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

Date of Decision: 30th May, 2022

+ W.P.(C) 1994/2022

DR VISHNU TODI

..... Petitioner

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR.

..... Respondent

Present: Mr. Nitin K. Gupta and Ms. Ritika Gautam, Advocates for Petitioners.

Mr. Sudarshan Rajan, Mr. Ramesh Rawat, Mr. Hitain Bajaj and Mr. Vijay Kr. Sharma, Advocates for PGIMER. Mr. Dushyant Parashar and Manu Parashar, Advocates for AIIMS.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Petitioner – a Nepalese national, is aggrieved with the denial of admission in M.Ch. (cornea, cataract and refractive surgery) course [hereinafter, “*said course*”] by Respondent No. 2 – Post Graduate Institute of Medical Research and Education, Chandigarh [“*PGIMER*”], despite fulfilling the eligibility criteria and being declared as a selected candidate in the entrance test for Institutes of National Importance Super-Speciality [“*INI-SS*”] conducted by Respondent No. 1 – Examination Section of All



India Institute for Medical Sciences [“*AIIMS*”], pursuant to a Merit List dated 25th December 2021, on the ground that Respondent No. 2 did not have any seats reserved for foreign national candidates. He thus seeks direction to Respondents to grant him admission.

BRIEF FACTS

2. In October, 2021, AIIMS invited applications from eligible candidates, including foreign nationals, for admission to various degree courses, including the said course, for the academic session commencing from January 2022. Pursuant thereto, Petitioner appeared for, and subsequently cleared the INI-SS Examination. On 25th December, 2021, AIIMS released a merit list of provisionally qualified candidates, wherein Petitioner was selected for admission in PGIMER in the said course under the ‘foreign national’ category.

3. It is the case of the Petitioner that pursuant to the result, he made several attempts to contact PGIMER regarding further procedure for admission. By way of an email communication dated 28th December, 2021, he was informed by AIIMS that he need not apply for counselling. Thereafter, as he did not receive any further instructions, aggrieved from the lack of communication regarding his admission, Petitioner approached the High Court of Punjab and Haryana at Chandigarh, which, *vide* order dated 19th January, 2022, directed him to approach the Director of PGIMER, and accordingly, he made a representation dated 20th January, 2022.

4. Thereafter, on 25th January, 2022, by way of an email communication,



he was informed by AIIMS that the allocation of seat to him was erroneous and no seat was available to foreign national candidates at PGIMER. The said communication reads as follows:

*"From: AIIMS INI-SS <aiims.iniss@gmail.com>
Date: Tue, Jan 25, 2022, 17:05
Subject: Withdrawal of Candidature for M.Ch-Cornea, Cataract & Refractive Surgery at PGIMER, Chandigarh for January-2022 session
To: Vishnu Todi <vishnu.todi@gmail.com>
Cc: DMMCh Section <dmmchpgi@gmail.com>*

Dear Candidate,

Attention drawn towards allocation of seat for course M.CH in subject/specialty of Cornea, Cataract and Refractive Surgery Vide result notification 205/2021 dated 25.12.2021.

It is informed that seats under Sponsored and Foreign National category are not interchangeable at PGIMER, Chandigarh and an allocation to you has been made inadvertently. The mistake has been communicated to you by the PGIMER on the day of reporting at the Institute.

In continuation of same it is hereby informed that the said allocation on sponsored seat in M.Ch. Cornea, Cataract and Refractive Surgery stands cancelled as you have applied under Foreign National Category and there is no seat available for Foreign National in the said specialty at PGIMER, Chandigarh.

The inconvenience caused is deeply regretted."

5. Pursuant to AIIMS's communication, PGIMER, vide letter dated 29th January 2021, withdrew the Petitioner's admission, stating that seats under the above-noted categories are not interchangeable at PGIMER, Chandigarh.
6. Assailing the two aforesaid communications as arbitrary and unjust, Petitioner has filed the present writ petition.



CONTENTIONS OF THE PARTIES

CONTENTIONS ON BEHALF OF PETITIONER:

7. Mr. Nitin K. Gupta, counsel for Petitioner, submits the following:

7.1. The said course is a unique course only offered in one institute across the country. A total of two seats – one in the unreserved category and one in the sponsored category – were advertised for the concerned course in PGIMER.

7.2. Reliance is placed on Clause 7(C)(iv) of the Prospectus issued by AIIMS, wherein it is provided that “*foreign nationals/Overseas Citizens of India (OCI) will be considered against the seats advertised under the “sponsored” category for DM/M.Ch. & MD (Hospital Administration) Entrance Examination courses*” to state that Petitioner, if meritorious, would be eligible for admission against the seat under the sponsored category. As Respondent No. 1 continuously consulted with the Nodal Officer of PGIMER, it can be concluded that PGIMER was well-aware of this stipulation.

7.3. Petitioner had applied for and secured the highest marks in the INI-SS Examination as a foreign national, and no objection was raised thereto *qua* his eligibility by the Respondents. Having declared the Petitioner as a successful candidate, and consequently, selecting him for admission in PGIMER under the foreign national category, a right was created in favour of the Petitioner to be offered admission in the said course by applying the doctrine of legitimate expectation.

7.4. Petitioner has forgone other opportunities which he would have otherwise availed had he not been selected for admission in PGIMER. He also left his fellowship at ASG Eye Hospital, Patna and came to Delhi for



admission, in light of the fact that PGIMER is the only institute in the country providing the concerned course, and that the Petitioner possesses due merit. Thus, decision of Respondents to not admit him is unfair.

7.5. Attention of the Court is also drawn to the prospectus issued by PGIMER wherein the criterion for eligibility of foreign national students has been laid down to contend that denial of admission to Petitioner is tantamount to changing the admission criteria after declaration of result, and as such, infringes upon the fundamental rights of the Petitioner. Such a practice greatly prejudices the Petitioner, and has been condemned by the Supreme Court in a plethora of judgements.

7.6. Reference is also made to prospectuses issued by various institutes under INI-SS scheme to contend that all institutes have categorically explained the situation of foreign national students vis-à-vis seats under the 'sponsored' category. It is only JIPMER, Puducherry that has prohibited the allocation of seats under sponsored category to foreign nationals. Nonetheless, the prospectus issued by PGIMER is silent on this aspect and as such, the rules laid down by Respondent No. 1 shall be applicable for admission of Petitioner.

CONTENTIONS ON BEHALF OF AIIMS:

8. Mr. Dushyant Parashar, counsel for AIIMS, makes the following submissions:

8.1. AIIMS conducts the exams and counselling for admission to courses at various institutions and the prospectus issued by it is common to all participating institutions, subject to rules applicable to respective institutes as per their own prospectus. The same is stated specifically in the prospectus



at Pages No. 38 and 39. Therefore, admission to various seats at various institutions is governed by respective eligibility criteria fixed by these institutes. Although a common examination was conducted in larger public interest to draw merit, but admission and seat allocation are regulated by own rules of each institute. The same has also been reflected in the prospectus of AIIMS.

8.2. Seats were declared only under two categories in the prospectuses of AIIMS and PGIMER viz. general and sponsored. No vacancy was advertised in the foreign national category – which is a separate and distinct category, and as such, there are no seats available under the same. At no place in the prospectus of PGIMER has it been mentioned that foreign nationals are eligible for admission to the seats under sponsored category.

8.3. Since the said course is only available at PGIMER, the allocation of seats was done directly on the basis of merit, without any counselling process.

8.4. As Petitioner is a foreign national, the allocation made to him was inadvertent and under the assumption that rules applicable generally to all institutes are also applicable to PGIMER, which is not the case.

8.5. Moreover, considering that this is the first time the INI-SS Examination is being conducted by AIIMS, and based on the experience and challenges faced in conducting common entrance examinations – where multitude of rules apply, AIIMS also undertakes to be more cautious and revise the current rules to provide more clarity in the future.

CONTENTIONS ON BEHALF OF RESPONDENT NO. 2/ PGIMER

9. Mr. Sudarshan Rajan, counsel for Respondent No. 2/PGIMER, states



the following:

9.1. Every institute under the INI-SS Examination scheme has its own rules for selection in each course. Thus, while AIIMS is guided by its prospectus, admission into PGIMER is governed by the procedure mentioned in PGIMER's own prospectus. The same has also been conceded to by Petitioner in his writ petition.

9.2. There is no reservation for foreign national students in PGIMER in the academic session commencing from January 2022. Each year, two batches of selections are conducted by PGIMER – in January and July respectively. The conditions governing seats and vacancies differ in the two batches and foreign student reservation in PGIMER is available only in the July batch. To further this submission, reliance is placed on previous notifications detailing the allocation of seats under different categories for various courses released by PGIMER.

9.3. Insofar as the question of defining eligibility of a foreign national student contained in the prospectus for January 2022 batch is concerned, it is an error, as similar prospectuses are issued for both batches. Nevertheless, the scheme of reservation of seats differs in both batches and inclusion of eligibility criteria in the prospectus cannot be read to imply that PGIMER would accommodate foreign students in the January 2022 batch.

9.4. As this is the first time that the INI-SS Examination is being conducted for admission into various courses, there has been a *bonafide* mistake in publication of prospectus. Unlike AIIMS, there is no provision for accommodation of foreign students in sponsored category in PGIMER.

9.5. The criteria for admission of foreign nationals and sponsored students vary greatly. Sponsored candidates are ones whose entire stipend/ salary is



paid by the sponsoring institute, and thus, there is no financial implication on PGIMER. Whereas, foreign nationals are persons who have reserved seats only in the July batch of admission in PGIMER. A sponsored Indian doctor continues to render services in India after completion of the course, but the same is not applicable for foreign students. Thus, same criteria cannot be applied to sponsored candidates and foreign nationals. Similarly, a request for change in category cannot be entertained after submission of application as per rules of PGIMER. Therefore, no right accrues in favour of the Petitioner to seek accommodation under the sponsored category in PGIMER.

9.6. Even if Petitioner seeks admission in the July 2022 batch, he cannot be accommodated as the seat allocation chart published for July 2022 discloses that there were no vacancies under the foreign national category for the said batch as well.

REJOINDER SUBMISSIONS ON BEHALF OF PETITIONER

10. In response to the contentions raised by the Respondents, Petitioner argues that as this is the first time that the INI-SS exam has been conducted at the national level, the reliance upon distribution of seats in the preceding years is wholly incorrect. Prospectuses issued prior to this academic session are irrelevant as the practice has substantially changed with the introduction of INI-SS.

ANALYSIS

11. The Court has given due consideration to the submissions advanced by the counsel.



12. The examination department of AIIMS undertook to conduct the INI-SS Examination at the national level by integrating certain institutes of national importance through a common entrance test. PGIMER is amongst the said institutes that sought to admit students based on their performance in the INI-SS into various courses. It is an admitted case that Petitioner was declared to have been selected by AIIMS for admission to PGIMER in the academic session beginning in January 2022. However, Respondents contend that the same was done erroneously as there are no seats reserved for foreign nationals in PGIMER in the academic session commencing from January 2022, and thus, admission cannot be allowed to go through.

13. Indeed, there is ambiguity in the prospectus issued by PGIMER in as much as there is no clarity *qua* the position of foreign nationals in the said academic session – which led to allocation of seats under the sponsored category to a foreign national, *i.e.*, the Petitioner. However, in the facts of the case, considering that the conducting of the INI-SS Examination by AIIMS is still at a nascent stage, it is plausible that the same had inadvertently been done based on the general rules of admission and in the absence of counselling sessions that are usually held before admission.

14. PGIMER's prospectus for the academic session commencing January, 2022 describes the eligibility criteria for foreign national students in the following terms:

"A candidate applying for admission as a Foreign National candidate is required to take form and furnish the the print out of the online application form and furnish the relevant certificates are required to route their application through the Ministry of Health and



Family Welfare, Government of India, New Delhi. All foreign nationals will have to take prior permission from the Medical Council of India/National Medical Commission before applying for postgraduate Courses in the Institute, as per their Instructions issued vide office no. MC-202(1) (Gen) Regn-2010/45277 dated 9-12-2010:

- A) *An advance copy of application form along with relevant documents must be submitted at PGIMER, Chandigarh before the last date of receipt of applications, However applications of such candidates will be processed after receipt of the same through diplomatic channels.*
- B) *These candidates are also required to appear in the entrance examination along with other candidates. A separate merit list of for these candidates will be prepared within their own group.*
- C) *Selection of candidates will be made on merit based on their performance in the entrance examination.*
- D) *In the event of selection, the candidates have to apply for temporary registration with the Medical Council of India/NMC for the duration of postgraduate study.*

Note:- The Admission of Foreign National Category will be available in July Session only.”

It is also significant to note that in the prospectus of PGIMER issued for July, 2022 session, under the head ‘*eligibility of foreign nationals*’, a note has been added to state that “*admission of foreign national category will be available in July session only*”.

15. The Court also finds merit in the contention of PGIMER that the mere mentioning of eligibility criteria for admission as a foreign national in its prospectus does not mean that PGIMER advertised seats for foreign nationals. The pertinent question is *qua* the seat-allocation as published by PGIMER for said course, which reads as under:

“3.2 Number of Seats

The facilities for post-doctoral courses are available in the following super specialities for January 2022 Session:

Name of the Department/Course	Seats to be advertised for January 2022 Session	
	General	Sponsored
xx ... xx ... xx		
M.CH. COURSE		
xx ... xx ... xx		
Cornea, Cataract and Refractive Surgery	01	01
xx ... xx ... xx		

Number of seats are tentative, it may vary. ”



16. Furthermore, in terms of the order dated 26th April, 2022, PGIMER has filed an additional affidavit dated 30th April, 2022 – to affirm that the past practice of the institute has been to admit foreign nationals only in the July batch. Having regard to the above-stated affidavit, the seat allocation and prospectus issued for July 2022 batch, the Court finds justification to accept the explanation offered by the Respondents regarding the discrepancy in the eligibility criteria provided for foreign national students in PGIMER's prospectus. Such an error cannot be taken to have created a right in favour of the Petitioner to seek admission against the seat allotted for sponsored students.

17. Private institutions are empowered to formulate their own policies/ schemes governing reservation of seats for foreign national/ NRI students. It cannot be refuted that it is for PGIMER to ultimately decide the allocation of seats. The documents brought on record establish that PGIMER provides reservation of seats for foreign nationals only for the July batch, and not for the January batch. The prospectus of PGIMER would be the dominant factor in matters of admission to various courses in the said institute. PGIMER is well within its powers to lay down the policy of providing reservation to foreign nationals only in batches commencing from July, and not from January. In that light, it must also be noted that while laying down the general scheme of INI-SS, the prospectus issued by AIIMS categorically provides that the terms and conditions, including matters concerning seat allocation, for admission into any of the participating institutes (such as PGIMER) – will be governed by the rules and regulations of the respective



institutes. The same can be concluded from the following clause contained in AIIMS' prospectus:

"3. Administration

INI-SS is administered by the Examination Section, AIIMS New Delhi in consultation with nodal officers from all INIs AIIMS, New Delhi is the sole authority for conduct of all aspects related to Combined Entrance Test such as application, conduct of exam, declaration of results, Seat Allocation and its responsibility is limited to these aspects of INI-SS only.

Admission into any of the participating INI will be governed by the rules and regulation of respective Institute as applicable and will be administered by the Head of Institutions of respective INIs (the details are mentioned in Part of the Prospectus of INI-SS, January 2022) All disputes with regards to any matter referred to herein shall be subjected to the jurisdiction of Delhi Courts only."

18. Therefore, the ambiguity in the prospectus published by AIIMS is not a compelling ground to direct PGIMER to abide by the stipulations laid down by AIIMS, which are at variance with their policy.

CONCLUSION

19. In terms of the discussion above, it follows that PGIMER is the appropriate authority to determine the number of seats to be reserved under the 'foreign national' category. As held by the Apex Court in the case of *Nilay Gupta (supra)*, creation of a quota/ category for foreign nationals is neither sacrosanct nor inviolable. Therefore, it cannot be said that Petitioner has an inherent right to seek admission in the institute. It was an administrative decision to provide admission to foreign students only in the July batch, and the same cannot be tampered with by this Court. In the present case, PGIMER decided not to allocate any seats to foreign national candidates, and unfortunately, the declaration of result by the Examinations Department of AIIMS did not depict a true picture. Undeniably, there has been a mistake by the Respondents in declaring Petitioner as a selected



candidate, however, this does not empower the Court to create a seat for the Petitioner when evidently, none exists and there is no provision for the same in the scheme of examination decided by Respondents.

20. Accordingly, the present petition is dismissed, along with pending applications, if any.

SANJEEV NARULA, J

MAY 30, 2022

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