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

+ W.P. (C) 9365/2018

YAMAN KUMAR SHARMA AND ORS. Petitioners

Through: Mr. Rakesh Dhingra, Adv.

versus

UNIVERSITY OF DELHI AND ORS. Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr. Prang Newmai, Advs. for R-University
of Delhi

Mr. Bhagvan Swarup Shukla, CGSC with
Mr. Sarvan Kumar Shukla, Adv. for R-UOI

+ W.P. (C) 12540/2018

DR. INDU KUMARI & ORS Petitioners

Through: Mr. Hemant Sharma, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr. Prang Newmai, Advs. for R-University
of Delhi

+ W.P. (C) 12572/2018

DR. TRIPTI TYAGI Petitioner

Through: Mr. Vivek Kumar Tandon and
Ms. Mamta Tandon, Mr. Siddhant Tyagi,
Advs.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr. Prang Newmai, Advs. for R-University
of Delhi

+ W.P. (C) 12747/2018

VIJAY KUMAR VAID Petitioner

Through: Ms. Monica Kapoor and
Ms. Areeca Sanjay Massey, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vivekanand Mishra, Sr.
Panel Counsel for R-1/IOI
Mr. Mohinder J.S. Rupal and Mr. Prang
Newmai, Advs. for R-University of Delhi

+ W.P. (C) 2777/2019

DR. SUNIL GAUTAM Petitioner

Through: Mr. Rakesh Singh, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr. Prang Newmai, Advs. for R-University
of Delhi

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

10.10.2019

1. This group of writ petitions involves two sets of students, locked in a dispute over admission to seats in post-graduate (MD/MS) courses in Ayurveda, being conducted by the Faculty of Ayurvedic

and Unani Medicine, University of Delhi (hereinafter referred to as “the University”). One set of students comprises the petitioners in WP (C) 9365/2018, namely Yaman Kumar Sharma, Vijay Kumar Pathak, Pankaj Sharma and Preeti Singh (who shall collectively be referred to, hereinafter, for the sake of convenience, as Yaman Kumar Sharma etc.), whereas the other set of students comprises the petitioners in all the other writ petitions, namely

- (i) Indu Kumari, Leena Gautam and Kiran Kumari, the petitioners in WP (C) 12540/2018,
- (ii) Tripti Tyagi, the petitioner in WP (C) 12572/2018,
- (iii) Vijay Kumar Vaid, the petitioner in WP (C) 12747/2018 and
- (iv) Sunil Gautam, the petitioner in WP (C) 2777/2019.

The Facts

2. Having obtained their graduate BAMS (Bachelor of Ayurvedic Medicine & Surgery) and BUMS (Bachelor of Unani Medicine & Surgery) qualifications, students become entitled to aspire for their post-graduate (PG) degrees, i.e. MD/MS. The petitioners, in this set of writ petitions, are aspirants to the MD/MS qualification in Ayurveda.

3. Aspirants to postgraduate MD/MS qualifications in Ayurveda are required to undergo the All India AYUSH Post Graduate Entrance Test (AIAPGET), which is conducted by the All India Institute of

Ayurveda, under the aegis of the Ministry of AYUSH (an acronym for “Ayurveda, Unani, Siddha and Homoeopathy”), every year. 50% of the seats, for which the AIAPGET is held in any particular year, are filled in on an “all India quota” basis, whereas 50% of the seats are filled in by the respective states, through “state quotas”. The petitioners, in these writ petitions, seek admission to MD/MS seats, in Ayurveda in the Faculty of Ayurvedic & Unani Medicine, Delhi University (FAUM), which provides these courses in two colleges, namely the All India Institute of Ayurveda (AIIA) and the Ayurvedic & Unani Tibbia College (AUTC).

4. At this juncture, it is relevant to note that the BAMS course was of 5 ½ years’ duration, of which the last year was to be spent doing a compulsory rotational internship. The course, except for the compulsory rotational internship was, therefore, required to be completed in 4 ½ years. This period of 4 ½ years was split into three components, of 1 ½ years each. Of the various petitioners in these writ petitions – except Yaman Kumar Sharma etc., i.e. the petitioners in WP (C) 9365/2018 – all petitioners completed the periods of compulsory internship, in their respective BAMS courses, before 2017, the specific dates of completion of compulsory internship being, in respect of the various petitioners,

- (i) 14th June, 2008, in the case of Sunil Gautam,
- (ii) 4th September, 2010, in the case of Tripti Tyagi,
- (iii) 3rd October, 2013, in the case of Kiran Kumari,
- (iv) 16th January, 2016, in the case of Indu Kumari,

- (v) 18th January, 2016, in the case of Leena Gautam and
- (vi) 22nd July, 2016, in the case of Vijay Kumar Vaid.

5. Yaman Kumar Sharma, etc., commenced their BAMS course, from the AUTC, on 1st November, 2012. The first 4 ½ years of the course ought, therefore, to have been completed by May, 2017, when Yaman Kumar Sharma, etc., ought to have commenced their last year of compulsory internship which, in turn, ought to have been completed in May, 2018. However, owing to certain delays, on the part of the University, the result of Yaman Kumar Sharma etc., consequent on their having completed 4 ½ years, was declared only on 22nd November, 2017. It was only, therefore, on 23rd November, 2017, that Yaman Kumar Sharma, etc., commenced their final one year of compulsory rotational internship. The said period of internship, therefore, was completed only on 23rd November, 2018.

6. As we are proceeding chronologically, it may be noted, at this point, that, in 2017, consequent to clearing the AIAPGET held in 2017, Indu Kumari (Petitioner No. 1 in WP (C) 12540/2018) was admitted to the cause of MD in *Kirya Shari (Physiology)*, in the AUTC.

7. In April, 2018, the Ministry of AYUSH invited applications for the AIAPGET 2018. Side by side, an Information Bulletin, containing information relating to the AIAPGET 2018, was also released by the All India Institute of Ayurveda, which was conducting the AIAPGET

on behalf of the Ministry of AYUSH. The following clauses, of the said Information Bulletin, are relevant:

“1.1.4 AIIA/MoA has no role in counselling.

Concerned State AYUSH Authority(s) / Counselling Authority(s) of the States/UT/Universities/Deemed University/AYUSH Colleges/Institutes will conduct counselling for admission based on candidate AIAPGET 2018 merit, choice of subject and fulfilment of their eligibility criteria, guidelines, domicile criteria, applicable reservation policies etc.

3.0 ELIGIBILITY CRITERIA FOR AIAPGET 2018

3.1 Candidates in possession of BAMS/ BUMS/ BSMS/ BHMS/Graded BHMS degree or Provisional BAMS/ BUMS/ BSMS/ BHMS Pass Certificate recognized as per the provisions of the IMCC 1970/HCC 1973 Act and possess permanent or provisional registration certificate of BAMS/ BUMS/ BSMS/ BHMS/Graded BHMS degree qualification issued by the CCIM/CCH/state board/universities/deemed universities *and have completed one year of internship or/are likely to complete the internship before the date of counselling*, may apply for AIAPGET 2018 through online application registration system through website www.aiapget.com.

3.2 *Requests for appearing in AIAPGET 2018 from candidates completing internship after date of counselling or having qualifications that are not recognized by the competent authority shall be summarily rejected.* Candidates are further advised not to canvass for the same.

Candidates who are completing their internship after counselling or likely to complete after counselling need not apply in AIAPGET 2018 as they shall be ineligible to participate at any stage of the admission process.

- 3.4** The dates indicated by candidates in regard to 12 months Compulsory Rotating Internship i.e. starting date, completion date, shall be treated as final and *candidates will be required to submit the original Compulsory Rotating Internship completion certificate at the time of counselling.*
- 3.5** *Some of the Universities/Institutions are having regulations that candidates who are already pursuing any PG course in their University or in another University are not eligible for admission till they complete the course. The candidates were already pursuing PG Courses either through All India Quota or State Quota and are applying for a seat under All India Quota/State quota seats may confirm the eligibility conditions of that University in this regard. MoA/AIIA shall not be responsible if such candidates are refused for admission. Such candidates may opt for the subject and the college at their own risk and cost. The eligibility criteria will be as per CCIM/CCH regulations and notifications of Ministry of AYUSH, Government of India.*

18 COUNSELLING FOR AYUSH PG SEATS

- 18.2** Concerned State AYUSH Authority(s) / Counselling Authority(s) of the States/UT/Universities/Deemed University/AYUSH Colleges/Institutes will conduct counselling for admission based on candidate choice and fulfilment of their eligibility criteria, guidelines, domicile criteria, applicable reservation policies, etc.”

(Emphasis supplied)

- 8.** All the petitioners in these writ petitions participated in the AIAPGET, which was held on 24th June, 2018.

9. On 20th August, 2018 the Ministry of AYUSH declared the results of the AIAPGET. Except for Indu Kumari, all the petitioners in WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019, i.e. Sunil Gautam, Tripti Tyagi, Kiran Kumari, Vijay Kumar Vaid and Leena Gautam, scored less marks than Yaman Kumar Sharma etc., i.e. the petitioners in WP (C) 9365/2018. Indu Kumari fared better than Pankaj Sharma and Preeti Singh, but scored less than Vijay Kumar Pathak and Yaman Kumar Sharma. It may be noted, however, that Preeti Singh was an SC candidate, and that Kiran Kumari and Leena Gautam were OBC candidates, whereas the remaining candidates belonged to the Unreserved/General category. The merit position may be depicted, in descending order, thus:

Vijay Kumar Pathak > Yaman Kumar Sharma > Indu Kumari >
Pankaj Sharma > Preeti Singh > Sunil Gautam > Tripti Tyagi >
Kiran Kumari > Vijay Kumar Vaid > Leena Gautam

10. Apprehensive that, owing to the fact that the final one-year period of their compulsory internship would be completed only after the last cut-off date stipulated, in that regard, for the purpose of eligibility for admission to the MD/MS Ayurveda courses, Yaman Kumar Sharma, etc. represented, on 27th August, 2018, to the Ministry of AYUSH, requesting that counselling, for the state quota seats to be filled in by the Delhi University, be postponed till they completed their one-year internship, on 23rd November, 2018.

11. The said request having fallen on deaf ears, Yaman Kumar Sharma, etc. have petitioned this Court, by means of WP (C) 9365/2018, praying that

- (i) they be permitted to participate in the counselling, to be conducted by the University, for admission to the MD/MS Ayurveda courses, under the colleges affiliated to it, pursuant to the AIAPGET 2018, and
- (ii) directions be issued, to the respondents, to postpone counselling, for admission to the said courses, till completion of the period of compulsory internship, by them, on 23rd November, 2018.

12. On 21st September, 2018, the Ministry of AYUSH wrote to all State Authorities, with respect to admissions to postgraduate courses in Ayurveda, stipulating that

- (i) only students who had qualified in the AIAPGET 2018, could participate in the counselling for admission in the postgraduate AYUSH courses for the academic session 2018-2019,
- (ii) the minimum marks, for eligibility, in the entrance test for admission, consequent to the AIAPGET 2018, to the postgraduate Ayurveda courses, were
 - (a) 50% of the total marks, in the case of general category candidates,
 - (b) 40% in the case of Scheduled Caste (SC), or Scheduled Tribe (ST), candidates, and

- (c) 45% in the case of candidates belonging to the Other Backward Classes (OBC),
- (iii) the cut-off date for completion of internship would be 31st October, 2018, which was a requirement for admission to PG Courses for the 2018-2019 academic session, and
- (iv) the last cut off date for admission to all post graduate and undergraduate courses in AYUSH colleges would be 31st October, 2018.

13. On 26th September, 2018, the FAUM issued its Admission Notification, notifying, *inter alia*, that candidates, who had completed their internship on or before 30th September, 2018, alone, were eligible to apply for the MD/MS Ayurveda course, and only eligible candidates were required to get registered. These two clauses may be reproduced, thus:

“2. Only, eligible candidates are required to register online on website www.fmssc.ac.in.

3. Those candidates who have completed their internship training on or before 30.09.2018 are only eligible to apply.”

Additionally, the Admission Notification set out the schedule for the Online Registration and admission process, in the form of the following tabular statement:

i.	Online Registration start form	26/09/2018 (Wednesday)
ii.	Last date of filing online Registration	10/10/2018 (Wednesday) AT 5.00 pm server time

iii.	List for registered applicants*	11/10/2018 (Thursday)
iv	Final list of registered applicants	15/10/2018 (Monday)”

14. On the same day, i.e. 26th September, 2018, the FAUM also released the Information Bulletin providing information regarding the MD/MS Ayurveda course being conducted by it pursuant to the AIAPGET 2018. Clause 2.1(A)(i) of the Information Bulletin, which dealt with the eligibility criteria for the “Ayurved Vachaspati (MD/MS-Ayurved)” course, for the 50% Delhi University quota, read as under:

“The Candidates must have passed final Ayurvedacharya (BAMS) examination from the University of Delhi and *must have completed satisfactory one year compulsory rotating internship in a recognized Hospital as on or before 31.10.2018* and must have full registration with the State Council Board of Ayurvedic & Unani Medicine/CCIM.”

(Emphasis supplied)

15. On 28th September, 2018, the FAUM issued the Notification for the first Counselling, to be held on 22nd October, 2018, stating, further, that the second counselling, if required, would be held on 29th October, 2018.

16. On 2nd October, 2018, Vijay Kumar Vaid – the petitioner in WP (C) 12747/2018 – registered himself, for admission to the MD/MS Ayurveda course.

17. A corrigendum, to the Admission Notification dated 26th September, 2018 *supra*, with respect to the last date by which compulsory internship was required to be completed by candidates, seeking admission to the MD/MS Ayurveda course, was issued by the FAUM on 3rd October, 2018, to the effect that the cut-off date, for completion of internship, was 31st October, 2018, as was mandatorily required for admission to the PG Ayurveda courses.

18. On 12th October, 2018, the FAUM released a tentative list of eligible candidates, for admission to the MD/MS Ayurveda courses, against the 50% Delhi University quota, based on the performance of the candidates in the AIAPGET. A glance at the list reveals that the names, therein, were not entered in any particular order, either with respect to merit, or Roll Number, or even alphabetically. In the said list, the name of Vijay Kumar Vaid figured at S. No. 5. The list also contained the names of Yaman Kumar Sharma, etc. This was followed, however, by the Professional Merit list for admission to the MD/MS (Ayurveda) courses, which was released by the FAUM on 15th October, 2018. In the said list, the names of Yaman Kumar Sharma, Vijay Kumar Pathak and Pankaj Sharma figured at S. Nos 7, 1 and 12 in the list of General Category candidates, whereas Preeti Singh figured at S. No. 4 in the list of SC candidates.

19. Indu Kumari represented, on 17th October, 2018, to the FAUM, against the inclusion, in the aforesaid provisional Merit List, released on 15th October, 2018, of the names of Yaman Kumar Sharma, etc.

20. On 20th October, 2018, the FAUM released the Instructions, for candidates admitted in MD/MS Ayurveda and Unani courses, for the 2018 academic session. The candidates were required to carry, with them, among other things, the “compulsory rotation internship certificate”.

21. In view of the fact that the first round of counselling, for admission to the MD/MS Ayurveda courses, was imminent, this Court, *vide* order dated 22nd October, 2018, passed in WP (C) 9365/2018 (filed by Yaman Kumar Sharma etc.), allowed the petitioners, therein, to participate in the first counselling subject, however, to the outcome of the writ petition. The relevant passages, from the order, read thus:

“Learned senior counsel for the petitioners submits that the last date for counselling in respect of the course in question is tomorrow i.e. 23rd October, 2018.

In the facts and circumstances of this case, petitioners are permitted to participate in the counselling subject to outcome of this petition. It is made clear that this order will not create any special equities in favour of the petitioners.”

22. The first round of counselling was held on 22nd October, 2018. Pursuant to directions issued by this Court, Yaman Kumar Sharma, etc., also participated therein.

23. On 24th October, 2018, Indu Kumari represented, once again, against allowing of Yaman Kumar Sharma, etc., to participate in the

counselling, pointing out that they were yet to complete their compulsory one year internship, which was an essential precondition for admission to the MD/MS Ayurveda courses. *Vide* the said letter, Indu Kumar also relinquished the seat in the *shalakya* (ENT) discipline as offered to her.

24. Consequent to the first round of counselling, Office Order, dated 25th October, 2018, was issued by AIIA, enlisting, in a tabular form, the candidates who had been provisionally allowed to join their respective departments/courses. The list reflected Vijay Kumar Pathak, Yaman Kumar Sharma, Pankaj Sharma and Preeti Singh, the petitioners in WP (C) 9365/2018, as having been allotted the *shalya*, *kayachikitsa*, *kumarbhritya (bal roga)* and *salya*, disciplines, respectively. The name of Indu Kumari was reflected as “deletion”, obviously as she had relinquished the seat offered to her in the *shalakya* discipline.

25. The FAUM issued as many as three notices, notifying the tentative vacancy position of seats, for provisional admission to the MD/MS Ayurveda courses, pursuant to the AIAPGET 2018, for the second round of counselling, to be held on 3rd November, 2018.

26. The first of these notices were issued on 25th/26th October, 2018, and notified, for the General Category, only three available vacancies, against the 50% Delhi University quota, in the *Ayurveda*

Samhita Siddhanta, Rasashastra evam Bhaishiya Kalpana and Shalakya disciplines.

27. On 26th October, 2018, the Ministry of AYUSH issued a Circular, to all State authorities, informing them that, as MD/MS Ayurveda seats were lying vacant, the minimum eligibility criteria, for admission to the MD/MS Ayurveda courses conducted by the FAUM, pursuant to the AIAPGET 2018, stood revised to the 50th percentile for general category, 40th percentile for SC and ST categories and 45th percentile for OBC candidates. Simultaneously, the Circular also extended the cut-off date for admission, to the said courses, till 15th November, 2018.

28. It is an admitted position that Leena Gautam and Kiran Kumari (Petitioners No. 2 and 3 in WP (C) 12540/2018), Tripti Tyagi (the petitioner in WP (C) 12572/2018), Vijay Kumar Vaid (the petitioner in WP (C) 12747/2018) and Sunil Gautam (the petitioner in WP (C) 2777/2019) became eligible for securing admission to the MD/MS Ayurveda courses, conducted by the FAUM, pursuant to the AIAPGET, only consequent to the revision of minimum eligibility criteria for admission, as effected by the aforesaid Circular, dated 26th October, 2018, issued by the Ministry of AYUSH, from percentage, to percentile, basis.

29. The FAUM, too, intimated, *vide* Notice dated 26th October, 2018, the fact of revision of the eligibility criteria, for admission to the

MD/MS Ayurveda courses being conducted by the FAUM pursuant to the AIAPGET 2018, from percentage, to percentile, basis. The Notice stated, further, that the second round of counselling, earlier scheduled for 29th October, 2018, stood postponed.

30. Inasmuch as she had become eligible, to apply for admission to the MD/MS Ayurveda courses, conducted by the FAUM, pursuant to the AIAPGET 2018, consequent to the revision of the eligibility criteria, by the aforesaid Circular, dated 26th October, 2018, from percentage, to percentile, basis, Tripti Tyagi requested, *vide* e-mail dated on 29th October, 2018 addressed to the Delhi University, permission to have herself registered for admission to the MD/MS Ayurveda courses, and for inclusion of her name in the second round of counselling being conducted therefor.

31. On 30th October, 2018, the FAUM issued a second notice (consequent to the revision of eligibility criteria from percentage, to percentile, basis), notifying the tentative vacancy position of seats, for provisional admission to the MD/MS Ayurveda courses being conducted by the FAUM, pursuant to the AIAPGET 2018. The notice intimated that the second round of counselling would be held on 3rd November, 2018. The vacancy position, as reflected in the said notice, dated 30th October, 2018, was the same as that which was reflected in the earlier notice dated 25th/26th October, 2018 *supra*. However, the notice informed that the eligibility criteria, for admission to the MD/MS Ayurveda courses, stood revised from percentage, to

percentile, basis, as per the directions issued by the Ministry of AYUSH.

32. Closely following on the heels of the aforesaid notice dated 30th October, 2018, the FAUM issued a third notice, dated 1st November, 2018, once again notifying the tentative vacancy position of seats, for provisional admission to the MD/MS Ayurveda courses being conducted by the FAUM, consequent to the AIAPGET 2018, for the second round of counselling to be held on 3rd November, 2018. This notice, too, reflected three vacancies as being available, in the *Ayurveda Samhita Siddhanta*, *Rasashastra* *evam* *Bhaishiya Kalpana* and *Shalakya* disciplines, but showed all the said vacancies as belonging to the OBC category. No general category vacancies, of the 50% quota allotted to the Delhi University were, therefore, reflected in the said notice dated 1st November, 2018.

33. It is not necessary, for the purposes of this judgment, to enter into the reason for the three available vacancies, in the 50% Delhi University quota, being reflected in the OBC category, though they were earlier shown to be general category vacancies, though the University has offered an explanation in its counter-affidavit.

34. The second round of counselling was held, as notified by the above notices, on 3rd November, 2018. Indu Kumari and Leena Gautam were not allowed to participate, as the subject of first choice of Indu Kumari, i.e. *salya*, already stood allotted to Vijay Kumar

Pathak [Petitioner No. 2 in WP (C) 9365/2018], and Indu Kumari had refused the *shalakya* discipline, which had been offered to her in the first round of counselling, and the lone available SC vacancy already stood allotted to Preeti Singh. Kiran Kumari was also not allowed to participate, as the discipline of *Bal Roga/Kumarbhritiya*, to which she aspired, already stood allotted to Pankaj Sharma. Vijay Kumar Vaid was also not allowed to participate, on the ground that there were no general category vacancies. None of the petitioners in these writ petitions, therefore, effectively, participated in the second round of counselling.

35. The FAUM, *vide* notices dated 6th November, 2018 and 13th November, 2018, notified the tentative vacancy position of seats, for provisional admission to the aforesaid MD/MS Ayurveda courses, for the third and fourth rounds of counselling, held on 12th November, 2018 and 15th November, 2018, respectively. No general category vacancy was notified in the 50% Delhi University quota in either counselling. One OBC vacancy, alone, was notified, in the *Rasashastra evam Bhaishiya Kalpana* discipline, but in the All India quota on each occasion. Vijay Kumar Vaid attended both the rounds of counselling, but was not allowed to participate, as the sole available seats belong to the OBC category, and was of the All India quota. Sunil Gautam does not state, in his writ petition, whether he attended the third and fourth rounds of counseling; this fact is not, however, of any significance, insofar as the outcome of these proceedings is concerned.

Resultant factual position

36. Resultantly, the situation that obtains, on the ground, is that Yaman Kumar Sharma, etc., were allowed to participate in the first round of counselling, on the basis of order, dated 22nd October, 2018, passed by this Court in WP (C) 9365/2018. The said order never directed grant of admission to Yaman Kumar Sharma, etc.; nevertheless, they have been granted admission, and the petitioners, in the other writ petitions, challenge the very eligibility, and entitlement, of Yaman Kumar Sharma, etc., to be considered for admission to the MD/MS Ayurveda courses, being conducted by the FAUM consequent on the AIAPGET 2018 results.

Prayers in the writ petitions

37. It would be appropriate, at this stage, to extract the prayer clauses, in the individual writ petitions, to the extent the prayers are relevant, and merit consideration, thus:

WP (C) 9365/2018 [Yaman Kumar Sharma and Ors v. University of Delhi and Ors]

“That in view of facts and circumstances aforesaid, the petitioners most humbly prays that this Hon’ble Court may preciously be pleased to;

- a) issue to allow necessary directions to the respondents to allow petitioners participate in the ensuing counselling for the Post Graduate courses (Ayurved Varchaspati MD/MS).

- b) issue necessary directions to postpone the counselling till the internship of the petitioners is completed on 23.11.2018.
- c) Issue directions to the respondents to be sold publication of counselling result.
- d) issue any other order or directions as deemed fit in the facts and circumstances of the case.”

WP (C) 12540/2018 [Indu Kumari & Ors v. Union of India & Ors]

“In the light of facts and circumstances as mentioned above, it is most respectfully prayed that this Hon’ble Court may be pleased to:

- a. Issue appropriate Writ and or order quashing and setting aside the admission of ineligible candidates Vijay Kumar Pathak, Yaman Kumar Sharma, Pankaj Sharma and Preeti Singh done in counselling held on 22.10.2018 by the respondent university of Delhi in respondent All India Institute of AYUSH (in short AIIA), New Delhi; And
- b. Issue appropriate Writ, order or direction to the respondent University and Respondent Institution to allot aforesaid seats to the petitioners in their given choice Course and/or give option to the petitioners to opt seat for them by directing respondent No.-2, 3, 4 and 5 to consider the name of the petitioners against those seats allotted to the aforesaid ineligible candidates mentioned in prayer (a); And
- c. Issue appropriate Writ, order and/or direction to the respondents not to allot seats to any one which are subject matter of Writ Petition No. 9365 of 2018; titled Yaman Kumar Sharma & Ors. Vs. University of Delhi

& Ors. pending before this Hon'ble Court except the Writ Petitioners; And

d. Pass order directing the respondent University to not conduct any further counseling for the seats in respondent institute and to be filled by only petitioners; And

e. Pass such other and further orders, directions or writ as may be deemed fit and proper.”

WP (C) 12572/2018 [Tripti Tyagi v. Union of India & Ors]

“In the light of facts and circumstances as mentioned above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Issue appropriate Writ and or order quashing and setting aside the second counselling held on 3.11.2018 without calling application for from the candidates who became eligible for registration in the light of Notification Dated 26.10.2018 of Respondent Ministry (ANNEXURE E); And

b. Issue appropriate Writ, order or direction to the respondent University to first register the name of the petitioner to admission in PG Courses-MD/MS-Ayurveda 50% Delhi University Quota and after that direct petitioner to opt seat for her by directing respondent No.-2, 3, 4 and 5 to consider the name of the petitioner against those seats allotted to ineligible candidates mentioned in petition and subject matter of Writ Petition No.9365/2018; And

c. Issue appropriate Writ, order and/or direction to the respondents is not to allot seats to any one which are subject matter of Writ Petition No. 9365 of 2018; titled Yaman Kumar Sharma & Ors. Vs. University of Delhi & Ors. pending before this Hon'ble Court except the Writ Petitioner; And

d. Pass order directing the respondent University to not conduct any further counselling for the seats in respondent institute and be filled by only petitioner; And

e. Pass such other and further orders, directions or writ as may be deemed fit and proper.”

WP (C) 12747/2018 [Vijay Kumar Vaid v. Union of India & Ors]

“In view of the facts and circumstances as mentioned above, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

(A) issue writ of mandamus, order or direction thereby setting aside/ quashing the Office Order No. F. No. B11003/5/5/2016-AIIA/Jr.Resi/3285 dated 25.10.2018 (uploaded on 26.10.2018) issued by the respondent no.4, to the extent of provisional selection and permission to the respondents no. 6 to 9 to join their respective departments in Post Graduate MD/MS Ayurveda Degree Course, 2018-2021 conducted by the respondents no.1 to 3, the same being illegal, arbitrary and against the eligibility criteria laid down by respondents no. 1 to 3, w.r.t. respondents no. 6 to 9;

(B) issue writ of mandamus, order or direction to respondent no. 1 to 5 directing the respondents to consider the candidature of the petitioner for admission to Post Graduate MD/MS Ayurveda Degree Course, 2018-2021 conducted by the respondent is no. 1 to 3, the petitioner being eligible for the same since 2nd round of counselling.

(C) pass any other order/orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

WP (C) 2777/2019 [Sunil Gautam v. Union of India & Ors]

“In the light of facts and circumstances as mentioned above, it is most respectfully prayed that this Hon’ble Court may be pleased to:

- a. Issue appropriate Writ and or order quashing and setting aside the addition of ineligible candidates Vijay Kumar Pathak, Yaman Kumar Sharma, Pankaj Sharma and Preeti Singh done in counselling by the virtue of order dated 22.10.2018 passed by Hon’ble Court in the respondent university of Delhi.
- b. Issue appropriate Writ, order or direction to the respondent University and respondent Institution to allot aforesaid seats to the petitioner and the candidates in merit List in their given choice courses against those seats allotted to the aforesaid ineligible candidates mentioned in prayer (a)
- c. Issue appropriate Writ, order and/or direction to the respondents not to allot seats to any one which are subject matter of Writ Petition no. W.P. (C) 9365/2018, titled Yaman Kumar Sharma & Ors. vs. University of Delhi & ors. pending before this Hon’ble Court on 19.03.2019.
- d. Pass order directing the respondent University to allot the seats in the respondent Institute as per the Merit List in respective category.
- e. Pass such order and further order/directions or writ as may be deemed fit and proper.”

Rival Submissions

38. Detailed arguments have been advanced, before me, by learned Counsel appearing for the parties, who have also filed written submissions in support of their respective stands.

39. Yaman Kumar Sharma etc., represented by Mr. Rakesh Dhingra, learned Counsel, have emphasised their superiority, in merit (Vijay Kumar Pathak being at S. No. 1 of the Merit List), to the petitioners and the other writ petitions, except for Indu Kumari. They have further pointed out that it was the Delhi University alone, which was at fault for their failing to complete the internship before 31th October, 2018, and that, therefore, it would be entirely unjust to subject them to prejudice on that account. In any event, they point out, they had completed the requisite mandatory one-year internship on 23rd November, 2018. This factor, combined with their merit position, and the element of public interest involved in ensuring quality medical treatment for the public, they submit, make out a clear case for grant of relief in their favour.

40. Yaman Kumar Sharma etc. have also sought to discredit the claims of the petitioners in the other writ petitions. Pointing out that, except for Indu Kumari, the petitioners in the other writ petitions were far below Yaman Kumar Sharma etc. in the merit list, and that even Indu Kumari was lower, in merit, to Vijay Kumar Pathak, who had been allotted the course (*salya*), to which she aspired, it is submitted, with respect to the other petitioners, as under:

- (i) Indu Kumari had already been admitted to MD in *Kirya Shari (Physiology)* in 2017, and was attending classes, in the said course, in the AUTC, under the University of Delhi. The applicable Rules did not, therefore, permit her to join any other

stream midway, till she had completed 3 years of her *Kirya Shari* course, in 2020. Reliance was placed, for this proposition, on the judgment, of a Division Bench of this Court in ***Dr. Nidhi Goyal v. Faculty of Medical Sciences, University of Delhi***¹. That apart, if she had to leave the course, she had to pay a bond amount of ₹ 5 lakhs. Further, her name was shown as “deleted” in the Office Order, dated 25th October, 2018, issued by the AIIA, consequent to the first counselling held on 22nd October, 2018, enlisting the candidates who had been provisionally allowed to join their respective departments.

(ii) Kiran Kumari was ineligible for admission to the MD/MS Ayurveda course, and became eligible only consequent to the change of eligibility criteria, from percentage, to percentile, basis, *vide* the Ministry of AYUSH Circular dated 26th October, 2018. Such mid-stream change of criteria was unsustainable in law, as held by a number of decisions of the Supreme Court. That apart, Kiran Kumari had already been admitted to the MD/MS Ayurveda course, and could not, therefore, be permitted to change her course of study within 2 months of joining.

(iii) Leena Gautam and Vijay Kumar Vaid, too, became eligible for admission to the MD/MS Ayurveda course only consequent to the illegal change of eligibility criteria, from

¹ 2015 SCC OnLine Del 8347

percentage to percentile basis on 26th October, 2018. They, therefore, could not claim priority over Yaman Kumar Sharma, etc., who were much higher than her on merit.

(iv) Tripti Tyagi had failed to fill in the form for counselling or pay the requisite fees therefor and could not, therefore, in any case, claim any right to admission. At the time when the form was required to be filled up, no minimum criteria, for eligibility for admission to the MD/MS Ayurveda course, had been prescribed, so that she could not claim want of eligibility as an excuse for not filling in the form.

41. It was further contended, by Yaman Kumar Sharma, etc., that, their having been admitted to the MD/MS course, and having undergone the course, pursuant to the order passed by this Court, it would be unjust to hold, at this stage, that they were ineligible in that regard. It is also sought to be submitted that, in allowing them to undertake the course and granting them admission therefor, the Delhi University could not be said to have been infracted the order, dated 22nd October, 2018 *supra*, of this Court, as the said order did not proscribe grant of admission to them. Exception was also taken, by Yaman Kumar Sharma, etc., to the inaction, on the part of the respondents, in postponing the date of first counselling, so that their compulsory one-year internship period could be completed.

42. Indu Kumari and the other petitioners in WP (C) 12540/2018 have, on the other hand, sought to contend that completion of internship training on or before 1st November, 2018, and furnishing of certificate in that regard, were mandatory, in order to entitle any candidate to be eligible to secure admission to the MD/MS Ayurveda course conducted by the Delhi University pursuant to the AIAPGET 2018. Yaman Kumar Sharma, etc., not having completed their compulsory internship prior to the said date, and not being in possession of a certificate, in that regard, on the date of the first counselling – or, for that matter, even on the date of the second counselling – were ineligible to seek admission to the MD/MS Ayurveda course, or to attend the counselling for the said purpose. Indu Kumari, and the other petitioners in WP (C) 12540/2018, also take exception to the grant of admission to Yaman Kumar Sharma, etc., pointing out that the interim order, dated 22nd October, 2018, of this Court, never directed, or even permitted, their admission. As regards the objection, of Yaman Kumar Sharma, etc., to Indu Kumari having already secured admission to the MD/MS Ayurveda course in 2017, albeit in some other discipline, it is sought to be submitted that Clause 5.6 of the Information Bulletin provided for relinquishing and/or giving up of the previous course, but that she did not choose, or opt, to do so, as she had not been allotted a course of her choice, i.e. *salya*, in 2018-2019. Reliance has also been placed, in this regard, on Clause 5.7 of the Information Bulletin. The decision in *Nidhi Goyal*¹ is sought to be distinguished on the ground that Indu Kumari had, in fact, participated in the first counselling held on 22nd October, 2018,

and had not elected to accept the seat, in the *shalakya* discipline, offered to her and had, instead, filed a declaration, under Clauses 5.6 and 10.5 of the Information Bulletin, within the time stipulated in that regard, as a result whereof the said stream (*shalakya*) was allotted to some other candidate.

43. It is also sought to be pointed out, by the petitioners in WP (C) 12540/2018, that Yaman Kumar Sharma etc. never chose to challenge the stipulation that candidates, who had not completed their compulsory internship before the date of counselling, would be ineligible to seek admission. No application, either, was preferred, by the said petitioners, to relax the said requirement. Kiran Kumari and Leena Gautam, it is pointed out, became eligible for being considered for admission, in the second round of counselling, consequent on the division of the eligibility criteria, from percentage to percentile basis. Several candidates had secured admission, in the 50% Delhi University quota, consequent to revision of the eligibility criteria, and the said admissions were never challenged by any of the petitioners in WP (C) 9365/2018. Leena Gautam was the first candidate, on merit, after Preeti Singh, who was ineligible for admission to the MD/MS Ayurveda course, not having completed compulsory one year internship before the dates of counselling, or before the cut-off date fixed in that regard.

44. Tripti Tyagi, the petitioner in WP (C) 12572/2018, places reliance on communication, dated 21st September, 2018 *supra*, from

the Ministry of AYUSH to all State Authorities, to justify her not registering herself for the MD/MS Ayurveda courses, consequent to the AIAPGET 2018. She seeks to point out that, in the said communication, the Ministry of AYUSH clearly stipulated the minimum qualifying marks, for the AIAPGET 2018 to be 50% of the total marks, in the case of general category candidates, 40% in the case of SC/ST candidates and 45% in the case of candidates belonging to the OBCs. On this reckoning, she submits, she would have been ineligible to participate in the counselling, for admission to the MD/MS Ayurveda courses. She also relies on Clause 3.1 of the Information Bulletin released by the Ministry of AYUSH, which, too, stipulated that candidates, found to be ineligible at any stage of the AIAPGET 2018, would not be permitted to appear in the examination or counseling, as the case may be. The Admission Notification, dated 26th September, 2018 *supra*, issued by the Delhi University, too, indicated, in para 2 thereof, that only eligible candidates were required to register online. She seeks to submit that, as she had scored less than 50% marks, she was not eligible to participate in the counselling for admission to the MD/MS Ayurveda courses and did not, therefore, seek registration. Once the eligibility criteria had been relaxed, by the Circular, dated 26th October, 2018, of the Ministry of AYUSH, she submits that the option for seeking registration was necessarily required to be re-opened. This, however, was not done, as a result whereof she was unable to register. Rather, she complains, owing to the lackadaisical attitude of the respondents, several ineligible candidates were allowed to register. Objecting, further, to the

admission of Yaman Kumar Sharma, etc., despite their being ineligible, as they had not completed their period of compulsory internship before the prescribed date, she relies on *Ashok Kumar Sharma v. Chander Shekhar*² and *Rakesh Bakshi v. State of J & K*³.

45. The submissions advanced by Vijay Kumar Vaid essentially echo the submissions of the petitioners in the other writ petitions, opposing the claim of Yaman Kumar Sharma etc. Besides, Vijay Kumar Vaid contends that he was the only candidate who was present in all rounds of counselling and that, therefore, instead of leaving vacancies unfilled, he ought to have been accommodated.

Analysis

46. It is the burden of the song, of the Delhi University, as well as of the petitioners in WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019, that the petitioners in WP (C) 9365/2018, i.e. Yaman Kumar Sharma etc., deserve to be non-suited even for the sole reason that the period of one-year compulsory internship, which was required to be completed before counselling, was not completed till 25th November, 2018.

² 1993 Supp (2) SCC 611

³ (2019) 3 SCC 511

47. I am unable to agree, for the following reasons:

(i) There is no doubt about the fact that Yaman Kumar Sharma, etc., were unable to complete their period of compulsory internship till 31st October, 2018, which was the final cut-off date fixed, in that regard. For this, however, Yaman Kumar Sharma, etc., were not to blame. There is not a whisper of a justification, in the counter-affidavit of the Delhi University, filed in response to WP (C) 9365/2018, for the unconscionable delay in declaring the results of the final examinations of Yaman Kumar Sharma, etc., which were conducted in March-May 2017. In fact, para 9 of the counter-affidavit, which is the only para which deals with this issue, reads as under:

“It is submitted that the Petitioners themselves have admitted in the present Writ Petition that the first Professional Examination i.e., July/August 2014, the IInd Professional Examination i.e. September-November, 2017 and the IIIrd Professional Examination i.e., final examinations March-May 2017 respectively were held well in time *and the results were declared on 22.11.2017* and thereafter the Petitioners started their compulsory internship of 12 months but by way of present Writ Petition the Petitioners have sought to mislead this Hon’ble Court by stating that there was delay in declaring the results of BAMS. It is further submitted that the students are required to clear all papers i.e., first Professional to final professional examination to be eligible or in order to start compulsory rotatory internship training.”

(Emphasis supplied)

In para 7 of WP (C) 9365/2018, it is specifically averred, by Yaman Kumar Sharma, etc., that “the petitioners cleared final professional which has time schedule March-May 2017 by Delhi University *but it was result delayed delay till 22.11.2017.*” It was incumbent, therefore, on the Delhi University to explain, in its counter-affidavit, as to why, when the final examination of the BAMS course undertaken by Yaman Kumar Sharma, etc., had taken place during the period March to May, 2017, the declaration of the results thereof was delayed till 22nd November, 2017. The University has not cared to do so. An adverse inference must, therefore, necessarily visit the University in this regard. As a result of the wholly indefensible delay, on the part of the Delhi University, in declaring the result of Yaman Kumar Sharma, etc., they were unable to complete their compulsory one-year internship period before 31st October, 2018, which was the final cut off date fixed therefor, in order to be eligible to secure admission to the MD/MS Ayurveda courses conducted by the FAUM.

(ii) The BAMS course, as well as the MD/MS course, in Ayurveda, were both conducted by the Delhi University. The Delhi University was, therefore, well aware of the fact that students, who cleared the BAMS course, were eligible to aspire to the MD/MS Ayurveda course. Being so aware, it was incumbent on the Delhi University to ensure that the results, of the Final Year of the 2012 batch of BAMS students (to which

Yaman Kumar Sharma, etc., belonged), were announced sufficiently in advance, so as to enable them to complete their compulsory one-year internship period well in time, so as to enable them to secure admission to the MD/MS Ayurveda course. *The University could not, on the one hand, delay the announcement of the results of the Final Year examination of the BAMS course undertaken by Yaman Kumar Sharma, etc., by six months (from March-May 2017 till 22nd November, 2017) and, thereafter, seek to justify denial of admission, to these students, to the MD/MS Ayurveda course, on the ground that they had failed to complete their compulsory one-year internship before the cut-off date of 31st October, 2018. This would amount to permit the University to take advantage of its own wrong. This principle, embodied in the maxim *Nullus commodum capere potest de injuria sua propria* (“no man can derive advantage from his own wrong”), stands neatly paraphrased, by the Supreme Court, thus, in ***Eureka Forbes Limited v. Allahabad Bank***⁴:*

“The *maxim nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations.”

(Emphasis supplied)

⁴ (2010) 6 SCC 193

The principle, thus enunciated, was followed, recently, by the Supreme Court, in *Advanta India Limited v. B. N. Shivanna*⁵.

(iii) *Lex non cogit ad impossibilia*. The University had, by its delay in declaring the result of the final examination of the BAMS course undertaken by Yaman Kumar Sharma, etc., till 22nd November, 2017, rendered adherence, by them, to the cut-off date for completing their one-year internship, in order to be eligible for admission to the MD/MS Ayurveda course, pursuant to the AIAPGET 2018, an impossibility. The law does not permit visitation, of the citizen, with adverse civil consequences, for failing to do the impossible.

(iv) Yaman Kumar Sharma, etc., were allowed to join their respective departments *vide* Office Order dated 25th October, 2018, though they have not been permitted to attend classes. Grant of relief to the said petitioners does not, therefore, infract, in any manner, the cut-off date for admissions, which was extended till 15th November, 2018, *vide* Circular, dated 26th October, 2018 *supra*, of the Ministry of AYUSH.

(v) In this context, it is also necessary to bear, in mind, the fact that the cut-off date of 15th November, 2018 was fixed, not by any statutory edict, or any precedential prescription, but by an administrative decision, taken at the level of the Ministry of

⁵ (2018) 14 SCC 666

AYUSH. The fact that this cut-off date had earlier been fixed as 31st October, 2018 and was, subsequently, re-fixed as 15th November, 2018, indicates that the cut-off date was flexible. Had the University, therefore, informed the Ministry of AYUSH about the difficulty created as a result of the 2012 batch of BAMS students completing their compulsory internship only on 22nd November, 2018, there is no reason for this Court to believe that the Ministry of AYUSH would not have extended the cut-off date for admissions beyond 15th November, 2018. I enter this observation only because of the defence, sought to be taken by the University, for not extending the date of counselling, as the fixation of cut-off date by the Ministry of AYUSH was 31st October, 2018. The University having itself, by reason of its own act, rendered adherence to this cut-off date an impossibility, for the 2012 BAMS batch, it cannot lie in the mouth of the University to urge the fixation of such cut-off date, by the Ministry of AYUSH, as a justification for not appropriately adjusting the date of counselling. In any event, this factor pales into insignificance, in the present case, as the petitioners were, under an interim order of this Court, permitted to participate in the first round of counselling and were, on the basis thereof, admitted to the respective courses before 31st October, 2018.

(vi) In case the stand, of the Delhi University, were to be accepted, it would result in denying the entire 2012 BAMS

batch the opportunity to join the Post Graduate course, in Ayurveda, in 2018, solely owing to the delay on the part of the University, for which the students are entirely innocent. This would be a travesty of justice, which no writ court, acting under the aegis of Article 226 of the Constitution of India, could possibly permit.

(vii) Acceptance of the stand of the University, and of the petitioners in WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019, would result in students, who are more meritorious, having to cede place to those who are less meritorious. Petitioner No. 2, Vijay Kumar Pathak, and Petitioner No. 1, Yaman Kumar Sharma, in WP (C) 9365/2018, were at the first and fifth places, in the merit list, following the AIAPGET 2018, for the 50% Delhi University quota. It would be unfair, as well as unjust, to deny the students admission to the MD/MS Ayurveda course, and to the disciplines allotted to them, merely because of a delay, occasioned on the part of the Delhi University, in declaring their final examination results in 2017. This Court cannot be oblivious to the fact that the petitioners, in all these writ petitions, aspire to admission to medical courses, and that, in such cases, excellence and academic merit have to be accorded primacy. I am, frankly, unable to subscribe to an interpretation, of the law, which would result in meritorious candidates, such as the petitioners in WP (C) 9365/2018, being denied admission

owing to the fact that, owing to the delay, on the part of the University of Delhi, in declaring their final year examination results, they fell short of the cut-off date, for completion of their internship, by 15 days, for which they are in no way responsible.

(viii) In the event of non-grant of relief to Yaman Kumar Sharma, etc., the seats, against which they were admitted, *vide* Office Order dated 25th October, 2018, would have to go abegging. It would not be possible to adjust any of the petitioners, in the other writ petitions being decided by this judgment, against these seats. This is for the following reasons:

(a) The cut-off date, for admissions to the MD/MS Ayurveda course, was 15th November, 2018. This Court could not, legally, direct admission to be granted, to any student, in violation of the said cut-off date. The following passages, from *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh*⁶, merit reproduction, in this context:

“81. Lastly, the question which is required to be discussed in the light of the facts of the present cases is adherence to the schedule. Once the relevant schedules have been prescribed under the Regulations or under the Judge-made law, none, whosoever it be, is entitled to carve out exceptions to the prescribed schedule. Adherence to the schedule is the essence of

⁶ (2013) 2 SCC 617

granting admission in a fair and transparent manner as well as to maintain the standards of education. The purpose of providing a time schedule is to ensure that all authorities concerned act within the stipulated time. Where, on the one hand, it places an obligation upon the authorities to act according to the schedule, there it also provides complete clarity to other stakeholders as to when their application would either be accepted and/or rejected and what will be the time duration for it to be processed at different quarters. It also gives clear understanding to the students for whose benefit the entire process is set up as to when their examinations would be held, when results would be declared and when they are expected to take admission to different colleges in order of merit obtained by them in the entrance examinations or other processes for the purposes of subject and college preference.

82. We are constrained to reiterate with emphasis at our command that the prescribed schedules under the Regulations and the judgments must be strictly adhered to without exceptions. None in the hierarchy of the State Government, university, NCTE or any other authority or body involved in this process can breach the schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Court. In *Parshavanath Charitable Trust v. All India Council for Technical Education*⁷, decided on the same date, this Court held as under: (SCC para 26)

⁷ (2013) 3 SCC 385

“26. ... Time schedule is one such condition specifically prescribed for admission to the colleges. Adherence to admission schedule is again a subject which requires strict conformity by all concerned, without exception. Reference in this regard can be made to ***Rajan Purohit v. Rajasthan University of Health Sciences***⁸ at this stage, in addition to ***Medical Council of India v. Madhu Singh***⁹ .”

83. Undoubtedly, adherence to the schedule achieves the object of the Act and its various aspects. Disobedience results in unfair admissions, not commencing the courses within the stipulated time and causing serious prejudice to the students of higher merit resulting in defeating the rule of merit.”

(b) WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019, were filed on 22nd November, 2018, 22nd November, 2018, 24th November, 2018 and 20th March, 2019, respectively. *They were all filed, therefore, after the last cut-off date, for making admissions to the MD/MS Ayurveda course. It would be impossible, therefore, for this Court to pass any order, directing admission, of the said petitioner's, on the basis of the AIAPGET 2018. The petitions were, in fact, infructuous even on the day they were filed.*

⁸ (2012) 10 SCC 770

⁹ (2002) 7 SCC 258

(c) Kiran Kumari, Leena Gautam, Vijay Kumar Vaid and Sunil Gautam were, admittedly, ineligible for being considered for the MD/MS Ayurveda course under the pre-existing percentage system of marking, and became eligible only consequent to the minimum eligibility criteria being changed to percentile basis, *vide* circular dated 26th October, 2018 *supra* of the Ministry of AYUSH. Clause 3.1 of the Information Bulletin released by the Ministry of AYUSH stipulated that candidates, who were found to be ineligible at any stage of the AIAPGET- 2018 could not be permitted to appear in the examination or counselling. The Admission Notification, dated 26th September, 2018 *supra*, issued by the University, too, indicated that only eligible candidates were required to register online. There is substance, therefore, in the contention of Tripti Tyagi, as advanced before this Court, that candidates such as Kiran Kumari, Leena Gautam, Vijay Kumar Vaid and Sunil Gautam, who were ineligible till the change of eligibility criteria on 26th October, 2018, ought not to have been permitted to register themselves. It is also an admitted position that, after 26th October, 2018, when the eligibility criterion was changed from percentage to percentile basis, fresh registration was not possible. Kiran Kumari, Leena Gautam, Vijay Kumar Vaid and Sunil Gautam, therefore, who secured registration irregularly, without

being eligible for such registration, at the said time, could not, quite obviously, have been admitted to any course. Of these, as a matter of fact, however, Kiran Kumari was granted admission and there is no prayer, in any of the writ petitions, challenging the same. As such, though no occasion arises to disturb the admission granted to Kiran Kumari at this stage, it is clear that none of these four petitioners i.e. Kiran Kumari, Leena Gautam, Vijay Kumar Vaid and Sunil Gautam could aspire to any of the seats against which Yaman Kumar Sharma etc., i.e. the petitioners in WP (C) 9365/2018, were admitted.

(d) The same situation obtained in the case of Tripti Tyagi, who, too, became eligible for admission to the MD/MS Ayurveda Course only consequent to the eligibility criterion being changed, from percentage to percentile basis *vide* Ministry of Ayurveda circular dated 26th October, 2018 *supra*. As a result thereof, Tripti Tyagi could not take registration. There is no question, therefore, of her being an aspirant to admission to any of the seats, against which, Yaman Kumar Sharma etc. secured admission.

(e) Indu Kumari, Petitioner No. 1 in WP (C) 12540/2018, moreover, was additionally ineligible to be admitted to any course, pursuant to the AIAPGET-2018,

as she had already been admitted to the *Kirya Shari* (*Physiology*) Discipline, consequent to the AIAPGET-2017 and Clause 14.1 in the Bulletin of Information, issued by the University, *supra*, was by way of an absolute proscription against her being admitted to any other course, till the completion of the three years of the *Kirya Shari* course to which she had been admitted in 2017. The reliance, by Indu Kumari, on Clauses 5.6 and 10.5 of the Information Bulletin, is, in my view, misconceived. Clauses 5.6 and 14.1 of the Information Bulletin, have necessarily to be interpreted harmoniously. For ready reference, and at the cost of repetition, Clauses 5.6 and 14.1 of the Information Bulletin are reproduced thus :

“5.6 The candidate who is already pursuing any other Course must resign / relinquish the seat before completing the admission process but not later than 03 working days from the date of allotment of seat in the Delhi University Quota & All India Quota Counselling.

14.1 The Post Graduate Degree Courses are full-time courses. No candidate shall be allowed to apply for/to join any other course or any post either in India or abroad, once he/she has been admitted in the course and till the course is completed.”

(f) Read harmoniously, in my view, Clause 5.6 cannot detract from the effect of Clause 14.1. These two clauses, in my view, cater to different exigencies. Clause 14.1, which specifically deals with the case of a student who is admitted to a post-graduate degree course, and engrafts an absolute prohibition, against any such candidate applying for, or joining, any other course once she, or he, had been admitted to the course, and till the course is completed. As against this, Clause 5.6 deals with a situation in which a candidate is pursuing a course elsewhere, as is apparent from the specific use of the words, “Allotment of Seat in the Delhi University Quota and All India Quota Counselling”, employed therein. This indicates that clause 5.6 deals with a situation in which a candidate, who is already pursuing a course elsewhere, secures a seat pursuant in the Delhi University quota or in the All India Quota, pursuant to the AIAPGET 2018, in which case Clause 5.6 mandates that the candidate must relinquish the course being pursued by her, or him, before completion of the admission process and not less than three working days from the date of allotment of seat under the Delhi University, or all India, quota. It does not cover a situation in which a candidate, such as Indu Kumari, who was already admitted, pursuant to the AIAPGET of the previous year, to a seat in the post-graduate MD Ayurveda course, albeit in another

discipline, was offered another discipline in the AIAPGET conducted the next year. Such cases specifically fall within the four corners of Clause 14.1, and Clause 5.6 has no application thereto. Clause 10.5 deals with an entirely different situation, in which a candidate is allotted a seat in the first round of counselling and decides to accept another in the second round of counseling, which has no application in the case of Indu Kumari. Inasmuch as she had already been admitted to the *Kirya-Shari* discipline in the MD/MS Ayurveda Course, against the 50%, Delhi University quota, pursuant to the AIAPGET 2017, therefore, Indu Kumari could not have aspired to any seat in any discipline, of the MD/MS Ayurveda Course, pursuant to the AIAPGET 2018.

(ix) Maximising the reach of education is a sanctified constitutional goal, and it is avowedly in public interest that medical professionals, of eminence and excellence, emerge to serve the society. This Court is, therefore, loath in according, to the provisions contained in the applicable instructions, figuring in the Bulletins of Information and Admission Notifications, a construction which would guillotine the chances of meritorious students, who seek to pursue medical education, from doing so. In exercise of its jurisdiction under Article 226 of the Constitution, this Court is required to act in

public interest, viewing the facts before it holistically, and not in a hyper-technical manner, which would result in sacrificing merit, and in denying, to meritorious candidates, a right to excel in their chosen professions.

48. Before concluding, I may note that WP (C) 9365/2018 was pressed only *qua* Petitioners 1 to 4 therein, namely Yaman Kumar Sharma, Vijay Kumar Pathak, Pankaj Sharma and Preeti Singh, as the remaining two petitioners namely Himanshu Gautam and Akshay Kumar, were far lower in merit. Neither do the names of Himanshu Gautam and Akshay Kumar figure in Office Order dated 25th October, 2018 *supra*, whereby the their four other co-petitioners were permitted to join their respective courses in the University. The University has not allowed the said petitioners to attend classes, owing to want of any specific direction, by this Court to the other effect. At this distance of time, it is obviously impossible for the said petitioners to attend any classes for the 2018-2019 academic session. They would, however, be entitled to commence their MD/MS Ayurveda course with effect from the 2019-2020 academic session, on the basis of Office Order dated 25th October, 2018 *supra*.

49. The remaining writ petitions, i.e. WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019, therefore, fail.

Conclusion

50. In view of the discussion hereinabove, the admission granted to the petitioners Yaman Kumar Sharma, Vijay Kumar Pathak, Pankaj Sharma and Preeti Singh, *vide* Office Order dated 25th October, 2018, is upheld. On the basis thereof, the said petitioners i.e. Yaman Kumar Sharma, Vijay Kumar Pathak, Pankaj Sharma and Preeti Singh would be entitled to join and attend the courses, to which the said Office Order grants them admission, with effect from the 2019-2020 academic session, and to join classes, for the said purpose, forthwith.

51. WP (C) 9365/2018 stands allowed to the above extent.

52. WP (C) 12540/2018, WP (C) 12572/2018, WP (C) 12747/2018 and WP (C) 2777/2019 are dismissed.

53. All pending applications stand disposed of. There shall be no orders as to costs.

C. HARI SHANKAR, J.

OCTOBER 10, 2019/HJ