

\$~

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

Decided on: 10th November, 2021

+ **W.P.(C) 9413/2021 & CM APPLs. 29236/2021, 33649/2021**

RAMGOPAL SHARMA & ANR. Petitioners

Through: Mr. Santhosh Krishnan &
Mr. Marzook Bafaki,
Advocates.

versus

ALL INDIA INSTITUTE OF
MEDICAL SCIENCES Respondent

Through: Mr. Dushyant Parashar,
Advocate for AIIMS.

%

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The present writ petition concerns the decision of the respondent-All India Institute of Medical Sciences [“AIIMS”] to reject the candidature of the petitioner no. 1-Ramgopal Sharma [“Sharma”] for admission to the M.Sc. (Nursing) course in the 2021 admission session, on the ground that he had obtained the B.Sc. (Nursing) degree through distance education.

Facts

2. AIIMS offers various post-graduate (Masters degree) courses, including the M.Sc. (Nursing) course. For admission in the year 2021, it issued an Admission Notice, published on 02.03.2021, followed by a prospectus, which was uploaded on 27.04.2021 [“the Prospectus”]. These covered M.Sc. (Nursing), M.Sc. courses and M. Biotechnology.

Signature Not Verified

Digitally signed By: SHITU

NAGPAL

Signing Date: 11.11.2021

16:50:38

W.P.(C) 9413/2021

Page 1 of 22

As far as the M.Sc. (Nursing) course is concerned, seven specialties were offered, including Paediatric Nursing. For the M.Sc. courses, the Prospectus enumerated eight specialties. For the M.Sc. (Nursing) course, in addition to the seats offered in various other categories, one seat in each specialty was reserved for AIIMS In-Service candidates.

3. Sharma is employed by AIIMS as a Nursing Officer since 2007. Prior to that, he completed a course in General Nursing and Midwifery/ Psychiatric Nursing from Akkamahadevi School of Nursing, Bidar, Karnataka in 2001. He was thereafter admitted to the Nurses and Midwife register maintained under the Delhi Nursing Council Act, 1997. During the course of his employment with AIIMS, he also undertook the degree of B.Sc. (Nursing) (Post Basic) from Indira Gandhi National Open University [“IGNOU”], which was conferred upon him in 2014.

4. Sharma, being a Nursing Officer presently employed by AIIMS, applied for admission to the M.Sc. (Paediatric Nursing) course in the In-Service category. For this purpose, he was granted a No Objection Certificate by AIIMS, New Delhi in April, 2021. Sharma participated in the entrance examination and secured an overall rank of 135. However, after the counselling held on 23.08.2021, his candidature was rejected with the following remarks:-

“Candidate reported on 23.08.21 candidate found not eligible, as he has done post basic from IGNOU (distant learning programme) and as per prospectus distant learning not allowed and with the approval of the Competent Authority, his case cannot be considered.”

5. It is in these circumstances that the present writ petition has been filed. The principal ground of challenge urged by Sharma is that the Prospectus contained no provision disqualifying candidates who obtained their B.Sc. (Nursing) degree through distance education.

6. In addition to Sharma, the AIIMS Nurses Union [“ANU”] has been arrayed as petitioner no. 2 in this writ petition. Mr. Santhosh Krishnan, learned counsel for the petitioners, submitted that the ANU supports the case made out by Sharma that the Prospectus contained no such bar, and in fact goes further to argue that AIIMS is not empowered to impose such a condition at all.

7. By an order dated 03.09.2021, this Court found a *prima facie* case in favour of Sharma, and directed maintenance of *status quo* with regard to admission to the M.Sc. (Paediatric Nursing) course in the In-Service category. By a further interim order dated 28.09.2021, it was also made clear that if Sharma succeeds in the writ petition, the Court will also consider grant of appropriate relief, including admission to the course in question in the In-Service category.

8. As AIIMS had provisionally accepted the candidature of another candidate (whose rank was lower than that of Sharma) in the second round of counselling, directions were also given on 03.09.2021 for service of the present petition upon the provisionally admitted candidate. Mr. Krishnan has filed an amended memo of parties impleading her as respondent no. 2 and also proof of service upon her by email. However, she has chosen not to enter appearance to contest these proceedings.

Relevant clauses of the Prospectus and the Admission Notice

9. The eligibility conditions for admission to the various courses offered are contained in Section 7 of the Prospectus. As the matter turns on a reading of the various clauses of Section 7, the entirety of the section is reproduced below:-

7

ADMISSION REQUIREMENTS

1. M.Sc./M. Biotechnology:

The candidate must possess one of the following qualifications and have secured at least 60% marks for General/OBC(NCL)/EWS candidates (55% marks in case of SC/ST candidates) in aggregate in the qualifying examination:

- (a) MBBS/BDS (55% for Gen/OBC(NCL)/EWS & 50% for SC/ST Categories)
- (b) B.V. Sc.
- (c) B. Pharmacy
- (d) Bachelor of Physio-therapy (4½ year course)
- (e) B.Sc. degree of minimum three years' duration in any subject.

(Candidates having degree other than above are not eligible)

Note: The admission requirements for M.Sc. Medical Anatomy, Medical Biochemistry, Biophysics, Medical Physiology, Medical Pharmacology and M. Biotechnology is the same as mentioned above, but the requirements for (i) Reproductive Biology and Clinical Embryology, (ii) Nuclear Medicine Technology iii), Cardiovascular Imaging and Endovascular Technologies will be as mentioned below:

- (i) Reproductive Biology and Clinical Embryology - B.Sc degree in any of the discipline related to Biology or allied to Biology.
- (ii) Nuclear Medicine Technology - B.Sc. degree courses in Nuclear Medicine from a recognised University.

OR

B.Sc. degree with Physics/Chemistry/Mathematics from a recognized University.

OR

B.Sc. in allied/related subject i.e. Radio Diagnosis/Radiotherapy from a recognized University.

OR

B.Sc. in life Sciences with Physics as a subject from recognized University.

- (iii) Cardiovascular Imaging and Endovascular Technologies – B.Sc. degree in Radiography from a recognized University.

For Cardiovascular Imaging and Endovascular Technologies, M.Sc Nuclear Medicine Technology & others: Candidates possessing Bachelors Degree through Distant Learning Course/Non hospital based training Institute shall not be eligible.

2. M. Biotechnology:

Admission requirements are same like other M.Sc. Courses along with B. Tech (Biotechnology) which is also covered under eligibility criteria.

3. M.Sc. Nursing

- (i) B.Sc. (Hons.) Nursing /B.Sc. Nursing (Post-Certificate)/Post-Basic /B Sc. Nursing (4years) course from any recognised University, from an educational institution Recognised by the Indian Nursing Council, with 60% marks for Gen/OBC(NCL)/EWS candidates (55% marks in case of SC/ST candidates).
- (ii) Registration as Nurse, RN, RM (Registered Nurse, Registered Midwife) with any State Nursing Council.

Note 1: For Indian Nationals, 5% reservation for Person with Benchmark Disability shall be provided on horizontal basis, in the seat available in M.Sc. Nursing courses. Eligibility criterion for candidates under this category as per the guidelines finalized by Nursing Council of India as amended from time-to-time.

[Handwritten signature]

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, 2021 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 Seat Allocation/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.

10. Sharma has also relied upon the Admission Notice dated 02.03.2021, published prior to the issuance of the Prospectus. The Admission Notice is reproduced below:-

Signature Not Verified

Digitally signed By: SHITU

NAGPAL

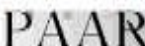
Signing Date: 11.11.2021

16:50:38

W.P.(C) 9413/2021

Page 5 of 22

 ALL INDIA INSTITUTE OF MEDICAL SCIENCES EXAMINATION SECTION ANSARI NAGAR, NEW DELHI-110068		
No.F.7-7/ESc/MSc/MBiotech/BS c/2021	ADMISSION NOTICE NO.27/2021	02.03.2021
<u>AIIMS-M.Sc. Nursing / M.Sc. Courses / M. Biotechnology -2021</u>		
All India Institute of Medical Sciences, New Delhi invites Online applications (Basic Registration followed by Generation of Code and Final Registration) for Entrance Examinations leading to admission in M.Sc.Nursing/ M.Sc. Courses / M. Biotechnology -2021 of AIIMS, New Delhi and Other AIIMS.		
Who can apply for Basic Registration and are eligible for <u>M.Sc. courses</u> 2021 session	Candidate who possess one of the following qualifications and have secured at least 60% marks for Gen./EWS/OBC and 55 % marks for SC/ST in aggregate in the qualifying examination accordingly to below mentioned M.Sc Courses: - For M.Sc Medical Anatomy, Medical Biochemistry, Biophysics, Medical Physiology, Medical Pharmacology and M. Biotechnology: - MBBS/BDS (55% FOR Gen./EWS/OBC & 50% for SC/ST Categories) - B.V.Sc. (c) B. Pharmacy (d) Bachelor of Physio-therapy (4½ year course) - B.Sc. degree of minimum three years duration in any subject. - For Reproductive Biology and Clinical Embryology, Nuclear Medicine Technology, Cardiovascular Imaging and Endovascular Technologies will be as mentioned below: Reproductive Biology and Clinical Embryology- B.Sc degree in any of the discipline related to Biology or allied to Biology. Nuclear Medicine Technology- B.Sc. degree courses in Nuclear Medicine from a recognized University. OR B.Sc. degree with Physics/ Chemistry/ Mathematics from a recognized University. OR B.Sc. in allied/ related subject i.e. Radio Diagnosis/ Radiotherapy from a recognized University. OR B.Sc. in life Sciences with Physics as a subject from recognized University. Cardiovascular Imaging and Endovascular Technologies- B.Sc. degree in Radiography from a recognized University.	
Who can apply for Basic Registration and are eligible for <u>M. Biotechnology</u> 2021 session	Admission requirements are same like other M.Sc. Courses along with B. Tech (Biotechnology)	
Who can apply for Basic Registration and are eligible for <u>M.Sc. Nursing</u> 2021 session	Candidate who possess the following qualifications. - B.Sc. (Hons.) Nursing/B.Sc. Nursing (Post- Certificate)/ Post-Basic /B.Sc. Nursing (4 years) course from any recognized University, from an educational institution Recognised by the Indian Nursing Council, with 60% marks for Gen/EWS/OBC candidates (55% marks in case of SC/ST candidates). - Registration as Nurse, RN, RM (Registered Nurse, Registered Midwife) with any State Nursing Council.	
For M.Sc. Cardiovascular Imaging and Endovascular Technologies & M.Sc Nuclear Medicine Technology:- Candidates possessing Bachelors Degree through Distant Learning Course/Non hospital based training Institute shall not be eligible.		

Online Registration for applications	
Basic Registration (PAAR) for M.Sc. Nursing/ M.Sc. Courses/ M. Biotechnology -2021	Start Date : 13.03.2021 Closing Date: 06.04.2021 (5.00 PM)
Status update (Accepted & Not Accepted) of Basic Registration	09.04.2021
Correction of deficiencies in Basic Registration that are not Accepted	09.04.2021 to 15.04.2021 (05:00 PM)
Final status (Accepted & Rejected) of Basic Registration for M.Sc. Nursing/ M.Sc. Courses / M. Biotechnology -2021	20.04.2021
Uploading of Prospectus	27.04.2021
Generation of Code for Final Registration for M.Sc. Nursing/ M.Sc. Courses/ M. Biotechnology -2021 only for those whose Basic Registration is accepted.	Start date: 28.04.2021 Closing date: 13.05.2021 (5:00 PM)
Final Registration (Payment of fees and city choice) only for those who have Generated Code for Final Registration.	Start date: 28.04.2021 Closing date: 13.05.2021 (5:00 PM)
Final Status of M.Sc Nursing application & Rejected application with reason for rejection	21.05.2021
Final Status of M.Sc Courses and M. Biotechnology application & Rejected application with reason for rejection	22.05.2021
Last date for submission of required documents for <u>M.Sc. Nursing / M.Sc. Courses / M. Biotechnology -2021</u> for Regularization of Rejected Application. No Correspondence will be entertained after 27.05.2021 under any circumstances and candidates are requested not to contact the Examination Section.	27.05.2021 (05:00 PM)
Hosting/uploading of Admit Cards of M.Sc. Nursing on AIIMS website	04.06.2021 (Tentative)
Hosting/uploading of Admit Cards of M.Sc. Courses/ M. Biotechnology on AIIMS website	05.06.2021 (Tentative)
Date & Timing of Examination of M.Sc. Courses	14 th June, 2021, Monday
Date & Timing of Examination of M.Sc. Nursing	27 th June, 2021 Sunday
Date & Timing of Examination of M. Biotechnology	27 th June, 2021 Sunday
For Indian nationals, 5% reservation for Person with Benchmark disability will be provided on horizontal basis, in the seat available in M.Sc nursing courses. Eligibility criterion for candidates under this category as per the guidelines finalized by nursing council of India as amended from time to time.	
Important: All applicant who have applied earlier and whose Basic Registration have been accepted for 2020 Session are also eligible for Generation of code for Final Registration and they do not require to fill the Basic Registration again. All applicants are required to visit the website regularly since all subsequent Corrigendum/Addendum/Updates will only be uploaded on the website.	
  Sd/- ASSISTANT CONTROLLER (EXAMS.)	

Signature Not Verified

Digitally signed By: SHITU

NAGPAL

Signing Date: 11.11.2021

16:50:38

W.P.(C) 9413/2021

Page 6 of 22

Submissions of the parties

11. Mr. Krishnan submitted that Sharma meets the qualifications mentioned in the Prospectus, as far as the M.Sc. (Nursing) courses are concerned, having secured the B.Sc. (Nursing) (Post Basic) qualification with more than 60% marks from IGNOU. He thus possesses a Bachelors Degree from a recognised University, from an educational institution recognised by the Indian Nursing Council [“INC”] with 60% marks [as required for General/OBC (NCL)/EWS candidates]. He is also a Registered Nurse and Registered Midwife with the Delhi Nursing Council [“DNC”]. Mr. Krishnan submitted that no other condition could be imposed to determine Sharma’s eligibility for the course in question.

12. In support of these contentions, Mr. Krishnan relied upon a notification dated 14.08.2019 issued by the INC, whereby the B.Sc. (Nursing) (Post Basic) qualification of IGNOU has been specifically included in Part II [Recognized Higher Qualifications] of the Schedule to the INC Act, 1947. He has also placed on record the certificate of registration dated 19.02.2008 to demonstrate that Sharma is a registered nurse and registered midwife on the rolls of the DNC.

13. Mr. Krishnan further submitted that a limited exclusion in respect of distance education courses is contained in the qualifications for M.Sc./ M.Biotechnology in clause 1 of Section 7 of the Prospectus, which reads as follows:-

“For Cardiovascular Imaging and Endovascular Technologies, M.Sc Nuclear Medicine Technology & others: Candidates possessing Bachelors Degree through

Distant Learning Course/Non hospital based training Institute shall not be eligible.”

He emphasised that no similar disqualification is to be found in clause 3 of Section 7, which alone deals with the M.Sc. (Nursing) course.

14. Mr. Krishnan has also placed on record the Syllabus and Regulations prescribed by the INC pertaining to M.Sc. (Nursing). He submitted that AIIMS, as an educational institution offering courses in Nursing, is bound to follow the rules notified by the INC, in which the eligibility criteria are mentioned in the following terms:-

“Eligibility Criteria/Admission Requirements:-

- 1. The candidate should be a Registered Nurse and Registered midwife or equivalent with any State Nursing Registration Council.*
- 2. The minimum education requirements shall be the passing of:
B.Sc. Nursing/ B.Sc. Hons. Nursing/ Post Basic B.Sc. Nursing with minimum of 55% aggregate marks.*
- 3. The candidate should have undergone in B.Sc. Nursing/ B.Sc. Hons. Nursing/ Post Basic B.Sc. Nursing in an institution which is recognized by Indian Nursing Council.*
- 4. Minimum one year of work experience after Basic B.Sc. Nursing.*
- 5. Minimum one year of work experience prior or after Post Basic B.Sc. Nursing.*
- 6. Candidate shall be medically fit.*
- 7. 5% relaxation of marks for SC/ST candidates may be given.”*

Mr. Krishnan emphasised that the Post-Basic B.Sc. Nursing course is expressly included in these eligibility criteria, which are substantially similar to the qualifications enumerated in the Prospectus.

15. Mr. Krishnan supported his argument on the irrationality of the impugned decision by reference to the fact that, in prior years, In-Service candidates with the Post Basic qualification from IGNOU have been admitted to the M.Sc. (Nursing) course. According to him, the eligibility criteria for the M.Sc. (Nursing) course, as published in the prospectuses for the relevant years, were substantially similar to those contained in the Prospectus for the present year. Mr. Krishnan gave the specific example of two candidates admitted to the M.Sc. (Nursing) course in the 2020 admission session, having obtained Ranks 79 and 202. He also drew my attention to various certificates of appreciation received by Sharma from the Pediatrics Department in AIIMS.

16. Mr. Krishnan submitted that the rejection of Sharma's application on the ground taken by AIIMS tantamounts to an impermissible imposition of a condition extraneous to the Prospectus, which falls foul of the principle that the rules set out in the Prospectus cannot be altered mid-way. He cited the judgments of the Supreme Court in *Maharashtra State Road Transport Corpn. and Others vs. Rajendra Bhimrao Mandve and Others*¹ and *Mohd. Sohrab Khan vs. Aligarh Muslim University and Others*² for this purpose. He also relied upon the judgment of a Division Bench of this Court in *Varun Kumar Agarwal vs. Union of India & Ors.*³.

17. Mr. Dushyant Parashar, learned counsel for AIIMS, on the other hand, submitted that the impugned decision is based upon an

¹ (2001) 10 SCC 51

² (2009) 4 SCC 555

³ (2011) 179 DLT 24

interpretation of the eligibility conditions contained in the Prospectus, with which the Court ought not to interfere. He located the source of the disqualification for distance learning courses, even in the case of M.Sc. (Nursing), in the “Note” reproduced in paragraph 13 hereinabove. He contended that the Note refers not only to “*Cardiovascular Imaging and Endovascular Technologies, M.Sc Nuclear Medicine Technology*”, but also contains the words “& others”. The general words “& others”, according to Mr. Parashar, are sufficient to bring M.Sc. (Nursing) courses also within the ambit of the disqualification contained therein. His contention is thus that the intention to exclude distance learning degrees from the recognised qualifications is evident from the Prospectus itself.

18. Mr. Parashar submitted that the decision to disqualify Sharma has been taken by domain experts, not only on a consideration of the eligibility conditions contained in the Prospectus, but also on the practical consideration that Sharma’s qualification has been obtained through distance learning rather than hospital-based training. He submitted that Sharma’s employment with AIIMS as a Nursing Officer is entirely irrelevant to the question of whether he possesses the qualification for admission to the post-graduate academic course. He submitted that although the Post Basic qualification from IGNOU was accepted for admission to the M.Sc. degree in previous years, the Prospectus (for the year 2021) contains a material change with the addition of the aforesaid Note.

19. Mr. Parashar urged the Court not to interfere with the decision of academic experts in the matter of eligibility, for which purpose he

cited the judgments of the Supreme Court in *University of Mysore and Another vs. C.D. Govinda Rao and Another*⁴ and *Basavaiah (Dr.) vs. Dr. H.L. Ramesh and Others*⁵, and of the Division Bench of this Court in *All India Institute of Medical Sciences vs. Vikrant Bhuria*⁶.

20. Mr. Krishnan, in rejoinder, disputed the interpretation placed upon the Prospectus by AIIMS. He submitted that the question of deference to expert opinion would arise only if the expert opinion is placed on record, which has not been done in the present case. He emphasised that the relevant regulations of the INC contain no disqualification for distance education, and the B.Sc. (Nursing) (Post Basic) qualification offered by IGNOU has, in fact, been specifically recognised. Mr. Krishnan urged that the view of the INC, which is the regulator of education in the field of Nursing, is entitled to equal - if not greater - deference than that of AIIMS.

21. Without prejudice to this argument, Mr. Krishnan submitted that the views of experts are also subject to judicial scrutiny on the grounds of manifest arbitrariness and unreasonableness. He relied upon the judgments of the Supreme Court in *Dr. J.P. Kulshrestha and Others vs. Chancellor, Allahabad University and Others*⁷ and *K. Shekar vs. V. Indiramma and Others*⁸ in this connection.

22. With regard to the interpretation of the phrase “& others” in the Note, Mr. Krishnan contended that AIIMS relies upon a manifestly erroneous reading. He cited three principles of interpretation accepted

⁴ AIR 1965 SC 491

⁵ (2010) 8 SCC 372

⁶ Judgment dated 28.05.2012 in LPA 487/2011

⁷ (1980) 3 SCC 418

⁸ (2002) 3 SCC 586

by the Supreme Court in this connection - *ejusdem generis*⁹, *noscitur a sociis*¹⁰ and *expressio unius est exclusio alterius*¹¹.

23. In response to the last argument, Mr. Parashar disputed the applicability of the aforesaid principles of interpretation, relying upon the judgment of the Supreme Court in *P. Mohanraj and Others vs. Shah Brothers Ispat Private Limited*¹². He submitted that the principles of *ejusdem generis* and *noscitur a sociis* are applicable only when the specific words used in the provision disclose a particular genus or category which, in the present case, they do not.

Analysis

24. It is undisputed that Sharma possesses the qualifications expressly enumerated in clause 3(i) and (ii) of Section 7 of the Prospectus, to the extent that he has the B.Sc. (Post Basic) qualification from a recognised University, from an educational institution recognised by the INC with more than 60% marks, and is a registered nurse and registered midwife with the DNC. The only impediment urged by AIIMS to his admission is that his B.Sc. (Post Basic) qualification from IGNOU was obtained through distance learning.

25. The principal question which requires consideration, therefore, is whether the Prospectus contained a disqualification in respect of distance education courses while laying down eligibility conditions for the M.Sc. (Nursing) course. Mr. Parashar strongly urged the Court not

⁹ *M/s Siddeshwari Cotton Mills (P) Ltd. vs. Union of India and Another* (1989) 2 SCC 458

¹⁰ *Parle Agro Private Limited vs. Commissioner of Commercial Taxes, Trivandrum* (2017) 7 SCC 540

¹¹ *State of Bihar vs. Tata Iron and Steel Company Limited* (2019) 7 SCC 99

¹² (2021) 6 SCC 258

to interfere with the determination of the academic experts on this point. He has placed a number of authorities to the effect that experts are entitled to a great degree of latitude in determining academic matters. However, even those judgments do not prescribe complete freedom from legal redress in such matters. The judgment of the Supreme Court in *Sanchit Bansal and Another vs. Joint Admission Board and Others*¹³, for example, makes it clear that the views of academic experts can be tested on the anvil of arbitrariness, unreasonableness and discrimination.

26. The case in *University of Mysore*¹⁴ arose from a petition for a writ of *quo warranto* asserting the ineligibility for appointment of one of the parties to the post of a Reader. It is in this context that the Court held that a contravention of statutory provisions or rules must be shown and that the expert opinion of the selection board ought to have been accepted. The Court expressly made a distinction¹⁵ between the tests which would apply to issuance of a writ of *quo warranto* and a writ of *certiorari*, including the test of “*manifest error*”, which may apply to the latter but not to the former. The judgment in *Dr. Basavaiah*¹⁶, also concerned with appointments to faculty positions, follows *University of Mysore*¹⁷. The Division Bench decision of this Court in *Vikrant Bhuria*¹⁸ is also to similar effect.

¹³ (2012) 1 SCC 157 [paragraphs 22 and 27]

¹⁴ Supra (note 4)

¹⁵ In paragraphs 7 and 13

¹⁶ Supra (note 5)

¹⁷ Supra (note 4)

¹⁸ Supra (note 6)

27. While the general principle articulated in the aforesaid line of judgments is not a matter of doubt, the limitations of this principle are apparent from the decisions of the Supreme Court in *Dr. J.P. Kulshrestha*¹⁹ and *K. Shekar*²⁰.

28. In *Dr. J.P. Kulshrestha*²¹, the judgment in *University of Mysore*²² was cited and reiterated. However, the Court held as follows:-

“17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out. In Govinda Rao case [University of Mysore v. C.D. Govinda Rao, : AIR 1965 SC 491 : (1964) 4 SCR 575, 586] Gajendragadkar, J. (as he then was) struck the right note:

“What the High Court should have considered is whether the appointment made by Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board and its recommendations on which the Chancellor has acted.” (emphasis added)

¹⁹ Supra (note 7)

²⁰ Supra (note 8)

²¹ Supra (note 7)

²² Supra (note 4)

The later decisions cited before us broadly conform to the rule of caution sounded in Govinda Rao [University of Mysore v. C.D. Govinda Rao, : AIR 1965 SC 491 : (1964) 4 SCR 575, 586] . But to respect an authority is not to worship it unquestioningly since the bhakti cult is inept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about academic autonomy have no place here.”²³

29. In *K. Shekar*²⁴ also, the Court followed the aforesaid reasoning:-

“21. We can take judicial notice of the fact that NIMHANS is an institution of repute. It has already been so recognised by this Court in B.R. Kapoor v. Union of India [(1989) 3 SCC 387] . It is also true that generally speaking courts have been reluctant to interfere with the running of educational institutions. But there can be “no islands of insubordination to the rule of law” [J.P. Kulshrestha (Dr) v. Chancellor, Allahabad University, (1980) 3 SCC 418 : 1980 SCC (L&S) 436] . The actions of educational institutions, however highly reputed, are not immune from judicial scrutiny. Indeed, to preserve the high reputation, there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the institution's actions.”²⁵

30. The judgment of the Supreme Court in *K. Shekar*²⁶ has been followed by this Court in *Shri Krishan vs. Union of India and Others*²⁷.

²³ Emphasis supplied.

²⁴ Supra (note 8)

²⁵ Emphasis supplied.

²⁶ Supra (note 8)

²⁷ (2011) 183 DLT 535 [paragraph 35]

31. Having regard to the aforesaid decisions, the approach of the decision-maker is not altogether immune from scrutiny, but must be tested on the anvil of arbitrariness. Despite the relatively low level of scrutiny in such matters, the Court is duty bound to ensure that the process remains fair and reasonable from the perspective of candidates also. Unfortunately, for the reasons stated below, I am of the view that AIIMS has, in the present case, been unable to justify its actions even on such minimal scrutiny.

32. The arguments advanced by Mr. Parashar in this connection do not appeal to me for the following reasons:-

- a) The Note upon which Mr. Parashar relied is contained in clause 1 of Section 7 which is entitled “M.Sc./M. Biotechnology”. Eligibility conditions for M.Sc. (Nursing) are contained in clause 3. There is nothing in clause 3 to indicate a similar bar as far as M.Sc. (Nursing) is concerned, or to draw a prospective candidate’s attention to the Note in clause 1. The placement of the Note indicates that it does not apply to M.Sc. (Nursing) at all.
- b) The Note specifically mentions two disciplines of the M.Sc. course. This suggests that it was intended to be limited to those disciplines. As mentioned above, the Prospectus covered eight specialties within the M.Sc. courses as also the M. Biotechnology course. Even on the broadest interpretation of the term “& others” it could, at best, cover other specialties within the M.Sc./M. Biotechnology courses, but not the M.Sc. (Nursing) course.

- c) The B.Sc. (Post Basic) qualification is specifically mentioned in clause 3(i). The Prospectus requires the qualification to be obtained from “*any recognised University*”, which IGNOU undoubtedly is.
- d) The Admission Notice dated 02.03.2021 restricts the Note to the two disciplines of M.Sc. (Cardiovascular Imaging and Endovascular Technologies, Nuclear Medicine Technology) and does not contain the words “& others”.

33. The interpretation placed upon the Prospectus by AIIMS is, in fact, tantamount to a belated addition of an eligibility condition for the M.Sc. (Nursing) course. Such an addition has been held to be impermissible *inter alia* by the Division Bench of this Court in *Varun Kumar Agarwal*²⁸, which also concerned admission to post-graduate courses (MS/MD) at AIIMS. The Division Bench held as follows:-

“15. In Indu Gupta v. Director Sports, Punjab, AIR 1999 P&H 319 (FB), the Full Bench in paragraphs 9, 10 and 11 has expressed thus:

xxxx xxxx xxxx

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used preemptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of

²⁸ Supra (note 3)

discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure.

16. We have referred to the aforesaid decisions only to highlight that the conditions stipulated in the prospectus are guidelines for all concerned and everyone is required to follow the same in letter and spirit and not act in transgression. The hopes and aspirations of the students, who came within the zone of merit, cannot be scuttled by changing the prospectus by way of introducing a corrigendum. A change in the conditions of the prospectus can be conceived of and allowed if such power is specifically reserved while making the prospectus public as in that case, no one can think of having a right. In that event, the same could be capable of change. In the case at hand, in the absence of a power reserved in the prospectus, in our considered opinion, the same could not have been altered by way of corrigendum. It is interesting to note that by issuing a corrigendum, the scenario of results changed because further results were published and more candidates were called. This, according to us, is nothing but an accommodation. The AIIMS may have been conferred the privilege of institutional preference, but that would not enable AIIMS to change the prospectus in the manner it has been done. Thus, the action of the AIIMS on this score is vitiated and despite the laboured attempt by the learned counsel for

the AIIMS, we cannot give the stamp of approval to the action of the institution.”²⁹

In the above judgment, the Court also referred to the Division Bench decision of the High Court of Madras in *Dr. M. Vannila vs. Tamil Nadu Public Services Commission*³⁰ which expressly holds that the prospectus is binding on the candidates as well as the State.

34. In the context of selection for public service, the Supreme Court in *Maharashtra Road Transport Corporation*³¹ held that the rules of the game, i.e. the criteria for selection, cannot be altered after commencement of the process of selection. For appointment to the post of a lecturer in a university, the Court in *Mohd. Sohrab Khan*³² took the same view in the following terms:-

“24. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream.

²⁹ Emphasis supplied.

³⁰ 2007 (3) CTC 69 [paragraph 19]

³¹ Supra (note 1) [paragraph 5]

³² Supra (note 2)

XXXX

XXXX

XXXX

XXXX

*27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard.*³³

35. As emphasised by the aforesaid judgments, deference to the views of academic authorities is warranted, but equally, the consideration of fairness to candidates cannot be altogether jettisoned. In the context of the present case, a candidate was entitled to rely upon the conditions contained in the Prospectus. AIIMS candidly admits a degree of ambiguity in the Prospectus.³⁴ Deference to academic opinion in such matters does not require a complete abdication of the judicial function; the interpretation offered must, at the very least, be a plausible one. Seen from this viewpoint, I am of the view that the procedure adopted by AIIMS in the present case does not meet the required degree of fairness and reasonableness. A candidate is not expected to appreciate that a disqualification contained in a section of the Prospectus which deals with courses other than his proposed course will be applied to him merely because general words like “& others” have been employed therein. The eligibility conditions for the M.Sc. (Nursing) course were separately enumerated in clause 3 of

³³ Emphasis supplied.

³⁴ In paragraph 3 of the counter affidavit, it is stated as follows:

“The wording of the prospectus may not be as clear as they could be. However, the wording convey the logic and intent of allowing specialized training only to those individuals who have sufficient qualification with hands-on experience at the BSc level to be able to make use of this specialized training.”

Section 7. Even upon the most careful reading of clause 3, no such disqualification can be found.

36. In view of my conclusion that the Note relied upon by Mr. Parashar does not apply to M.Sc. (Nursing) courses at all, it is not necessary to consider the arguments of learned counsel on both sides with regard to interpretation thereof in detail. Suffice it to say that, whether or not the two courses mentioned therein constitute a genus, the words “& others” used thereafter are insufficient to incorporate the disqualification as part of clause 3 of Section 7 which deals with the M.Sc. (Nursing) course.

37. Mr. Parashar’s submissions with regard to the practical requirements of the course and the hands-on training required are also not dispositive of the matter. The undisputed fact is that in prior years, even as late as 2020, candidates with the very same qualification as Sharma, have been admitted to the same course. There can, of course, be no absolute bar on a change of eligibility conditions in a subsequent year; the purpose of mentioning this is only to show that the qualification possessed by Sharma is not one which was entirely outside the contemplation of AIIMS. Had AIIMS intended to apply the disqualification to such candidates, it was required to do so in the Prospectus itself and not by way of a subsequent decision.³⁵

³⁵ Mr. Krishnan had sought to urge that any such disqualification would, in fact, be *ultra vires* the powers of AIIMS in the context of the regulations in the INC Act. Having come to the conclusion that AIIMS has not, in fact, incorporated such a disqualification in the Prospectus for the present year, I do not consider it necessary to enter into this controversy.

Conclusion

38. For the aforesaid reasons, the writ petition succeeds and the impugned decision of AIIMS holding Sharma ineligible on the ground that he has completed the B.Sc. (Nursing) (Post Basic) qualification by way of distance learning is set aside.

39. As the course has commenced very recently and in view of the specific directions contained in the interim order dated 28.09.2021, I am of the view that Sharma is entitled to a direction that he be admitted to the seat reserved for the In-Service category in the M.Sc. (Paediatric Nursing) course in the 2021 session. No other ground of ineligibility has been specified in the impugned decision, and no legal bar to doing so has been urged in these proceedings. AIIMS is therefore directed to process Sharma's admission as expeditiously as possible and permit him to join the M.Sc. (Paediatric Nursing) course in the In-Service category in the 2021 session. Needless to say, Sharma will be required to comply with the rules and regulations applicable to the course, including those pertaining to attendance.

40. The writ petition is disposed of in the aforesaid terms, but with no order as to costs. Pending applications stand disposed of.

PRATEEK JALAN, J

NOVEMBER 10, 2021

'pv'