

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 20th December, 2018
Pronounced on: 7th January, 2019

+ W.P.(C) 11903/2018 & CM No. 46107/2018
+ W.P.(C) 12713/2018
+ W.P.(C) 12714/2018
+ W.P.(C) 12790/2018
+ W.P.(C) 12856/2018
+ W.P.(C) 12959/2018
+ W.P.(C) 12858/2018
+ W.P.(C) 12511/2018
+ W.P.(C) 12800/2018
+ W.P.(C) 12805/2018
+ W.P.(C) 12806/2018
+ W.P.(C) 12808/2018
+ W.P.(C) 12813/2018
+ W.P.(C) 12814/2018
+ W.P.(C) 12155/2018
+ W.P.(C) 12171/2018
+ W.P.(C) 12208/2018
+ W.P.(C) 12441/2018
+ W.P.(C) 12486/2018

PRACHI

..... Petitioner

Through: Mr. Praveen Suri, Adv.
 Mr. R. G. Srivastava with Mr. B.
 K. Goswami, Adv.
 Mr. Dev. P. Bhardwaj, Adv.
 Mr. Rishi Khanna & Mr. Varun
 Naghrth, Adv.
 Mr. Kuldeep Balhara and
 Mr. Ashok Dahiya, Adv. for
 petitioners Kshitiz Thakur,
 Rocky Bhardwaj and Harshit
 Bansal
 Mr. Aditya Vikram, Adv.
 Mr. Mobin Akhtar, Adv.
 Ms. Soumya Sarin, Adv.
 Mr. Nimish Chib and Mr.
 Satyam Bhatia, Adv.

Mr. Ashok Agarwal and Mr.
Kumar Utkarsh, Advs.

Mr. Sanjay Sharawat and Mr.
Divyank Rana, Mr. Ashok
Kumar, Advs.

versus

GURU GOVIND SINGH INDRAPRASTHA UNIVERSITY
AND ANR.

..... Respondents

Through: Mr. Mukul Talwar, Sr. Adv.
with Ms. Ekta Sikri and Mr.
Jasbir Bidhuri, Mr. Arun
Sanwal, Ms. Ritu, Advs. for
R-1

Mr. Bipin K. Dwivedi, Adv. for
R-2

Mr. Namit Suri, Mr. Dipender
Chauhan and Mr. Kunal Kumar,
Advs. for R-2

Mr. Kamal Gupta and
Ms. Pragya Agrawal, Advs. for
R-2

Mr. Abhishek Paruthi and Mr.
Praveen Sharma, Advs. for
Maharaja Agarsen Institute

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. The petitioners, in this batch of writ petitions, were provisionally admitted, to colleges affiliated with the Guru Gobind Singh Indraprastha University (Respondent No 1 herein and referred to, hereinafter, as “the GGSIPU”), against the 10% “management quota”, consequent to their clearing the Common Entrance Test (CET) conducted by the GGSIPU. These admissions were, however,

subsequently either refused, or not approved, by the GGSIPU, sometime in November, 2018. The petitioners who, thereby, found themselves unable even to appear in the first Semester examinations, despite having attended the classes therefor, in colleges affiliated to the GGSIPU, have approached this Court for succour.

2. *Vide* interlocutory orders passed in this batch of writ petitions, the petitioners were permitted to appear, provisionally, in the first Semester examinations, clarifying that such appearance would not result in creation of any equities in their favour. The petitioners have, on the strength of the said interim directions, appeared in the first Semester examinations.

3. Notices were issued, in these writ petitions, on various dates, with directions, to the respondents, to file the responses, thereto, positively within two weeks. The writ petitions were set down for final hearing, with the consent of all parties, on 20th of December 2018. The only counter-affidavit which has been filed, however, is by the GGSIPU, in W.P. (C) 11903/2018. Inasmuch as the second semester is to commence in January, 2019, it was not possible for this Court to keep the matter pending, awaiting filing of further pleadings. Accordingly, having heard detailed arguments, on behalf of the petitioners, the GGSIPU, and the colleges, judgment, in these writ petitions, was reserved on 20th December 2018, and is being pronounced today.

4. The nature of controversy, in all these writ petitions, is the same, though there are some minor, albeit consequential, differences in facts.

I propose, and proceed, therefore, to pass this detailed judgment in W.P. (C) 11903/2018 (*Prachi v. G.G.S.I.P.U.*). The individual facts of the other writ petitions would be alluded to, thereafter. Reference, in this judgment, to “the petitioner” would, therefore, be to Prachi, the petitioner in W.P. (C) 11903/2018.

WP (C) 11903/2018

5. In April, 2018, the petitioner appeared in the Common Entrance Test (CET) conducted by the GGSIPU for the B.Ed. course. It is not in dispute that she fulfilled the eligibility conditions prescribed, for admission to the said course, as contained in Clause 2.4.2 of the Admission Brochure of the GGSIPU. The said eligibility conditions read thus:

“Candidates with at least 50% marks either in the Bachelors Degree and/or in the Masters degree in Sciences/Social Sciences/Humanities, Bachelors in Engineering or Technology with specialisation in Science and Mathematics with 55% marks or any other qualification equivalent thereto, are eligible for admission to the program. The University shall follow NCTE guidelines/regulations for the B.Ed. programs for admissions and implementation.”

6. At the time of her applying and appearing in the CET, the results of the qualifying examination of the petitioner, i.e. B. Com. (Hons), were awaited. Clause 3.7 of the Admission Brochure of the GGSIPU dealt with “Result Awaited Cases For Engineering, B. Arch. & Professional Programs”, and read thus:

“3.7 Result Awaited Cases For Engineering, B. Arch. & Professional Programs (Except for NEET -based admissions)”

1. Result

Awaited/Compartment/Supplementary Cases

i. All such candidates who have appeared in the qualifying examination (irrespective of the outcome of the final result) will be eligible to appear in the CET 2018-19 and all such candidates will be provisionally admitted in the respective programs; provided that the examination of the qualifying program of study on the basis of which admission is sought is over before the commencement of classes in the University for the program of study in which admission is sought. Further, such provisionally admitted candidates will have to fulfil his/her eligibility as per the eligibility laid down in the admission brochure latest by October 15, 2018.

ii. All such candidates whose result is awaited, will have to submit an undertaking/self-declaration form at the time of admission/verification of document (schedule to be notified later) in the prescribed Pro forma (to be made available on or before 28th February, 2018). Further, in case the candidate is a minor i.e. below 18 years of age, in that case, the undertaking shall be countersigned by his/her parent/guardian. Candidates/parents/guardians may further note that the submission of false affidavit is a punishable offence;

iii. The candidate will have to submit the final result of qualifying degree proving his/her eligibility on or before October 15, 2018 to their Concerned

Dean/Principal/Director of the respective School/College/Institute where the admission has been granted. The concerned Dean/A/Director must submit the details of the results of these provisionally admitted students by October 18, 2018 to the Incharge (Admissions), Academic Reception Counter, Administrative Block, GGS Indraprastha University, Sec 16C, Dwarka, New Delhi-110078, duly signed by the concerned Dean/A/Director;

iv. In case the candidate fails to submit his/her final result of qualifying degree in the manner as prescribed above to prove his/her eligibility on or before October 15, 2018, whatsoever the reason may be, his/her admission will be treated as null and void (cancelled) and the entire fee will be forfeited and under no circumstances he/she will be allowed to appear in the End Term Exam. If such an admitted student appears for the examination and even if the result of such students is declared, the candidature of such provisionally admitted candidates shall be cancelled and the results declared as null and void. No extension beyond October 15, 2018 shall be allowed by the university in any case. The Dean of the Schools/Director/Principal shall be responsible to ensure that the eligibility of all students are checked by them to ensure correctness of admissions specially in case of provisionally admitted students. The provisional admission will automatically stand cancelled if the candidate fails to submit result in time i.e. October 15, 2018.”

7. On 29th May, 2018, the result of the CET, conducted by the GGSIPU, was published. The rank of the petitioner was 3769.

8. It is an admitted position that 90% of the seats, in the various courses conducted by the GGSIPU, were filled on the basis of the merit position in the CET, whereas 10% of the seats were available to be filled under the “management quota”. The petitioner could not qualify, on merit, for admission against the 90% merit-based seats. Consequently, she was counselled, on 29th June, 2018, by the GGSIPU, and was granted provisional admission, by the Respondent No. 2-College in the 10% management quota. Classes commenced, under the Respondent No. 2-College, on 1st August, 2018, and the writ petition avers that the petitioner has regularly attended the first semester classes.

9. Prior to being granted admission, the petitioner, like all other students who were granted provisional admission, was required to furnish the following undertaking in accordance with sub-clause (ii) of clause 3.7(1) of the Admission Brochure supra :

“Guru Gobind Singh Indraprastha University
Sector 16-C, Dwarka, New Delhi-11078

**UNDERTAKING/SELF DECLARATION BY THE
CANDIDATE FOR RESULT AWAITED**

**(To be Submitted at the Time of
Counselling/Admission by the Candidates Seeking
Provisional Admissions)**

“I, _____ (Name of the candidate),
Son/Daughter/Wife of _____
(Father’s/Husband’s name) Resident of _____
seeking admission to _____ (Name of the
Course) of GGSIP University, hereby solemnly affirm and
declare

(i) that I have appeared in the 12th class/final semester/final year (name of the qualifying degree) Graduation/Post Graduation) _____ Examination, 2018 _____ University (Board/University), *the result of which has not yet been declared and is expected to be declared the latest by 15th October, 2018;*

(ii) that all the examinations of the qualifying degree are/shall be over on/before 31 July, 2018.

(iii) I undertake that examination of the qualifying program of study on the basis of which admission is sought his/shall be over before the commencement of classes in the University for program of study in which admission is sought, otherwise I understand that my admission shall be cancelled and the full fees deposited shall be forfeited.

(iv) I am seeking provisional admission due to non-declaration of result of final year/final semester of the qualifying degree examination by Board/University as stated above in current or previous years of the qualifying degree examination as on date of admission.

(v) I declare that I will submit the result only in consonance with the result of 12th class/final semester/final year (name of the qualifying degree) from board/University as mentioned above in (i) and that I am well aware that the submission of result from any other board/University will not be considered for fulfilling the eligibility criteria for admission and the respective program and no claim for the same will be made by me.

(vi) That I have carefully gone through the rules regarding provisional admission and fully understand that in the event of my failure to submit

the concerned Team/Principal/Director of the concerned School/College, where the provisional admission has been granted, solely on the request, *appropriate proof of my securing at least ___marks/percentage in qualifying examination for admission to _____ (name of the Cause) of GGSIP University of 15th October, 2018*, my admission is liable to be cancelled with forfeiture of the fees paid for admission. In absence of submission my provisional admission to the said course will automatically get cancelled and full fee deposited will be forfeited.

Date:

Candidates Signature:

Name of the Candidate (In Bold Letters):

Address of Candidate:

Mobile No:

Counter signed by the Parent/Guardian:

Name of the Parent/Guardian (In Bold Letters):

Relationship with the candidate:

Note: The Undertaking has to be filed by the candidate only in his/her handwriting. A self attested copy of the documents/admit card for appearing in the said examination as declared by the candidate for which the result is awaited is also to be enclosed by the candidate at the type of verification of document.”

(Emphasis supplied)

10. On 1st August, 2018, the first semester classes, conducted by the Respondent No. 2-College, as already noted hereinabove, commenced. The petitioner attended all the classes, and was issued an Identity Card by Respondent No. 2.

11. Prior to the cut-off date of 15th October, 2018, stipulated in Clause 3.7(1)(iii) of the Admission Brochure, the results of the petitioner's B. Com (Hons) examination became available. She submitted the mark sheet of the said examination, to the GGSIPU, on 18th August, 2018. She had scored 936 marks out of 1700, which was above the 50% cut off prescribed for eligibility to the B.Ed. course.

12. Regarding these facts, there is no dispute.

13. On 5th October, 2018, the petitioner was called by Respondent No. 2, and was served a copy of the impugned email communication, from the GGSIPU to the Respondent No. 2-College, which reads thus:

“Regarding documents submitted for Management Quota admissions in B.Ed. Prog. for Session 2018-19

Thursday, 4 October, 2018 4:17 PM

From: “Pravin Chandra” <admissions@ipu.ac.in>

To: “principal manager” <grdced@yahoo.co.in>

Sir,

This is in reference to our earlier email and your letter no. nil dated 10.09.2018 on the above subject pointing out certain observations/discrepancies and seeking further information for consideration of Management Quota files in B.Ed. Program for session 2018-19.

Further, the following candidate shall not be considered for admissions in Management Quota because the result was awaited on the day of display of Merit and/or day of Counselling.

1. Ms Prachi, CET Roll No. 1221031, Rank 3769

Regards
Admissions Branch”

(Emphasis Supplied)

14. Having attempted, unsuccessfully, to represent, to the GGSIPU, against the above-extracted communication, the petitioner has petitioned this Court.

15. The writ petition contends that the impugned communication, and the decision, of the GGSIPU, reflected therein, not to consider the petitioner for admission in the management quota (thereby effectively cancelling the provisional admission granted to the petitioner) is contrary to Clause 3.7 of the Admission Brochure, already extracted hereinabove. Pointing out that the petitioner fulfils the eligibility criteria stipulated in Clause 2.4.2 of this Admission Brochure, for admission to the B.Ed. course of the GGSIPU, the writ petition argues that, as the qualifying program of study, i.e. the B. Com (Hons) course undertaken by the petitioner, was over before the commencement of classes in the Respondent No. 2-College, and as the petitioner had furnished the mark sheet of the said course prior to the cut-off date of 15th October, 2018, the GGSIPU could not have legally cancelled the provisional admission, granted to the petitioner against the Management Quota. It is pointed out that the ground for cancellation, i.e. that the result of the petitioner’s B. Com (Hons) course was awaited on the date of display of merit/counselling for the B.Ed. course of the GGSIPU, was invalid, as the Admission Brochure did not require the results of the qualifying examination/course to be available on the date of display of merit and/or date of counselling. All that was required, the

petition reasserts, was that the said result be produced, by the candidate, prior to 15th October, 2018, which the petitioner did. Highlighting the prejudice that has resulted to the petitioner as a consequence of the impugned act of the GGSIPU, the writ petition seeks quashing of the impugned email dated 4th October, 2018, and the decision, of the GGSIPU, to cancel the provisional admission granted to the petitioner, reflected therein.

16. The GGSIPU has, in its counter-affidavit filed in response to the writ petition, sought to rely on the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulations of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 (hereinafter referred to as “the 2007 Act”) and the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, The regulations of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Rules, 2007 (hereinafter referred to as “the 2007 Rules”), to support its decision. It is averred that these provisions regulate admissions, to management quota seats, in professional colleges in Delhi.

17. Inasmuch as specific reliance has been placed, by the GGSIPU, on Sections 12(1)(a), 13 and 14 of the 2007 Act, these provisions may be reproduced, as under:

“12. Allocation and reservation of seats –

- (1) In every Institution, except the minority institution

(a) subject to the provisions of this Act, ten per cent of the total seats in an unaided institution shall be allocated as management seats;”

“13. Manner of admission –

An institution shall, subject to the provisions of this Act, make admission through a common entrance test to be conducted by the designated agency, in such manner as may be prescribed:

Provided that the management seats may be advertised and filled up, from the candidates who have qualified the common entrance test by the institution in a transparent manner based on the merit at the qualifying examination.”

“14. Admission made in contravention of this Act –

Any admission made in contravention of the provisions of this Act or the rules made thereunder, shall be void.”

18. These provisions, argues the counter-affidavit, require management quota seats to be filled up from candidates, who have qualified the CET, in a transparent manner, *based on the merit at the qualifying examination*. This, the counter-affidavit argues, necessarily predicates availability of the merit position of the candidate, in the qualifying examination, before the seats are filled up. The corollary, therefore, according to the counter-affidavit, would be that candidates, whose merit position in the qualifying examination, was not known on the date when the seats were filled up, could not have been admitted at all, even provisionally, under the management quota. The counter-affidavit also emphasises Section 14 of the 2007 Act, which, by

statutory fiat, renders all admissions, made in contravention thereof, void.

19. Admissions to management quota seats, submits the counter-affidavit, also stand regulated by Rule 8(2)(a) of the 2007 Rules. The said provision, with its various sub-clauses, may be reproduced thus:

“(2) Every institution other than a minority institution shall provide for seats in respect of management quota, wards of defence personnel, persons with disability and others in the manner as described below:-

(a) Management Quota –

(i) The Chairman or Secretary of the highest management body of the institution shall furnish an affidavit to the designated agency, mentioning therein that they have followed the procedure laid down in the Act and these rules in a transparent manner and that they have done so without any prejudice or undue favour. Such an affidavit shall accompany the list of successful candidates under management quota, to be lodged with the University in the manner laid down in sub-clause (viii).

(ii) The institution shall advertise the admission notice for management quota seats in at least two leading daily newspapers, one in Hindi and the other in English in addition to displaying the same on the institution’s website and the institution’s notice board, kept at a conspicuous place. The admission notice shall be displayed at least a fortnight before the last date for closing of admission for the concerned course in the University and shall include therein information necessary for the students seeking admission to

management quota seats. The admission notice shall include therein the place from which admission forms will be available, the date, time and manner for submission of completed applications and the schedule for various admission processes and counselling. Prospective applicants shall be given a period of at least 18 days to apply for seats under the management quota, in the aforementioned manner.

(iii) While calculating the management seats, fraction less than 0.7 shall be ignored and above that converted into one full seat.

(iv) Based on the aggregate marks obtained by qualified applicants at the qualifying examination, the institution concerned shall prepare and display the rank ordered merit list of such applicants on the institution's website and notice board kept at a conspicuous place of the institution, within two days of the closing date for receipt of the management quota applications. The criteria for rank ordering of applicants with a tie in the qualifying examinations aggregate marks shall be the same as those laid down in the admission brochure or as laid down by the designated authority.

(v) Based on the merit list so drawn up, the institution concerned shall conduct admission counselling for allotment of branches/courses to qualified applicants within a period of three days of drawing up of the merit list of qualified management quota applicants. Such admission counselling will, however, be subject to the condition that there shall not be more than two rounds of counselling. The list of applicants who will be called for a given round of admission counselling shall be

displayed on the institution's website and notice board, kept in a conspicuous place.

(vi) Following the conduct of admission counselling, the list of applicants admitted to the management quota seats made on the basis of the merit list drawn up in the aforementioned manner in the balance of the management quota seats in each course shall be published at the end of each round of counselling on the website of the institution as well as that of the designated agency. A copy of such list shall be displayed on the notice board of the designated agency as well as that of the institution, kept at a conspicuous place for the information of the candidates and others. The list of the candidates being called for the first round of counselling shall be displayed in the aforementioned manner along with the merit list, indicating there in the date, time and place at which the counselling will be held. The date, time and place of the second round of counselling will be displayed along with the list of candidates admitted in the first round of counselling:

Provided that the second round of counselling shall commence only 12 hours after publication of the list of applicants admitted in the first round of counselling and the discipline/course -wise balance of seats.

(vii) The last date to fill up the management quota seats will be nine calendar days after the last date for regular admissions to the University and the concerned course.

(viii) All admissions made to the management quota seats shall be provisional and will need ratification by the designated agency, which will convey its decision within

a day of being informed by the institution of the list of successful candidates and the basis of their selection as per procedure mentioned herein before.

(ix) The affiliated institutions shall not be authorised to admit candidates against the management quota seats after the cut-off date fixed as mentioned in sub- clause (vii) above.

(x) If any dispute arises with regard to the petitioner under the management quota seat(s), the designated agency or the Government, as the case may be, shall have the overriding power to issue directions to the institution which shall be binding upon the institution concerned.”

20. Upholding of the admission of Respondent No. 2, under the management quota, the counter-affidavit seeks to contend, would infract various provisions of the 2007 Rules, inasmuch as (i) Rule 8(2)(iv) requires admissions, under the management quota, to be done based on the aggregate marks obtained by the qualified applicants at the qualifying examination, after preparation and display of their rank order of merit list of such applications on the institution’s website at notice board, within two days of the closing date of receipt of the management quota applications, (ii) Rule 8(2)(v) requires the institution to conduct admission counselling, for allotment of branches/courses to qualified applicants within a period of three days of drawing up of the said merit list, (iii) Rule 8(2)(vii) stipulates that the last date to fill up management quota seats is nine calendar days after the last date for regular admissions, so that, in the present case, the last date for regular admissions in the GGSIPU, for the academic year 2018-19 having been

31st July, 2018, the last date for admission, under the management quota, was 9th August, 2018, whereas the petitioner's B. Com. (Hons) Result was declared only on 10th August, 2018.

21. It is, therefore, contended, in the counter-affidavit of the GGSIPU, that no admissions could be granted, under the management quota, to students, the results, in the qualifying examination, of whom, were not available on the date of display of merit list/counselling, and were not even available within nine days of the last date for regular merit-based admissions.

22. The GGSIPU, in its counter-affidavit, also draws attention to a communication, dated 16th July, 2018, addressed by it to the Principals/Directors of its affiliated institutions, dealing with admission to management quota seats for the academic year 2018-2019, which extract, *in extenso*, the above-extracted provisions in the 2007 Act and the 2007 Rules, and proceeds to direct the affiliated institutions, thus:

“All are required to meticulously follow the prescribed procedure as notified as per the rules regarding filling of Management Quota and submit the list of the candidates admitted along with affidavit of the Chairman or Secretary of the highest Management body of the institution to the designated agency, mentioning therein that they have followed the procedure laid down in the Act and these rules in a transparent manner and that they have done so without any prejudice or undue favour. Such an affidavit shall accompany the list of successful candidates under management quota, to be lodged with the University in the manner laid down in sub- clause (viii) and as procedure as laid down for Management Quota in the rules as per Notification dated 14.06.2007 as above as per section 8(2)a(ii) to (x), immediately and as specified the last date

to fill up the Management Quota seats will be within 9 calendar days after the last date for regular admissions in the University and concerned case, failing which no cognizance will be taken by the University, of the candidate(s) admitted by you under the Management Quota. The last date to fill up the Management Quota seats will be 9 calendar days after the last date for regular admissions in the University and the concerned course. All admissions made to the Management Quota seats by the Institutions shall be provisional till the University (as designated agency) ratifies the same.

The details of candidates who have applied for admission and the management Quota at your Institute and those who have been admitted under Management Quota should be submitted separately as per format 'Annexure-A' and 'Annexure-B' respectively, both in hardcopy and soft copy in MS-Excel.

Kindly send the list of admitted candidates along with the following documents for ratification and allotment of Universities Enrolment No.

- a) Affidavit by the Chairman or Secretary of the Society in consonance with the rules notified by the Government of NCT of Delhi referred above and following rules as mentioned in section 8(2)a(i) to (x) of the letter No DHE-4 (15)/2006-07/1546-1605 dated 14.06.2007.
- b) List of admitted candidates indicating Name, Father's Name, Mother's name, Date of Birth, CET Rank and % of marks in qualifying examination (Aggregate % should be strictly as per eligibility criteria mentioned as per rules).
- c) Copy of the Advertisement of Admission Notice published in at least 2 leading daily newspapers, one in Hindi and other in English in addition to display of the same on Institution Notice Board, etc., as mentioned in the Notification dated 14.06.2007.

d) Personal file of the admitted candidates containing Application Form and all other documents as detailed in the relevant Admission Brochure is under Chapter “Documents required for admission at the time of Counselling”.

e) Payment of ₹12,000/- for each of the admitted candidates through Demand Draft in favour of “Registrar, Guru Gobind Singh Indraprastha University” payable at Delhi.”

23. The above communication was, however, significantly followed up by the following letter, dated 30th August, 2018, again addressed by the GGSIPU to all Directors/Principals of affiliated institutions/colleges:

**“Guru Gobind Singh Indraprastha University
Sector 16-C, Dwarka, New Delhi-110078**

F. No. IPU-7/Admissions/2018-19/5167
30/8/18

Dated:

To,

**All the Directors/Principals of
Affiliated Institutions/Colleges of the University**

**Subject: Submission of the Admission Files of Students
admitted in Supplementary Counselling Stage.II &
Management Quota for Academic Session 2018-19.**

Sir/Madam,

This is in continuation to Universities Notice No IPU-7/Supplementary Counselling/2018/0620 dated 06.08.2018.

The schedule for submission of ‘Admission Files of Students admitted during Supplementary Counselling Stage.II & Management Quota’ as enumerated in the

aforesaid Notice at page 2 at point (g), is attached herewith. All the Institutes/Colleges are requested to please adhere to the notified schedule for submission of 'Admission Files of Students admitted during Supplementary Counselling Stage.II & Management Quota' along with the list of student to be provided separately Program -wise by AP Institute/College if any, who are provisionally admitted *on the basis of undertaking submitted by them that they will submit the result of qualifying decree to prove their eligibility on or before 15 October 2018.*

It is reiterated that these files shall be complete in all respects and shall be forwarded along with a complete list of students *(with separate mention about the result-awaited/who have taken Provisional admission on submission of Undertaking).*

As the Provisional Admissions in Supplementary Counselling Stage.II & Management Quota have been carried out at respective Institute/College. Such Provisional Admissions will be examined as per rules and gratification of admissions shall be informed by the University of eligible candidates accordingly.

Dr. Nitin Malik
Joint Registrar (Admissions)''

24. The GGSIPU has also sought to contend that Clause 3.7 of its Admission Brochure did not cover admissions to management quota seats, which were exclusively governed by the provisions of the 2007 Act and the 2007 Rules. The reliance, by the petitioner, on Clause 3.7 of the Admission Brochure of the GGSIPU is, therefore, misconceived, according to it.

25. Regarding Prachi, Petitioner No. 1 in W.P. (C) 11903/2018, the counter-affidavit of the GGSIPU also complains that, in the list of

students, to whom provisional admission had been granted by it, the Respondent No. 2-College had reflected the marks obtained by her, in her qualifying examination, as 55%, when her mark sheet was yet to be issued. Learned counsel appearing for the Respondent No. 2-College has stated that this was an inadvertent error. Be that as it may, inasmuch as the refusal, on the part of the GGSIPU, to grant admission, to the said petitioner, under the Management Quota, is not on this ground, and any examination of this contention would necessarily involve entering into the arena of disputed facts, I do not propose to examine the same.

26. In her rejoinder to the counter-affidavit of the GGSIPU, the petitioner merely submits that, as she fulfilled the conditions stipulated in Clause 3.7 of the Admission Brochure governing admissions to the GGSIPU, there could be no justification for not approving her admission, under the management quota. It is pointed out that, as required in the said Clause 3.7, the qualifying examination, undertaken by the petitioner, was over in June, 2018, prior to the commencement of the B. Ed. classes in the Respondent No 2-College on 1st August, 2018, and that the petitioner had also submitted proof of her eligibility, for admission to the said course on 10th August, 2018, well before the cut-off date of 15th October, 2018. In these circumstances, the petitioner contends that the GGSIPU was unjustified in refusing to consider her for admission to the Management Quota, nearly 2 months after she had actually completed her first semester in the B. Ed. course.

27. Detailed arguments, supporting their respective clients, were advanced by Mr Kamal Gupta and Mr. R. K. Saini, learned counsel for

the petitioner and Mr. Mukul Talwar, Senior Counsel appearing for the GGSIPU, with learned counsel essentially echoing the stances adopted in the writ petition and the counter-affidavits, respectively.

28. Learned counsel appearing for the petitioners emphasised that the petitioners could be bound only by the provisions contained in the Admission Brochure, which did not exclude, anywhere, admissions under the Management Quota. It was pointed out that the students could hardly be expected to know the provisions of the 2007 Act and the 2007 Rules, and that the communication, dated 16th July, 2018 (*supra*), on which the GGSIPU sought to rely, was also addressed to the Principals/Directors of the colleges/institutes in which the petitioners were admitted, and not to the petitioners themselves. No reference, to the provisions of the 2007 Act, or the 2007 Rules, it was further pointed out, figured in the Admission Brochure issued by the GGSIPU. It was also sought to be contended that the GGSIPU was bound, not by the 2007 Act, or, consequently, the 2007 Rules, but by the GGSIPU Act, which was a distinct and different piece of legislation. The reliance, by the GGSIPU, on the 2007 and the 2007 Rules was also sought to be met by submitting that the GGSIPU had itself not acted in compliance therewith, especially with regard to the mandate of sub- clause (viii) of Rule 2(a) of the 2007 Rules, inasmuch as the impugned decision was communicated, by it more than 1 ½ months after the GGSIPU was informed, by the Respondent No. 2-College, of the list of successful candidates. Mr. Saini also sought to rely on the judgment of a learned Single Judge of this Court in *Amandeep Singh v. University of Delhi, 2015 SCC Online Del 10814*, to contend that relief could be granted, to

further the cause of justice, even if it was not strictly in compliance with the provisions of the statute. Regarding the submission of the GGSIPU, that admissions, under the management quota, ought not to have been granted, by the Respondent No. 2-College, to candidates, whose results, in their qualifying examination, were awaited, learned Counsel appearing for the College submits that the expression “admission”, in the proviso to Section 13 of the 2007 Act would include provisional admission and that, therefore, it was open to the College to grant provisional admission, subject to ratification by the GGSIPU and clearance of the examination. Reliance was placed, by learned counsel for the petitioners, on *Delhi University v. Varun Kapur*, *ILR (2011) Del 565* and *State of U.P. and Ors. v. Reena Singhal(Dr.)*, (2000) 9 SCC 391.

29. Mr Talwar, arguing *per contra*, preferred to confine his submissions essentially to the binding nature of the 2007 Act and the 2007 Rules, which rendered all admissions made, in contravention of the mandate of the procedure prescribed therein, void. Compliance with the said provisions, Mr. Talwar would submit, was possible only if the results of the candidates, in the qualifying examination(s), were known prior to grant of admission. It is submitted that, therefore, the School erred in admitting, provisionally, students whose results, in the qualifying examination, were awaited. Mr. Talwar would also seek to submit, on instructions, that the reference to furnishing of an undertaking, by the provisionally admitted students, in the communication dated 30th August, 2018 (*supra*), from the GGSIPU to the various Institutions/Colleges, was only with reference to admissions

in the Supplementary Counselling Stage-II, and not to admissions made under the management quota.

30. Mr. Talwar would, therefore, exhort this Court to dismiss the writ petitions, essentially in view of the provisions of the 2007 Act and the 2007 Rules which, in his submission, were sacrosanct and binding.

Analysis and findings

31. As is apparent from the above, the petitioners rely on the provisions contained in the Admission Brochure of the GGSIPU, particularly Clause 3.7 thereof, whereas the GGSIPU relies on the provisions of the 2007 Act and the 2007 Rules.

32. Clause 3.7 of the Admission Brochure, which stands extracted, *in extenso*, hereinabove, does not except, in any manner, its application, to admissions made under the management quota. On the contrary, sub-clause (1)(i) thereof clearly states that “*all such candidates who have appeared in the qualifying examination* (irrespective of the outcome of the final result) will be eligible to appear in the CET 2018-19 and *all such candidates will be provisionally admitted* in the respective programs”. The overarching ambit of the said sub- clause is conditioned only by two provisos, the first, that the “qualifying examination”, on the basis of which admission was sought, was over before the commencement of classes in the GGSIPU, and the second, that the provisionally admitted candidates would have to fulfil their eligibility,

as per the eligibility conditions prescribed in the Admission Brochure, latest by 15th October, 2018.

33. The sub-clauses of Clause 3.7, which follow, only serve to enhance and reinforce this impression. Sub-clause (ii) requires *all such* candidates, *whose result is awaited*, to submit an undertaking/self-declaration form. Sub-clause (iii) requires the candidate to submit the final result of the qualifying degree, proving his/her eligibility on or before 15th October, 2018, to the School/College/Institute where she/he has been granted admission. It also goes on to require the School/College/Institute to submit, by 18th October, 2018, the details of “*these provisionally admitted students*”. This also goes to indicate that “provisional admission” is also regarded, even in the Admission Brochure of the GGSIPU itself, as a specie of “admission”. Default, on the part of the candidate, in submission of her/his final result in the qualifying degree, “to prove his/her eligibility on or before October 15, 2018” results, under sub-clause (iv), in the admission of the candidate being liable to be treated as null and void (cancelled).

34. None of the sub-clauses of Clause 3.7 of the Admission Brochure limits the scope and application, thereof, only to admissions other than those effected under the management quota.

35. The position that management quota admissions are also governed by Clause 3.7, even in the perception of the GGSIPU, is reinforced by two other acts, of the GGSIPU itself. The first is the letter, dated 30th August, 2018 (*supra*), already extracted in para 22

hereinabove. This letter, addressed by the GGSIPU to the affiliate institutions/colleges, specifically deals with admissions under the management quota, and contemplates provisional admission of students, thereunder, at the stage when the results of their qualifying examinations are yet awaited, subject to their production of the said results, proving their eligibility to such admission, on or before 15th October, 2018, as well as the furnishing of an undertaking, by such “result awaited” provisionally admitted students, to the said effect. The faint attempt, of Mr. Talwar, learned senior counsel for the GGSIPU, to restrict this letter to admissions made consequent to the Supplementary Counselling, goes against the language of the letter itself and cannot, obviously, sustain; the argument is clearly an argument of desperation. The second act, of the GGSIPU, which indicates that, even in the understanding of the GGSIPU, provisional admission of students, whose qualifying examination results were yet awaited, against the management quota, was permissible, subject to the students furnishing the results on or before 15th October, 2018, is the undertaking, drafted by the GGSIPU itself, subject to which such students were permitted to appear in the first semester examinations. The said undertaking, *which is relatable to sub-clause (ii) of Clause 3.7(1) of the Admission Brochure*, and which stands reproduced in para 8 hereinabove, also contemplates provisional admissions of students whose results, in their qualifying examinations, were awaited on the date of admission, subject to their undertaking to furnish the results on or before 15th October, 2018. Having, on its own discretion, made the petitioner and other students, provisionally admitted against the management quota, subscribe to, and furnish, such an undertaking, the GGSIPU is to an

extent estopped from contending, before this Court, that Clause 3.7 of its Admission Brochure excluded admissions made under the 10% management quota.

36. Clearly, therefore, not only were the students led to believe, by Clause 3.7 (i) in the Admission Brochure of the GGSIPU, that, even if the results of their qualifying examinations were awaited, they could be admitted, albeit provisionally, to the courses conducted by the affiliate colleges of the GGSIPU; the GGSIPU, too, was under the same impression.

37. There is merit in the submission of Mr. Saini that the students, who were applying for admission, could hardly be expected to look beyond the Admission Brochure of the GGSIPU itself, and familiarise themselves with the provisions of the 2007 Act and the 2007 Rules. The reliance, by the GGSIPU, in this regard, on the communication, dated 16th July, 2018 (*supra*), cannot alter this position. The said communication was not addressed to the students, but was an internal communication between the GGSIPU and the various affiliate institutions. Even assuming the said communication figured on the website of the GGSIPU, there was no requirement, far less compulsion, on the applying students to access the said document, and peruse the contents thereof, once an Admission Brochure, purporting to be exhaustive and self-contained in nature, was already available for their perusal and guidance. It was, undoubtedly for the GGSIPU to draw the attention of the applying students, by way of inclusion thereof in the Admission Brochure, to the provisions of the 2007 Act and the 2007

Rules, which are, now, being so assiduously pressed into service by Mr. Mukul Talwar. That the GGSIPU did not choose to do so is yet another pointer to the fact that, even in the understanding of the GGSIPU, Clause 3.7 of the Admission Brochure also covered admissions effected under the management quota.

38. If one were to examine the facts of the present case on the anvil of the provisions contained in Clause 3.7 of the Admission Brochure of the GGSIPU, the impugned action obviously cannot sustain. There is nothing, in the said Clause, which requires, either expressly or by necessary implication, the results, of the candidates seeking admission under the management quota, to be available on the date of declaration of the merit/counselling, or, for that matter, at any time prior to 15th October, 2018, which is the prescribed cut-off date for the said results to be made available by the provisionally admitted students.

39. That the petitioner was eligible, under the concerned sub- clauses of Clause 2.2 of the Admission Brochure, for admission to the respective courses to which she aspired, is not in dispute. That her qualifying examinations were already over prior to the date of commencement of classes in the affiliate colleges/institutions, to which she was provisionally admitted, is also not in dispute. Equally, it is accepted that the petitioner furnished her mark sheets and results of her qualifying examinations, establishing her eligibility for being admitted to the B. Ed. course, prior to the cut-off date of 15th October, 2018. All the pre-requisites, entitling the petitioner to be admitted under the management quota, as stipulated in Clause 3.7 of the Admission Brochure of the GGSIPU, therefore, stood fulfilled. In that view of the matter, seen in

the light of Clause 3.7, the decision, of the GGSIPU, not to admit the petitioner under the management quota, cannot sustain.

40. But what, then, of the 2007 Act, and the 2007 Rules, on which the GGSIPU places reliance? The contention, of learned Senior Counsel for the GGSIPU is that, irrespective of the contents of its Admission Brochure, the 2007 Act is a piece of plenary legislation, to which the contents of the Admission Brochure would necessarily have to cede place. Sections 13 and 14 of the 2007 Act, it is sought to be submitted, are inexorable in their application. They render void any admission made, to “management seats”, from candidates who have qualified the CET, except admissions “based on merit at the qualifying examination”. Where, therefore, the merit possession of the candidate, at the qualifying examination, is not known at the time when admission takes place, the admission is itself void, the GGSIPU would submit.

41. The submission is, undoubtedly, attractive and, at first blush, merit acceptance. It is not possible to subscribe to the contention, advanced by Mr. Saini, that the 2007 Act, and the 2007 Rules, do not apply to the GGSIPU. Sections 12 to 14 of the 2007 Act cover “admissions” made by “every institution”. “Institution” stands defined, in clause (l) of Section 3 of the said Act as meaning “a college or institution, aided or unaided, affiliated to a University, imparting education in the following disciplines, namely:-

- (a) Engineering and technology;
- (b) Medicine, Dentistry, Pharmacy, Ayurveda, Homeopathy, Siddha, Nursing, Paramedical and the like;

- (c) Law and Legal Affairs;
- (d) Management;
- (e) Teachers Education;
- (f) any other discipline as may be notified by the Government”.

“University” is, in turn, defined, in clause (y) of Section 3 of the 2007 Act as meaning “a University established under any law made by the Legislative Assembly of Delhi.” Reading, in juxtaposition, the definitions of “institution” and “University”, the GGSIPU, having been established under the GGSIPU Act, which is a law made by the Legislative Assembly of Delhi, qualifies as a “University”, within the definition of clause (y) of Section 3 and, per corollary, the Respondent No 2-college qualifies as an “institution”, within the meaning of clause (l) of Section 3.

42. The applicability, of the 2007 Act and, consequently, the 2007 Rules, to the GGSIPU, and to Respondent No. 2 cannot, therefore, in my opinion, be wished away.

43. “Admission”, as already noted hereinabove, includes “provisional admission”. Section 12 of the 2007 Act would, therefore, seem to mandate that provisional admissions, against management quota seats, have also to be effected on the basis of comparative merit in the qualifying examination, after drawing up a comparative merit list. This is also, apparently, supported by the procedure prescribed, in that regard, in Rule 8 of the 2007 Rules.

44. Seen in isolation, and without reference to the provisions contained in the Admission Brochure of the GGSIPU, and other documents to which reference has been made hereinabove, it may appear that the provisional admission of the petitioner, made by the Respondent No. 2-College, infringed the provisions of the 2007 Act and the 2007 Rules. Ordinarily, no doubt, such infraction might have served to vitiate the admissions themselves, and the submissions, to that effect, of Mr. Mukul Talwar would be well taken.

45. The court finds itself, in a case such as this, at crossroads. Are the provisional admissions, granted to all the petitioners, to be declared illegal, based on the 2007 Act and the 2007 Rules, even though such a declaration would be contrary to the Admission Brochure of the GGSIPU, the undertaking, to which the students were required to subscribe at the time of being granted provisional admission, as well as the communication, dated 30th August, 2018, (*supra*) of the GGSIPU itself?

46. The approach of the court, in a case such as this, has to be necessarily circumspect. The court is required to be informed, every instant, of the declaration, in the preamble to our Constitution, that we, the people of India, have solemnly resolved, to secure, to ourselves, *justice, social, economic and political*. The laws of this country and, indeed, the entire justice-dispensation system in place, is geared and intended at attainment of this solemn constitutional goal. The law cannot be so applied, by a court – especially a writ court - as would

compromise justice. Justice cannot be allowed to be sacrificed at the altar of the “Law”.

47. Dispensation and administration of justice is, unquestionably, the highest to which the judicial authority can aspire to; and such dispensation and administration of justice is, ordinarily, required to be achieved by application and enforcement of the extant law, for the simple reason that law is, axiomatically, intended to be an instrument to effectuate administration of justice. On the flip side, it would also not be appropriate, or even legal, for the Court to turn its back to the 2007 Act and the 2007 Rules which, in law, are undoubtedly entitled to greater weight than the Admission Brochure.

48. A balance is, therefore, necessarily required to be created.

49. In the present case, there was no indication, in the Admission Brochure of the GGSIPU, that Clause 3.7 thereof would not apply to admissions in the management quota. The application, of the petitioner, was entirely in accordance with the mandate of the said Clause. She had cleared the CET. She had also applied in the qualifying examination prior to the commencement of classes in the Respondent No. 2-College. The result, of her qualifying examination, was submitted by her prior to 15th October, 2018. These three conditions being fulfilled, it could not be said that the petitioner’s admission was irregular in any manner.

50. At the same time, it is also correct that Section 13 of the 2007 Act requires management quota seats to be filled by drawing up a merit list,

reflecting the comparative merit, in the qualifying examination, of the students aspiring for the said seats, and filling up of the seats on the basis of such merit list. Section 14 of the 2007 Act is also clear in ordaining that admissions effected contrary to the mandate of Section 13 would be void.

51. In my opinion, the twin considerations of ensuring that justice is done to the students, and that respect is also accorded to the words of the legislature, as contained in the 2007 Act, may simultaneously be satisfied if the GGSIPU is permitted, even at this stage, to proceed in accordance with Section 13 of the 2007 Act. In other words, though, undoubtedly, at the time of her being granted provisional admission to the Respondent No. 2-College, the petitioner's performance, in the qualifying examination, was not known and, consequently, her admission was not effected by preparation of a comparative merit list in accordance with Section 13 of the 2007 Act, the fact of the matter remains that, after extracting an undertaking from her, in a format devised by the GGSIPU itself, she was permitted to attend the first semester classes and has, as on date, also written the first semester examinations, albeit on the basis of interim orders passed by this Court. In these circumstances, I do not deem it appropriate to endorse, judicially, the decision of the GGSIPU not to approve the provisional admission of the petitioner. As of today, the number of management quota seats which were available in the Respondent No. 2-College, for the academic year 2018-2019, the number of students provisionally admitted, there against, and the comparative merit possession of the petitioner (based on her qualifying examination) among such students,

are all known. In these circumstances, I deem it appropriate to direct the GGSIPU to examine whether, based on her merit in the qualifying examination, as compared to the students who were granted provisional admission to the management quota seats in the B.Ed. course in the Respondent No. 2-College (and who actually joined the course), the case of the petitioner fell within the number of management quota seats available for the said course in the Respondent No. 2-College. If it did, the provisional admission, granted to the petitioner, shall be regularised, and she shall be treated as having regularly appeared in the first semester examinations held by the GGSIPU, and entitled to future advancement, based on her performance therein. If, however, on merit, the petitioner falls outside the number of management quota seats available for the period course in the Respondent No. 2-College for the academic session 2018-2019, based on her performance in the qualifying examination, then she would not be entitled to admission, and the impugned decision of the GGSIPU, not to grant admission to the petitioner, would stand upheld.

52. In the case of the petitioner, the factual position, as stated by learned Counsel at the bar, appears to be that there were 10 management quota seats available with the Respondent No. 2-College and, though, in the initial list drawn up by the College, the petitioner figured at No. 15, in the final list, of 9 students, that was released, she figured at Sl. No. 5. The number of management quota seats available with Respondent No. 2 were, therefore, it would appear also sufficient to accommodate the petitioner. If this is so, applying the *via media* outlined in para 51 (*supra*), the petitioner would be entitled to admission

to the B.Ed. course in the Respondent No. 2-College, as conducted by the GGSIPU, for the academic year 2018-2019, and her provisional admission would accordingly stand regularised. If, on the other hand, this is not so, and there are 10 students, whose merit position, based on their performance in the qualifying examination, was superior to the petitioner's, she would not be entitled to such admission, as there were only 10 management quota seats available in the Respondent No. 2-College. This is an exercise which would have to be conducted by the Respondent No. 2-College and the GGSIPU.

WP (C) 12814/2018, WP (C) 12813/2018, WP (C) 12808/2018, WP (C) 12800/2018, WP (C) 12171/2018, WP (C) 12155/2018, WP (C) 12790/2018, WP (C) 12713/2018

53. The facts of these cases are, to all intents and purposes, identical to those of W.P. (C)11903/2018. The only difference is that, in some cases, there has been no communication, from the GGSIPU to the concerned College, or to the student, setting out the reason for not granting admission to the student in the management quota. All these matters have, however, been argued together, and it is not the case of the GGSIPU that, in any of these matters, the ground for rejecting the case of the petitioner concerned was different from that in W.P. (C) 11903/2018.

54. I may also note, in this regard, that W.P. (C) 12790/2018 (*Babli Yadav v. G.G.S.I.P.U.*) does not incorporate any specific challenge to the decision, of the GGSIPU, not to admit the petitioner, but merely seeks that the petitioner be allowed to appear on the first Semester

examination. Strictly speaking, such a prayer, in the absence of a challenge to the non-admission of the petitioner, under the management quota, may not be maintainable at all. In the interests of justice, however, I do not deem it appropriate to proceed on that technical ground, which would require the petitioner to file a fresh writ petition, challenging the decision of the GGSIPU not to approve the admission of the petitioner under the management quota. The benefit of the judgment in W.P. (C) 11903/2018 (*supra*) is also, therefore, being extended to this petitioner, so that multiplicity of litigation is avoided.

55. These writ petitions are, therefore, also liable to be disposed of, on the same basis as W.P. (C) 11903/2018.

WP (C) 12511/2018, WP (C) 12856/2018, WP (C) 12858/2018, WP (C) 12806/2018, WP (C) 12805/2018, WP (C) 12486/2018, WP (C) 12441/2018, WP (C) 12714/2018

56. In these writ petitions, each of the petitioners, while otherwise situated similarly to Prachi, the petitioner in W.P. (C) 11903/2018 (*supra*), had failed in one of the papers in their qualifying examinations, and had, therefore, to repeat the same. These, therefore, were what are commonly known as “compartment”, or “essential repeat” cases. In all these cases, however, the “supplementary”/repeat examination was over before the date of commencement of the session under the GGSIPU, i.e. before August, 2018, though the results thereof became available only thereafter. As the supplementary/repeat examinations were undertaken, by these petitioners, prior to commencement of the session, and as the results of such supplementary examinations were

also made available, by the petitioners, prior to the cut-off date of 15th October, 2018, these petitioners would also be entitled to the benefit of the judgment in W.P. (C) 11903/2018 *supra*. It is also relevant to note, in this context, that Clause 3.7 of the Admission Brochure of the GGSIPU specifically covers “compartment” cases.

57. Resultantly, these writ petitions are also, to all intents and purposes, similar to W.P. (C) 11903/2018.

Conclusion and Directions

58. As a result, these writ petitions are disposed of in the following terms and with the following directions:

(i) The GGSIPU shall ascertain whether, based on their performance in their qualifying examination, *vis-à-vis* other students who were admitted to the management quota seats *and who actually joined, pursuant to being granted provisional admission*, the petitioners in these writ petitions could be accommodated in the management quota seats available in the respective colleges to which they were granted provisional admission.

(ii) In the case of petitioners who could be so accommodated, the decision, of the GGSIPU, not to grant them admission under the management quota, shall stand quashed and is accordingly set aside, and the provisional admission granted to such petitioners

shall stand regularised. In that event, they shall be treated as having regularly appeared in the first semester examinations, and their future advancement shall abide by their performance therein, in the light of the extant rules/regulations/applicable legal provisions. The writ petitions filed by such students shall, therefore, stand allowed in these terms.

(iii) In the case of petitioners who could not be so accommodated, i.e. whose merit position, in the qualifying examination, does not qualify them for admission against the management quota seats available in the college to which they were provisionally admitted, the decision, of the GGSIPU, not to grant admission to such students, shall stand upheld. The writ petitions filed by such students shall, therefore, stand dismissed.

(iv) The above exercise shall be undertaken and completed by the GGSIPU within a period of 4 weeks from the date of pronouncement of this judgement.

59. There shall be no order as to costs.

C. HARI SHANKAR, J

JANUARY 7, 2019

HJ