

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 28, 2016

Judgment delivered on: December 06, 2016

+ W.P.(C) 9444/2016, CM No. 37801/2016

SAMRAT ASHOK PRIVATE ITI

..... Petitioner

Through: Mr. Sanjay Sharawat, Adv.

versus

DIRECTORATE GENERAL OF TRAINING (DGT)

..... Respondent

Through: Mr. C.M. Goyal, Adv. with
Mr. Bhagat Singh (TO) DGT.

+ W.P.(C) 9711/2016, CM No. 38843/2016

KALAM PRIVATE ITI & ORS

..... Petitioners

Through: Mr. Sanjay Sharawat, Adv.

versus

DIRECTORATE GENERAL OF TRAINING (DGT)

..... Respondent

Through: Mr. C.M. Goyal, Adv. with
Mr. Bhagat Singh (TO) DGT.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. As both these petitions involve a common issue, the same are being decided by this common order.

Facts:-

Writ Petition (Civil) 9444/2016

2. The present petition has been filed seeking the following reliefs:-

“1. Pass an appropriate order, writ or direction and extend the last date for admitting students in Electrician and Fitter trade for academic session 2016-17 for which the petitioner has already been granted affiliation by the respondent; and

2. Consequently pass an order and permit the Petitioner to admit students against 4 (2+2+0) units in “Electrician trade” and 4 (2+2+0) units in “Fitter trade” for academic session 2016-17 and further permit the petitioner to commence the course from said academic session;

3. It is the case of the petitioner that on December 14, 2015, the respondent invited applications from institutions desirous of seeking affiliation for various skill development trades for academic session 2016-17, by April 15, 2016. In response thereof, the petitioner had on, March 3, 2016 submitted application with the QCI for seeking affiliation for 4 (2+2+0) units in “Electrician Trade” and 4 (2+2+0) units in “Fitter Trade”. It is the stand of the petitioner that it completed Desktop Assessment on May 05, 2016 and made payment towards site visit. The QCI conducted the site visit of the petitioner on May 22, 2016 and on June 17, 2016 all the NC’s of the site visit were successfully completed.

4. It is the case of the petitioner that vide circular dated June 17, 2016 the DGT took a decision that henceforth while receiving applications from ITI’s seeking affiliation the relevant document in support of building permission as per building byelaws of local

authority must also be insisted and the QCI was asked to apply the said decision to all cases currently in the pipeline for August 2016 session. It is the case of the petitioner that QCI did not insist upon the Building Completion Certificate from the petitioner and vide its decision dated July 20, 2016 had in its meeting granted accreditation and the file was sent to NCVT (DGT) for affiliation. It is the case of the petitioner that on July 25, 2016, the QCI informed the petitioner that further action in respect of its application shall be taken only after receipt of the Building Completion Certificate. The petitioner would contend that on July 19, 2016, it had already submitted application in the office of the District Collector for obtaining Building Completion Certificate. It is also the contention of the petitioner that the land on which the petitioner is situated is agricultural in nature and falls outside the limits of local authorities and therefore, the local authorities do not have power and jurisdiction to issue Building Completion Certificate in respect of buildings constructed on such lands. It is the stand of the petitioner that the District Collector vide its certificate dated August 26, 2016 certified that till date no Master Plan/Development Plan/Regional Plan/Zonal Plan has been received in respect of land over which the petitioner is situated. The said letter was forwarded by the petitioner on August 30, 2016 to the QCI. On August 30, 2016 itself, the DGT-respondent issued a circular vide which it relaxed the condition of submitting the Building Completion Certificate and required the petitioner to submit the approved building plan signed by competent authority and to give an undertaking to the effect that the building plan shall be submitted within six months. Being aggrieved by demanding Building

Completion Certificate, the petitioner filed writ petition in this Court being W.P.(C) No. 7971/2016 when this Court after hearing the arguments on September 14, 2016 directed the QCI and the respondent to decide the application of the petitioner for the academic session 2016-17 without insisting upon Building Completion Certificate.

5. It is averred that vide notice dated September 26, 2016, the respondent extended the closing date for uploading the details of the admitted students on NCVTMIS web portal till September 30, 2016. It is also averred that the respondent granted affiliation to the petitioner in its meeting held on September 16, 2016 for the academic session 2016-17. The said order was made available for the first time only on September 27, 2016 by uploading the same on its official website. It is the case of the petitioner, on a request made by the petitioner on September 27, 2016, the respondent on September 28, 2016 furnished login ID and password to the petitioner for uploading the desired data of admitted students. It is averred that the petitioner was left with only two days to admit students and upload their data on the web portal. The time was practically insufficient to issue advertisement for inviting applications from desirous students and upon receiving such applications, to admit them and then upload the data as required. It is the stand of the petitioner that the Institution requires minimum 15 to 20 days to complete the admission process by uploading the data from the date of receipt of the affiliation order.

6. The respondent has filed counter-affidavit, wherein it has been averred that the Industrial Training Institutes in the country are the backbone of the vocational training

system, major source of supply of skilled manpower to industry. There are 13105 ITIs having about 18.65 lakh seats. The National Council of Vocational Training was set up by the Government of India in the year 1956 to function as a central agency to advise the Government of India in framing the training policy and coordinating vocational training implemented through ITIs. They also referred to the constitution of the QCI. It is contended that the main objective of the QCI is to establish and operate national accreditation structure and promote quality through National Quality Campaign. The National Accreditation Board for Education of Training (NABET), one of the Constituent Board of Quality Council of India has been entrusted with the responsibility of carrying out accreditation of Government and private industrial training institutes in the Country. In order to make the system transparent, efficient, accountable, responsive, credible, user friendly with e-facilities, QCI has been engaged with effect from September 1, 2012 to carry out the accreditation of government and private ITIs and to guide the institute for improving the standards in accordance with the standard set by NCVT. It is averred that the Ministry of Skill Development & Entrepreneurship published an advertisement for national campaign for skilling regarding establishment of 7000 new ITIs. The interested applicants from PSUs, Companies registered under the Act, Public and Private limited establishments etc may initiate action to set up ITIs. The last date of applications was March 15, 2016, which was extended till April 15, 2016 to accommodate maximum possible number of registrations of ITIs.

7. It is stated that the affiliation of ITIs is an ongoing process and the applications are not invited specifically for a particular session. Although efforts are made to cover as many applications as possible and for the same the affiliation process for this year was extended till October 7, 2016 in the NCVT Sub Committee meeting. Thereafter, the affiliation process for the current session was closed but still there could be many cases, which can be taken up in subsequent session. It is stated that there is a defined approval process for grant of affiliation. Accreditation of an ITI from QCI is a pre-condition for grant of affiliation. QCI is the accrediting body and they are supposed to evaluate the application within a prescribed timeframe. On the receipt of accredited proposal from QCI, the matter is placed before the Sub-Committee of NCVT, which evaluates the case as per prescribed guidelines/norms. The institute, who comply all prescribed norms & guidelines issued by NCVT, is granted affiliation. For the academic session 2016-17, 1924 accreditation reports of ITIs were received from QCI. Out of 1924 reports, 1873 ITIs have already been affiliated before October 09, 2016.

8. It is also averred that for timely commencement of a session and to have minimum 90 working days in each semester (in this case first semester), before the All India Trade Test for the first Semester (commencing from February 02, 2017), it was essential to start the session by October 10, 2016 and therefore the affiliations could not be further extended for the current session. 90 days training is essential to acquire necessary skills of ITI training in each semester to ensure that the quality of teaching should not get compromised. The

next semester has to begin by March, 2017. For the session 2016-17, the date for uploading the details of admitted trainees on NCVTMIS web portal has been further extended till September 30, 2016. Further the trainees' details were also received up to October 09, 2016 by accepting through email. It is stated that these details have been uploaded on the portal.

9. The respondent has also taken an objection of misrepresentation by the petitioner of the time flow chart of QCI. According to the respondent, the stand of the petitioner that the application need to be finally decided within a period of 90 days from the date of application, is misconceived, inasmuch as in ideal condition, with no fault of the petitioner in responding to NCs of QCI/NABET, the time limit is of 90 days for accreditation and not affiliation. It is also the case of the respondent that the petitioner is trying to misinterpret the minimum attendance clause as the minimum attendance for promoting in second semester is only for the reasons, such as illness of student or the other exigencies beyond the control of the students and not for the institutions.

10. It is also the case of the respondent that the first term exams are scheduled in February, 2017 and for the first term exams, the students must have 90 days training. The student with minimum 70% of total period of each of the semester i.e of around half year, attendance which is worked out as minimum 90 days can be allowed to be promoted to second term. In exceptional conditions, subject to the end of second semester, the students secure 80% of the cumulative attendance. It is also stated the respondent has never

promised the petitioner, the academic session for 2016-17 as the affiliation of the ITIs is an ongoing process and the applications are not invited for specifically for a particular session.

Writ Petition (Civil) No. 9711/2016

11. The present petition has been filed seeking the following reliefs:-

- “1. Pass an appropriate order, writ or direction and extend the last date for admitting students in Electrician and Fitter trade for academic session 2016-17 for which the petitioner has already been granted affiliation by the respondent; and*
- 2. Consequently pass an order and permit the Petitioner to admit students commence the course from academic session 2016-17.”*

12. This petition, even though filed by three petitioners, during the course of the submissions, Mr. Sanjay Sharawat has stated that as the petitioner No.3 namely S.P. Private ITI has not been granted affiliation, the petitioner No.3 would not pursue the writ petition. The said statement is taken on record. The Court proceeds on the premise that the present petition has been filed by Kalam Private ITI (petitioner No.1) and Kaushalya Private ITI (petitioner No.2). The facts, to the extent narrated in W.P.(C) No.9444/2016 and are repetitive, shall not be stated. The facts relevant to the petitioner institutes shall be noted.

13. It is the case of the petitioners that pursuant to the notification dated December 14, 2015, the petitioners have submitted their respective applications with the QCI for seeking

accreditation for the academic session 2016-17 on March 11, 2016 (petitioner No.1) for 6 (2+2+2) units in “Electrician” and 6 (2+2+2) units in “Fitter” and on February 25, 2016 (petitioner No.2) for 6 (2+2+2) units in “Electrician” and 6 (2+2+2) units in “Fitter”.

14. On September 28, 2016, the petitioners filed W.P.(C) No. 8751/2016 and 8851/2016 in this Court, when this Court on September 28, 2016 directed the QCI and the respondent to decide the application of the petitioners for the academic session 2016-17 without insisting on the BCC.

15. In compliance of the aforesaid order, the respondent granted affiliation to the petitioner on October 7, 2016. Vide emails dated October 8, 2016 and October 9, 2016, the respondent furnished login ID and Password to the petitioners for uploading the desired data of admitted students.

16. The respondent has filed its counter-affidavit wherein they have reiterated the stand already taken by the respondent in response to the writ petition No. 9444/2016 and as such, the same are not repeated for the sake of brevity.

17. Mr. Sanjay Sharawat, learned counsel for the petitioner, before commencing his submissions, filed a compilation of documents consisting of 103 pages which includes the accreditation criteria prescribed by the DGT/QCI for processing the application for grant of affiliation to ITIs and various circulars issued from time to time and also certain orders passed in W.P.(C) No.8849/2015 and LPA No. 705/2015. He would draw my attention to

page 53 of the compilation to contend that it was the direction of the Prime Minister's office to open 7000 new Industrial Training Institutes within one year, so as to double the capacity of the institutes existing i.e 13105 ITIs which would train 1.86 million students in total. With that aim in view, applications were invited by March 15, 2016. He would state as per the communication dated December 14, 2015 of the respondent, the calendar for the year 2016-17 would depict that the closing date of QCI portal was March 15, 2016 and the last date of admission in ITIs was August 31, 2016. According to him, on March 16, 2016, the schedule underwent a change inasmuch as the closing date for QCI portal was extended till April 15, 2016. Similarly, he would state that a further change was effected vide communication dated May 17, 2016 when the closing of the QCI portal was revised to May 31, 2016 and the last date of inspection by QCI was changed to July 15, 2016 and the last date of meeting of NCVT Sub Committee was changed from July 15, 2016 to August 12, 2016. It is his submission that on September 12, 2016, the last date of admission of trainees was revised to September 25, 2016 from August 31, 2016. He also states on September 26, 2016, the last date of uploading the details of the admitted trainees was extended till September 30, 2016 till 6 pm. In this regard, he would state that that it is the respondent's case as well that the date of admitting the students was extended till September 30, 2016 and uploading the details thereof till 6 pm. According to him, in the meeting dated September 16, 2016, the respondent had taken a decision to grant affiliation to the petitioner in WP(C) No.9444/2016. According to him, regrettably the said decision was not

communicated to the petitioner till September 27, 2016 (effective from August, 2016) and similarly with regard to two petitioners in W.P.(C) No. 9711/2016, the order of affiliation were communicated vide orders dated October 8, 2016 (effective from August, 2016).

18. He would highlight, insofar as the petitioner in W.P.(C) No.9444/2016 is concerned, the petitioner having received the order of affiliation on September 27, 2016 and the password having been given only on September 28, 2016, the petitioner had only two days time to make admissions. Similarly, the petitioners in W.P.(C) No. 9711/2016 were given effectively one day to complete the process of admission, which was an impossible task, as an Institution requires 15 to 20 days time to complete the admission process by uploading the data from the date of receipt of the affiliation order. He has also drawn my attention to page 61 of the compilation, which is a communication dated October 5, 2016 wherein the respondent has communicated that details of the admitted trainees can be emailed to the Directorate till October 9, 2016. He has drawn my attention to page 62 of the compilation, which is a communication dated October 6, 2016 to contend that the date of admitting the trainees was also extended to October 9, 2016 for the ITIs which were granted affiliation on September 23, 2016 and October 7, 2016. He concedes to the fact that since the petitioner in W.P.(C) No. 9444/2016 got affiliation in the meeting dated September 16, 2016, the same was not applicable to the said petitioner. According to him, the petitioner in W.P.(C) No.9444/2016 has still admitted 55 students on September 29, 2016 and September 30, 2016 and 16 students on October 1, 2016 and October 3, 2016. Similarly, the petitioners in

W.P.(C) No. 9711/2016 have admitted 61 students both in “Electrician” and “Fitter” category on October 8, 2016 and October 9, 2016.

19. He states, that the petitioner having been given accreditation/affiliation with regard to four units, which comes to total 168 seats in both “Electrician Trade” and “Fitter Trade”, the petitioner can still admit 97 students in both the trades and similarly the petitioners in W.P.(C) No. 9711/2016, the accreditation/affiliation being for similar number of seats, and the petitioners having admitted around 61 students, the balance need to be filled by the petitioners. He state, that there was no fault attributable to the petitioners. They submitted the application for the academic session 2016-17 and the application was required to be finally decided within 90 days from the date of submission of the application. Till first week of September, the respondent had not decided the application and therefore, the petitioners cannot be penalized for the delay attributable to the respondent.

20. He also states that as per the time table prescribed by the respondent, the first semester would come to an end on February 1, 2017. It has been prescribed that minimum 90 days of training for each semester need to be fulfilled in terms of the communication dated June 21, 2016. If this instruction is read in conjunction with communication dated January 7, 2016, which prescribe the norms of minimum attendance, a student with less than 80% but up to 70% of attendance in first semester can go to the next semester but at the end of the second semester, he has to secure 80% cumulative attendance and in addition for emergency cases, the Principal of the concerned ITI is empowered to relax 5% of the

attendance, which would mean that a candidate having even less than 90 days of training can be promoted to the second semester, subject to the achieving 80% of the cumulative attendance in the second semester. Therefore, there is sufficient time available even in completing the first term. That apart, he would state that even in the past, the respondent had conducted the first term semester exams in the month of March, 2016 and as such the exams can be shifted from 2nd February, 2017 to a date in the month of March 2017, more so as the schedule is fixed by the respondent administratively and not under any statutory scheme. The schedule being flexible, the time table can be prepared to ensure all those Institutions who have got the affiliation are given the benefit of an extended date, to affect admissions against the unfilled seats. He states this will benefit around 2 lacs students. He also states that this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can direct the respondent to extend the date for making admission of the students against the balance seats and in this regard, he would rely upon the following judgments:-

- 1. (2012) 7 SCC 389 *Asha v. Pt. B.D. Sharma University of Health Sciences and others*;**
- 2. 2014 (146) DRJ 193 (DB) *Siddarth Singh vs. Vice Chancellor, Delhi University and ors*;**
- 3. (2013) 3 SCC 385 *Parshvanath Charitable Trust and others vs. All India Council for Technical Education and ors*;**
- 4. *Writ Petition (Civil) No. 13969/2015 decided on June 11, 2015 Irinjalakuda***

Diocesan Educational Trust v. All India Council for Technical Education and ors;

5. *Writ Petition No. 26127/2013 decided on November 13, 2013 Joseph Sriharsha Mary Indraja Educational Society vs. The National Council for Teacher Education;*

6. *174 (2010) DLT 510 (DB) Tej Pal Yadav v. Union of India and ors;*

7. *(2014) 16 SCC 330 Varun Saini and others vs. Guru Gobind Singh Indraprastha University.*

8. *LPA No. 320/2016 decided on June 3, 2016 Dr. Ankita Chodhary v. Guru Gobind Singh Inderprastha University;*

21. On the other hand, Mr. C.M. Goyal, learned counsel appearing for the respondent would, apart from reiterating the stand taken by the respondent in the counter-affidavit submit that in terms of the advertisement applications were invited for establishment of 7000 new ITIs by March 15, 2016. He would lay stress on the fact that the applications were invited for the session commencing from August, 2016. In other words, the applicants were not necessarily be given accreditation/affiliation for the session 2016-17. He would lay stress on the word “from” preceding the words “August, 2016” at page 14 of the counter-affidavit. That apart, he states that the circulars dated December 14, 2015, March 16, 2016 and May 17, 2016 are not communications calling for the applications but were only stipulating/prescribing the scheduled dates for various activities leading to the admissions in ITIs. He concedes to the fact that the scheduled dates have undergone a change. That apart, according to him, in an ideal situation, an application filed by an Institution for accreditation need to be decided within 90 days from the date of application.

He clarifies, the ideal situation to mean that there is no fault of the petitioner in responding to the NCs of the QCI/NABET. But it so happens that in view of the deficiencies, which need to be corrected, the time period gets increased. He would state that vide communication dated September 12, 2016, the date of admission of trainees was revised as September 25, 2016. He further concedes to the fact that the date of admitting the trainees was extended till September 30, 2016. According to him, the dates were extended to accommodate the Institutions only. According to him, the petitioner in W.P.(C) No. 9444/2016 was communicated the grant of affiliation on September 27, 2016. He states, as per the information uploaded by the institute, in two days time it has admitted 55 students. According to him, the prayer in the petitions for extension of the last date for admitting students in the “Electrician” and “Fitter” trade for the academic session 2016-17 cannot be granted, inasmuch as, as per the communication dated June 21, 2016, minimum 90 days of training for each semester is required to be acquired by a trainee for appearing in the All India Trade Test for craftsmen. He would also state that in terms of the time table prescribed by the respondent, the exam for the first semester starts from February 2, 2017. He would vehemently oppose the submission made by Mr. Sharawat that the communication dated June 21, 2016 has to be read in conjunction with the communication dated January 7, 2016, which stipulates that a trainee up to 70% attendance with a further relaxation of maximum 5% in first semester can go to the second semester. He states, the relaxation up to 70% and further 5% is only for good valid reasons. That apart, it is his

submission that the attendance in terms of communication dated January 7, 2016 need to be seen from the date when the semester has commenced i.e October 10, 2016. He submits that the new trainees cannot meet the criteria of 90 days and hence, the prayers sought for, cannot be granted. He would also oppose the submission made by Mr.Sharawat that the date can be shifted to contend that the same would affect not only the petitioner institutes but other thousands of ITIs. He would also state, the judgments relied upon by Mr. Sharawat are not applicable to the facts of these cases, inasmuch as those judgments are primarily relatable to the petitions filed by the students and the students have not approached the Court. He would rely upon the following judgments in support of his submissions and state that the petitioners shall be accommodated in the academic session 2017-18.

(i) 2012 LawSuit (SC) 305 Priya Gupta v. State of Chhatisgarh and ors decided on May 8, 2012;

(ii) 2015 Lawsuit(SC) 767 Royal Medical Trust (Regd) and another v. Union of India and anr decided on August 20, 2015;

(iii) LPA No. 14/2016 Medical Council of India v. RKDF Medical College Hospital & Research Centre and ors.

22. Having heard the learned counsel for the parties, the only question, which arises for consideration is whether the petitioners are entitled to extension of time for admitting the students. There is no denial to the fact that the petitioners in these petitions were given effectively two days for affecting admission of the trainees. During the course of the

submission, Mr. Sharawat also conceded to the fact that the petitioner in W.P.(C) No. 9444/2016 had also made admission of 16 students on October 1, 2016 and October 3, 2016. This was despite the fact that there was no extension of time for admitting the trainees. No doubt, Mr. Sharawat would submit that the said admissions would be treated as illegal. Regrettably, it may be stated here the aspect of admitting the students both on October 29, 2016 and October 30, 2016 in W.P.(C) No. 9444/2016 and on October 8, 2016 and October 9, 2016 in W.P.(C) No. 9711/2016 has not been mentioned in the writ petition. An impression has been given in the petitions as if pursuant to the affiliation, no admissions have been made. Be that as it may, the prayer in the writ petitions is for seeking extension of time for making admissions. Whether such a relief can be granted when the course having commenced on October 10, 2016 and when the instruction stipulates 90 days as the minimum training to be undertaken by a trainee for sitting in the exam to be held on February 02, 2017. The answer must necessarily be “No”. This I say so for the reason that today’s date being December 06, 2016 and the exam to be conducted on February 2, 2017, an Institution is left with 58 days of training, out of which 15/20 days need to be excluded for calling applications and admitting students, which shall be around 43 days.

23. The submission of Mr. Sharawat that the instruction dated June 21, 2016 must be read in conjunction with the communication dated January 7, 2016 is unsustainable, more particularly when we are left with 43 number of days and 70% attendance thereof would be around 30 days and additionally 5% relaxation would bring the figure further down.

24. Insofar as the plea of Mr. Sharawat that in the past also, the respondent had held the examination in the month of March, 2017 is also unsustainable. I agree with the submission made by Mr. Goyal that any change in the examination date would affect the semester/examination date across all the ITIs in the Country and which would further have a bearing on the commencement and ending of the second semester.

25. The plea of Mr. Sharawat that because of the non extension of time for admitting the students has affected more than two lakhs students is also unsustainable for the reason, such a plea cannot be canvassed by an institution. No student has come forward to plead his case. Even if such a plea was advanced by the student, the same would be unsustainable today in view of my conclusion above.

26. The submission of Mr. Sharawat that the institution shall make all its effort to complete the training of 90 days on or before February 2, 2017 by holding extra classes is also not sustainable because of the number of days remaining, which in the opinion of this Court, the training cannot be completed by any means and this Court would not like to pass such an order which is impractical and shall lead to confusion and inconvenience.

27. Insofar as the judgments relied upon by Mr. Sanjay Sharawat are concerned, in *Asha (supra)*, the Supreme Court was concerned with an appeal filed by a student who was declared successful in the entrance examination for MBBS, BDS and BAMS securing 832 marks. The appellant was at serial number 13 of the ESM category. All concerned were informed that the first counseling for allotment of seats was to be held on 14th -15th July,

2011. In the counseling, the appellant was not admitted to MBBS Course as she was lower in merit. She took admission in the BDS Course on that very day. Thereafter, a declaration was made by the respondents that the second counseling for allotment of seats in the MBBS course would be held on 20th September, 2011. The appellant again participated in the counseling but her name and roll number was not declared by the respondents for the said admissions. However, when the list of allocation of seats was displayed, it came to light that though the appellant had not been admitted to the MBBS Course, candidates who ranked below her in the merit list, including the respondent no.3, Vineeta Yadav, who had obtained 821 marks and was at serial number 14 of the ESM Category, had been given admission to the MBBS Course. On the above facts, the learned Single Judge of the High Court of Punjab and Haryana at Chandigarh, observed that according to the respondents, the ‘appellant left the counseling place’ without appearing before the Counseling Board. Resultantly, her candidature was not considered for admission to the MBBS course under the ESM category and the candidate next in merit was given the admission. It was the opinion of the Court that it would be too far fetched to accept that the appellant, though was physically present at the time of taking of attendance, thumb impressions and photography, did not respond to the call for counseling at the relevant time. Further, the Court observed that no reason whatsoever could be seen for absence of the appellant at the relevant moment from the record before the Court. In view of the fact that the appellant had filed the writ petition within a week of the second counseling, the Court accepted the facts averred in the

writ petition and directed the respondents to admit the appellant to the MBBS course and while directing so, the Court observed it would be open to the respondents to see that the admission of other students, lower in the merit is not cancelled. Upon appeal, the Division Bench of that Court upset the judgment. The Supreme Court while considering the case, on the issue of extension of time beyond 30th September, has held as under:-

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

28. It may be stated here that in the aforesaid judgment, the Supreme Court was concerned with the appellant, who was a candidate for admission to MBBS, BDS courses. It is not the institution which had approached the Supreme Court for extension of time for

making admission. That apart, the Supreme Court was concerned with the aspect of admission beyond the date of 30th September. This judgment would not be applicable in view of my conclusion above that the 90 days period, as prescribed by the respondent No.1 is not being met.

29. Insofar as, *Siddarth Singh (supra)*, this Court relying upon the judgment of the Supreme Court in *Asha (supra)* and *Varun Saini and others v. Guru Gobind Singh Indraprastha University, W.P. © No. 853/2014 decided on October 16, 2014* wherein, the Court had extended the time for admission to the B.Com (Hons.) course is concerned, the said judgment also was an appeal filed by a student and not by an institution, for grant of admission to B.Com (Hons.) in the academic year 2014-15. This Court has referred to the ratio of the judgment in *Asha (supra)* of the Supreme Court, wherein the Supreme Court held though the Authorities cannot grant admission beyond the specifically postulated cut-off date but where no fault is attributable to the candidate and he/she is denied admission for arbitrary reasons, the cut-off date should not be permitted to operate as a bar to admission of such a candidate, particularly when it would result in complete ruining of the professional career of a meritorious candidate. This judgment would not be applicable to the facts of this case in view of my finding above, which primarily concerns with the adhering to the period of training by a trainee of 90 days, which is impermissible at this point of time.

30. Similarly, in *Tej Pal Yadav (supra)*, this Court was concerned with the admission of

a candidate belonging to the OBC quota. This Court on the plea of the learned counsel for the petitioner therein that the relief to the appellant should not be declined or denied solely on the ground that the admissions are over, the Court had accepted the plea made on behalf of the appellant that he be adjusted in respect of a seat meant for the general category candidate. This Court relying upon the various judgments of the Supreme Court, has directed the admission of the student in general category quota in the next academic year. Suffice to state, the judgment is of no help to the case of the petitioner, in view of my finding above. Further, the Court had not granted relief to the appellant therein in that particular year.

31. In ***Joseph Sriharsha Mary Indraja Educational Society (supra)***, it is noted that the institute had applied for establishment of a college for running D.El.Ed course for the year 2012-13. The High Court found the action of the respondent as unjustifiable. It noted that the academic year 2012-13 for which the application was made had already expired and new academic year 2013-14 was scheduled to commence in a month or two, the Court has set aside the order passed by the respondent No.2 rejecting the petitioner's application and directed that the recognition be granted for the academic year 2013-14. This case also does not help the case of the petitioner as in the said case, the relief granted was for recognition of an Institute not for the year for which the application was made but for the next academic year.

32. The reliance placed by Mr. Sharawat on the judgment of ***Irinjalakuda Diocesan***

Educational Trust (supra), has no applicability to the facts of this case in view of my conclusion above. I note, the reliance placed by Mr. Sharawat on para 17 and 18, wherein, the Court has held as under:-

“17. What is essentially sought to be avoided by the Hon'ble Supreme Court is the method of 'pick and choose' by the authorities at their whim and caprice so as to avoid altogether; approvals and rejections beyond the last date specified in the schedule. This could be, by considering applications filed beyond time, giving certain applicants more time to cure the defects in excess of that prescribed under the schedule, while denying it to some others and even with approvals granted in the midst of an academic year; all of which would do violence to a judicious consideration of the applications for approvals and put in jeopardy the high standards required in the matter of education.

18. Equally injudicious would be an attempt on the part of the authorities to effect a rejection of an application without valid reasons and do it at the fag end of the schedule, thus frustrating the applicants remedies against such an injudicious approach. The schedule prescribed would not have been intended, so as to permit the AICTE to keep approvals pending till the last date and make rejections without any application of mind or by perpetrating an illegality or on totally irrelevant considerations and then claim immunity on the strength of the schedule. That would go against the principle behind the judgment of the Hon'ble Supreme Court in Parshvanath (supra) and its spirit and tenor.”

33. In any case, from the perusal of para 21, the Court had noticed the last date for commencement of the academic session is 1st August and the last date of admission of

students is 15th August. In the case in hand, the course has commenced on October 10, 2016 and the last date for making admission was September 30, 2016 and October 9, 2016 respectively and the training period left with is much less than the minimum 90 days required.

34. In **Varun Saini (supra)**, the Supreme Court has in paras 27 and 28 held as under:-

“27. In a State of good governance, a problem is taken note of so that appropriate and timely steps are taken to avoid any recurrence. The authorities who are incharge of giving approval, preparing syllabus, imparting education and carrying on such other activities, are required to behave with responsibility. Lack of concern is only indicative of the beginning of destruction. That cannot be allowed to occur. Therefore, we caution the AICTE and the University to see to it that things are done on time following the fixed time schedule. We ingeminate, at the cost of repetition, that we have extended the time because of the situation that has prevailed this year but if due efforts are taken, we are certain that same would not be required. We hasten to clarify the time schedule originally fixed in Parshvanath Charitable Trust case has to be treated as the schedule for all coming years. Any modification that has been done, as is manifest from the various orders which we have reproduced hereinbefore, including the present judgment, have been passed for the academic session 2014-15 in the special features of each case. Be it stated, avoidance of unpleasant litigation is a progressive step in a civilised society governed by rule of law.

28. To sum up:

28.1 Time is extended for carrying out the on-line counselling till 21st of

October, 2014.

28.2 *The students who have already taken admission in colleges shall not be permitted to participate in the supplementary counselling, and the students who are attending classes in any institution without the counseling shall be deemed not to have been admitted and therefore they will be eligible to participate in the on line counseling.*

28.3 *The students those are selected for admission and allotted to the respective colleges on merits shall take admission forthwith.*

28.4 *The students after being allotted to a particular college shall be put in a separate Section as they shall be required to attend extra-working classes. The educational institutions have to seriously impart education with the help and aid of teachers, if necessary, by providing adequate means and facilitation for the teachers.*

28.5 *The University shall constitute a team to see whether classes are held or not.*

28.6 *Unless a student gets the requisite attendance of 75% on the basis of the computation held, regard being had to the entire teaching days, he shall not be permitted to appear in the examination.*

28.7 *The time schedule originally fixed in Parshavnath Charitable Trust (supra) shall remain in force and be religiously followed in the subsequent years.”*

35. Suffice to state that in para 28.6, the Supreme Court has laid emphasis on the fact that unless a student gets the requisite attendance of 75% on the basis of the computation held, regard being had to the entire teaching days, he shall not be permitted to appear in the examination. The said judgment was, in an appeal filed by a student and not by an

Institution and in view of my finding above, the judgment has no applicability.

36. In **Dr. Ankita Chodhary (supra)**, this Court has referred to the judgment of the Supreme Court in **Asha (supra)** and the same has no applicability to the facts.

37. I note for benefit, the judgment of the Supreme Court in **Parshvanath Charitable Trust and others (supra)**, wherein in paras 42 and 43, the Supreme Court has held as under:-

“42. The admission to academic courses should start, as proposed, by 1st August of the relevant year. The seats remaining vacant should again be duly notified and advertised. All seats should be filled positively by 15th August after which there shall be no admission, whatever be the reason or ground.

43. We find that the above Schedule is in conformity with the affiliation/recognition schedule afore-noticed. They both can coexist. Thus, we approve these admission dates and declare it to be the law which shall be strictly adhered to by all concerned and none of the authorities shall have the power or jurisdiction to vary these dates of admission. Certainty in this field is bound to serve the ends of fair, transparent and judicious method of grant of admission and commencement of the technical courses. Any variation is bound to adversely affect the maintenance of higher standards of education and systemic and proper completion of courses. (emphasis supplied)”

38. In **Royal Medical Trust (Regd.) and another (supra)**, in paras 29 and 30, the Supreme Court has held as under:-

“29. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below

the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta it did exercise that power in favour of Government Medical Colleges. The decision of this Court in Priya Gupta undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in Priyadarshini. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course as laid down by this Court in Madhu Singh and Mridul Dhar must always be observed.

30. Since the deadline for making admissions was over and there was no formal permission to establish new Medical Colleges or to increase the intake capacity in respect of existing Colleges, applicants in Categories I and II were not considered fit for grant of any interim relief. For the same reasons no relief can be granted to them. Consequently, the writ petitions and appeals

arising from the special leave petitions in Categories I and II except one arising out of SLP(C) No.23512 of 2014 are dismissed. Said appeal from SLP(C) No.23512 of 2014 at the instance of the MCI is allowed and the order passed by the High Court is set aside. No orders are required in Transfer Petition No. 1217 of 2014 and it stands dismissed. The relief granted in respect of those falling in Category III, vide orders dated 18.09.2014 and 25.09.2014 is made absolute in terms of those orders and the writ petitions and appeals arising from special leave petitions in Category III stand disposed of in such terms.”

39. In view of the discussion above, the present writ petitions are devoid of merit. The same are dismissed. No costs.

CM 37801/2016 in WP(C) No.9444/2016
CM 38843/2016 in WP(C) No.9711/2016

Dismissed as infructuous.

DECEMBER 06, 2016
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V. KAMESWAR RAO, J