

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

+ **W.P.(C) 401/2023**

Date of Decision: **20.04.2023**

**IN THE MATTER OF:**

**SHREYANSH SHARMA**

S/o Sh. Jagdeep Sharma  
R/o E-21, Jyoti Colony, Shahdara  
Delhi-110032.  
9810455080

..... PETITIONER

Through: Mr.K.C. Mittal, Mr.Yugansh Mittal,  
Mr.Jagdeep Sharma, Mr. Vaibhav  
Yadav and Mr.Amit Sharma,  
Advocates.

Versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY  
THROUGH REGISTRAR**

Sector 16 C, Dwarka, Delhi-110078.  
011-25302170.

..... RESPONDENT NO.1

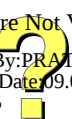
**MAHARAJA AGRASEN INSTITUTE OF TECHNOLOGY,**  
Through Principal,  
Maharaja Agrasen Chowk, Sector 22, Delhi-110086.  
09212421247

..... RESPONDENT NO.2

Through: Ms.Anita Sahani and Mr.Rahul  
Mourya, Advocates for R-1.

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The petitioner, in the present petition, seeks to challenge the notification dated 21.12.2022, in so far as the same relates to restriction for admission to the candidates in special spot offline counseling.
2. Learned counsel appearing on behalf of the petitioner states that the impugned circular violates the provisions of the Delhi Professional Colleges or Institutions (Prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee and other measures to ensure equity and excellence) Act, 2007 (hereinafter referred to as the 'Act of 2007'). He states that under the provisions of the Act of 2007, the Admission Regulatory Committee is constituted as per Section 4 thereof and the said Committee is the only competent authority to issue any guideline or regulate the procedure of admission in an institution to maintain a fair, transparent, merit-based and non-exploitative procedure. He, therefore, states that respondent No.1-Guru Gobind Singh Indraprastha University (hereinafter referred to as 'the University') being a designated agency in terms of Section 3(g) of the Act of 2007, has no power or authority to issue the impugned circular.
3. He also states that in terms of public notice dated 23.12.2022, the petitioner had participated in the counseling for admission in the 2022-23 batch and had deposited the requisite fee. According to him, despite the availability of the vacant seats for the preferred branch i.e. Computer Science Engineering ('CSE'), the petitioner has not been granted admission only on



account of Clauses 6 and 7 of the impugned circular which *inter alia* prescribes for observance of 'no rank violation'.

4. According to him, once the seats are vacant in the respective colleges and no more meritorious candidate is available then the right to admission to a professional educational institution ought not to have been denied to the petitioner on the ground of 'no rank violation' condition. Therefore, it is prayed that the petitioner be granted admission for the Academic Session 2022-23 in respondent No.2-Maharaja Agrasen Institute of Technology (hereinafter referred to as 'MAIT'), where, he participated in counseling in CSE.

5. Learned counsel appearing on behalf of respondent No.1-University opposes the submissions made on behalf of the petitioner by way of filing a counter affidavit. She states that Section 3(d) of the Act of 2007 prescribes that admissions in professional educational institutions are to be granted based on a common entrance test conducted for the determination of the merit of the candidates followed by centralized counseling for merit-based admission. According to her, the principle of merit will have to be followed in the matter of grant of admission. She further states that as per the circular dated 21.12.2022, the conduct of a special spot offline round of counseling is to facilitate those candidates who for certain reasons have not been able to get admission in the online counseling process. According to her, in the instant case, the petitioner did participate in the offline centralized counseling and he was offered a seat according to his merit in three branches at respondent No.2-MAIT.

6. She has also placed reliance on an interim order passed by this court dated 13.12.2022 in W.P.(C) No.16871/2022 to indicate that when the same

circular was challenged before this court at the instance of respondent No.2-MAIT itself, this court in its detailed order, declined to pass any interim order. She also states that the special spot offline counseling mechanism was provided as an extraordinary measure keeping in mind that certain seats remained vacant and various students because of genuine reasons could not participate in the counseling. She further states that the admissions in the professional educational institutions were completed on 04.11.2022 and the classes commenced on 07.11.2022 and, therefore, at this stage, no interference is called for.

7. I have heard learned counsel appearing on behalf of the parties and perused the record.

8. Clauses 7 and 8 of circular dated 21.12.2022 which is under challenge, reads as under:-

*“7. Merely registration and participation by NLT/CET qualified candidates in Special Spot Offline Round of Counselling does not guarantee an admission to the such candidate in his / her choice of College or Stream as the allotment shall be purely on centralized merit basis of complete counselling held so far and in accordance with the CUT OFF rank determined through Online Counselling for the respective programme of respective college to ensure NO rank violation with respect to admitted candidates.*

*8. The conduct of Special Spot Offline Round of Counselling is with the purpose to only facilitate those candidates who for certain reasons have not able to get admission in the Online Counselling Process held so far. During the Special Spot Offline Round of Counselling, the University shall ensure that allotment of seat in respective programme in a college is purely on merit basis and in accordance with the CUT OFF rank determined through Online Counselling for the respective programme of respective college to ensure NO rank violation with respect to admitted candidates. The Hon'ble High Court of Delhi in a Writ Petition has upheld the policy of the University for NO rank violation with respect to the admitted candidates.”*

9. A bare perusal of the circular dated 21.12.2022 would indicate that the same was issued as a last opportunity for online registration for a special spot offline round of counseling for admission to various programmes for Academic Session 2022-23. Clause 7 as reproduced above would further indicate that mere registration and participation by NLT/CET qualified candidates in special spot offline round of counselling does not guarantee admission to such candidate in his/her choice of college or stream. The respective colleges were to ensure the 'no rank violation' principle with respect to admitted candidates in terms of college and programme.

10. Clause 8 of the said circular further speaks about ensuring the 'no rank violation' principle. The 'no rank violation' principle as explained by the University would mean that the candidate who is desirous of admission to any college or programme will not be considered if he/she obtains marks less than the marks obtained by the last admitted candidate in the concerned course/college.

11. This court finds that such a stipulation is necessary to ensure that merit is maintained and no less meritorious candidate obtains admission under the guise of a special spot offline round of counseling.

12. In the instant case, the last rank of the admitted candidate in respondent No.2-MAIT in CSE branch (Shift-I) is 50533 and CSE branch (Shift-II) is 50771 and the rank of the petitioner is 259763 in JEE Mains.

13. It is thus seen that so far as the merit position is concerned, the last candidate admitted by respondent No.2-MAIT is higher in merit than the petitioner. Therefore, the petitioner cannot be granted admission *de hors*, the 'no rank violation' principle.

14. The next question that arises for consideration is as to whether respondent No.1-University can direct for observing the 'no rank violation' principle as has been done in the instant case in terms of circular dated 21.12.2022.

15. The Hon'ble Supreme Court in the case of *T.M.A. Pai Foundation and others versus State of Karnataka and others*<sup>1</sup>, *Islamic Academy of Education & Anr. Versus State of Karnataka and Ors.*<sup>2</sup> and *P.A. Inamdar and others versus State of Maharashtra and others*<sup>3</sup> emphasized that admission to a professional educational institution should always be based on merit. In order to maintain excellence in higher education, merit plays an important role.

16. The *proviso* to Section 13 of the Act of 2007 further provides for the advertisement and filling up of seats from the candidates who have qualified for the common entrance test by the institution in a transparent manner based on merit at the qualifying examination.

17. It is thus seen that in order to honor the *inter se* merit, respondent No.1-University has issued the impugned circular prescribing that under the guise of a special spot offline round of counseling, no less meritorious candidate should be granted admission. Respondent No.1-University being a designated agency in terms of the provisions of the Act of 2007 and being an affiliating authority, is competent to issue necessary directions to ensure merit-based admission. The merit-based admission is inbuilt under Article 14 of the Constitution of India.

18. It is also to be noted that the instant counseling i.e. special spot offline

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<sup>1</sup>(2002) 8 SCC 481

<sup>2</sup>(2003) 6 SCC 697

<sup>3</sup>(2005) 6 SCC 537

round of counseling is a special round of counseling and the same has been directed for the Academic Session 2022-23 under special circumstances. If admissions are granted to candidates who are less meritorious than the candidates admitted in the earlier rounds of counseling, the same would cause prejudice and frustration in the minds of already admitted candidates. The petitioner did participate in earlier rounds of counseling and was offered seats in three branches. The special spot offline round of counseling is envisaged for those candidates who could not, at all have participated, in earlier rounds of counseling for some genuine reasons.

19. It is thus seen that in the instant case even after the special spot round of counseling, if some seats remained vacant, the same cannot be the reason to continue further rounds of counseling. If such an approach is resorted to, the entire counseling process would become endless and the same would mean that till the last seat is filled up, the counseling process should go on. This can never be the intent of any fair and transparent counseling process. In any case, the merit position cannot be compromised in the matter of grant of admission to educational institutions. If the 'no rank violation' principle is not followed, the same is susceptible to compromising the merit position.

20. The Hon'ble Supreme Court in the case of ***Education Promotion Society for India and Anr. Vs. Union of India and Ors.***<sup>4</sup> considered the prayer for a general extension of time in the form of an additional mop up round of counseling on the ground that a large number of seats were lying vacant. The Hon'ble Supreme Court has held that the seats' lying vacant is not a ground to grant an extension of time and further opportunity to fill up the vacant seats.

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<sup>4</sup>(2019) 7 SCC 38

21. In view of the aforesaid, this court does not find any reason to interfere with the impugned circular. Accordingly, the instant petition stands dismissed.

**PURUSHAINDRA KUMAR KAURAV, J**

**APRIL 20, 2023/nc**

