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

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Judgment delivered on: 13.01.2017

+ **W.P.(C) 145/2016**

SHUBHAM SHARMA

..... Petitioner

versus

GURU GOBIND SINGH
INDRAPRASTHA UNIVERSITY

..... Respondent

Advocates who appeared in this case:

For the Petitioner :

Mr. Vijay Singh and Mr Sanjay Singh

For the Respondent :

Mr Vaibhav Kalra

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

13.01.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks a mandamus to the respondent for allocation of institution of his preference (i.e. University School of Information and Communication and Technology in course of Information Technology (Dual)) as per merit.

2. It is contended that the petitioner applied for registration for admission in B.Tech/ M.Tech Dual Degree on 26.02.2015. Based on the rank of the petitioner, the petitioner was allocated seat in Maharaja Agrasen Institute of Technology (Electronics and

Communication Engineering) on 22.07.2015. It is contended that the said preference was the fifth preference of the petitioner. The petitioner deposited the fee and took admission.

3. Thereafter, it is contended that on 28.07.2015, the petitioner while checking the online seat status, came to know that a candidate lower in rank to the petitioner has been granted admission in the University School of Information and Communication and Technology, which, as per the petitioner, was his third preference.

4. The petitioner thereafter approached the respondent for allocation of the seat to the petitioner in the University School of Information and Communication and Technology because the candidates lower in rank had been granted admission. It is contended that since no action was taken by the respondents, the petitioner filed the present petition on 05.01.2016. The petitioner is presently studying in Maharaja Agrasen Institute of Technology.

5. The respondents have contended that the petitioner was granted admission on 24.07.2015, as per his rank and the petitioner took admission.

6. It is contended that after the three rounds of online counselling were over on 25.07.2015, the schedule for on-spot offline counselling was published on 27.07.2015.

7. It is contended that all the seats which were not taken in the

initial rounds of counselling or which fell vacant, consequent to some candidates not taking admission or vacating the seats in the online counselling, were included in the on-spot offline counselling.

8. It is contended that in the Information Bulletin of the respondent – University as also in the Notification dated 27.07.2015 with regard to on-spot offline counselling, it is specifically clarified that only **“not admitted”** candidates would be eligible to participate in the spot counselling.

9. It is contended that since the petitioner had already taken admission in the online counselling, the petitioner was not eligible to participate in the on-spot offline counselling.

10. It is contended that in case the respondents permitted candidates to change their option, in subsequent rounds of counselling, after they had already taken admission in initial round, it would upset the entire counselling process and would set off a chain reaction leading to unending rounds of counselling.

11. Reliance is placed on the decision of this Court dated 17.10.2016 in **W.P.(C) No.9507/2016** titled **Priyanka Chaudhary & Others vs. National Board of Examinations.**

12. It is an admitted position that petitioner has already taken admission in the online counselling in Maharaja Agrasen Institute of Technology.

13. Clause 11.12 of the Information Bulletin reads as under:-

“11.12 Spot Counselling

1. After Round 01 and round 02 of online counselling ‘Spot Counselling’ shall be done offline.

2. Any CET qualified candidates who have not taken admission in round 01 and round 02 of Online counselling will be eligible to participate in the spot counselling, against the available vacant seat.

3. The candidates who are allotted seat in round 01 and round 02 of online counselling and have paid the part Academic Fee of Rs. 40,000/- to confirm admission in any Institute/college will be treated as “admitted” at the time of Spot Counselling would not be eligible to participate in the Spot Counselling.

4. Any candidate, who was admitted in any round and subsequently withdrawn will be eligible to participate in the Spot Counselling.

5. All “not admitted” candidates will be eligible to participate in the Spot Counselling.

6. Candidates will be eligible to withdraw after first and second round of online counselling only. There will be no withdrawal of admission and refund of fees for the candidates who will take admission in Spot counselling.”

14. The relevant portion of Notification dated 27.07.2015, issued by the respondents notifying the schedule for offline spot counseling reads as under:-

“NOTIFICATION
SPOT COUNSELLING (OFFLINE)
ELIGIBILITY
(Academic Session 2015-16)

*This is in continuation to office notice No. IPU-7 / Admissions(Acad.)/Online Counselling/ 2015/1088, dated 20.07.2015. As notified in the Admission Brochure for the Academic Session 2015-16, Part-D, clause 11.12(4) “All **“not admitted”** candidates will be eligible to participate in the Spot Counselling”, for the following CET Codes:-*

S.No.	Prog. Code	Name of Programme
<i>1.</i>	<i>101</i>	<i>MBA</i>
*****	*****	*****

*The following is the category of **“not admitted”** CET qualified candidates, who shall be eligible for the Spot Counselling:*

- a) CET Qualified candidates who have not participated or Registered in Online Counselling.*
- b) CET Qualified candidates who have participated in Online Counselling, but were not allotted any seat during Round 01, Round 02 and Round 03 (last Round of Online Counselling).*
- c) Candidates who have participated in Online Counselling, were allotted seat during Round 01, Round 02 and Round 03, but did not deposit part Academic Fee of Rs. 40,000/-.*

- d) All CET qualified candidate who, after being allotted a seat in any of the rounds, has deposited Part Academic Fee of Rs. 40,000/-, but did not report at Designated Centre/University College/Institute for verification of documents (within the stipulated period) or did not report to the respective allotted college/Institute for joining within stipulated period.*
- e) All CET qualified candidate who have been admitted but have withdrawn their admission within the period allowed for withdrawal.*
- f) Any candidate who deposited Rs. 40,000/- and got their eligibility verified during Round 01 and Round 02, and subsequently withdrew.”*

15. From the perusal of the Information Bulletin as well as the Notification dated 27.07.2015, it is clear that the candidates were duly informed that only those candidates, who were **“not admitted”** candidates, were eligible to participate in the on-spot offline counselling.

16. The petitioner had admittedly participated in the online counselling process without any demur being aware of the clause laid down by the Information Bulletin. The petitioner opted for the confirmed seat and took admission. No doubt the petitioner, is meritorious but on account of the application of the Rules, as laid down by the Information Bulletin, has not been granted admission in the College for which the petitioner had given a higher preference.

17. In **Priyanka Chaudhary** (Supra) it has been held as under:-

10. *The petitioners had participated in the first round of counseling without demur. Perusal of the information bulleting shows that candidates had the option not to appear in the first round of counseling and could have chosen to wait for the subsequent rounds. However, once the candidate has exercised the option to participate in counseling and has opted for a confirmed seat, as per the information bulletin, the candidate is not eligible for participation in subsequent rounds of counseling.*
11. *The petitioners were well aware of the rules laid down by the information bulletin and despite the same the petitioners participated in the counseling process without any demur. The petitioners have opted for confirmed seats and have taken admission. No doubt that the petitioners are meritorious, but on account of the application of the rules as laid down by the information bulletin, which is clear in terms of its application, the petitioners are clearly ineligible to participate in the second round of counseling commencing from 21st October, 2016.*
12. *Similar view has been expressed by the co-ordinate bench in **Shikha Aggarwal** (supra) wherein it is held as under :*

“6. The cause of heartburn of the petitioner is that the first round of counseling is held for the top in the merit list to pick the stream and college/institute/hospital of his choice and the second round is held for the next in the merit list alongwith the opportunity to

the ones who have already participated in the first round to change their stream in case some seats fall vacant, but the respondent board does not envisage the participation of the students who have already participated in the first round to again participate in the second round and thus robs the candidate the opportunity to take up another stream which could be available in the second round and was not available at the first. The contention of the counsel for the petitioner is that the premier Institute such as AIIMS and others give provisional admissions in the first round leaving the window of opportunity open for them to change their choice in the second round and thus the same should be the procedure followed by the respondent Board. The National Board of Examinations administering the DNB degree has the liberty to frame its own rules and regulations and the rules of counseling or any other cannot be termed as unreasonable by comparing with the rules set forth by the AIIMS or any other body conducting examinations.

7. *It is also a settled legal position that a candidate after participating in the selection process of taking the entrance examination and the counseling process cannot turn around and challenge the same as the rules and guidelines framed by the respondent-Board were within the knowledge of the petitioner before participating in the same and therefore, the petitioner thus waives off her right to challenge the said counseling*

procedure once having taken the said examination. It would be relevant here to refer to the judgment of the Apex Court in the case of Dhananjay Malik vs. State of Uttranchal (2008)4SCC171 which has reiterated the said legal position in the following words:

"In the present case, as already pointed out, the writ petitioners- respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

(Underlining supplied)

13. In **Shikha Aggarwal** (supra) a coordinate bench of this Court has clearly held that a candidate after participating in the selection process by taking the entrance examination and the counseling process cannot turn around and challenge the same. The candidate is deemed to have waived off the right to challenge the decision of the examiner once having taken the said examination.

14. The Supreme Court in **Arvind Kumar Kankane** (supra) has held as under :

"2. A learned Single Judge of the High Court interpreting the rules directed that when after the first counselling any subsequent counselling is decided to be held for allocation of remaining

seats including those which have fallen vacant subsequent to the first counselling, the same shall be notified to the public and the first date of each subsequent counselling will be reserved for the candidates who were allotted seats at the earlier counselling and who wish to change their seats and out of the candidates, who were allotted seats at the first counselling, who turn up for subsequent counselling on the first date which is served for such students, distribution of seats which have fallen vacant subsequent to the first or earlier counselling will be done according to merit. The change of seat to these students who have been allotted seats during the first and earlier counselling will be permitted only in respect of seats which have fallen vacant after the first counselling and not of the left over seats.

*3. Aggrieved by these directions, an appeal was preferred by the Director General of Medical Education and Training. The Division Bench, after considering the scheme of admission and conditions imposed therein and the decisions of the Full Bench of Delhi High Court in *Veena Gupta (Dr) v. University of Delhi* and of High Court of Punjab & Haryana in *Anil Jain v. Controller of Examinations*, held that any seat which is available and which has not been included in any of the three counselling by mistake should be filled in, in order of merit amongst the wait listed candidates. Normally, when a seat is available, the same should be included in the initial counselling. If by mistake a seat is not included in the initial counselling then the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for counselling, the result would be that all the candidates who took*

part in the first counselling should be given a chance, in order of merit, to opt for the same seat. This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counselling. There again a chain reaction will start leading to the third counselling. The effect of putting the seat back for counselling for all candidates would, therefore, be to upset the entire counselling which had already taken place. Prima facie though it appears to be somewhat unfair, there is no alternative, apart from leaving the seat unfilled, but to offer the said seat to the wait listed candidates. It was also noticed that once the academic course commences the same will have to be completed within a period of three years and if the counselling goes on continuously for a long period then it may not be possible to fulfill that condition and thereby upset the course of study itself. On this basis, the Division Bench set aside the order made by the learned Single Judge and allowed the appeal. It is against this order and connected matters that the present appeals are filed by special leave.

4. We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the Division Bench and Delhi High Court in Dr. Veena Gupta case and the High Court of Punjab & Haryana in Anil Jain case is in accordance with the reason and stands the test of rationality. It is clear that once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counselling and his seat becomes vacant, the process of counselling will be endless and, as apprehended by the High Court, it

may not be possible to complete the academic course within the stipulated period.

5. The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student, who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the Rule.”

(Underlining supplied)

15. The Supreme Court in Arvind Kumar Kankane (supra) has held that such a condition which puts an embargo on the candidates, who have taken part in the first counseling from participating in subsequent rounds, is in accordance with reason and stands the test of rationality. The Supreme Court has noticed that if such a process, as propounded by the petitioners, was permitted, it would upset the entire counseling which had already taken place and would set off a chain reaction leading to further rounds of counseling.
16. In the present case also one of the petitioners is rank 29 and is opting for a seat which has fallen vacant because candidate ranked 24 has vacated the same. If the petitioners were to participate in subsequent round of counseling then the seat being vacated by the petitioner rank 29 would then be offered to candidates ranking 30 down to 6,000 and likewise in the case of all the seats of the

petitioners. This would unsettle the entire counseling process which would then become unending.

18. The judgment of the Supreme Court in Arvind Kumar (*supra*) as well as Priyanka Chaudhary (*supra*) is squarely applicable to the facts of the present case.

19. In view of the above, the action of the respondent in denying the opportunity to the petitioner in participating in the on-spot offline counselling and admission in the University School of Information and Communication and Technology cannot be faulted. If such a process were permitted, it would upset the entire counseling, which has already taken place and would set off a chain reaction leading to unending rounds of counselling.

20. I find no merit in the petition. The same is accordingly dismissed. No orders as to costs.

SANJEEV SACHDEVA, J

JANUARY 13, 2017

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