

\$~104

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

Date of decision: 10th December, 2018

+ W.P.(C) 12454/2018 & CM APPL. 48367/2018

DR. MUKTA KATOCH Petitioner

Through: Mr. Arvind Sharma, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA

UNIVERSITY & ORS. Respondents

Through: Mr. Anita Sahni, Adv. for R-1

Mr. Dilbag Singh, Sr. CGS for R-2

Mr. Uday Bedi and Mr. Jaitegan Singh,

Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T (O R A L)

1. Having cleared the All India Ayush Post Graduate Entrance Test (AIAPGET) conducted by Respondent No. 2 [the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH)], with 57.9 %, the petitioner responded to a notification, issued by the Respondent No. 1 – Guru Gobind Singh Indraprastha University (hereinafter referred to as “the University”), fixing the date of “mop-up counselling” for admission to Post-Graduate Ayurveda Courses (PGAC), conducted by them, on 15th November, 2018. Incidentally, on the same date, mop-up counselling was also held at the Rajeev Gandhi Government Post-Graduate Ayurveda College and Hospital Piprola, Himachal Pradesh (hereinafter referred to as “the

Rajeev Gandhi Ayurveda College”), where, too, the petitioner had, applied for admission to the Post-Graduate Ayurveda course.

2. On 5th October, 2017, Respondent No. 2 had issued the following instructions, to all State authorities, to deal with the situations where counselling dates, fixed by different State universities/colleges, pursuant to the AIAPGET, clashed :

“AYUSH BHAWAN”
‘B’ Block, GPO complex
INA, New Delhi- 110023
Dated : 05.10.2017

To,
The State Authorities
(as enclosed)

Sub:- Clash of All India Ayush Post Graduate Entrance Test (AIA-PGET) counseling dates between State Universities/Colleges - reg.

Sir/Madam,

1. I am directed to say that Ministry of AYUSH has received various representations on the subject cited above and to say that counselling of various states are being conducted on same dates for example counselling of the State of Uttar Pradesh, Himachal Pradesh, Uttarakhand and Indraprasth Universities is being conducted on 09.10.2017. This will hamper the prospects of various students in getting their choice seats according to their merit position.

2. In view of above, the followings are requested :-

(I) The State Authorities and Universities should ensure that date of counseling may not coincide with each other.

(II) In case counseling of two or more State or Universities are being conducted on same date then authorized representative of the concerned students

should be allowed to appear for counseling with self-attested photocopy of the required documents.

3. This is issued with the approval of Competent Authority.

Yours
Faithfully,
(Banamali Naik)
Under Secretary to the Govt. Of India
Ph. No. : 011-24651976/80”

3. Following the instruction contained in sub para (II) of para 2 of the communication dated 5th October, 2017, extracted hereinabove, the petitioner attended the mop-up counselling at the Rajeev Gandhi Ayurvedic College on 15th November, 2018, and her mother appeared, on her behalf, in the mop-up counselling, which was held, on the same day, in the Respondent No. 1–University. However, the petitioner’s mother was not permitted to attend the mop-up counselling, on the ground that the counselling had to be attended by the candidate herself/himself, and not by her/his authorised representative.

4. Alleging that the said decision of the Respondent No. 1–University was contrary to the afore-extracted instructions dated 5th October, 2017, issued by Respondent No. 2, the petitioner has approached this Court by means of the present writ petition, which prays, essentially, for issuance of a mandamus to the respondents to admit the petitioner in the PGAC, being conducted by the Respondent No. 1–University for the academic session 2018-2019, for which the petitioner had registered herself with the Chaudhary Brahm Prakash Ayurvedic Charak Sansthan, Khera Dabar, Najafgarh, New Delhi, affiliated to the Respondent No. 1–University.

5. The writ petition specifically avers that the last candidate who had been granted admission to the said course, namely Nisha Yadav, (impleaded as Respondent No. 3 herein), had secured lower marks than the petitioner, inasmuch she had scored 57.11 % whereas the petitioner scored 57.9 %.

6. When this matter was listed for preliminary hearing on 26th November, 2018, Ms. Anita Sahni, learned counsel appearing for the Respondent No. 1 – University, relied on the following communication, dated 9th November, 2018, issued by Respondent No. 2 :

“AYUSH BHAWAN”
‘B’ Block, GPO complex
INA, New Delhi- 110023
Dated : 09.11.2018

To,
All State Authorities
(as enclosed)

Sub:- Clash of All India Ayush Post Graduate Entrance Test (AIAPGET-2018) counseling dates between State Universities/Colleges - reg.

Sir/Madam,

1. I am directed to say that Ministry of AYUSH has received various representations on subject cited above and to say that counselling of various states are being conducted on same day. This will hamper the prospects of various students in getting their choice seats according to their merit position.

2. In view of the above, all the State Authorities and Universities are requested to ensure that the date of counselling may not coincide with each other.

3. This issues with the approval of the competent authority.

Yours Faithfully,
(Dr. Shashi Ranjan Kumar Vidyarthi)
Director
Ph. No. : 011-24651976-80”

7. The submission of Ms. Sahni was that the instructions, dated 5th October, 2017 (*supra*), applied only to the academic session 2017-2018 and that the academic session 2018-19 was covered by the instructions, dated 9th November, 2018 (*supra*), which did not permit representation of a candidate by any authorised representative. As such, Ms. Sahni sought to submit that the petitioner could not seek to rely on the earlier instructions, dated 5th October, 2017, which did not apply to the academic session 2018-19.

8. To this submission of Ms. Sahni, Mr. Arvind Sharma, learned counsel for the petitioner, had handed over, across the bar a communication dated 20th November, 2018, issued by Respondent No. 2 to the Respondent No. 1—University, specifically dealing with the representation of the petitioner, and drawing attention to the earlier instructions, dated 5th October, 2017 (*supra*), which permitted a representative, of a candidate, by her/his authorised representative during counselling. The said communication, dated 20th November, 2018 (*supra*), therefore, required the University to examine the matter in the said prospective.

9. Ms. Sahni, faced this situation, had sought adjournment to take

instructions. Today, she reports that clarification had been sought, from Respondent No. 2, which responded *vide* letter dated 4th December, 2018, stating that the instructions dated 5th October, 2017 (*supra*) had never been withdrawn by it, and that, therefore, the University ought to have acted thereupon.

10. Inasmuch as the petitioner claimed to be superior, in merit, to Ms. Nisha Yadav, the said candidate stands impleaded as Respondent No. 3 and is represented today by learned counsel Mr. Uday Bedi, who submits that, irrespective of the rights of the petitioner, it would be completely unfair and iniquitous to displace his client, especially as there are a number of judicial authorities to the effect that candidates, once admitted, ought not to be unseated by orders of courts.

11. Having gone through the records and having heard learned counsel, I am of the view that the claim of the petitioner that the Respondent No. 1–University did not act in accordance with law in refusing the mother of the petitioner an opportunity to represent the petitioner in the mop-up counselling held on 15th November, 2018, is well founded. The instructions, dated 5th October, 2017 (*supra*) had never been withdrawn by Respondent No. 2. The subsequent circular, dated 9th November, 2018 (*supra*), on which Ms. Sahni relies, does not state that it has been issued in supersession of the earlier circular, dated 5th October, 2017 (*supra*). Even otherwise, in the absence of a specific stipulation, in the circular dated 9th October, 2018 (*supra*), to the effect that candidates would not be permitted to be represented by their authorized representatives, thereby departing from the procedure

established by the earlier circular, dated 5th October, 2017 (*supra*), the candidate could not be faulted for having proceeded on the premise that the instructions, dated 5th October, 2017 (*supra*), continued to hold good. The benefit of the ambiguity thus created – assuming any such ambiguity existed – has necessarily to enure in favour of the candidate.

12. Inasmuch as Ms. Nisha Yadav, who had admittedly secured lower marks than the petitioner, was granted admission in the course, the petitioner, who had admittedly secured higher marks than her, cannot be denied such admission. At the same time, it is also true that it would be entirely iniquitous to unseat Respondent No. 3, Ms. Nisha Yadav at this point of time.

13. In the circumstances, I am of the opinion that the interests of justice would warrant allowing of this writ petition, but in the following terms :

(i) The petitioner shall be granted admission in the Post-Graduate Ayurveda course (MD/MS course), conducted by the Respondent No. 1– University for the year 2018-19. Needless to say, the petitioner would have to furnish all requisite documents and comply with all formalities as would be required in order to enable her to join the course.

(ii) Respondent No. 3 shall not be unseated from the admission granted to her. In the peculiar facts of this case, the petitioner shall be granted admission in the said course, even if

it exceeds the number of seats, fixed for the course, as the denial of admission to the petitioner is owing to no fault of hers.

14. In order to ensure that this order does not result in an avalanche of petitions, by other candidates who may have been denied permission to be represented in the counseling by their authorized representatives, and have not chosen to approach this Court in that regard, it is clarified that this order will not be treated as a precedent, to be cited by any candidate, who has not, till now, moved this Court.

15. The writ petition is allowed in the above terms, with no orders as to costs.

Copy of this order be given *dasti* under the signatures of the Court Master.

C. HARI SHANKAR, J

DECEMBER 10, 2018

bh