decision to delay the holding of the examination in the year 2016 till the time the students inducted in September 2013 completed the teaching and training term of three years. As per the prospectus issued by AIIMS, the last date for joining was July 31, 2016 as per Note III, contents whereof have been noted by us in paragraph 16 above with the requirement of degree to be obtained by July 30, 2016. The two i.e. Vipul Agarwal and Anurag Goel made representations to the Rajasthan University on May 12, 2016, May 27, 2016 and June 09, 2016, pleading that unless the examination was conducted and results declared before July 30, 2016, the two would lose the benefit of they being empanelled by AIIMS to undergo the Super Speciality Course : M.Ch.(Cardiothoracic and Vascular Surgery). With reference to Regulation 13(2) of the Post Graduate Medical Education Regulations, 2000 issued by the Medical Council of India they pleaded that since students undergoing Post Graduate Courses had to have 80%

attendance and training as a condition of being awarded the Post Graduate Degree, the University should conduct the examination forthwith and declare the result latest by mid-July, 2016 so as to enable the two to join AIIMS by July 31, 2016.

22. No heed being paid by the University to their demands inspite of the Controller of Examination of the University seeking clarifications from the Medical Council of India regarding interpretation placed by the two on Regulation 13(2), the two filed writ petitions in the Rajasthan High Court on reopening of the Court on July 05, 2016. The writ petitions filed by the two were dismissed by the learned Single Judge on July 12, 2016. Whereas Anurag Goel accepted his fate and did not lay a challenge to the said decision, Vipul Agarwal filed above captioned appeal before the Division Bench.

23. Relevant would it be to note that the learned Single Judge opined that in view of Regulation 10 of Post Graduate Medical Education Regulations, 2000 the period of training had to be three years and since students were inducted in the year 2013 between the months of July to September, 2013, no direction could be issued to the University to conduct piecemeal examinations. Equally relevant would it be to note that in the writ petitions, though AIIMS was impleaded as a respondent, no challenge was raised to the prospectus issued and in particular the schedule fixed there under. The prayers made in the writ petitions were to direct the University of Rajasthan to conduct the examination for MD/MS Courses for the 2013-2016 batch before July 30, 2016 and declare the result before said date. Alternative prayer was to direct AIIMS to provisionally admit Anurag Goel and Vipul Agarwal in the Super Speciality Course in question till the University of

Rajasthan conducted the examination and declared the result or alternatively two seats be kept vacant and not allotted to the wait listed candidates. Further equally relevant would it be to note that the two wait listed candidates against whom the second alternative to the second prayer was made were not impleaded as respondents.

24. Dr.Vipul Agarwal laid a challenge to the decision of the learned Single Judge by filing a writ appeal in which, on July 22, 2016, the learned Division Bench formed a prima-facie view that Vipul Agarwal was not to be faulted for what happened in the year 2013 and that the derailment took place due to interim orders passed by the Supreme Court concerning NEET Examination (PG-2013). The Division Bench opined that Vipul Agarwal was never at fault but was indeed a victim of the authorities and thus directed that upon he making a representation it was expected from the authorities to consider the same sympathetically; and needless to state the authorities were AIIMS. On August 05, 2016 the Division Bench noted that the University of Rajasthan had commenced the written examination for the MS/MD Courses for the batch 2013-2016 and the result was likely to be declared by August 08, 2016. Once again highlighting that Vipul Agarwal was a victim and was suffering due to no fault of his and because as per guidelines framed by the Supreme Court, second counselling had to be held on August 20, 2016, the direction issued was *'that the university of Health Science shall make the list of internal/external examiners available to the respective medical colleges by 8.8.2016 and the respective medical colleges shall hold their practical examination by 9.8.2016 to 16.8.2016'* so that the result could be declared by August 19, 2016 and this would enable Vipul Agarwal to attend the second counselling. It was followed by another

order dated August 19, 2016 in which AIIMS was directed to permit Vipul Agarwal to appear at the second counselling to be held on August 20, 2016 and the foundation of the direction was a schedule notified by the Medical Council of India on January 14, 2016, which was approved by the Supreme Court in the order dated January 18, 2016 in WP(C) No.76/2015 Ashish Ranjan & Ors. vs. Union of India & Ors. Pertaining to the time schedule for completion of Admission Process for PG (Super Speciality) Medical Courses, the approved schedule, with Note 1 and 2 beneath thereunder which reads as follows:-

“Time Schedule for completion of Admission Process for PG (Super Speciality) Medical Courses)

<i>S.No.</i>	<i>Schedule for admission</i>	<i>Super Speciality</i>
<i>1.</i>	<i>Conduct of Entrance Examination</i>	<i>By 10th July</i>
<i>2.</i>	<i>Declaration of result of the qualifying Exam/Entrance Exam</i>	<i>By 15th July</i>
<i>3.</i>	<i>1st round of counseling admission</i>	<i>By 31st July</i>
<i>4.</i>	<i>Last date for joining the allotted college and the course</i>	<i>Between 1st to 7th August</i>
<i>5.</i>	<i>2nd round of counseling/admission</i>	<i>By 20th August</i>
<i>6.</i>	<i>Last date of joining for the 2nd round of counseling/admission</i>	<i>By 27th August</i>
<i>7.</i>	<i>Commencement of academic session/term</i>	<i>1st August</i>
<i>8.</i>	<i>Last date up to which students can be admitted/joined against vacancies arising due to any reason</i>	<i>31st August</i>

Note:

1. Institute/College/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year.

2. *In any circumstances, last date for admission/ joining will not be extended after 31st August.”*

was referred by the Division Bench to opine that as per the same the second round of counselling for admission had to take place on August 20, 2016. The Division Bench also prima-facie opined that the decision rendered by the Supreme Court reported as (2012) 7 SCC 389 Asha vs. Pt.B.D.Sharma University of Health Sciences & Ors. which held that the principle of strict adherence to the rule of merit had a very limited exception, warranted the direction in question to be issued.

25. But much before the order dated August 19, 2016 was passed by the Division Bench of the Rajasthan High Court, on July 30, 2016 AIIMS issued letters offering a seat in the course in question to the two writ petitioners requiring them to join on July 31, 2016, informing in the memorandums offering the seats that the offer was subject to the decision in the proceedings before the Division Bench of the Rajasthan High Court. The two accepted the offer and join.

26. Left with no seats, AIIMS obviously held no counselling on August 20, 2016 and this led to contempt applications being filed before the Division Bench of the Rajasthan High Court and notwithstanding no orders being passed therein holding anybody guilty of contempt, probably under the fear of the wrath of the court, AIIMS issued a communication on September 26, 2016 to Jhulana Kumar Jena withdrawing the seat offered to him and on the same date issued a memorandum to Dr.Vipul Agarwal offering the seat to him.

27. Since Dr.Anurag Goel did not pursue the matter further, happily Chauhan Abhinavsingh Abhimanyusingh finds himself in a safe position

because he is the candidate at serial No.1 of the wait list and the battle has to be fought by Dr.Jhulana Kumar Jena and his antagonist would be Dr.Vipul Agarwal.

28. Arguments advanced by learned counsel for Dr.Jhulana Kumar Jena were:-

(i) In view of clause 25 of the prospectus, contents whereof we have noted in paragraph 17 above, Rajasthan High Court had no jurisdiction to entertain the petition and hence the appeal by Dr.Vipul Agarwal.

(ii) Dr.Vipul Agarwal had not challenged the prospectus issued by AIIMS and the admission schedule in the writ petition filed by him and therefore to determine the rights of the two candidates this Court as also the Rajasthan High Court, assuming the latter had jurisdiction, have to proceed treating the schedule as legal and valid.

(iii) De-hors the argument No.2, there was no conflict between the schedule fixed by AIIMS and the schedule notified by Medical Council of India which was approved by the Supreme Court in Ashish Ranjan case (supra).

(iv) It was settled law that where a cut off date was prescribed by which eligibility had to be acquired, the same was sacrosanct.

(v) Orders passed by the Division Bench of Rajasthan High Court could not adversely affect Dr.Jhulana Kumar Jena because he was not impleaded as a party therein and were passed behind his back.

(vi) Dr.Jhulana Kumar Jena had acted to his detriment by not joining the DNB Course at Medanta Medcity Hospital because he had been offered the seat in question by AIIMS and thus acted to his detriment.

(vii) Dr.Vipul Agarwal having not challenged the schedule fixed by AIIMS

nor having filed a writ petition well in time seeking directions against University of Rajasthan to conduct the MS/MD examination for the batch 2013-2016 the belated writ petition could not result in any rights being created in his favour because on February 19, 2016 when AIIMS issued the prospectus he was made aware that last date for acquiring eligibility was July 31, 2016.

29. The response of learned counsel for Dr. Vipul Agarwal was that his client was not at fault for the admission process in the year 2013 being extended till September 2013 and the university overlooking requirement of 80% attendance as per Regulation 13(2) of Post Graduate Medical Education Regulations, 2000 could not be to the prejudice to his client. Learned counsel argued that his client could not have filed the writ petition before exhausting the alternative remedy of making representations to the university which his client's did on May 12, 2010, May 27, 2006 and June 09, 2010. Since the university did not pay heed his client filed the writ petition on the reopening of the Rajasthan High Court. Learned counsel urged that irrespective of his client not laying a challenge to the schedule fixed by AIIMS, it being settled that an administration decision if in conflict with a statutory regulation would require the later to be given effect to, and thus AIIMS was bound by the statutory regulations i.e. the ones notified by the Medical Council of India on January 14, 2016, which were accepted and incorporated by the Supreme Court in the decision in Ashish Ranjan case. Learned counsel urged that the law declared by the Supreme Court in Asha's case (supra) which was followed in the decision reported as 2014 (10) SCC 521 Chandigarh Administration & Anr. vs. Jasmine Kaur & Anr. warranted the two captioned writ petitions to be dismissed and the writ

appeal filed by his client to be allowed.

30. The undisputed position is that due to interim orders passed by the Supreme Court concerning NEET- 2013 the admissions to Post Graduate Courses in Medicine and Surgery in India got affected and whereas all States managed to complete the selection process by July 31, 2013, with the result that on completion of the course of three years duration examinations could be held and results declared in July 2016, in the State of Rajasthan the admission process continued in the year 2013 till the month of September 2013 and since the Regulations issued by Medical Council of India prescribe three years course and traineeship, the University of Rajasthan did not take steps to conduct the examination in July 2016 and probably wanted to conduct the examination in September 2016. Whether or not Regulation 13(2) of the Post Graduate Medical Education Regulation 2000 would permit the examination to be held when 80% of the course duration is over is a matter of debate which in the fact of the present case is not warranted, for the reason whatever may be the cause, the fact of the matter remains that the university did not proceed to hold the examination, both written and practical, in the month of July 2016. The issue which needs out attention therefore would be whether the time schedule fixed by AIIMS in its notification dated February 19, 2016 fouls the Regulations framed by Medical Council of India and notified on January 14 2016 which were approved by the Supreme Court in Ashish Ranjan case on January 18, 2016.

31. In paragraph 16 above, we have noted the schedule fixed by AIIMS as per which the last date for joining was July 31, 2016 and the selection was to be by July 15, 2016. The eligibility had to be acquired by July 30,

2016.

32. The time schedule for completion of admission process for PG Super Speciality Medical Courses, as noted in paragraph 24 above, requires conduct of entrance examination by 10th July, declaration of qualifying examination by 15th July, first round of counselling by 31st July, second round of counselling by 30th August and commencement of academic session by 1st August; permitting students to join against vacancies arising due to any reasons by August 31.

33. The word used in the notification is 'by' and not 'on'. In other words the entrance examination has to be held on any date on or before July 10 i.e. 'by 10th July'. The results have to be declared on or before 15th July i.e. 'by 15th July'. Therefore, we do not find the time schedule fixed by AIIMS to be in conflict with the notification issued by the Medical Council of India. To do an act or perform an activity 'by a date' would mean not on the date but on or before the date in question.

34. It is settled law that where a date by which an eligibility is prescribed is fixed, the eligibility has to be acquired by said date and we note only one authority on the subject. The decision is reported as 2013 (11) SCC 58 Rakesh Kumar Sharma vs. State (NCT of Delhi) & Ors.

35. The eligibility prescribed by AIIMS for the Super Speciality Course in question is concededly a MD in Surgery with requirement of the degree to be obtained by July 30, 2016. Admittedly, Dr. Anurag Goel did not obtain the degree by said date. Whilst it may be true that he is not at fault but neither is AIIMS nor is the Medical College in which he pursued the MD Surgery Course nor the University of Rajasthan for the reason the root of the problem lies in the issue pending before the Supreme Court concerning

NEET-2013 which resulted in delay in admission in medical colleges in Rajasthan for Post Graduate Courses in the year 2013.

36. Whilst it may be true that as was observed in Asha' case (supra), a meritorious candidate cannot be denied admission applying the rule of merit, but the said judgment recognizes exceptions thereto. On facts the exception in favour of Asha was she not being at fault at the counselling and being a victim of inefficient, inaccurate and improper method of admission by the State. Her assertion that she was present at the second counselling, proved through her attendance marked at the place of the counselling on September 20, 2011, was found to be correct with reference to the record and the plea of the Board that when her name and roll number was called out she did not respond was found to be contrary to normal human conduct. That is why in paragraph 30 the Supreme Court observed that where no fault is attributed to a candidate who is denied admission for arbitrary reasons, the cut off date prescribed cannot be permitted to operate as a bar to admission because in such a case the rule of merit has to be accorded primacy over the rule of adherence to the cut off date. In para 32 the Supreme Court also noted that Asha had pursued her rights and legal remedies expeditiously and without delay. Notwithstanding these findings, Asha was not granted the relief she has prayed for because by the time the Supreme Court decided the issue the year 2013 had come into being and the academic session with which the cut off date was concerned was 2011-12. Noting that in the meanwhile Asha take admission in BDS Course where syllabus for the first six months was near identical to the MBBS course which Asha wanted to pursue and therefore the possibility of a direction being issued that she could join the course for the year in question for which she had competed

was looked at by the Supreme Court. Noting that Asha was negligent in not diligently attending classes and there was a shortage of attendance, the Supreme Court declined relief to Asha as she had prayed for and granted the modified relief that she should be admitted in the MBBS course in the next year. This judgment was followed with approval in Jasmine Kaur case where the candidate was not found to be diligent in pursuing the legal remedies.

37. The ratio of law in the two judgments would be that where a qualified candidate finds a position in the merit list sufficient enough to justify an admission the principle of merit would supersede the principle of counselling dates and dates of admission and course commencing notified, provided it is found that the candidate is not at fault and was diligent in pursuing the remedy and the wrong was committed by the body conducting or supervising the selection process and therefore the latter would yield to the former.

38. In the instant case neither AIIMS nor Dr.Vipul Agarwal is at fault. But the fact of the matter remains that by the prescribed cut off date to complete the admission process and the notified date by which the eligibility had to be acquired, Dr.Vipul Agarwal had not acquired the MS Surgery degree and thus the decision has to be in favour of Dr.Jhulana Kumar Jena.

39. We also find merit in the contention that Dr.Vipul Agarwal did not lay a challenge to the schedule prescribed by AIIMS in the writ petition filed by him and thus would be estopped from raising any argument qua the schedule fixed viz-a-viz the schedule fixed by the Medical Council of India, but in view of the finding above, that we find no hiatus between the two we

deal with this argument no further with reference to reasons to be given.

40. Since we have found on merits in favour of Dr.Jhulana Kumar Jena we do not comment upon the effect of clause 25 of the prospectus, but would certainly like to observe that apart from the clause we find no cause of action accruing outside the territorial jurisdiction of Courts in Delhi for the reason the examination conducted by AIIMS was at Delhi. Applications were received at Delhi. The result was declared at Delhi. AIIMS is at Delhi. Decisions taken by AIIMS were at Delhi. Letters offering seat were issued were at Delhi. In our opinion centralized admission to institutes must be questioned in Courts within the jurisdiction of which an institution is situated lest problems of the kind which candidates faced in the instant case arise. Dr.Vipul Agarwal and Anurag Goel took recourse to remedies in Rajasthan. Dr.Chauhan Abhinavsingh Abhimanyusingh took recourse to remedies in Delhi. There could be a possibility of conflicting decisions and the Supreme Court had to intervene to transfer the writ appeal from the Rajasthan High Court to this Court so that the two captioned writ petitions and the writ appeal could be decided together.

41. Further, we also find merit in the plea that Dr.Jhulana Kumar Jena has acted to his detriment on account of he being offered the seat on July 30, 2016 and forgoing the seat which was offered to him for the DNB Course which is equivalent to the one at hand by Medanta Medcity Hospital.

42. To bring the curtains down, D.B.SPECIAL APPEAL (WRIT) NO.1021/2016 is dismissed and the order passed by the learned Single Judge in S.B.CWP No.8773/2016 is upheld.

43. WP(C) No.9130/2016 and 8575/2016 are allowed quashing the letter dated September 26 2016 offering the seat in M.Ch. CTVS Course to

Dr.Vipul Aggarwal. Letter dated September 26, 2016 cancelling the admission to the seat granted to Dr.Jhulana Kumar Jena is struck down and letter dated July 30, 2016 offering him the seat is restored.

44. Parties to bear their own costs.

45. Dasti under signatures of Court Master to learned counsel for the parties.

CM No.35304/2016 & 37024/2016 in WP(C) 8575/2016
CM No.36953/2016 in WP(C) 9130/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

OCTOBER 05, 2016
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