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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 06.11.2020/10.11.2020

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Judgment Pronounced on: 02.12.2020

+ W.P.(C) 8593/2020

INJAMAM UL HOSSAIN

... Petitioner

Through Mr.Arvind Kumar, Mr.Prashant
Bhardwaj, Mr.Rishi Bhardwaj and Mr.Shaurya Dogra,
Advs.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE
& ORS.

... Respondents

Through Mr.Dushyant Parashar and Mr.Manu
Parashar, Advs. for R-1/AIIMS.

Mr.Apoorv Kurup and Mr.Shikhar Srivastava, Advs.
for R-2/UGC.

Mr.Ajay Digpaul, CGSC and Mr.Kamal R. Digpaul,
Advs. for UOI/R-3.

Mr.Jasbir Bidhuri, Adv. for R-4/GGSIPU.

+ W.P.(C) 8527/2020

SHATARUPA BHATTACHARYA

... Petitioner

Through Mr.Matrugupta Mishra and Mr.Tusharjeet
Singh, Advs.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES
AND ORS.

... Respondents

Through Dr.Harsh Pathak, Adv. for R-1 to R-3.

Ms.Nidhi Banga and Mr.Govil Upadhyaya, Advs. for
R-4/UOI.

Mr.Apoorv Kurup and Mr.Shikhar Srivastava, Advs.
for R-5/UGC.

+ W.P.(C) 8592/2020

SMRITI ARORA

... Petitioner

Through Mr.Arvind Kumar, Mr.Prashant Bhardwaj, Mr.Rishi Bhardwaj and Mr.Shaurya Dogra, Advs.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE
& ORS.

... Respondents

Through Mr.Dushyant Parashar and Mr.Manu Parashar, Advs. for R-1/AIIMS.

Mr.Apoorv Kurup and Mr.Shikhar Srivastava, Advs. for R-2/UGC.

Mr.Ajay Digpaul, CGSC and Mr.Kamal R. Digpaul, Advs. for UOI/R-3.

Mr.Jasbir Bidhuri, Adv. for R-4/GGSIPU.

+ W.P.(C) 7831/2020 & C.M. No.26481/2020

LAVI BHATI

..... Petitioner

Through Mr.Matrigupta Mishra and Mr.Tusharjeet Singh, Advocates.

Versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE, THROUGH ITS
DIRECTOR & ORS.

..... Respondents

Through Mr.V.S. R. Krishnal, Advocate for AIIMS.

Mr.Mohinder J.S. Rupal and Mr.Hardik Rupal, Advocates for University of Delhi.

Mr.Ajay Digpaul, CGSC with Mr.Kamal R. Digpaul, Advocate for UOI.

Mr.Apoorv Kurup and Ms.Nidhi Mittal, Advocates for R-5/UGC.

+ W.P.(C) 7832/2020 & C.M. Nos.25718/2020 and 26482/2020

MS. MEENAKSHI & ORS.

..... Petitioners

Through Mr. Abhay Kumar, Advocate

Versus
ALL INDIA INSTITUTE OF MEDICAL
SCIENCE & ANR.

..... Respondents

Through Mr. V.S. R. Krishnal, Advocate for
AIIMS.

Mr.Tanveer Ahmed Ansari, Advocate for R-2.

Mr.Mohinder J.S. Rupal and Mr.Hardik Rupal,
Advocates for University of Delhi.

Mr.Apoorv Kurup and Ms.Nidhi Mittal, Advocates for
UGC.

Mr.Varun Thakur and Mr.Brajesh Pandey, Advocates
for Barktullah University Bhopal.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. These writ petitions arise out of similar facts and raise common questions of law and are disposed of by a common judgment.
2. Essentially the issue revolves around extension of the last date for submission of the original certificates of the qualifying exam which originally was fixed as 31.07.2020 but was extended upto 31.08.2020. The petitioners rely upon a notification issued by UGC to claim that as per the said notification the last date for submitting the original certificates of the qualifying exam have been extended till 31.12.2020 and the respondent is bound by the same. *Dehors* the above argument, it has been pleaded that on account of the ongoing pandemic, most universities are lagging behind in the schedule for the qualifying exam in question and hence, there is a delay in getting the original degrees of the

qualifying examinations. It is pleaded that in these circumstances, the respondent should be more flexible and considerate.

3. For the purpose of narration of facts, I have narrated the facts of W.P.(C) 8593/2020 titled as Injamam Ul Hossain vs. All India institute of medical science & Ors. The facts as narrated are that the petitioner is a resident of West Bengal and completed his class 12 from West Bengal in 2015. Thereafter, the petitioner joined B.Sc. (Medical Laboratory Technology) course in West Bengal University of Health Sciences. The duration of the course is three years plus six months' clinical training. The candidate is mandatorily required to undergo six months' internship/clinical training in the institution. The final year exams were conducted by the University in question, namely, respondents No. 4 and 5 in W.P.(C) 8593/2020 in November 2019. The result was declared on 12.02.2020. The petitioner qualified the said exam. Thereafter, the petitioner enrolled himself for an internship which commenced on 15.02.2020. On or around 25.03.2020, a lockdown was declared by the Government of India and State Governments. The educational institutions were shut, and the internship of the petitioner was suspended during the lockdown period. After the unlock process, w.e.f. 01.07.2020 the petitioner again commenced his internship which came to an end on 15.11.2020.

4. The petitioner was interested in joining the course of M.Sc. (Medical Bio-Chemistry) run by respondent No. 1 which is at two places, namely, New Delhi and Jodhpur. The exams were supposed to be held on 06.06.2020. However, on account of COVID the exams were ultimately conducted on 21.08.2020. The petitioner being an OBC candidate applied for the course of M.Sc. (Medical Bio-

Chemistry). The petitioner secured 38th General Rank but in the OBC category, he secured 4th Rank.

5. The petitioner participated in the online counseling. The petitioner gave his first choice as New Delhi which was accepted by the respondent. The petitioner was called upon to produce the original documents for verification by respondent No. 1 on 28.10.2020. It is stated that the petitioner produced his testimonials including date of birth, 10th and 12th class result, B.Sc. mark sheet and the certificate evidencing that he is still undergoing the mandatory internship/clinical training. However, the petitioner was informed that he is not eligible for admissions as he has failed to qualify the eligibility requirement of possessing/producing degrees/provisional certificate of B.Sc.

6. Reliance is placed by the petitioner on the notification issued by UGC in September 2020 which provides that the relevant documents of qualifying examination should be accepted up to 31.12.2020. These are the UGC Guidelines on Academic Calendar for the First Year of Under-Graduate and Post-Graduate Students of the Universities for the Session 2020-21 in view of COVID-19 Pandemic. Based on the above, it is pleaded that the last date as per the UGC Guidelines has been extended upto 31.12.2020 for submitting the original certificates of the qualifying exam and respondent No. 1 is bound to adhere to the same. Hence, the present writ petition.

7. I may note that when these matters came up for hearing on the first date, keeping in view the submission of the petitioners and the notification issued by UGC in September 2020 and the fact that most of the candidates already at the time when they approached this court had obtained their qualifying degrees, this

court had directed the respondent to maintain status quo with regard to the seats in question.

8. AIIMS has filed a counter-affidavit in WP(C) 7831/2020. The same has been adopted for all the matters. It has been stressed by the respondent AIIMS that securing and passing the under-graduation degree is an essential qualification for getting admission in M.Sc. programme of the respondent Institute. It has been stressed that as per the rules, the cutoff date for procuring proof of passing the qualifying exam was 31.07.2020. This was extended upto 31.08.2020. Admittedly, it is stated that even on the day of filing of the counter-affidavit, the petitioners did not possess the requisite qualification. Hence, it is pleaded that the writ petitions are not maintainable. It is reiterated that in the prospectus for M.Sc. courses, the respondent had fixed the cutoff date for obtaining proof of passing the qualification examination as on or before 31.07.2020. Subsequently, on account of COVID-19 and the delay in holding the examination, the time was extended to 31.08.2020 from 31.07.2020. It is stressed that fixation of the admission deadlines and cut off for passing the qualifying examination is purely a policy administrative decision which has been taken in a reasonable and fair manner and should be considered as sacrosanct. It is stressed that candidates for selection to the respondent Institute come from various universities spread all over the countries. The concerns of the students have been looked into while fixing and extending the admission dates and the last date for obtaining proof of documents, especially the date when the qualifying examination should have been passed.

It has also been stated that AIIMS is a statutory body and is empowered to prescribe its own rules, regulations and guidelines for admission to various courses being conducted by the Institute. It is not governed by various guidelines issued by other Universities/Examining Body/Commission. It has been stressed that most of the candidates from various other universities have been able to furnish the requisite proof of passing the qualifying examination for admission to different M.Sc./M.Sc.(N)/M.Sc. Biotechnology courses. Hence, it is prayed that the writ petitions be dismissed.

9. University Grants Commission has filed a counter affidavit in W.P.(C) No.7831/2020. Learned counsel for UGC has confirmed that they adopt the contents of the said counter affidavit in response to all these writ petitions. In the counter affidavit, it has been stated that UGC was constituted under the provisions of the University Grants Commission Act, 1956. It was legislated to make provisions for co-ordination and determination of standards in higher education in India. It is stated that for the said purpose, UGC is authorized to perform such functions as may be prescribed or may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to discharge the above functions. In exercise of its powers, UGC has issued UGC Guidelines on Academic Calendar for the First Year of Under-Graduate and Post-Graduate Students of the Universities for the Session 2020-21. As per the said guidelines where admissions are solely through entrance tests, the relevant documents of qualifying examination may be accepted upto 31.12.2020.

10. It is further stated in the said counter affidavit that the said guidelines would apply to Universities as defined under Section 2(f) of the UGC Act and the Institutions which are deemed to be Universities declared under Section 3 of the UGC Act. However, it is clarified that the respondent AIIMS is an Institution of National importance as declared under Section 5 of the All India Medical Sciences Act being an Institution, established under Section 3 of AIIMS Act and is an autonomous body which is under the purview of the Central Government. In the light of these statutory provisions, learned counsel for UGC had pleaded that AIIMS may be able to urge that the aforesaid circular is not binding on AIIMS.

11. I have heard learned counsel for the parties.

12. Learned counsel for the petitioners have strenuously urged that on account of the pending COVID pandemic, all Universities are behind their schedules and hence, AIIMS should be more flexible for the present academic year. It has been strongly urged that the petitioners have qualified on merits in the entrance examination and should not be deprived of their right to get admission in the college in question on account of the failure of the Universities who are to give the qualifying certificates in declaring the results of the exams on account of the present pandemic.

It has also been pointed out that AIIMS themselves have extended the time schedules. The last date for showing proof of having cleared the qualifying examination was 31.07.2020 which was extended to 31.08.2020.

13. Reliance is also placed on “UGC Guidelines on Academic Calendar for the First Year of Under-Graduate and Post-Graduate Students of the Universities

for the Session 2020-21 in view of COVID-19 Pandemic” to plead that UGC has specifically stipulated that the last date for submission of proof of having cleared the qualifying examination/certificates should be kept as 31.12.2020. It has been pleaded that even if for some reason these guidelines are not binding on the respondent AIIMS, they would definitely have a persuasive effect as there is no reason why AIIMS should not fall in line with all other institutes of higher learning.

14. I may first look at the relevant prospectus of All India Institute of Medical Sciences, relevant portion of which reads as follows:-

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Note 2: For M.Sc/M.Biotechnology and M.Sc. Nursing Courses:- Candidates who are due to appear at the qualifying examination, or have already appeared and are awaiting result, can also apply for admission but such candidate must furnish:

- Proof of passing the qualifying examination on or before 31st July 2020 with requisite percentage of marks and subjects failing which their performance at the Entrance Examination will not be considered.
- All M.Sc. Nursing Candidates can submit certificate of Registration as a Nurse and Midwife from the Indian Nursing Council/State Nursing Council at the time of counselling/joining if they are selected.
- All selected candidates for M.Sc. nursing courses are required to furnish the proof of recognition of their college at the time of verification of their documents.”

15. Hence, the proof of passing the qualifying examination had to be submitted on or before 31.07.2020. This was extended to 31.08.2020. It is settled position of law that the terms of the information bulletin/prospectus are

normally binding on the candidates, especially in cases where a student has on the strength of the terms and conditions stipulated in the information bulletin participated in the exams. The student cannot thereafter turn around and seek to challenge the contents of the said bulletin.

16. I may look at the legal position regarding the Status of the terms of the Information Bulletin. Reference may be had to the judgment of the Supreme Court in the case of *National Board of Examinations vs. G. Anand Ramamurthy & Ors., (2006) 5 SCC 515* where the Supreme Court was dealing with the following contentions:-

“5. According to Mr Gopal Subramaniam, the respondents herein are not eligible to sit for examination and, therefore, the permission granted by the High Court permitting to sit for the examination is not proper and not called for. Clause 7.12 specifically provides that the candidates should be in possession of the recognised postgraduate degree qualification as specified under each speciality given in the syllabus for medical and surgical super specialities respectively. Clause 7.12 sub-clause (ii) stipulates that candidates should have completed the prescribed three years' training in the speciality after postgraduate degree from an institution recognised by the MCI/NBE/university as specified under each speciality. According to Mr Gopal Subramaniam, the respondents will be completing three years' training only by 30-6-2006. They are not qualified and eligible to appear for June 2006 examination.”

The Supreme Court held as follows:-

“7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to

perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise, the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates were requested to refer to the latest Bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no uncertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the governing body of the petitioner from time to time. Hitherto examinations were being conducted twice a year i.e. in the months of June and December 2006. There could be no

embargo in the way of the petitioner bona fide changing the examination schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of Respondents 1 and 2. In any event, the completion of three years' training is a necessary concomitant for appearing in the DNB final examination.”

17. Reference may also be had to the judgment of a co-ordinate Bench of this court in the case of ***Priyanka Chaudhary vs National Board of Examinations, 2016 SCC OnLine Del 5691*** where it was held as follows:-

“1. The petitioners are candidates, who applied for admission to the Diplomat of National Board Centralized Entrance Test. It is contended that in the entrance test, the petitioners got ranks between 29 to 119. Based on their merit all the petitioners were invited for the first round of counseling and petitioners as per the then available seats exercised their option and took confirmed seats in different disciplines.

2. It is contended that post the first round of counseling certain candidates, who had taken admission opted out and accordingly the seats opted by those candidates fell vacant and are now included in the second round of counseling which would commence from 21st October, 2016.

3. It is contended that the petitioners who are far higher in merit should also be eligible for participating in the second round of counseling and given an opportunity to opt for the seats which have fallen vacant. One example that has been cited is that a seat in radiology in Artemis Hospital, Gurgaon was opted by a candidate who ranked 24 in the entrance examination. The said candidate has not joined the course and accordingly the said seat is now available and has been included in the second round of counseling. It is submitted that the said seat is a much sought after seat and is being offered to candidates who rank about 6001.

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9. Clause 13.7 of the Information Bulletin reads as under:

“Candidates opting for a confirmed seat are NOT eligible to participate in subsequent round(s) of counseling irrespective of their joining/nonjoining/resignation from the seat already opted for.”

10. The petitioners had participated in the first round of counseling without demur. Perusal of the information bulleting shows that candidates had the option not to appear in the first round of counseling and could have chosen to wait for the subsequent rounds. However, once the candidate has exercised the option to participate in counseling and has opted for a confirmed seat, as per the information bulletin, the candidate is not eligible for participation in subsequent rounds of counseling.

11. The petitioners were well aware of the rules laid down by the information bulletin and despite the same the petitioners participated in the counseling process without any demur. The petitioners have opted for confirmed seats and have taken admission. No doubt that the petitioners are meritorious, but on account of the application of the rules as laid down by the information bulletin, which is clear in terms of its application, the petitioners are clearly ineligible to participate in the second round of counseling commencing from 21st October, 2016.

12. Similar view has been expressed by the co-ordinate bench in *Shikha Aggarwal* (2011 SCC OnLine Del 3538) wherein it is held as under:

“6. The cause of heartburn of the petitioner is that the first round of counseling is held for the top in the merit list to

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

7. It is also a settled legal position that a candidate after participating in the selection process of taking the entrance examination and the counseling process cannot turn around and challenge the same as the rules and guidelines framed by the respondent-Board were within the knowledge of the petitioner before participating in the same and therefore, the petitioner thus waives off her right to challenge the said counseling procedure once having taken the said examination. It would be relevant here to refer to the judgment of the Apex Court in the case of Dhananjay Malik v. State of Uttranchal (2008) 4 SCC 171 which has reiterated the said legal position in the following words:

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

18. Reference may also be had to the judgment of the Madras High Court in the case of ***Dr. Sandeep P.S. vs Government of India, 2020 SCC OnLine Mad 1263*** where the court held as follows:-

“33. It is settled law that the prospectus is the vital document which governs the admission procedure. A candidate who participates in the selection process based on the prospectus cannot turn around and challenge the very prospectus or a clause in the prospectus unless it is shown to be illegal or irrational. This court had in a number of cases relating to admissions to postgraduate Medical education has consistently held that the candidates who had applied for admission based on the conditions set out in the prospectus cannot challenge the conditions. Of course in the case on hand the petitioners had approached the court before the first round of counselling had commenced. However the counselling in effect commenced on 01-05-2020 and the candidates were required to furnish their online choices by 08-05-2020. The first counselling was done on 22-05-2020. The petitioners had filed the first writ petition on 17-05-2020 and were favoured with an interim order on 26-05-2020. The petitioners were aware of the existence of *Clause 4.5* in the handbook even when they had applied for admission. They had chosen to apply and also indicate their choices in compliance with the requirements

of the instructions in the handbook. Only after exercising their choices the petitioners chose to challenge *Clause 4.5* on 17-05-2020. Mr. G. Sankaran, would vehemently contend that since the petitioners had approached the court before the first round of counselling itself, there is no delay and they cannot be non-suited on the ground of delay. I am unable to accept the said submission of the learned counsel for the petitioner for more than one reason. As rightly pointed out by the learned Senior Counsel appearing for the second respondent if the petitioners' challenge is accepted the entire counselling process will have to be restarted in the sense all the candidates who had been allotted a seat in the first round of counselling and who had frozen their seats should also be given an opportunity to take part in the second round of counselling which would necessarily result in further delay in the process which has already been delayed by the pandemic. There are about 700 candidates who had frozen the seats allotted to them in the first round of counselling. If *Clause 4.5* is tweaked and they are also allowed to participate in the second round of counselling while retaining the seats allotted to them in the first round those 700 seats should also be shown as seats available in the second round of counselling. The second respondent in its counter affidavit has explained as to how this process accumulates more seats in the mop up round of counselling which go to candidates with lesser comparative merit. The Honourable Supreme Court in *Alapati Jyostna* (Supra) has considered the prevalent situation and after taking note of the fact that nearly 700 candidates had been allotted seats and have frozen their seats had refused to issue any directions for the present year. The Honourable Supreme Court in the said decision has also recorded the assertions made in the response filed by the Medical Council of India that a common counselling or a single online counselling in the coming years would definitely take care of the grievances. I am therefore of the considered view that it would not be appropriate for this court to interfere with the counselling at this stage for the present year.”

19. Clearly, the terms of the prospectus would be binding on the candidates. The petitioners participated in the entrance examination and also participated in the counselling based on the terms of the prospectus and they cannot now turn around and seek concessions which are contrary to the terms of the prospectus. If the plea of the petitioners were to be accepted, then all the candidates who have not been able to submit their documents of having passed the qualifying degree as on 31.08.2020 would also have to be given the same relief. This would naturally cause confusion. In any case, the stipulations as noted above are reasonable and fair and cannot be termed to be arbitrary. There are no reasons to interfere in the procedure prescribed by the respondents. The respondent cannot accommodate to the schedules of all the universities in the country.

20. The other plea raised by the petitioners, namely, reliance on the guidelines issued by UGC, the same is misplaced. Admittedly, the said guidelines do not bind the respondent AIIMS.

21. There is accordingly no merit in the present petitions and the same are dismissed. All pending applications also stand dismissed. Interims orders stand vacated.

JAYANT NATH, J.

DECEMBER 02, 2020

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